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COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 01 of 2021

**In Re: Updated Terms of Service and Privacy Policy for WhatsApp users**

**Against:**

WhatsApp LLC  
Meta Platforms, Inc.

Opposite Party No. 1  
Opposite Party No. 2

**WITH**

**Case No. 05 of 2021**

**In re:**

Prachi Kohli

Informant

**Against:**

WhatsApp LLC

Opposite Party

**WITH**

**Case No. 30 of 2021**

**In re:**

Internet Freedom Foundation

Informant

**Against:**

WhatsApp LLC  
Meta Platforms, Inc.

Opposite Party No. 1  
Opposite Party No. 2

**Present**

For WhatsApp LLC  
(WhatsApp)

: Mr. Arun Kathpalia, Senior Advocate with Mr. Yaman Verma, Ms. Aisha Khan, Mr. Aniket Ghosh, Ms. Parinita Kare, Ms. Bani Brar, Ms. Tahira Kathpalia and Ms. Supritha Prodaturi, Advocates

For Meta Platforms, Inc. (Meta)

: Mr. RajShekhar Rao, Senior Advocate with Mr. Naval Chopra, Ms. Krithika Ramesh, Ms. Meherunnisa A. Jaitley, Mr. Rajarshi Roy, Ms. Nitika Dwivedi, Ms. Bani Brar and Ms. Supritha



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Prodaturi, Advocates, along with Ms. Ruth Chen and Mr. Rahul Satyan, Representatives of Meta.

For Facebook India Online Services Limited (Facebook India) : Mr. Tejas Karia, Mr. Aatmik Jain, Mr. Aakash Kumbhat, Mr. Shashank Mishra and Ms. Supritha Prodaturi, Advocates

For Internet Freedom Foundation (IFF) : Mr. Vivek Pandey, Mr. Sasthibrata Panda, Ms. Shreya Kapoor and Ms. Biyanka Bhatia, Advocates.

**CORAM:**

**Ms. Ravneet Kaur**  
**Chairperson**

**Mr. Anil Agrawal**  
**Member**

**Mr. Deepak Anurag**  
**Member**

**Order under Section 27 of the Competition Act, 2002**

1. In January 2021, the Commission took *suo motu* cognisance of certain media reports stating that WhatsApp Inc. (now, WhatsApp LLC and hereinafter, referred to as 'WhatsApp') has updated its privacy policy and terms of service for its users (Suo Moto Case No. 01 of 2021). It was *inter alia* reported that the new policy makes it mandatory for the users to accept the terms and conditions in order to retain their WhatsApp account information and provides as to how it will share personalised user information with Facebook Inc. (later renamed as Meta Platforms, Inc. and hereinafter, referred to as 'Meta') and its subsidiaries.
2. The Commission observed that since early January 2021, WhatsApp users started receiving notification from WhatsApp informing them about the new changes in



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WhatsApp's terms of service and privacy policies. The text of such notification, as reported in media, is as follows:

*WhatsApp is updating its terms and privacy policy.*

*Key updates include more information about:*

- *WhatsApp's service and how we process your data.*
- *How businesses can use Facebook hosted services to store and manage their WhatsApp chats.*
- *How we partner with Facebook to offer integrations across the Facebook Company Products*

*By tapping AGREE, you accept the new terms and privacy policy, which take effect on February 8, 2021. After this date, you will need to accept these updates to continue using WhatsApp. You can also visit the Help Center if you would prefer to delete your account and would like more information.*

3. Thus, the above notification suggested that in order to be able to use the services of WhatsApp, from 08.02.2021 onwards, users will have to mandatorily accept the new terms and policy in their entirety including the terms with respect to sharing of their data across all the information categories with other Facebook Companies. As per previous privacy policy(ies) dated 25.08.2016 and 19.12.2019, existing users had an option to choose whether they wanted to share their WhatsApp data with Facebook. However, with the latest update, every WhatsApp user has to mandatorily agree to such data sharing with Facebook.
4. In the meanwhile, the Commission received an Information bearing *Case No. 05 of 2021* under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Ms. Prachi Kohli ('Informant') against WhatsApp alleging contravention of the provisions of Section 4 of the Act. The Commission considered the said Information in its ordinary meeting held on 23.03.2021 and noted that the allegations made by the Informant are substantially same to those, which are the subject matter of *Suo Moto Case No. 01 of 2021*. Accordingly, in terms of proviso to Section 26(1) of the Act, the Commission decided to club this matter with *Suo Moto Case No. 01 of 2021*. It was also decided that no separate order or direction is required to be passed on the instant Information and the same shall abide by the decision of the Commission in *Suo Moto Case No. 01 of 2021*.



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### Directions to the Director General (DG)

5. Based on the material available on record, the Commission, *vide* its order dated 24.03.2021, formed a *prima facie* view that WhatsApp in the garb of its policy update, has contravened the provisions of Section 4 of the Act through its exploitative and exclusionary conduct, as detailed in the said order. Accordingly, the Commission directed the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act (**PF Order**).
6. Subsequently, the Commission received another Information bearing Case No. 30 of 2021 against the Opposite Parties filed by Internet Freedom Foundation (**IFF**). The Commission considered the said Information in its ordinary meeting held on 12.10.2021 and noted that the subject matter of the allegations made in the instant Information was substantially the same as that of *Suo Motu* Case No. 01 of 2021 which is currently under examination before the DG. Accordingly, in terms of proviso to Section 26(1) of the Act, the Commission, *vide* its order dated 12.10.2021, decided to club this case with *Suo Motu* Case No. 01 of 2021. It was also directed that no separate order or further direction is required to be passed on the instant Information and the same shall abide by the decision of the Commission in *Suo Motu* Case No. 01 of 2021. It was clarified that the scope of the Order dated 24.03.2021 passed under Section 26(1) of the Act, in *Suo Motu* Case No. 01 of 2021, remains unaltered by virtue of the clubbing of the present matter with *Suo Motu* Case No. 01 of 2021.
7. The OPs filed Writ Petitions before the Single Judge in Hon'ble Delhi High Court to challenge the aforementioned order dated 24.03.2021 passed by the Commission. The Court *vide* its order dated 22.04.2021 dismissed the captioned petitions after finding no merit in the petitions and refused to quash the PF Order of the Commission. The OPs filed Letter Patent Appeals No. 163 and 164/2021 before the Division Bench of Hon'ble Delhi High Court against the said Single Judge bench order. The Hon'ble Court *vide* judgement dated 25.08.2022 dismissed both the LPAs. Aggrieved by the impugned judgment and final order dated 25.08.2022 passed by the Hon'ble Delhi High Court,



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Special Leave Petitions were preferred by the OPs. The Hon'ble Supreme Court *vide* its judgment dated 14.10.2022 dismissed the SLPs filed by parties. The Court observed that the Commission should not be restrained from proceeding further with the enquiry/investigation for the alleged violation of any of the provisions of the Act.

8. Accordingly, the DG submitted the Investigation Report (confidential as well as non-confidential versions) on 12.01.2023 along with case records.

### **Investigation by the DG**

9. During the course of Investigation, the DG has collated information from OPs as well as third parties. The replies and submissions so received have been considered by the DG while preparing his Investigation report.
10. Based on the analysis of various factors mentioned in the Act, following relevant markets were delineated by the DG:
  - a) Market for Over-the-Top (OTT) messaging apps through smartphones in India; and
  - b) Market for online display advertising in India.
11. The Investigation also found that Meta operating through WhatsApp and Messenger in the market of OTT messaging apps in India is way ahead of other messaging apps. Considering the relative financial resources and active users of the OPs and the competing apps in the relevant market, direct network effects, the strong lock-in effects, absence of countervailing buying power, and control over huge data acting as barriers to market entry, Meta group was found by the DG to be dominant in the market for Over-The-Top (OTT) messaging apps through smartphones in India.
12. The DG also found that Meta (through WhatsApp) has contravened the provisions of Sections 4(2)(a)(i), 4(2)(c) and 4(2)(e) of the Act for reasons elaborated in the Investigation Report.



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### Consideration of the Investigation Report by the Commission

13. The Commission considered the Investigation Report in its ordinary meeting held on 14.07.2023 and noted that Meta appears to operate as a 'Group' and offers its products/services through its various subsidiaries including WhatsApp. The Commission directed to forward an electronic copy of the non-confidential version of the Investigation Report to the Opposite Parties *i.e.*, WhatsApp, Meta and Facebook India Online Services Limited as well as to the Informant(s) in Case Nos. 05 of 2021 and 30 of 2021 (together referred to as the 'Parties'). The Parties were allowed to file their respective suggestions/ objections, if any, to the Investigation Report. The Parties were directed to mutually exchange copies of their respective objections/ suggestions in advance, before filing the same with the Commission. Parties were also allowed to file response(s), if any, to each other's objections/ suggestions.
14. Further, the Commission, *vide* its order dated 22.11.2023, decided to set up a confidentiality ring in the matter in terms of Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (General Regulations), to grant access to the confidential version of the Investigation Report and confidential case records to the OPs, as prayed for, subject to the stipulations made therein.
15. The respective objections/ suggestions from all the three OPs as well as IFF have since been received and taken on record. The Informant in Case No. 05 of 2021 (*i.e.*, Ms. Prachi Kohli) has neither filed any submission nor participated in the proceedings before the Commission.
16. The Parties were also allowed to appear for a oral hearing on the Investigation Report either in person or through their duly authorised representatives, within the meaning of Section 35 of the Act. During the course of oral hearing, the OPs were also given liberty to make submissions on the quantum of penalty which may be levied by the Commission in the event they are held in contravention of the provisions of the Act. In this regard, the attention of the OPs was drawn towards the Competition Commission of India



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(Determination of Turnover or Income) Regulations, 2024 and the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 (Penalty Guidelines).

17. The Commission heard the learned Senior Counsel(s) appearing on behalf of WhatsApp and Meta and learned counsel appearing on behalf of Facebook India and IFF, on 22.05.2024, 16.07.2024, 25.07.2024, 26.07.2024, 01.08.2024, 07.08.2024 and 28.08.2024. On conclusion of hearing, the Commission invited the learned Senior Counsel(s) for the OPs to make arguments on the quantum of penalty and remedies which may be imposed in the event they are held to be in contravention of the provisions of the Act. The learned Senior Counsel appearing on behalf of WhatsApp made his submissions on these aspects as well. Further, as prayed, the parties were also allowed to file brief synopsis of their oral arguments, within 10 (ten) days, if so desired. The Commission also decided to pass an appropriate order in due course.
18. Thereafter, all the parties filed synopsis of their oral arguments with the Commission. The same have been taken on record.

#### **Replies/objections/suggestions by the Parties.**

19. The Informant in Case Nos. 30 of 2021 (*i.e.*, IFF), in its reply to the Investigation Report, concurs with the conclusions and findings of the DG, while the OPs have contested the findings of the DG. The averments made by the OPs as well as IFF would be referred to in this order and dealt with, while analysing the matter on merits.

#### **Analysis and findings of the Commission**

##### *About the Parties*

20. Internet Freedom Foundation (IFF) is stated to be a registered charitable trust under the provisions of the Indian Trust Act, 1882 that works on technology and fundamental rights issues. As per the information available, it was established in 2016 to promote the



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rights of internet users before policymakers, regulators, courts and the wider public sphere and claims to be working in furtherance of that objective to bring transparency to policies and defend and expand digital rights.

21. Meta, established in 2004 is a publicly traded company listed on NASDAQ. In October 2021, its name was changed from Facebook, Inc. to Meta Platforms, *Inc.* Meta offers various internet-based products, services and applications (apps). The primary product offerings of Meta include Facebook, WhatsApp, Instagram, Messenger, *etc.* Facebook is a social networking service providing services like Newsfeed, stories, photos and videos sharing, Watch, Pages, Groups, Events and Marketplaces. The Instagram Service is a mobile and web-based application that provides a variety of features to users to communicate with each other, such as sharing photos, videos, messages, feed *etc.* Messenger is a messaging application which enables people to send and view messages, including text, photos, videos, or voice messages. Meta also provides advertising services wherein advertisers purchase ads that can appear in multiple places, including on the Facebook Service, the Instagram Service, Messenger, and on third-party mobile apps.
22. WhatsApp was acquired by Meta in February 2014, and it provides instant messaging platform which enables the users to send text messages, make voice and video calls, share various media files across devices with ease, *etc.* WhatsApp has also evolved to cater to the needs of businesses, providing features such as WhatsApp Business and WhatsApp Business API. Currently, WhatsApp services in India and globally, are provided by WhatsApp LLC (OP-1/WhatsApp). Whereas, WhatsApp Ireland Limited provides the WhatsApp service for users located in the European region.
23. WhatsApp Business App, launched in January 2018, is stated to be a free-to-download app that makes it easier for small businesses to connect with customers, and more convenient for WhatsApp users to chat with businesses that matter to them. Among other things, the WhatsApp Business App: (a) helps companies create business profiles; (b) provides smart messaging tools (that allow businesses to send greeting messages to introduce customers to their business, away messages to let customers know the





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company is busy, and quick replies to provide fast answers to frequently asked questions); (c) provides messaging statistics; (d) allows businesses to chat from their desktop to manage conversations and send files to customers; and (e) provides tools for businesses to organize contacts and chats. Businesses have the option to build a WhatsApp business profile which includes additional fields (including address, category, products or services offered, hours of operation, email address, and website fields), but they are not required to do so.

24. WhatsApp Business API, launched in August 2018, allows businesses to programmatically send and receive messages to and from their customers at scale. Unlike the WhatsApp Business App, this is a paid service. Users of the WhatsApp Business API are contractually obligated to abide by the Meta Terms for WhatsApp Business (and the policies, terms and guidelines incorporated by reference within), given the business uses the product through the Meta interface.
25. WhatsApp also offers *WhatsApp Pay* which is an in-chat payment feature that allows users to make transactions *via* WhatsApp to their contact list. It is a UPI-based payments service that allows users to both send and receive money.
26. Facebook India is one of the four Indian subsidiaries of Meta, and its current role is stated to be providing sales and marketing services to Meta, in relation to advertising in India. During 01.10.2018 to 31.07.2022, Facebook India was appointed as a non-exclusive reseller of its advertising inventory in India.

### **Preliminary Objections**

27. Before advertng on the issues on merit, the Commission deems it appropriate to examine certain alleged ‘foundational errors’ in the Investigation Report as claimed by WhatsApp. WhatsApp has averred that the Investigation Report improperly arrives at incorrect findings on matters of data protection and privacy law, unrelated to the Act. The contentions of WhatsApp in this regard are as follows:



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- 27.1 Each of the Investigation Report's findings that WhatsApp has violated the Act is predicated on the DG's conclusion that there is a breach of data protection and privacy norms (which are defined by the DG itself and do not find basis in any law in force at the time the Investigation Report was prepared). In particular, the Investigation Report returns findings on whether: (a) WhatsApp obtained proper consent from users for the 2021 Update; and (b) WhatsApp's data collection is excessive or unfair.
- 27.2 The same questions of data protection and privacy law analysed by the DG are being adjudicated by the Hon'ble Supreme Court and Hon'ble Delhi High Court. A decision by these Courts in the Privacy Policy Litigations will be binding on the DG and the Commission and, therefore, the DG should not have arrived at any pre-emptive findings on these issues.
- 27.3 The DG has gone against the Commission's own submissions before the Delhi High Court where it had clarified that it will only look at the competition aspects of the 2021 Update, and not the data protection and privacy aspects.
- 27.4 Two special statutes, the Digital Personal Data Protection Act, 2023 (**DPDP Act**) which provides for a framework of lawful consent and the Information Technology Act, 2000 (**IT Act**) along with the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (**Privacy Rules**) address data protection and privacy issues. Further, where a subject-specific law occupies the field, the courts have held that it must take precedence over the Act.
- 27.5 Based on above, WhatsApp has averred that the Investigation Report's pre-emptive findings on the nature of consent and extent of data collection under the 2021 Update relate to data protection and privacy law and are outside its purview. Therefore, the entire Investigation Report should be rejected and set aside.



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28. The Commission has carefully considered the averments made by WhatsApp and concludes that it has jurisdiction to examine the conduct of the OPs. The observations of the Commission in this regard are as follows:

28.1 The primary averment of the OPs is that the subject matter of the present proceedings is covered by data protection and privacy laws. The Commission notes that data plays a pivotal role in the operation of digital platforms as it enables them to improve their services and provide zero-priced products to users. By utilizing user data, these platforms can refine and enhance their offerings, tailoring them to user preferences and behaviours. This strategy allows digital platforms to deliver services at no monetary cost to the consumer, creating value in exchange for the data provided. As a result, these platforms are often referred to as “data-driven enterprises.”

28.2 The diverse data collected by digital platforms plays a crucial role in enhancing product quality, improving services, and boosting overall productivity. By analysing user demand, habits, and needs, platforms can refine their offerings and deliver products that better align with consumer preferences. Additionally, feedback and reviews from users help identify areas of improvement, allowing platforms to make data-driven enhancements. This data also enables companies to predict market trends more accurately, which in turn helps optimize production and distribution processes, leading to increased efficiency. Furthermore, the insights gained from diverse data facilitate the discovery of new business opportunities and support the adoption of more targeted business models, such as personalized services, which enhance customer engagement and satisfaction. The competitive strength of enterprises in these markets is now increasingly measured by the amount, diversity, and quality of the data they control. Therefore, access to and effective use of data are crucial factors that determine the competitiveness and market power of digital enterprises.

28.3 Competition authorities play a critical role in maintaining the integrity of markets by preventing anti-competitive practices. Their primary objective is to promote healthy competition, prevent the abuse of market dominance, and protect users of these platforms as well as competitors from being unfairly disadvantaged by dominant



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players. In data-driven markets, the role of competition authorities is significant as data has emerged as a critical parameter of competition and a source of market power. Digital platforms that rely heavily on data often have the potential to gain substantial market power due to the unique characteristics of data, such as its ability to be collected, processed, and utilized on a massive scale. Such platforms can leverage their extensive data repositories to create barriers to entry, exclude competitors, or engage in discriminatory practices, thus stifling competition and reducing consumer welfare in the long run.

- 28.4 Given these dynamics, competition authorities must closely monitor and address anti-competitive behaviour in data-driven markets. Therefore, the role of competition authorities in such markets is indispensable. Their active oversight is necessary to ensure that data does not become a tool for perpetuating anti-competitive behaviour, and that the benefits of data-driven innovation are shared widely. By preventing the misuse of data-driven power, authorities not only safeguard fair competition but also contribute to a more dynamic, innovative, and consumer-friendly digital economy.
- 28.5 Data-related practices can lead to different types of legal violations that fall under multiple statutes *viz.* data protection or consumer protection or competition laws, *etc.* reflecting the growing complexity of the digital economy. Data protection and competition law, have distinct intervention tools to address data-related concerns, and each serves a unique purpose. Data protection and privacy laws focus on maintaining transparency and securing individual rights, which supports consumer protection by increasing awareness and trust. Competition law, on the other hand, addresses the impact of data on market power, ensuring that dominant firms do not exploit their data advantage to the detriment of competition. It aims to protect consumer welfare by promoting competitive pricing, innovation, and more diverse choices.
- 28.6 Abuse of a dominant position can manifest as either exclusionary or exploitative conduct. In the context of data, exclusionary abuses typically involve practices such as consolidating data sets from various services to exclude competitors and create barriers to entry. These tactics limit competition by preventing other firms from



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competing effectively in the market. On the other hand, exploitative abuses are characterized by actions like reducing service quality or demanding excessive user data for access to existing services. Such practices can degrade the quality of service and harm consumer welfare, as reduced privacy or misuse of data can be seen as a decrease in service quality.

- 28.7 Data-related practices might violate data protection laws, but they can also be seen as the imposition of unfair terms under competition law. This overlap creates a point of intersection between data protection and competition law, with each addressing different aspects of harm. Further, while data protection laws primarily focus on the processing of personal data, competition law can also intervene when non-personal but competition-sensitive data is abused. In this context, it is important to recognize that the concept of "user data" in digital platforms encompasses not just personal data, but also anonymized and aggregated data, which may not always align with traditional definitions of personal data. This broader view is crucial when analysing data-related competition concerns in digital markets.
- 28.8 Consequently, data-related practices can sometimes trigger concerns that require simultaneous intervention from multiple branches of law. For instance, data-driven conduct by a dominant firm may raise privacy concerns under data protection law and also constitute an abuse of market dominance under competition law. Therefore, a comprehensive approach is necessary to create a market structure that is competitive, transparent, and beneficial to consumers in terms of price, quality, privacy, choice, *etc.*
- 28.9 Data protection laws apply universally to all entities handling personal data, ensuring the privacy and rights of all individuals. In contrast, Section 4 of the Act, specifically applies only to dominant entities, imposing additional obligations to prevent abuse of market power. There is no inherent conflict or repugnancy between the two statutes, as the Act supplements data protection regulations by placing heightened responsibilities on dominant firms, ensuring they do not leverage their market position in a manner that distorts competition or harms consumer welfare.



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28.10 In this regard, it is also apt to refer to observations of the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Another (2017) 8 SCC 47*, which are extracted below:

*“...Competition policy contributes to economic growth to the ultimate benefit of consumers, in terms of better choice (new products), better quality and lower prices. Consumer welfare protection may be required in order to redress a perceived imbalance between the market power of consumers and producers. The imbalance between consumers and producers may stem from market failures such as information asymmetries, the lack of bargaining position towards producers and high transaction costs. Competition policy may serve as a complement to consumer protection policies to address such market failures...”*

28.11 The issue raised by the OPs have already been succinctly put to rest by the Division Bench of Hon'ble High Court of Delhi in the present matter itself. The Division Bench *vide* its judgement dated 25.08.2022 in LPA Nos. 163/2021 and 164/2021 has observed as follows:

*“26. At the outset, it becomes pertinent to delineate the objective of the Competition Act, 2002, and the role of the CCI. The objective of the Act is set out in the Preamble itself, i.e. to establish a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure the freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. Chapter II of the Competition Act prohibits certain agreements, abuse of dominant position, and regulation of combinations, with Section 4 specifically prohibiting the abuse of dominant position. Chapter IV of the Act deals with provisions which set out the duties, powers and functions of the CCI, with Section 18 stating that it shall be the duty of the Commission to eliminate practices relating to the principles set down in the Preamble itself.*

*27. Therefore, as has been succinctly enumerated by the Supreme Court in Competition Commission of India v. Steel Authority of India (supra), the main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of a market responsive to consumer preferences. Satisfactory implementation of competition law would lead to a threefold advantageous system wherein there would be allocative efficiency, which ensures effective*



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*allocation of resources; productive efficiency, which ensures that costs of production are kept at a minimum; and dynamic efficiency, which promotes innovative practices. One can only proceed ahead with a matter entailing an attack to the jurisdiction of the CCI by keeping these objectives of the Competition Act in mind.*

*28. The primary issue that has been submitted before this Court is with regard to the overlapping jurisdiction of the CCI and the Constitutional Courts, and whether CCI should abstain from exercising its jurisdiction to maintain comity between decisions of different authorities on the same issues.....*

*32. .... Contrary to what has been submitted by the Appellants, this observation cannot be interpreted as a holding that the issues being considered by both the authorities are the same. Even if the issues are the same, the approach of the authorities is vastly dissimilar, and there exists no inviolable rule that the CCI would completely lack jurisdiction in the instant matter. Parallel inquiries by two different authorities in their respective spheres of adjudication is not uncommon and a slight overlap between the inquiries does not mean that one must lead to the ouster of the other. Therefore, in the absence of any irreconcilable repugnancy between the jurisdiction of both the authorities, i.e. CCI and the Constitutional Courts, the CCI has the liberty to proceed ahead with its investigation under Section 26(1) of the Act.*

*33. The investigation conducted by the CCI will not be affected by the outcome of the proceedings pending before the Apex Court and this Court. In the event the Supreme Court upholds the 2021 Policy, then surely CCI can venture into the question as to whether the provisions of the Act have been violated or not. In the event that the 2021 Policy is set aside by the Supreme Court, the CCI will still possess the jurisdiction to investigate the violation of the Act, if any, during the pendency of the matter before the Supreme Court when the 2021 Policy was in operation. In either of the cases, it cannot be stated that the CCI does not have the authority look into this affair being the market regulator.....*

28.12 Hon'ble Supreme Court *vide* its order dated 14.10.2022 refused to intervene and dismissed Special Leave Petitions Nos. 17121/2022 and 17332/2022 filed by Meta and WhatsApp, against the above-mentioned judgement of the Hon'ble Delhi High Court.

29. In conclusion, the jurisdiction of the Commission must be viewed in the light of its statutory mandate under the Act, which aims to prevent anti-competitive practices,





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promote competition, and protect consumer interests. As observed by the Courts, the Commission's jurisdiction operates independently and concurrently with other authorities, including Constitutional Courts, even in instances where there may be a potential overlap in the subject matter of inquiries. The objectives of competition law, as set out in the Act, focus on promoting economic efficiency. Mere existence of parallel proceedings or the involvement of other authorities does not strip the Commission of its jurisdiction. Thus, the Commission retains the authority under the Act, irrespective of any ongoing legal proceedings in other forums, reaffirming its role as the market regulator and guardian of competition principles. Accordingly, exercise of its jurisdiction in the present matter is in full compliance with Commission's averments before the Hon'ble Delhi Court as well as the Hon'ble Supreme Court.

30. Based on the above, the Commission finds preliminary objections raised by the OPs as erroneous and misconceived and thus, the same are rejected.

#### *Role of Facebook India*

31. Before advertizing to issues on merit, it is also important to examine the submission of Facebook India and its role in the present matter. Facebook India has averred that,
  - 31.1 Case No. 30 of 2021 names Facebook India as an "*Opposite Party*", but it does not make any allegations specific to Facebook India. Further, the allegations which IFF makes regarding the conduct of what it terms as the "*Facebook Group*" (i.e., WhatsApp, Meta and Facebook India) are based on the mistaken assumption that Facebook India issued the 2021 Update or is somehow involved in hosting, operating or controlling the WhatsApp Service, Facebook service, (Facebook) Messenger service or Instagram service, which it is not.
  - 31.2 Facebook India's role is limited to being a service provider to Meta; it does not gather or collect user data for any other purpose, or share data with Meta for ads purposes. Further, (a) WhatsApp — not Facebook India — issued the 2021 Update; (b) Facebook India has no role in hosting, operating, or controlling the WhatsApp





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Service, the Facebook service, the Instagram service or the (Facebook) Messenger service; (c) Facebook India is not involved in WhatsApp's alleged collection and sharing of user data with Meta or any other Meta companies pursuant to the 2021 Update; and (d) Facebook India is not involved in Meta's alleged use of user data received from WhatsApp.

32. Based on above, Facebook India has averred that its name ought to be deleted from the array of parties, or an order may be passed declaring that Facebook India has not violated Section 4 of the Act.
33. The Commission has perused the submissions of Facebook India. Based on these averments and the fact that WhatsApp and Meta have submitted to the jurisdiction of the Commission in relation to allegations under Section 4 of the Act, the Commission decided to delete name of Facebook India as one of the Opposite Parties in the matter in terms of Regulation 27 of the Competition Commission of India (General) Regulations, 2024 (General Regulations 2024). Accordingly, any reference to OPs or Opposite Parties in this order mean WhatsApp and Meta. The cause title of Case No. 30 of 2021 is also directed to be amended accordingly.

### **Relevant Market and Assessment of Dominance**

34. The instant matter pertains to allegations of abuse of dominant position by the OPs in violation of Section 4 of the Act. The assessment framework under Section 4 requires delineation of relevant market(s) wherein the concerned entity operates, followed by an assessment of market power *i.e.*, whether such entity holds a dominant position. Finally, the conduct of the dominant entity is examined to ascertain whether it is abusive in nature, in terms of various provisions of Section 4(2) of the Act.
35. Relevant market has been defined under Section 2(r) of the Act, as "*the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.*" Thus, delineation



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of relevant market generally has two dimensions *i.e.*, relevant product market and the relevant geographic market. Similar position emerges from Section 19(5) of the Act.

36. Section 2(t) of the Act defines 'relevant product market' as "*...a market comprising all those products or services (i) which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or (ii).....*" Moreover, Section 19(7) of the Act provides a list of factors to be considered by the Commission for determination of the relevant product market, which includes physical characteristics or end use of the goods or the nature of services, price of goods or services, consumer preferences, *etc.* The Competition (Amendment) Act, 2023 has *inter alia* introduced *costs associated with switching demand or supply to other goods or services* as one of such factors.
37. Relevant geographic market has been defined under Section 2(s) of the Act as "*a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas*". In this regard, Section 19(6) of the Act lists various factors which may be given due regard to by the Commission while determining the relevant geographic market *viz.* regulatory trade barriers, local specification requirements, language, transport costs, consumer preferences, *etc.*
38. As observed by the Hon'ble Supreme Court of India in Civil Appeal No. 6691 of 2014 titled *Competition Commission of India v. Co-ordination Committee of Artists and Technicians of WB. Film and Television and Ors.*, market definition is a tool to identify and define the boundaries of competition between firms. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. Further, the objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertaking involved that can constrain its behaviour and prevent it from behaving independently of competitive pressure.



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39. After delineation of the relevant market(s), the next step for assessing the alleged abuse of dominant position in terms of Section 4 of the Act, is to examine whether the concerned entity holds dominant position in the relevant market(s), so identified. Explanation (a) to Section 4 of the Act sets out the test for dominance as, “*a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to: (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour*”. Further, Section 19(4) of the Act lists out various factors which are to be considered while determining whether an enterprise enjoys a dominant position for the purposes of Section 4 of the Act.
40. In the instant matter, allegations against OPs are particularly related to the WhatsApp 2021 Privacy Policy update, which made it mandatory for WhatsApp users to accept the terms and conditions in order to retain their WhatsApp account, data sharing with Meta, leveraging and creating entry barriers leading to denial of market access in the online display advertising services. Based on information available on record, it is noted that Meta offers display advertisement services to advertisers through Facebook and Instagram and OTT messaging services to users through WhatsApp.
41. In order to assess the conduct of the OPs, the DG in its Investigation Report has delineated following relevant markets *i.e.*,
- a. Market for OTT messaging apps through smartphones in India; and
  - b. Market for online display advertising in India.
42. The DG has also found Meta to be dominant in the first relevant market.
43. The reasoning and findings of the DG, submissions of the parties thereon and the analysis of the Commission, in this regard, are given in succeeding paragraphs.



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## A. Market for OTT messaging apps through smartphones in India

### *Relevant Market*

44. The allegations in the present matter emanate from the updated privacy policy of WhatsApp, an Over-The-Top (OTT) messaging App with features of multitude type of communication and linked to a smartphone device and mobile number. It is noted that OTT messaging services are communication platforms that operate over the internet and are provided by third-party companies, not requiring traditional telecommunication networks. These services enable users to send and receive messages, share multimedia content, make voice and video calls, and create groups without relying on SMS or voice call services offered by mobile network operators.
45. The Investigation has observed that OTT messaging apps have unique features which indicate that it forms a separate and distinct market and cannot be substituted or interchanged with the traditional electronic communication services such as text messaging, voice calls, *etc.* Accordingly, after examining the physical characteristics, price and consumer preference of the OTT messaging apps, the DG has found the same to constitute a distinct relevant market. The DG has *inter alia* further noted that some consumer communication apps are proprietary in nature *i.e.*, available on only one operating system such as FaceTime and iMessage service which are available on Apple's iPhones and, therefore do not form part of the relevant market for OTT messaging apps in India. Regarding the geographic market, the DG has noted that the OTT messaging apps for a country are similar in terms of price, functionality or operating system. Hence, the Investigation delineated the geographical market in this case as territory of India. Thus, first relevant market delineated by the DG the '*market for the OTT messaging apps through smartphones in India*'.
46. The Commission notes that:
- 46.1 OTT messaging is an instant messaging service or online chat platform provided by third-party companies, which is distinct from traditional SMS (Short Message



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Service), or text messaging provided by mobile network operators. Unlike conventional messaging services that rely on the telecom network's infrastructure, OTT messaging relies solely on an internet-based data connection (such as Wi-Fi or mobile data). This means that users are not dependent on their carrier's voice or text services and can communicate freely as long as they have internet access. This fundamental difference allows OTT messaging services to bypass the costs and limitations associated with traditional telecom services.

- 46.2 OTT messaging apps allow users to engage in individual or group conversations without restrictions on the length of messages, enabling unlimited communication that is not constrained by character limits. Beyond just text, these apps support rich media communication, including the ability to share images, videos, audio messages, emojis, GIFs, and location information. Moreover, OTT apps provide features like voice calls and video calls, both one-on-one and in groups, enhancing their versatility compared to traditional text messaging. This flexibility makes OTT messaging a distinct choice for a wide range of communication needs, from casual chats to professional discussions.
- 46.3 OTT messaging apps provide a host of additional features to enhance the user experience. These include online status indicators (showing when a user is active or "online"), "last seen" timestamps (indicating the last time a user was active on the app), profile information, and profile photos. They also offer delivery and read receipts, which inform the sender when a message has been delivered and read by the recipient.
- 46.4 Many OTT messaging services are designed to be compatible with various platforms and devices, including desktops, laptops, tablets, and smartphones, ensuring seamless access and communication across devices. As long as an internet connection is available, users can communicate from any device, enabling flexibility in how and where communication takes place. This cross-platform compatibility enhances convenience and accessibility, allowing users to stay connected whether they are at home, in the office, or on the move.



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47. WhatsApp has contested the abovementioned market delineation. Meta in its response has adopted submissions of WhatsApp in relation to this relevant market. These averments are briefed as follows:

47.1 In contrast to the narrow and flawed market definition set forth in the DG Report, WhatsApp actually operates in the broad and highly competitive market for user attention. WhatsApp competes with all digital products and services that seek to capture user attention through different services or functionalities, such as social networking, messaging, gaming, content viewing and sharing, photo and video sharing, or music, amongst many others. WhatsApp claims that these services are substitutable from the perspective of the user and form part of the same relevant market. In this regard, WhatsApp has also relied on outage of Meta’s family of apps, including the WhatsApp Service, on 04.10.2021 (**Outage**). Based on few reports, WhatsApp has asserted that services such as Netflix, X (formerly Twitter), Snapchat, Signal, and Telegram saw an increase in user engagement during the Outage. WhatsApp asserts that the fact that users shifted to a wide range of services in response to the Outage (as opposed to just consumer communication services or OTT messaging apps) demonstrates that these wide range of services are substitutable.

47.2 Indian users exhibit a high degree of multi-homing by installing and switching between numerous applications on their devices. The high degree of switching between various services, including social media service providers, entertainment services, and other companies, demonstrates how the market cannot be limited to merely specific modes of engagement, but should broadly be defined as the “market for user attention”.

47.3 The narrowest possible definition of relevant product market claimed by WhatsApp is that of “*consumer communication services*” and the same should not be segregated based on functionality (for instance, no distinction should be made



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between messaging / audio / video services) in view of the demand and supply-side realities. The consumer communication services market includes not only OTT messaging apps such as JioChat, Zoom, Skype, Signal, Telegram, and Snapchat, but also SMS, MMS, RCS, voice services, proprietary apps (such as FaceTime, iMessage and Google Messages), and email. Each of these services is substitutable for the other; their intended use is similar (communication), their price is similar (free), and they are all offered on the same device.

- 47.4 Consumer communications market should also not be segmented based on devices. Most consumer communication services are available across devices (*i.e.*, desktops, smartphones, tablets, *etc.*). Google Duo, Signal, Skype, Telegram, Viber and Snapchat are all available on PCs and mobile phones, as are proprietary apps such as FaceTime, iMessage, and Discord.
- 47.5 The Investigation Report fails to collect relevant evidence, *e.g.*, through user surveys, or consider market reports to assess demand-side substitutability, which is a key factor for arriving at the market definition. The DG fails to account for the fact that users regularly switch between various multi-functional online service providers (*i.e.*, multi-homing), and that new and existing online competitors are constantly evolving, innovating, and adopting new features (including rich communication services as well as other features) to attract and retain user interest.
- 47.6 Investigation Report improperly excludes important rivals solely on the basis that their offerings' functionalities do not perfectly match the DG's notion of a hypothetical direct messaging service, despite failing to provide any supporting evidence on actual user behaviour (such as survey evidence on which functional characteristics are linked to user demand substitution patterns). For example, the Investigation Report describes Koo as a micro blogging service, Slack as a B2B business tool, and Discord as a group chatting platform, and excludes these rivals from its alleged market without any analysis of user substitution between them and



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the WhatsApp Service, despite the fact that those services also provide vibrant messaging functionalities.

- 47.7 Due to flawed and incomplete analysis, the Investigation Report also incorrectly excludes short messaging services (SMS), multimedia messaging services (MMS), and rich communication services (RCS) from the alleged market even though they offer the same functionality as instant messaging services. The Investigation Report excludes important mediums of communications like email and voice over internet protocol from the alleged market, despite both being substitutes for instant messaging.
- 47.8 Investigation Report fails to undertake a proper economic analysis suitable for zero-priced products and instead, it merely relies upon the PF Order. This demonstrates confirmation bias.
- 47.9 Investigation Report incorrectly limits the relevant geographic market to India without any analysis. Although there are certain differences in the regulatory regimes in different countries, those differences do not materially affect competition or demand. An objective assessment of the competitive and dynamic realities of the market supports a global definition of the market and the Investigation Report's analysis is flawed, because: (a) markets for digital services are global as:- (i) players typically operate globally, and (ii) functionalities of services rarely differ from country-to-country; and (b) WhatsApp's product decisions are typically made on a global basis to offer a consistent user experience across the globe.
48. The Commission has perused the information available on record and the observations of the Commission in respect of delineation of the abovementioned relevant market, are as follows:
- 48.1 The Act defines a relevant product market as a market consisting of products or services that are interchangeable or substitutable from the perspective of the





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consumer, based on their characteristics, prices, and intended use. This definition implies that products and services should be considered part of the same market only if consumers regard them as direct substitutes. Different digital services like social media platforms, streaming services, and search engines do not necessarily serve the same consumer needs or provide the same functionalities. Users engage with WhatsApp, Facebook, Netflix, X (formerly Twitter), *etc.*, for distinct purposes *i.e.*, communication, social interaction, entertainment, micro-blogging, *etc.* Therefore, they cannot be considered interchangeable or substitutable solely based on the user's attention. The fact that all these services compete for attention does not automatically make them part of the same market, as their characteristics and intended uses differ significantly.

48.2 Defining the market broadly as a "market for user attention" is akin to arguing that all goods and services a consumer can buy with their disposable income are substitutes simply because money is a common medium for purchase. Such an approach incorrectly suggests that everything a consumer spends their money on—whether groceries, clothing, entertainment, or travel—belongs to a single market, which contradicts established competition law principles of substitutability. Just as these diverse categories cannot be lumped into the same market merely because they all compete for a share of the consumer's wallet, digital platforms cannot be considered part of a single "market for user attention" simply because they vie for time spent on their platforms. Each platform offers distinct services that fulfil specific consumer needs, making it essential to define their markets separately based on the nature and purpose of the service provided, rather than viewing them as competitors for user attention in an overly generalized manner.

48.3 While it is true that in advertising markets, the users' time and attention are treated as valuable commodities that advertisers seek to purchase, this does not imply that user attention itself constitutes a relevant product market under competition law. The demand from advertisers is fundamentally different from the demand of users. For advertisers, platforms like Facebook provide access to users' attention through



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targeted ads, which helps advertisers promote their products or services and drive sales. However, for users, the platform meets their demand for social networking, communication, or content sharing. The two sides of the market serve distinct demands *i.e.*, advertisers seek to reach potential customers, while users seek to connect and communicate with each other. Therefore, defining the market as one for "user attention" may erroneously conflate these two distinct types of demand coming from two distinct user sides, which competition law does not intend to do. Instead, competition law looks at the relevant product market from the perspective of the distinct needs and preferences of each market side, recognizing that user and advertiser demands are not interchangeable or substitutable.

- 48.4 Specifically in relation to reliance placed by WhatsApp on the Outage, the Commission is of the view that *firstly*, even assuming that users temporarily shifted to other platforms like Netflix, Snapchat, or Twitter during the outage, this appears to be more a reflection of the immediate need to fill a communication or entertainment void rather than a fundamental substitutability between these services. *Secondly*, the consumer shift during the outage appears to be temporary and driven by the lack of access to their preferred platform, not a non-transitory behavioural change that suggests these services are direct substitutes. There is no evidence on record to suggest the contrary. Suppose people go to a cinema hall in a mall to watch a movie, but when they find that tickets are unavailable, they decide to have dinner in an adjoining restaurant instead. This situation does not imply that the cinema hall and the restaurant are competitors. The cinema hall and the restaurant serve fundamentally different consumer needs *i.e.*, one offers entertainment, while the other provides food and dining. The fact that consumers opted for a restaurant due to the unavailability of movie tickets reflects a temporary shift in their activity within the same location, not a substitutive relationship between the two businesses. Similarly, during the Facebook outage, users may have temporarily turned to other platforms or services, but this does not necessarily mean those services are in direct competition with Facebook or its messaging apps.



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Therefore, the contention of WhatsApp in relation to broader user attention market is rejected sans merit.

- 48.5 OTT messaging services are generally free or available at a significantly lower cost compared to traditional communication methods like SMS or MMS, which are typically chargeable by telecom providers. Users of OTT messaging apps do not incur costs for individual messages, voice, or video calls; instead, they only need to pay for internet access, which is often already covered by existing data plans or Wi-Fi connections. While telecom operators may offer messaging packages for traditional services, additional charges frequently apply for sending MMS, international messages, or messages during roaming. This contrast in cost structures presents a significant advantage for OTT messaging apps, as users can communicate without worrying about variable fees. The cost savings associated with OTT messaging apps have been a key factor in their widespread adoption, as they offer a more economical option for a broad range of communication needs.
- 48.6 OTT messaging apps function as closed user group services, meaning that communication is restricted to users who have installed the same app. For example, a user on WhatsApp can only send messages to others who also use WhatsApp; they cannot directly communicate with users on a different OTT platform, like Telegram or Signal. This model creates distinct, isolated networks where users must align their app choices to communicate. In contrast, SMS / MMS / RCS allow communication across different devices, networks, and operating systems without requiring a specific app. While SMS / MMS and OTT messaging apps both serve the primary function of communication, they are not direct replacements for one another and often exhibit a certain degree of complementarity. Thus, traditional electronic communication services and OTT messaging applications are not substitutable, and these two services constitute separate relevant product markets.
- 48.7 In relation to OP's contention regarding substitution between OTT messaging apps and email services, the Commission is of the view that these modes differ



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significantly in their style, speed, and delivery. Email is typically used for more formal, structured communication and often involves longer messages with detailed content or attachments like documents and files. It is suited for professional or official exchanges and does not emphasize real-time interaction. In contrast, OTT messaging apps, such as WhatsApp or Signal, are designed for instant, real-time communication, favouring shorter, conversational messages with features like multimedia sharing, voice and video calls, and often include read receipts and online status indicators, providing a more dynamic and interactive communication experience. The user interface and accessibility of these platforms also vary. Email is accessible on both desktop and mobile platforms but are generally optimized for desktop use, where users can manage longer messages and more complex tasks. Conversely, OTT messaging apps are highly optimized for mobile devices, emphasizing quick messaging and ease of use for continuous, ongoing conversations. Another key difference lies in integration and functionality. Email integrates well with various productivity tools, such as calendars, task management apps, *etc.*, making it an essential tool for business and professional environments. OTT messaging apps focus more on social interaction and multimedia communication, integrating features for voice and video calls, group chats, location sharing, and even payments.

- 48.8 The DG has also distinguished between OTT messaging apps and proprietary apps such as Apple's FaceTime and iMessage which has been contested by the OPs. In this regard, it is noted that consumer communication apps that are proprietary and limited to a single operating system, such as Apple's FaceTime and iMessage, are not substitutable for OTT messaging apps (interoperable across devices) because they restrict communication to users within a specific ecosystem, creating a "*walled garden*" effect. These proprietary apps only allow (or allow with limitations) messaging and calling between users who own devices compatible with the same operating system, in this case, Apple's iOS, effectively excluding users on other platforms like Android or Windows. This limitation contrasts with interoperable OTT messaging apps, such as WhatsApp or Telegram, which operate across



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multiple platforms and devices, allowing seamless communication regardless of the user's choice of device or operating system. Consequently, proprietary apps lack the flexibility, reach, and inclusiveness of interoperable OTT messaging services, making them less suitable as a universal communication tool, particularly in a diverse and interconnected user base.

48.9 It has also been contended that the Investigation Report incorrectly excludes services such as Discord, Koo, and Slack from the alleged relevant market. Based on the characteristics and intended uses of apps like Koo, X (formerly Twitter), Slack, and Discord compared to OTT messaging apps, it emerges that these platforms are not considered substitutes for OTT messaging apps by consumers. The primary reason for this is the distinct functionalities and user purposes each app serves. OTT messaging apps like WhatsApp are designed primarily for instant, real-time communication, including text messaging, voice and video calls, and multimedia sharing. In contrast, Koo and X (Twitter) primarily serve as microblogging and social networking platforms, where the focus is on public broadcasting, following, and interacting with content from a broad audience. They are designed for sharing news, opinions, and engaging in public discourse, not for private, one-on-one or group communication. Similarly, Slack and Discord are primarily collaboration tools, intended for team communication and project management in professional or community settings. They offer features like organized channels, integration with various productivity tools, and specific functionalities for task management, which are not typical of OTT messaging apps like WhatsApp.

48.10 Regarding the contention by the OPs that the consumer communications market should not be segmented based on devices, it is important to note that using WhatsApp Web or the desktop version still requires a phone number and an active connection to a smartphone. This prerequisite means that WhatsApp's core service is inherently tied to a smartphone, making it fundamentally different from communication services that can operate independently on desktops or other



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devices. OTT messaging apps like WhatsApp, primarily designed for smartphones, provide seamless and instant messaging capabilities. Desktop-based communication apps are generally not optimized for the instant, always-on messaging experience typical of smartphone-based apps, which impacts how consumers perceive and use these services. The instantaneous messaging feature available on smartphone has led to WhatsApp's penetration in Indian markets. Moreover, the OPs have not provided data showing that any major competitor is excluded from the relevant market in a way that would reduce WhatsApp's market power. Apps available on PCs only, if any, lack reasonable substitutability with mobile apps due to key functional difference between both in terms of mobility. Even if WhatsApp's argument were accepted, it would not significantly change the market dynamics, as Meta's dominance with WhatsApp, due to its vast user base and smartphone-centric approach, remains largely unaffected. Therefore, device-based segmentation is required to accurately assess the competitive landscape and Meta's market power.

- 48.11 The OPs have also attempted to draw parallel between OTT messaging apps and video conferencing applications *viz.* Zoom, *etc.* In this regard, it is noted that OTT messaging apps like WhatsApp offer basic video calling features primarily designed for casual, one-on-one, or small group communication. However, they lack the advanced capabilities that define video conferencing solutions like Zoom, Google Meet, Microsoft Teams, and Cisco Webex. Video conferencing apps are built for more structured, professional meetings and can support a larger number of participants, cross-platform compatibility (across phones, tablets, and computers), screen sharing, recording, and the ability to invite participants *via* a dedicated meeting link. These functionalities make video conferencing solutions better suited for large-scale virtual meetings and collaborative environments, distinguishing them from the simpler video call services provided by OTT messaging apps, which are not direct substitutes for comprehensive conferencing needs.



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- 48.12 Regarding the OP's claim for a global definition of the relevant geographic market, the Commission is of the view that the conditions of competition in the OTT messaging apps market are homogeneous within India, and thus the relevant market should be defined nationally, not globally. India has a unique regulatory environment that significantly impacts the operation of OTT messaging services. Regulatory policies, data privacy laws, and requirements for data localization can differ substantially from those in other countries, affecting how these services are provided and accessed in India. Further, it would be erroneous to include competitors not operating in India in the relevant market based on a global geographic definition, as claimed by WhatsApp as competition is determined by the choices available to consumers in a specific location. Therefore, the scope of relevant geographic market remains the territory of India.
49. The averments of the OPs in relation to multi-homing as well as zero-priced products have been examined while assessing dominance of the OPs in the relevant market. To conclude, an important factor in favour of considering OTT messaging apps as a distinct market is the comprehensive range of functionalities they offer, which cumulatively exceed the capabilities of other individual communication services like SMS, email, or single-purpose applications. Unlike SMS or email, which do not support real-time voice or video calls or group chats, OTT messaging apps such as WhatsApp provide a unified platform for various types of communication, including text messaging, voice and video calls, multimedia sharing, and group conversations. Similarly, while Apple's FaceTime is limited to video calls and is only compatible with Apple devices, it does not provide cross-platform messaging or allow calls to devices on other operating systems. OTT messaging apps bridge these gaps by offering seamless, cross-platform communication, real-time interaction, and additional features such as end-to-end encryption. This versatility and ease of use highlight why OTT messaging apps should be considered a distinct market segment, driven by consumer demand for multifunctional and integrated communication solutions.





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50. Consumers increasingly demand communication services that seamlessly integrate multiple functions, enhancing their overall user experience. OTT messaging apps have met this demand by allowing users to effortlessly switch between different types of communication—such as instant messaging, voice calls, and video calls—at no extra cost. For example, a user can initiate a conversation through text messages and, within the same app, transition smoothly to a voice or video call, all without needing to switch platforms or incur additional charges. Devices equipped with cameras and microphones further enable this flexibility, allowing users to switch communication methods seamlessly without interrupting the conversation. This versatility has become a key feature of OTT messaging apps, meeting modern consumer expectations for integrated, fluid communication experiences that are convenient and cost-effective.
51. Thus, on a holistic consideration of the information available on record, the Commission agrees with the findings of the DG in this regard. Accordingly, based on the statutory scheme prescribed in the Act (including the parameters given in Section 19(6) and 19(7)), the Commission delineates *market for OTT messaging apps through smartphones in India* as the first relevant market, for the purpose of the present matter.

#### *Assessment of Dominance of the OPs*

52. Investigation also found that Meta operating through WhatsApp and Facebook Messenger in the market of OTT messaging apps in India is way ahead of other messaging apps. The DG has noted that WhatsApp is owned by Meta, which also operates Facebook, Facebook Messenger and Instagram, which adds on to their combined strength as a group. Further, as the parent company, Meta has been found to have considerable size and resources at its disposal. Considering the relative financial resources and Daily Active Users (DAUs) and Monthly Active Users (MAUs) of the OPs and the competing apps in the relevant market, direct network effects, the strong lock-in effects, absence of countervailing buying power, and control over huge data acting as barriers to market entry, the DG has found Meta group to be dominant in the





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market for Over-The-Top (OTT) messaging apps through smartphones in India through WhatsApp.

53. The OPs on the other hand have contested the abovementioned finding of the DG and have *inter alia* averred that WhatsApp is not dominant in the market for user attention or even in the narrow segments of consumer communication services in India and the even narrower alleged relevant market of OTT messaging apps through smartphones in India.
54. The Commission has perused the information available on record and the observations of the Commission in respect of assessment of dominance of Meta through WhatsApp in the abovementioned market are elucidated in succeeding paras.

*Market Shares based on Daily Active Users and Monthly Active Users data*

55. Market shares is a key element for understanding the market structure and the relative importance of competitors within a relevant market. While high market share can provide an important indication of an entity's market power, it is not the sole factor; a thorough analysis of all relevant factors is necessary to establish market power accurately. This is particularly true in technology markets, where rapid innovation and the fast-paced nature of the industry can lead to transient market shares. Despite this fluidity, consistently high market shares may still reflect substantial competitive advantages, such as the ability to leverage presence in neighbouring markets, economies of scale, and network effects, which can reinforce an entity's market position and protect it from competitive threats. Digital platforms and networks often exhibit a natural tendency towards concentration due to pronounced indirect and direct network effects. Indirect network effects occur when the value of a platform increases as more users join, attracting more third-party developers, advertisers, or content creators. Direct network effects happen when the platform's value grows directly with the number of its users, as seen in social networks or communication apps. Thus, determining market power requires a broader assessment that considers not only market shares but also the



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underlying dynamics that drive concentration and user behaviour within digital ecosystems.

56. In relation to digital platforms, market position can be assessed based on user engagement, as app platforms consider frequent user interactions a key success factor. The DG has noted that Meta also regularly reports the number of its Daily Active Users (DAUs) to measure usage intensity and Monthly Active Users (MAUs) to gauge the active user community size. DAU represents the number of unique users who log in and engage with the app daily, regardless of how many times they do so. A steadily increasing DAU count indicates growing popularity and user retention, providing valuable insights into how users interact with the app. Further, compared to total user registrations, the share of DAUs is a more significant metric for assessing a platform's market position, especially for instant messaging apps where users connect with their contacts frequently. High DAU figures suggest a strong network value and a significant market position.
57. In this regard, the Investigation has collated data related to DAU as well as MAU from various competitors in the market:

**DAU of OTT messaging apps in India (as of December of the relevant year)**

(In Millions)

Year	2016	2017	2018	2019	2020	2021 (5 months)
Facebook Messenger	██████	██████	██████	██████	██████	██████
WhatsApp	██	██	██	██	██	██
Snap	██████	██████	██████	██████	██████	██████
Viber	██████	██████	██████	██████	██████	██████
ShareChat	██████	██████	██████	██████	██████	██████
JioChat	██████	██████	██████	██████	██████	██████
Hike	██████	██████	██████	██████	██████	██████
BlackBerry	██████	██████	██████	██████	██████	██████
Line	██████	██████	██████	██████	██████	██████

*Source: Investigation Report data collected from the respective parties*



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58. It is noted from the abovementioned data that Meta's WhatsApp is way ahead of its rivals with [REDACTED] million DAUs (after first 5 months of 2021) followed by another Meta's messaging app *i.e.*, Facebook Messenger with [REDACTED] million. The closest competitor is ShareChat with less than [REDACTED] DAUs of WhatsApp *i.e.*, [REDACTED] million. The DAUs of WhatsApp are way beyond the cumulative number of its rivals suggesting a strong market position enjoyed by it. The situation tilts more in favour of Meta when DAUs of WhatsApp and Facebook Messenger are combined since both are owned by Meta. The strong market share lead enjoyed by Meta over its competitors gives a strong indication of competitive advantage that competitors are not able to match.
59. It is further noted that for OTT messaging apps, the market share based on DAUs is a key indicator of their competitive significance and market success. In the context of messaging apps, users typically engage in frequent, often daily, interactions with their contacts, sharing messages, multimedia, and other content in private or group settings. This high frequency of use reflects the app's importance in facilitating regular communication, making DAUs a crucial metric for evaluating the app's value and market position. The high market share in DAUs enjoyed by Meta (both in terms of absolute number and also in terms of considerable lead over other competitors) is particularly significant. The Commission further notes that while some users may use multiple messaging apps, this parallel usage is generally limited, with many users prioritizing one primary service over others. The combined DAUs of WhatsApp and Facebook Messenger, highlight Meta's strong market position, demonstrating the intensity of use and user preference for these platforms over their rivals.
60. In relation to MAUs, the DG has noted that MAU is another key performance indicator used by social networking and other companies to ascertain the number of unique users who visit a site within a month. MAU is defined as a registered user who logged in and visited a service in the last 30 days as on the date of measurement. In calculating MAUs, the date of measurement is the last day of a month. This stickiness metric indicates an app's ability to attract and retain users over time. It is used as a benchmark for determining the long-term performance, growth or popularity of any online site. A high



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MAU is an indication that a product / app enjoys good customer engagement and retention over a period of time. MAU data collated by the DG during investigation is as follows:

**MAU of OTT messaging apps in India (as on December of the relevant year)**

(In Millions)

Year	2016	2017	2018	2019	2020	2021 (5 months)
Facebook Messenger	██████████	██████████	██████████	██████████	██████████	██████████
WhatsApp	██████████	██████████	██████████	██████████	██████████	██████████
Snapchat	██████	██████	██████	██████	██████	██████
Viber	██████	██████	██████	██████	██████	██████
ShareChat	██████	██████	██████	██████████	██████████	██████
JioChat	██████	██████	██████	██████	██████	██████
Hike	██████	██████	██████	██████	██████	██████
BlackBerry	██████	██████	██████	██████	██████	██████
Line	██████	██████	██████	██████	██████	██████

Source: Investigation Report data collected from the respective parties

61. It is noted from the abovementioned data that Meta’s WhatsApp is way ahead of its rivals with █████ million MAUs (after first 5 months of 2021) followed by another Meta’s messaging app i.e., Facebook Messenger with █████ million. The closest competitor is ShareChat with less than approximately █████ MAUs of WhatsApp i.e., █████ million. In this case also, the MAUs of WhatsApp are way beyond the cumulative number of its rivals suggesting a strong market position enjoyed by it.
62. It may be further noted that the WhatsApp and Facebook Messenger have consistently maintained high levels of DAUs and MAUs over the period starting from 2016 indicating unassailable position and competitive strength enjoyed over peers.
63. In relation to the DAUs/MAUs data collated by the DG, the OPs have averred that Investigation Report's analysis of WhatsApp's market share based on DAU and MAU data cannot be relied upon as the Investigation Report itself admits that "... two major competitors namely Telegram and Signal did not provide [DAU and MAU] data. In the absence of this data analysis of dominance of OPs remains incomplete".



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64. During the course of hearing, IFF submitted Statista's Companies and Products Report for Telegram (Telegram Statista Report), which provide various statistics related to Telegram application. As per the said report, between January and April of 2022, the average number of MAUs for Telegram in India stood at 86.6 million as against cumulative MAUs of Meta at [REDACTED] (i.e., [REDACTED] million for WhatsApp and [REDACTED] million for Facebook Messenger).
65. In this regard, the Commission notes that Telegram *vide* its submission dated 23.06.2021 has stated that total number of users of the Telegram app in India are approximately 151.5 million and referred to a news article dated 13.01.2021 for the same. The relevant extract of the article is excerpted below:
- “...Lifetime downloads (since 2014) in India stood at 3.9 million for Signal and 151.5 million for Telegram, while WhatsApp has a whopping 1.4 billion downloads from India in the same period...”*
66. Thus, even if download data were to be considered, the disparity between Telegram and WhatsApp in India is significant. As per the referenced news article, Telegram has approximately 151.5 million downloads in India since 2014, whereas WhatsApp has an overwhelming 1.4 billion downloads during the same period. This vast difference further underscores the substantial lead that WhatsApp enjoys in terms of user base and potential network effects. The number of downloads for Telegram pale in comparison to WhatsApp, reinforcing the conclusion that WhatsApp holds a dominant position in the Indian market, driven by its extensive user base and higher user engagement. Therefore, Telegram appears to be a relatively smaller player as compared to Meta in the relevant market.
67. In relation to Signal, the Commission notes from the Global Consumer Survey of Statista (August 2022) that Signal does not rank in the top 10 messenger services in India. The referenced news article states that Signal has a meagre 3.9 million downloads which implies low DAUs of Signal. Moreover, Signal has not responded to the letters sent by the DG seeking user data. The entity's lack of engagement with the regulatory



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process seems to suggest lack of concern regarding developments in the OTT messaging apps market in India. In the absence of any information to the contrary, the Commission concludes that Signal does not constitute a significant or formidable player in the Indian market.

68. The OPs have also relied on download data of Telegram and Signal app to assert that rapid increase in user base of these apps demonstrates that no single firm dominates the market. In this regard, it is important to refer to submissions made by WhatsApp (reply dated 05.07.2021) which is excerpted below:

[REDACTED]

*On the contrary, a service may be assessed on the basis of user engagement. The level of user engagement is a direct measure of the quality of a service. The better the quality of the service offered by a specific platform, the more engagement users will have – all else equal – with that specific platform. Engagement can be measured by a variety or combination of metrics such as active users, clicks, time spent, etc. Recognizing this, competition authorities (including, the Commission) have used other metrics / parameters which more accurately measure active user engagement...*

*.....the most commonly used way to measure user engagement is through some form of temporal engagement metric, such as monthly active user (MAU), daily active user (DAU), time spent using a service."*

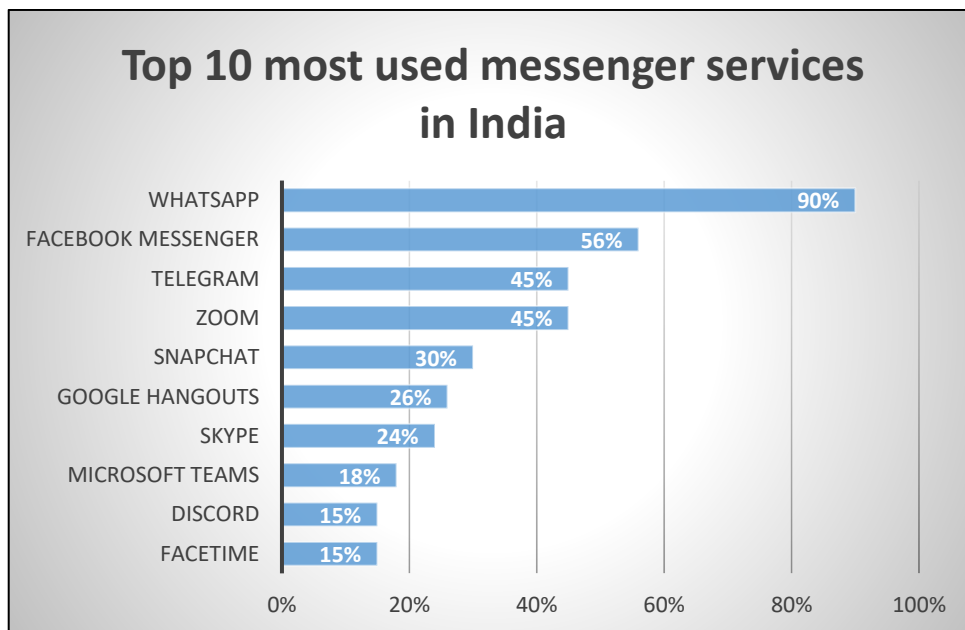
(Emphasis added)

69. In fact, as already stated, Meta in its financial statements also reports the number of its DAUs to measure usage intensity and MAUs to gauge the active user community size. A user may download an app but may not be using the same for various reasons. Therefore, the Commission is of the view that in assessing market dynamics within the OTT messaging app market, total number of downloads may not necessarily be a reliable metric for determining market presence or competitive strength especially in the



presence of better metric in the form of user engagement. Therefore, download data relied upon by the OPs to assert competitive constraints faced from Telegram and Signal is erroneous and misplaced.

- 70. Another key metric for evaluating user dependence on a platform is the ratio of DAU to MAU. This ratio provides insight into how frequently users engage with the platform within a given month. A ratio of 100% signifies that every user who visits the platform at least once a month is also accessing it on a daily basis, reflecting an exceptionally high level of user reliance and habitual interaction. Therefore, the closer the DAU/MAU ratio is to 100%, the greater the users' dependence on the platform, indicating that users consider it an integral part of their daily routines and are highly engaged with its services. Based on data presented above, it is noted that DAU/MAU ratio for WhatsApp is around ██████ whereas that of ShareChat, Snap and Viber are ██████████ respectively. This indicates that WhatsApp users interact with their platforms more frequently and have higher platform dependency compared to other applications.
- 71. In addition to DAU and MAU data, the DG has relied on Statista Global Consumer Survey as of August 2022 in respect of top 10 most used Messenger services in India:





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72. The DG has noted that in a consumer survey of 3,236 messenger user conducted by Statista, in response to a multi-pick question “*which instant messenger service or video call service do you use frequently?*” 90% users ranked WhatsApp as their mostly used service. The report also states that Signal does not rank in the top 10 messenger services in India. The Investigation further noted that WhatsApp and Facebook Messenger are the two top messenger service providers in India having 90% and 56% user share respectively which clearly indicates that these two are most popular apps in India.
73. However, the OPs have averred that DG's reliance on the Statista Report which is based on the Statista Survey - a broad survey designed to gather consumer insights and data on consumer characteristics – is improper both: (a) procedurally (as the Statista Survey is not part of the DG's record); and (b) substantively (as it is insufficient to support the DG's analysis of WhatsApp's alleged dominance). In this regard, the Commission notes that the OPs have provided a copy of the 2023 survey report (Annexure 9B of the Response dated 14.02.2024 filed by WhatsApp) which has similar findings/ observations in relation to market presence of the OPs and its competitors *i.e.*, Telegram and Signal. Therefore, the Commission is of the view that no prejudice has been caused to the OPs, procedurally. The Commission notes from the 2023 report that *Signal ranks outside the top 10 of most used messenger services in India*. The Report also states that *(t)he share of messenger users using Signal declined by 1 percentage points since Q1 of 2022*. Further, 2023 report also present data as per which WhatsApp and Facebook Messenger are two top messenger service providers in India which are used by 89% and 59%, respectively, of the users surveyed. This is followed by Telegram at 46%. This data also suggests that Meta group enjoys a dominant position in the relevant market.
74. The OPs have also contended that the Statista Survey is a broad survey designed to gather consumer insights and data on consumer characteristics from more than 15000 brands across 56 countries and the same was not designed with the objective of providing reliable market shares of Indian OTT messaging app users. In this regard, the DG as well as the Commission have not used the information / data included in the Reports for calculating market shares but assessing market presence of WhatsApp,





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Facebook Messenger, Telegram, Signal, *etc.* This information / data has to be assessed in conjunction with other data available on record to determine dominance of the OPs. In fact, the OPs have also relied on the same report to assert that *the Statista Survey also demonstrates multi-homing as the total share of the "top 10 most used messenger services in India" significantly exceeds 100%*". Therefore, the contentions of the OPs that reliance placed by the DG on Statista Survey is substantively improper is unfounded and thus, rejected.

75. The OP's argument appears contradictory. While the OPs claim that the Investigation Report fails to collect relevant evidence, such as conducting user surveys or referencing market reports, on the other hand, they challenge the reliance placed on the Statista survey, which does gather consumer insights. The Statista survey, focused on consumer behaviour, provides critical insights into how users interact with different messaging platforms, which are essential for understanding market presence and competition between OTT messaging apps. While the survey may not be perfectly tailored for determining exact market shares, consumer patterns captured in such reports are often used to assess the market presence of competitors in digital platform markets. Therefore, the reliance on consumer reports like Statista's remains appropriate for understanding market behaviour and competition in digital markets, including OTT messaging platforms, when seen in conjunction with other relevant factors.

*Network Effects, Switching Costs and Entry Barriers*

76. In the market for OTT messaging apps, such as WhatsApp and Facebook Messenger, positive direct network effects significantly contribute to market dominance. These network effects occur when the value of a service increases as more users join, creating a self-reinforcing cycle where increasing user numbers attract even more users. In the case of OTT messaging apps, this cycle is evident, as users tend to prefer larger networks where they can connect with a broader range of contacts. The ability to find and communicate with known contacts on the same platform leads to a concentration of



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users on one app, enhancing the app's market power and making it difficult for competitors to attract users.

77. One of the reasons for such strong network effects is that it is very difficult to switch to a rival of WhatsApp. If most of the contacts of an individual user are already using WhatsApp, then it will be more difficult to switch to another platform because the user will lose the ability to communicate with them easily. For example, if a user has a group chat with his friends on WhatsApp, then he will not be able to continue that conversation if he switches to another platform. He will have to convince his friends to switch to the new platform as well. These contacts will have further contacts, they would also have to be persuaded to switch. Users wishing to switch will be faced with the question of whether they should switch to another network if a significant share of their previous contacts will not do the same. The incentive to switch to another social network therefore decreases with higher intensity of use of the previous network. It creates a 'lock-in' effect and thus results in high entry barriers.
78. When a platform with a dominant user base, such as WhatsApp, is involved, users face significant switching costs when attempting to migrate to a new platform. These costs arise because users must convince their contacts to transfer to the new platform, which can be difficult when there is no interoperability between services. As a result, users are generally reluctant to switch unless the benefits provided by the new platform substantially outweigh the costs of leaving the existing network. The larger the user base of the dominant platform, the greater the switching costs, and thus, the higher the value or advantages the new platform must offer to make the switch attractive to users thereby, creating entry barriers for such platforms.
79. This self-reinforcing process promotes what is known as market "tipping." Once a messaging app reaches a critical size, the strong network effects make it challenging for competing platforms to gain a foothold in the market. New users are more likely to choose the largest network where most of their contacts already are, while existing users are reluctant to switch to smaller networks due to the limited connectivity they offer. As



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a result, smaller competitors often remain secondary or are effectively excluded from the market, creating a "winner takes most" or "winner takes all" scenario. For example, Meta's OTT messaging apps like WhatsApp and Facebook Messenger have consistently high numbers of daily active users (DAUs) and monthly active users (MAUs), reflecting their strong market position. This exponential increase in DAU and MAU numbers also evidences presence of direct network effects wherein presence of users on the platform attracts more users. It is also noted that despite the announcement of 2021 Policy Update by WhatsApp in January 2021, its user base did not suffer any decline, and it kept increasing.

80. Moreover, these positive direct network effects are often accompanied by indirect network effects in multi-sided market ecosystem like the one operated by Meta (including WhatsApp, Facebook Messenger, Instagram, *etc.*), where the growth in the user base also attracts more third-party developers, advertisers, and content creators. This further consolidates Meta's market position, as more users mean more opportunities for monetization through targeted advertising and other services. This concentration process is ongoing and reinforces the market dominance of leading players, making it difficult for new entrants to compete effectively.
81. Indirect network effects enjoyed by Meta have played a crucial role in facilitating the introduction of business features on WhatsApp. As the user base of WhatsApp grew exponentially, the platform became more attractive also to businesses looking to reach a large and active customer base. This growth created a self-reinforcing cycle: the more users joined WhatsApp, the more businesses saw value in using the platform to engage with their customers, provide support, and drive sales. WhatsApp capitalized on this dynamic by introducing dedicated business features, such as WhatsApp Business API, product catalogues, automated messaging tools, and payment integration, to cater to the needs of businesses and enhance their interaction with customers. These features leveraged the platform's vast user network, allowing businesses to connect directly with users who were already highly engaged, thereby enhancing the utility of WhatsApp as both a communication tool and a business channel. This strategy illustrates how indirect



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network effects, where the growth in one group of users (businesses) is fuelled by the increase in another (individual users), have been pivotal in expanding WhatsApp's functionality beyond personal messaging to include robust business services. These indirect network effects, when combined with direct network effects, further elevate the barriers to entry for OTT messaging apps.

82. In relation to entry barriers, WhatsApp has averred that there are very low entry barriers for new players to enter the market, since the cost of operating is low, no big capital investment or large numbers of staff, or infrastructure investments, *etc.* are required. It has been also averred that Telegram in its submission to the DG states that the alleged market for OTT messaging apps is competitive and rivals do not face any barriers to entry / expansion in India. Further, reliance has also been placed on the Commission's order passed in Combination Registration No. 2020/06/747 (*Jio/Jaadhu*) wherein it has been observed that the consumer communication applications market does not exhibit significant entry barriers. As per WhatsApp, low entry barriers and numerous examples of entry, coupled with the easy portability and interoperability between consumer communication applications, also mitigates against network effects.
83. The OPs have also relied on a submission by Telegram to the DG allegedly stating that it has not *faced any barriers to entry / expansion in India*. In this regard, the Commission notes that the specific query of the DG to Telegram and reply of Telegram to the same which is extracted below:

Telegram's Reply dated 23.06.2021

***Query (xiii) of the DG Notice***

***Would the sharing of information of its consumers by Whatsapp with Facebook and Facebook companies under its 2021 policy, lead to denial of market access to 'Telegram' in India? Please explain with figures and details to substantiate your stance.***

***Response:***



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*18. We have not found any cogent evidence so far which suggests that we have faced such a situation of barrier to expand our user base in India.*

Telegram Reply dated 07.07.2021

*“It is clarified that the query 3 (xiii) of the Notice of the DG dated 27 May 2021 (“Notice dated 27 May 2021”) and the response of Telegram FZ-LLC to the same, filed on 23 June 2021, is in relation to “denial of market access” and not on impact of data sharing between WhatsApp and Facebook on Indian users.”*

*“We have not conducted any analysis on whether WhatsApp has any network effects, and therefore, will not be able to assess the impact on Telegram.”*

84. Thus, it is noted that submission made by Telegram has been taken out of context by the OPs and in fact Telegram has not negated the importance of network effects as entry barriers, as claimed by the OPs.
85. It is observed that the primary entry barriers for new entrants in the OTT messaging market are the strong network effects, status quo bias and the challenge of reaching a critical mass of users. The DG has noted that many competitors in this space, with few exceptions, have experienced a steady decline in market share in recent years, with some, such as Hike, exiting the market altogether.
86. The significant disparity in DAU data between WhatsApp and its competitors, coupled with the reinforcing nature of network effects, also indicate that Meta is able to exert substantial competitive pressure on alternative OTT messaging platforms. However, the reverse is not true i.e., these rivals do not appear to exert competitive pressure on Meta, underscoring the dominant position Meta enjoys in the market.
87. In relation to reliance placed by the OPs on the Commission’s previous decisions as mentioned above, it is noted that it is crucial to distinguish between the contexts of combination assessments and abuse of dominance proceedings. The decision under the Combination regulations is a forward-looking exercise where the Commission predicts potential market outcomes, anticipating future market dynamics to gauge the potential



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appreciable adverse effect on competition resulting from the combination. On the other hand, in abuse of dominance cases, the Commission must assess the prevailing market conditions to determine if any anticompetitive conduct is occurring. Thus, the Commission's conclusions from a dated assessment in an another context are not sufficient to disregard the market realities which have been unravelled in an in-depth investigation. Furthermore, in rapidly changing markets in particular, market assessment cannot have a static approach. In the present case, the Commission has the benefit of a detailed investigation which has revealed that network effects are a critical factor in determining the success of new entrants in the OTT messaging market. These network effects, which strengthen as more users join a platform, significantly hinder the ability of new players to enter and compete effectively. This is evidenced by the market exit of platforms like Hike, which struggled to gain traction against larger competitors with entrenched user bases. Therefore, it is imperative to assess market conditions on a case-by-case basis, particularly in the fast-evolving digital markets where the landscape can shift rapidly.

88. Additionally, the Commission must remain cautious in relying on past decisions, as precedents in such rapidly changing environments are of limited value compared to the necessity of understanding the economic realities at the time of assessment. In the present matter, based on the detailed investigation, the Commission is satisfied that significant entry barriers exist in the relevant market, and prior observations do not preclude a reassessment of market conditions. The emphasis is on the present findings, and past decisions should not bind the Commission's conclusions in a different factual and market context.

*Dependence of the consumers on the enterprise:*

89. The DG has also examined dependence of users on WhatsApp and noted that there exists no countervailing buyer power which can effectively impact and constrain the market power of Meta in the relevant market. As per the DG, this is because of the scale advantage that large platforms possess which make it an unlikely possibility of users



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switching to another platform. Further, network effect not only restrict the existing users from leaving the platform, but also attracts new users to register on the platform.

90. In this regard, the OPs have *inter alia* contended that the DG has not contacted any users of WhatsApp or of other competing applications or consumer groups, *etc.* to assess their alleged dependence or inability to exert countervailing buyer power. It has been further contended that users can and do easily multi-home (*i.e.*, switch to and between competitors), which demonstrates that there is no user dependence on a single service. In this regard, the OPs have also relied on Commission's order dated 01.06.2017 in Case No. 99 of 2016 (Vinod Kumar Gupta v. WhatsApp) as well as Commission's order dated 19.07.2017 in Case Nos. 06 and 74 of 2015 (Fast Track Call Cab Private Limited & Anr. v. ANI Technologies). The OPs have also relied on research paper titled *A Web Of Paradoxes: Empirical Evidence On Online Platform Users And Implications For Competition And Regulation In Digital Markets* by Dr. Pinar Akman (***Pinar Akman Paper***), to assert that users switch between approximately four apps for communications / messaging. As per the said paper, 86% of Indian users engage in multi-homing when it comes to messaging / communication services. Accordingly, the OPs have claimed that consumers are not dependent on WhatsApp in terms of Section 19(4)(f) of the Act.
91. In this regard, the Commission is of the view that the impact of multi-homing on imposing competitive constraints in the OTT messaging market can be assessed based on two key factors *i.e.*, the *extent* of multi-homing and the *efficacy* of multi-homing in creating competitive constraints. The OPs based on Pinar Akman Paper have claimed that 86% of Indian users engage in multi-homing for messaging services, meaning they use multiple platforms simultaneously, such as WhatsApp, Telegram, and Facebook Messenger. However, a closer look at the data casts doubts on the significance of multi-homing as a competitive force. *E.g.*, if 86% of WhatsApp's MAUs, which stand at ■■■ million in India in 2021, were also using other messaging apps, such as Telegram, one would expect Telegram's MAUs to be around ■■■ million. However, as per the Statista report, Telegram's MAUs in India are only approximately 86.6 million, indicating a far smaller user base. Similar inferences can be drawn in respect of active user data related





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to Snapchat, *etc.* Accordingly, the extent of multi-homing claimed by the OPs is overstated and the claim of the OPs remains un-substantiated.

92. Furthermore, the parallel use of multiple services appears to be limited, with the majority of multi-homing users sticking with Meta's applications and other competitors, like Telegram or Signal, having much smaller user bases.
93. When assessing the efficacy of multi-homing in the context of OTT messaging apps, it is noted that platforms like WhatsApp are characterized by strong identity-based direct network effects, wherein their primary function is to enable direct communication between users, typically with known friends and acquaintances. For effective communication to occur, both parties must use the same messaging platform, as there is no interoperability or compatibility between different platforms. Consequently, the value and attractiveness of a messaging platform increases as its user base grows, as users are more likely to find their contacts on larger platforms, further reinforcing the network's market position. In such scenarios, multi-homing tends to have limited impact in weakening market power. This is because users derive the most value from platforms where the majority of their contacts are present, making them less likely to fully switch to or engage with other platforms, even if they multi-home. The apps where users multi-home remain secondary apps for them. Consequently, platforms like WhatsApp can maintain their dominance despite the existence of competing services.
94. In the case of OTT messaging apps like WhatsApp, the efficacy of multi-homing is diminished by the personal network effects involved. Users are more likely to stay with the platform where their close contacts and primary communication circles are already active. The switching costs are high, as migrating to a less popular platform would result in losing access to key contacts or reducing communication efficiency. Therefore, while users may multi-home across different messaging platforms, their activity remains concentrated on the platform with the largest user base, limiting the competitive constraints imposed by multi-homing.



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*Size, resource and economic power of the enterprise and competitors*

95. The DG has also examined size, resources and economic power of Meta and its competitors in terms of its assets and revenue. Total assets and revenue earned by Meta from the year 2014 and 2020 (calendar years), are tabulated hereunder:

**Assets and Revenue of Meta Platforms, Inc.**  
**(in million USD)**

Year	Total Assets	Revenue
2016	64,961	12,427
2017	84,524	20,203
2018	97,334	24,913
2019	133,376	23,986
2020	159,316	32,671
2021	165,987	46,753

96. The DG has also compared value of assets and turnover of Meta with its rivals in India and the same is tabulated below:

<b>Assets of competitors in OTT Messaging Services</b>				
<b>(INR in crores)</b>				
<b>Name of the Party</b>	<b>Year</b>			
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Line	██████	██████	██████	██
Jio Platforms Ltd.	██	██	██████	██████
Hike	██████	██████	--	--
Snapchat	██████	██████	██████	██
BlackBerry Limited	████████████████████	████████████████████	████████████████████	████████████████████

97. Based on above, the DG has observed that no competitor of Meta is even close to it as regards the global assets of Meta. The closest competitor, in terms of assets, can be



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stated to be Jio Platforms Ltd. Further, other competitors have negligible assets, *i.e.*, too minuscule to compare with Meta's assets.

98. In this regard, the OPs have contended that the asset size of an enterprise is not determinative of its position of strength or dominance in technology markets *inter alia* as the costs of entering and operating in this space are low, as entry does not require significant capital investment, scale, large numbers of staff, or access to local distribution.
99. The Commission notes that in its submissions, WhatsApp has submitted that *(r)ather than reflecting the competitive strength or dominance of the individual enterprise - in this case Meta - asset size is instead a signal of the material resources and rate of investment required to respond to the competitive pressure, and the welfare-enhancing benefits these deliver for users.* It has been further submitted that *(c)onsumer communication service providers, including WhatsApp, must continue to innovate and invest in research and development (R&D) to remain competitive. A significant part of Meta group's revenue goes into R&D..... Meta spent 30% of its revenue on R&D spends in 2022, 21% in 2021, and 21% in 2020. Such a high percentage of spend on R&D and marketing has been consistent over time.*
100. Thus, WhatsApp itself admits that financial resources are important to innovate and operate in the market. Based on data collated by the DG, very few players have comparable assets as those of Meta. Meta's vast financial resources allow it to outspend its competitors in areas such as research and development, marketing, and acquisitions. This gives Meta a competitive edge, enabling it to offer better services, enhance user experiences, and maintain its market-leading position in OTT messaging with platforms like WhatsApp and Facebook Messenger.

*Vertical integration of the enterprises*



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101. The DG has further noted that Facebook, Instagram, Facebook Messenger and WhatsApp belong to Meta group of companies which provides Meta group access to huge resources. The DG has further noted that these companies also share data amongst themselves, and such functional integration enables Meta to enjoy economies of scale.
102. In this regard, the OPs have contested these observations of the DG. The Commission notes that Meta operates a multi-sided ecosystem encompassing platforms like Facebook, Instagram, WhatsApp, and Messenger, connecting billions of users with advertisers, businesses, and developers. This ecosystem enables Meta to generate value from network effects, as users on one side (individuals) enhance the platform's attractiveness for the other side (advertisers and businesses). Meta's vast ecosystem of platforms allows it to collect immense amounts of data, which in turn strengthens its advertising business. This data advantage enhances Meta's ability to target advertisements more effectively than its competitors, thereby driving up revenues and further cementing its dominant market position. The scale of Meta's data collection enables it to continually refine and enhance its services, making it difficult for competitors to match the level of personalization and utility that Meta offers.
103. Meta also benefits from economies of scale, where the cost per user decreases as its user base grows, making it cheaper for Meta to operate on a large scale compared to smaller competitors. Additionally, Meta enjoys economies of scope, as it can leverage its existing infrastructure, technology, and data across multiple platforms (e.g., Facebook, Instagram, WhatsApp, Messenger) to enhance the user experience and lock users into its ecosystem. This integrated approach makes it more challenging for users to switch to other platforms, further reinforcing its dominance.

*Other averments of the OPs*

104. The OPs have also contended that the Investigation Report ignores the dynamic nature of zero-priced digital markets and does not conduct any economic analysis to determine dominance in such markets. Zero-priced markets are different from traditional markets,



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where the ability to dictate ‘*price*’ is an important factor to assess dominance. The DG fails to apply any appropriate economic test or reasoning that is specific to zero-priced markets. It has also been averred that the Investigation Report fails to consider the high levels of innovation in zero-priced digital markets, disregards the importance of multi-homing in such markets as well as how new entrants in zero-priced markets can quickly gain users.

105. The Commission has carefully reviewed these arguments and observes that, under the Act, dominance is defined as the ability of an enterprise to operate independently of competitive forces or affect its competitors, consumers, or the market in its favour. Section 19(4) of the Act sets forth various factors for determining dominance, and these have been appropriately considered in this case.
106. Further, while users may not pay a monetary price for services in these markets, the notion of "zero price" is a misnomer as users provide non-monetary consideration, typically in the form of their personal data, in exchange for services offered by platforms. Thus, the concept of price extends beyond monetary payments, encompassing *inter alia* data exchange which is recognised by Section 2(o) of the Act. These factors are equally relevant in digital markets as they are in traditional markets. The OPs' assertion that the investigation disregards the distinctive aspects of zero-priced markets is therefore erroneous. The Commission concludes that a thorough and sufficient analysis has been conducted, consistent with the legal requirements under the Act.
107. The Commission notes that the statutory test for the assessment of dominance must be viewed in the context of market realities, including the ubiquitous use of WhatsApp in everyday life. WhatsApp's widespread adoption is not limited to individual users but extends to businesses and even government bodies, which utilize the platform for critical administrative functions. For instance, during the course of hearing, IFF referred to news article in relation to the Hon'ble Supreme Court of India launching a service using WhatsApp to provide advocates with important case-related information, such as cause



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lists, case filings, and case listings, directly *via* WhatsApp messages. Such examples are not un-common in respect of WhatsApp and the same illustrates how deeply integrated WhatsApp has become in both public and private spheres. Such pervasive use reinforces the platform's dominance, as reflected in the statutory test, which requires assessing an enterprise's ability to operate independently of competitive forces and its influence on consumers and market conditions. Daily life examples like this further substantiate the conclusion that Meta, through WhatsApp, holds a dominant position in the Indian market. WhatsApp has become synonymous with messaging itself indicating the platform's deep integration into everyday communication.

### *Conclusion*

108. Thus, on holistic consideration of the ecosystem operated by Meta, findings of the DG as well as submissions made by the IFF as well as the OPs along with other information available on record, the Commission concludes that Meta group operating through WhatsApp is dominant in the market for OTT messaging apps through smartphones in India. This dominant position is further strengthened due to presence of Facebook Messenger in the same market.

### **B. Market for Online Display Advertising in India**

109. The primary revenue generation activity of Meta is advertising; therefore, it becomes necessary to examine various modes of advertising and the market dynamics involved therein to identify competitive constraints on Meta. For the purpose of delineation of this relevant market, the DG has referred to submissions made by Informant, Meta and multiple third parties / competitors *viz.* Snap, Ally, Google, Inmobi, Twitter, Taboola, LinkedIn, Amazon, Pinterest, *etc.* In addition, the DG has also referred to jurisprudence of other anti-trust agencies in relation to online display advertisement market *i.e.,* European Commission, Australian Competition and Consumer Commission, French Competition Authority, US Federal Trade Commission, UK CMA, *etc.* The observations of the DG in respect of this market *inter alia* are briefed below:



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- 109.1 Online and offline markets are different markets and serve different purposes. Offline advertising is primarily used by the advertisers to create brand awareness, while online advertising is mainly used to trigger a direct consumer response. Further, online advertising is generally more cost-effective, provides easily measurable returns on investment, and offers better tracking of conversions.
- 109.2 Search and display advertising are separate markets and are not substitutable with each other. The DG has found that except Facebook and Google, all advertisers engaged in online advertisement business have admitted that search and display advertising are different markets.
- 109.2.1 Search ads are driven by user intent and proactive search queries, while display ads rely on targeting parameters and do not require proactive user engagement.
- 109.2.2 Search advertising and display advertising utilize different advertising technologies to deliver their ads.
- 109.2.3 Search advertising involves advertisers paying for text-based ads to appear alongside search engine results. Display advertising enables advertisers to place ads on websites or apps in a variety of formats, including banner-style adverts, ‘native’ advertising, sponsored content, and video advertising.
- 109.3 The Investigation has also noted that search engines such as Google and Bing mainly provide search advertising, whereas social networks such as Facebook, Instagram and YouTube provide display advertising.
- 109.4 In relation to geographic dimension of the relevant market, the Investigation has noted that the conditions of online display advertising are homogeneous across





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India. Further, competitive conditions and regulatory structure in India is different from the global conditions for the online display advertising market.

110. Thus, the Investigation has concluded that search and display advertising are not substitutable and hence, fall under different markets. Accordingly, the second relevant market in the instant case as delineated by the DG is the “*market for online display advertising in India*”.
111. Meta on the other hand have contested the abovementioned market delineation. WhatsApp in its response has adopted submissions of Meta in relation to this relevant market. These averments are briefed as follows:
- 111.1 Definition of this alleged market is based on a flawed analysis as the Investigation Report did not properly assess demand-side substitutability between forms of advertising services. Further, the Investigation Report inappropriately relies on decisions of foreign competition authorities to conclude that Meta operates in the alleged, narrow market for online display advertising.
- 111.2 Meta operates in the product market for advertising services, including both online and offline mediums. It has been averred that DG has ignored submissions from third parties and from Meta showing that they consider online and offline advertising channels as substitutes.
- 111.3 Alleged product market for online advertising cannot be segmented into online display and search advertising services as there is concrete evidence of switching. It has also been averred that recent market events confirm that “search” and “display” advertising are substitutable, innovation and the rapid evolution of user preferences have further bolstered substitutability and also that technological changes have converged the purposes of online search and display advertising.



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- 111.4 Investigation Report also erroneously limits the geographic market to India and the same is flawed, because: (a) markets for digital services and advertising services are global; (b) players in the advertising market (including Meta’s rivals) offer similar services across countries (including India); and (c) Meta’s product decisions are generally made on a global level.
112. For the purpose of delineation of the present market, the Commission has perused the information available on record and the observations of the Commission are elucidated in the succeeding paras.

*Distinction between Online and Offline modes of advertising*

113. Offline Advertising refers to traditional methods such as print (newspapers, magazines), broadcast (TV, radio), and outdoor displays (billboards, posters). It typically targets a broad audience and has physical presence but lacks the flexibility of real-time targeting and personalization. Online Advertising, on the other hand, encompasses digital channels such as display ads on websites, social media ads, search engine marketing, and video ads. This type allows for precise targeting, data-driven strategies, and real-time tracking of user engagement, enabling advertisers to adjust campaigns quickly.
114. Relevant extracts from the submissions of Snap Inc. (Snap) dated 20.07.2021, in this regard, are as follows:

[REDACTED]

[REDACTED]



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115. The DG has also relied on decisions or reports of other competition authorities in relation to above distinction. The Commission has also perused these decisions and notes that:

115.1 European Commission in Google Search (AdSense) case (Case No. AT. 40411) *vide* its decision dated 20.03.2019 concluded that noted that *online and offline advertising are not substitutable* for various reasons discussed therein.

115.2 Digital Platforms Inquiry Final Report by Australian Competition and Consumer Commission (ACCC) released in June 2019 notes that “...*the ACCC considers that, while there may be a degree of substitutability between online and offline advertising, it does not follow that offline advertising places a substantial competitive constraint on online advertising.*” Importantly, the ACCC Report also states that “...*Facebook’s own description of the objectives of advertisers on its platforms suggests there is limited substitutability between offline and online advertising. Facebook observes that ‘no advertiser seeks to show an ad to all Facebook users. They want to show the ad to a subset of the right people—those most likely to be potential customers.’ This extract highlights the value of ad targeting on online platforms, which is generally currently unavailable for offline advertising...*”

116. Based on the available information, the Commission makes the following observations regarding the distinction between online and offline advertising for defining the relevant market:

116.1 Offline advertising, such as print and television, primarily aims to raise brand awareness by reaching a wide audience. On the other hand, online advertising,



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particularly search ads, focuses on driving immediate consumer actions, such as purchases or downloads, by directly engaging users and leading them towards specific conversions.

- 116.2 The level of user engagement varies considerably between offline and online advertising. Online advertising allows users to instantly interact with ads by clicking, which redirects them to a website or product page, facilitating a direct response. In contrast, offline advertising does not offer immediate interaction, making the transition from initial engagement to action slower and less straightforward.
- 116.3 Online advertising tends to be more cost-efficient and often delivers a higher return on investment (ROI). It offers superior performance tracking, allowing advertisers to monitor the effectiveness of their campaigns in real time and make quick adjustments to optimize their strategies. This level of agility is less feasible with traditional offline advertising methods.
- 116.4 Online advertising offers the advantage of real-time monitoring and analysis. Advertisers can directly trace clicks and consumer actions back to specific ads, providing an immediate measure of success. This precision in tracking is not possible in offline advertising, where results are harder to quantify. Thus, online advertising enables tracking of user behaviour, providing insights into engagement that offline methods cannot match. This capacity for detailed tracking and targeting makes online advertising more effective in reaching specific audiences.
- 116.5 The audience reach differs between offline and online advertising. Offline platforms like television or newspapers tend to reach a broader, more diverse demographic, while online advertising allows for more precise targeting, particularly engaging younger, tech-savvy consumers.



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- 116.6 With rapid digitalization of commerce, businesses need to focus on enhancing their digital visibility to ensure their advertising efforts remain effective. For businesses in modern times, relying entirely on offline advertising is not a practical option, as it lacks the reach and engagement capabilities that are essential for connecting with their primary audience through digital channels.
117. In conclusion, the clear distinctions in audience, engagement, cost, monitoring capabilities and purpose, reach between offline and online advertising suggest that they operate in separate but complementary markets.

*Distinction between Search and Display Advertising*

118. It is noted that display advertising refers to visual ads that appear on websites, apps, or social media platforms, often in the form of banners, images, or videos. These ads are designed to attract attention and drive traffic to a specific webpage, product, or service, typically focusing on brand visibility and awareness. Whereas search advertising involves placing ads on search engine results pages (SERPs). These ads appear when users search for specific keywords, making them highly targeted and intent-driven, as they reach users who are actively looking for related products or services.
119. For assessing the distinction between search and display modes of advertising, from the perspective of delineation of relevant market, it is important to refer to submissions made by various parties, as follows:

- 119.1 Relevant extracts from the submissions of Snap Inc. dated 20.07.2021 are as follows:

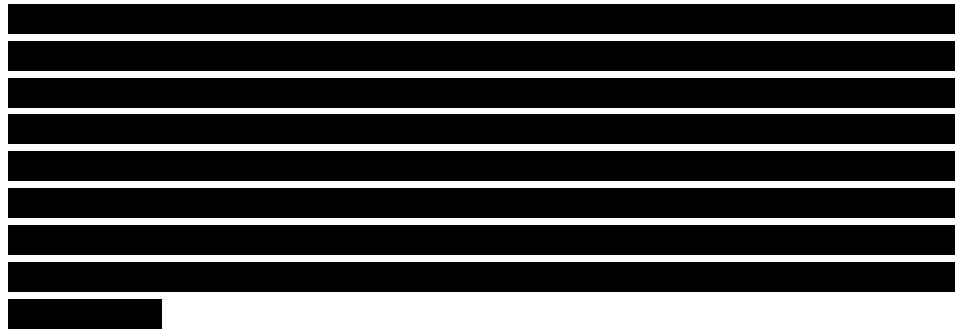
[REDACTED]



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*“There are a number of key differences between online search advertising and online non-search (or display) advertising.*

*With search advertising, the users have already input a query, so they are either primed to take an action or are doing research for a future action. Thus, search advertising is really focused on the bottom of the funnel-intent and conversion. Display advertising can serve the entire funnel (awareness, consideration, intent, and conversion). Thus, for example, if an advertiser just started a new brand, it would be less likely to use search advertising to raise brand awareness and inform potential customers about its brand and product.*

*The targeting capabilities are therefore different between online search ads and online display ads. The biggest difference is that search advertising is intent- driven, whereas display advertising is audience driven. For search advertising, advertisers bid on geography and keywords. For display advertising, the advertiser bids on characteristics of the user. The planning of search ad campaigns tends to be more straightforward, because search ads tend to be text based, whereas display ads are photo or video based.”*

119.2 LinkedIn Technology Information Private Limited vide its submission dated 23.07.2021 has submitted that,

*“Marketers and advertisers seek to achieve sales through what's known in the industry as the "sales funnel," where the initial marketing activities begin at the top of the funnel with brand introduction then move through the middle, which involves building the brand favourability and gaining customer trust, then move toward the bottom of the funnel-where customers form an intent to purchase, conduct price comparisons, download any white papers, then ultimately arrive at the purchase decision. Marketers allocate their advertising spends across the sales funnel and at each level, have available a range of marketing channels to achieve their objectives. It is thus advantageous for digital advertising service providers to have robust solutions across the entire funnel process to maximize their share*



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*of the total digital advertising spend.*

*.....search advertising has certain advantages as it enables marketers to reach the intended target audience with almost immediate results, where pay-per-click (PPC) ads are displayed directly on search results for a certain keyword or phrase. A PPC campaign can increase traffic to the marketer's website and drive higher conversions because in many instances, customers are actively searching keywords that are relevant to the marketer's product or service, i.e., qualified leads. Search advertising campaigns also allow for easy tracking and measurement of customer responses to the marketer's keywords and phrases.....*

*Display advertising is mostly focused on the upper and medium portions of the sales funnel to introduce and build a brand in gaining consumer trust and interest. When a marketer tries to build its brand and move down the sales funnel towards conversion, the volume of consumer engagement and the ability to reach the target audience with higher frequency all play an important factor in that process. This is Facebook's key advantage in display advertising....”*

- 119.3 Collectcent Digital Media Private Limited (Collectcent) is a digital advertising company offering performance based digital advertising services to companies. Relevant extracts from its submissions dated 30.06.2021 are as follows:

***(viii) Do you find any differences between search and display advertising? If yes, please give the features and your preferences for either.***

*Search advertising is offered primarily on Search engines by Search engines like Google search ads on Google.com search page. Display advertising is done across by all other type of Publishers, Websites or Apps on desktop or mobile.*

- 119.4 Taboola India Private Limited (Taboola) is primarily engaged in the business of providing content recommendations to users by leveraging technology to place relevant advertisements on publishers' websites. In relation to the difference between the two types of advertisements, Taboola *vide* its reply dated 25.07.2021 has submitted that, “.....the main difference lies in users' awareness. Search ads only appear to those who are already searching for products and services, while





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*display ads are paid placements that appear based on various targeting parameters...". Other submissions of Taboola are as follows:*

*"...the main difference between search and display advertising is that search advertising uses the "pull" method while display advertising uses the "push" method. This means that search ads only appear to users who are already actively searching for advertisers' products or services, while display ads are paid placement that appear to users who are targeted purposefully for those ads.*

*In other words, search advertising uses individual users' cookies to "pull" relevant ads based on their search results/history; while 'display advertising' uses other factors such as the publishers' industry, etc. to 'push' relevant advertisements to users."*

119.5 Twitter, Inc. vide its reply dated 02.08.2021 has submitted that,

*Twitter understands that online search advertisements are displayed based on a proactive search query keyed by a user. Online display advertisements do not typically require users to proactively look for a product / service. Instead, online display advertisements are typically triggered when users browse through websites / mobile applications and their interests are matched to relevant advertisements."*

[REDACTED]

119.6 InMobi Technology Services Private Limited (InMobi) vide its submission dated 09.07.2021 has stated that:

*"....search ads (ads based on search engine services) are a form of price per click advertising in which brands pay (using an auction-based model) to have their ads displayed above and below organic search engine results when users search certain keywords. Display ads aren't limited to appearing in only one location like search ads. Display ads appear across partner publisher's mobile apps and websites as banner and native ads.*

*11 . The main difference between search ads and display ads is that search*



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*ads are a form of "pull" advertising while display ads are "push" advertising. Meaning, search ads only appear to those who are already searching for a product or service, while display ads are paid placements that appear based on various targeting parameters."*

119.7 Xapads Media Private Limited (Xapads) is a digital advertisement and technology company in the field of digital / online marketing, delivering banners and video advertising campaigns through website and mobile applications. Xapads vide its submission dated 07.07.2021 has submitted that:

***“(ix) Is there any inter-changeability between search and display advertising?”***

*No, the segments of search and display advertisements are not inter-changeable. Majority of the advertisers have different advertisement budgets for Search, Social and Display Advertisements.”*

.....  
*“Both the Search advertisement and Display advertisement are different segments, with advertisers spending their ad spent on both the segments simultaneously, having said that, the first preference is always Search Advertising, as that brings higher return on ad spent, generating more conversions for the brand; However, Display Advertising is a better way of building brand by creating awareness around the Brand and Product.”*

119.8 Affle India Limited (Affle) is a technology company with a proprietary consumer intelligence platform that delivers consumer engagements, acquisitions and transactions through relevant Mobile Advertising. Affle vide its submission dated 30.07.2021 has submitted that:

*“Search and display advertising are quite different. While Affle's business pertains only to display advertising, we are sharing some details below based on our industry understanding of both these businesses.*

*Search advertising is where a user is shown ads related to products/services/queries he has searched for. The relevance of this advertising is thus very significant to what the user is looking for. These ads are also mostly shown as sponsored links and most average users find it difficult to differentiate organic search results and sponsored results and/or ads (even though the platforms showcase this difference subtly).*

*Display advertising in comparison is where ads are showcased as banners, logos, icons and/or videos when users are navigating through free internet*



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*sites/apps. Here the user does not provide obvious intent (like a search query) and ads served to him may / may not always appeal to him. The ads are also more obviously distinguishable for the user as they usually look very different from the content site/app which the user is on.”*

.....

***(ix) Is there any inter-changeability between search and display advertising?***

*Technically advertisers have an option to do both search and display advertising but most of these advertisers allocate separate budgets for both due to inherent differences between the two types of advertising. Some early stage advertisers find it easier to start with search as there the user interest / intent is most validated vs. display where the relevance of the ad is more inferred by the platform delivering the ad vs. being implicitly stated by the user.*

119.9 Pinterest, Inc. (Pinterest) provides a suite of advertising products, including brand and performance-based advertising. Pinterest vide its submission dated 22.07.2021 has submitted as follows:

*Online display advertising services provide for the display of ads targeted to particular users based on the interests suggested by users' network profiles and activity. For example, an online display advertising service will show an ad to a particular user that the service presumes will be relevant or interesting to that user based in part on the user's previous click, following, saving and, purchasing activity.*

.....

*Online search advertising services function differently from display advertising (see Question viii)) by providing for the display of ads that involve the matching by search advertising platforms of user queries with relevant search ads. Thus, when a user types in a search query into the search bar, an online search advertising service will use the words in the query to determine which ads would be relevant and interesting to show the user in response to the search. For example, if a user types "running shoes" into the Google search bar, Google may display ads for Adidas, Sketchers and JackRabbit (all makers of running shoes), and may also display an ad for Runners World, a magazine that contains an article describing the "10 Best Running Shoes for 2020".*

.....



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*Search and display advertising do utilize different ad tech to deliver their ads. Online search advertising requires the use of an ad serving model that utilizes keywords and search terms, while online display advertising requires the use of an ad serving model that utilizes data regarding a user's network profile and activity.*

119.10 SVG Media Private Limited (SVG Media), an advertisement network aggregator, vide its submission dated 20.07.2021 has submitted that:

***(viii) Do you find any differences between search and display advertising? If yes, please give the features and your preferences for either:***

*Reply: Yes, the major difference between the two types of ads is that display ads use a push approach, while search ads use a pull approach. In other words, the audience that comes across search ads are already looking for the advertised product, while display ads are targeted after watching a relevant video or browsing the web for relevant products. Knowing the difference between these two approaches can help one to quickly determine the right strategy based on the brand or product/service awareness. Our Preference lies with display advertising.*

***(ix) Is there any inter-changeability between search and display advertising?***

*Reply: While display ads can show up on sites across the Internet, search ads only appear in search engine results. Advertisers select a list of keywords that are relevant to their company or products and can bid to have their ad show when someone searches for those words or phrase.*

119.11 Inuxu Digital Media Technologies Private Limited (Inuxu) offers Digital & Social Media Advertising solutions to advertisers / brands. Inuxu vide its submission dated 17.07.2021 has submitted that:

*“Search Ads are ad-placements within the search engine results page. They are limited to the search result pages of the search engine platforms. Display Ads on the other side are ad placements across different websites or apps that users are browsing on across the web.*

*Search Ads & Display ads both cater to different business goals. We would use search ads in scenarios where we intend to cater to local audience,*



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*have smaller sales cycle and budget, have focus on leads rather than branding or our product or service is of the type where users generally take instantaneous actions and are likely to use search engines at the time of need - for e.g., emergency services like doctors, plumbers, etc. We would prefer display ads where the audience spread is high, main intent is branding or brand promotion, in case where our ads are more user engaging or for passive kind of audience and when our sales cycles are long and we can leverage the same audience through remarketing, cross-channel marketing etc. at later points as well.”*

.....

*“Display has a greater demand in our view, though search would not lag too much from display ad spends. The main reason being that display ads are much cheaper and can cater to a wider set of audience and also have a wider reach. Also display ads provide more flexibility to brands in terms of ad designs where ads can be more user engaging and focused on brand messaging. Also display are "Push" kind of ads while search are "Pull" kind of ads, so for new businesses / products or services display ads would be the first go to choice in terms of brand building. Globally overall display ad spends are also more than search ad spends.”*

119.12 In addition to above, the Commission has also perused submissions made by other parties in the matter viz. Ally Digital Media, etc. which have made similar submissions.

120. The DG has also referred to various reports from anti-trust agencies across the globe. Important observations from these reports are as follows:

120.1 ACCC Report states that *“there may have been a degree of convergence between display and search advertising over the past 15 years. However, the two varieties of advertising perform somewhat different functions and substitutability between them is still limited.”*

120.2 UK Competition & Markets Authority (CMA) in its *Online Platforms and Digital Advertising Report* dated 01.07.2020 has noted that *search and display advertising are not substitutable, mainly because they perform different roles within the customer purchase journey.*



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- 120.3 In its 2010 sector inquiry into competition in online advertising, French Competition Authority found that *‘display is not a close substitute for search-based ads and therefore cannot be deemed part of the same market’*.
- 120.4 US Federal Trade Commission (FTC), in its 2008 decision on the Google/DoubleClick merger, decided that search advertising is not a substitute for non-search advertising, observing that *“A user’s visit to a particular content page may reveal some insight into the user’s interests. However, users visiting a website do not declare their interests in the same way they do when they type in a keyword on a search engine.*
121. Based on the information available on record, the Commission is of the view that online display and online search advertisement are distinct from each other for following reasons:
- 121.1 Online search advertising and display advertising operate differently, each serving distinct purposes within the advertising ecosystem. Search ads are triggered when a user enters specific queries into a search engine, allowing advertisers to match those queries with relevant ads. This system is intent-driven, meaning users are actively looking for information, products, or services, which makes search advertising particularly effective for generating immediate responses or conversions. Users engaging with search ads are often closer to making a purchase decision, as they have already expressed interest through their queries. Search advertising is thus, particularly effective at the bottom of the funnel, or the final stage of the buying process. For example, a user searching for "best smartphones under INR 10,000" is likely near the end of her decision-making process, and search ads provide them with options that can lead directly to conversions such as purchases.



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- 121.2 In contrast, display ads appear as users consume content on websites, apps, or social media platforms, typically without any direct user input or search query. These ads are interspersed with the content the user is viewing, such as news articles or social media updates, and are designed to raise awareness about a brand or product rather than directly prompting immediate action. Display ads target users based on their profile, behaviour, or past activity, making them audience driven. As a result, display advertising is more focused on building long-term brand awareness and generating interest at earlier stages of the sales funnel. At this stage, consumers may not be actively searching for a product, but are open to discovering new brands or products.
- 121.3 Search advertising operates on a pull method, where ads are shown to users who are actively seeking specific products or services by entering relevant search queries. In contrast, display advertising follows a push method, where ads are presented to users as they browse websites or apps, regardless of whether they are actively looking for the product or service being advertised.
- 121.4 The difference in targeting also reflects in the engagement and conversion capabilities of the two advertising types. Search ads are more likely to result in conversions because they reach users who are actively seeking relevant information, making them qualified leads. This is why search advertising campaigns often lead to higher website traffic and conversion rates. On the other hand, display ads, while less likely to generate immediate conversions, play a critical role in introducing products and services to new audiences and building brand recognition over time.
- 121.5 When it comes to performance tracking, search advertising has an edge. Advertisers can easily measure the success of their campaigns by tracking the number of clicks on ads and the conversion rates for specific keywords. This level of detail allows for precise adjustments to advertising strategies in real-time. In contrast, the impact of display ads is harder to quantify, as there is typically no direct link between viewing the advertisement and making a purchase. The effectiveness of display





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advertising is often measured in terms of brand awareness and engagement metrics rather than direct sales.

- 121.6 From a supply-side perspective, search advertising relies on advanced algorithms to match user queries with ads in real-time auctions, ensuring that the most relevant ads appear in response to specific searches. In contrast, display advertising is delivered through advertising networks that use data about users' browsing behaviour and interests to target them with appropriate ads across various websites and apps.
- 121.7 Search advertising is primarily conducted on search engines, such as Google, where ads are displayed directly on the search results page based on user queries. For instance, Google Search Ads appear alongside organic search results on Google.com. In contrast, display advertising is distributed across a wide range of publishers, including websites, mobile apps, and social media platforms. These ads are typically visual and can be shown on any digital platform that serves display ads, whether on desktop or mobile, targeting users as they consume various types of content.
- 121.8 Switching from providing search advertising services to display advertising, or vice versa, would require significant changes in technology, audience engagement mechanisms, and ad-serving infrastructure. For instance, search advertising relies heavily on keyword-based targeting, while display advertising focuses on user behaviour and profile data to place ads across websites and apps. These differences create substantial barriers to supply-side substitution between the two markets. This is corroborated by different players operating in search and display advertising markets (*e.g.*, Google primarily in online search and Meta in online display).
122. The OPs have contended that advertisers can switch between the two modes of advertising and relied on the same to assert that they both belong to the same relevant market. In this regard, it is apt to refer to submission of following third parties:





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122.1 Relevant extracts from submissions dated 30.06.2021 of Collectcent are as follows:

***“(ix) Is there any inter-changeability between search and display advertising?”***

*Depends upon clients advertising strategy. Clients prefer to split budgets between both types of advertising.*

***(x) Is a separate budget assigned for search and display advertising independently?”***

*Yes”*

122.2 Xapads vide its submission dated 07.07.2021 has submitted that:

***(x) Is a separate budget assigned for search and display advertising independently?”***

*Yes, there are separate budgets for Search, Social and Display Advertisements. Here's how a brand generally divides there advertisement budgets:*

- a. Budgets of Search Advertisements are given out to Search Giants like Google, Microsoft Bing etc.*
- b. Budgets of Social Advertisements are given out to Social Media Companies like Facebook, Instagram, and Twitter etc.*
- c. Remaining Budgets are given out in form of Display Advertisements, which are given out to companies like ours.*

122.3 Affle vide its submission dated 30.07.2021 has submitted that:

***(x) Is a separate budget assigned for search and display advertising independently?”***

*Yes, in most cases we see this to be true.*

*However, we believe that advertising / media agencies are more qualified to answer such questions as they manage these budgets on behalf of advertisers, and as Affle we play only in the display advertising market.*

123. In view of the above, the Commission is of the view that advertisers appear to allocate their budgets separately between search and display advertising due to the significant functional differences between the two. Meta in its response has also acknowledged allocation of budgets for various mediums of advertising and asserted that low switching cost, multi-homing as well as willingness to move to new platforms as reasons for the



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same. However, the Commission is of the view that given the significant differences between search and display advertisements, as elaborated above, one cannot replace the other. Rather, this division of budget reflects that advertisers see both forms of advertising as complementary tools rather than direct substitutes. By investing in both, advertisers ensure that they are effectively reaching their audience at various stages of the customer journey, reinforcing the idea that search and display ads work in tandem to achieve broader marketing objectives. IFF has also made similar arguments before the Commission.

124. The OPs have also averred that technical advancements in digital advertising enables substitutability between various mediums of advertising. For instance, Google not only runs ads on its search engine, but also has a display advertising delivery system. In this regard, the Commission notes that simply because a market player is present in both the segments does not mean that both the segments are substitutable.
125. The OPs also contend that the DG ignored submissions of two of Meta's largest rivals, *i.e.*, Google and Amazon, which set out that there is substitutability between various mediums of advertising, without providing any reason. In this regard, the Commission has perused the submissions of Google and Amazon also. The Commission notes that in a previous case<sup>1</sup>, Google was found to be dominant in online search advertisement market. Therefore, the submissions of Google have to be considered guardedly. Therefore, instead of placing reliance on submissions of one or two parties, the assessment has to be done in the context of overall information available on record and the corresponding market reality. Based on a holistic assessment, the Commission is of the view that there is no substitutability between various mediums of advertising which warrants a single relevant market for advertising services.
126. The Commission also had the occasion to examine online advertisement services and made a distinction between search and non-search (display) advertising (Case No. 07 &

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<sup>1</sup> In Re: Matrimony.com Limited Vs. Google LLC & Others (Case No. 07 of 2012) & Consumer Unity & Trust Society (CUTS) Vs. Google LLC & Others (Case No. 30 of 2012), available at: <https://cci.gov.in/antitrust/orders/details/746/0>



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- 30 of 2012) and noted that the characteristics, intended use and price of search and non-search advertising are different from one another. The Commission in the said matter also noted that Google and Facebook (now Meta) operate in different markets *i.e.*, search advertisement and display advertisement services.
127. In view of the above discussion, the Commission concludes that online display and online search advertisement are different in terms of price, characteristics and intended use and therefore, form part of separate relevant markets.
128. Regarding the OP' claim for a global definition of the relevant geographic market, the Commission is of the view that the conditions of competition in the online display advertisement market are homogeneous within India, and thus the relevant market should be defined nationally, not globally. India has a unique regulatory environment that significantly impacts the operation of advertisement industry. The OPs have not presented any concrete argument to evidence that conditions of competition in the online display advertisement market are homogeneous across the globe. Providing similar services across the globe or making of product decisions on a global basis, does not mean that competitive constraints are homogenous across the globe. Therefore, the scope of relevant geographic market remains the territory of India.
129. In view of the above discussion, the Commission is not convinced with the arguments put forth by the OPs and the Commission agrees with the findings of the DG. Accordingly, the Commission delineates second relevant market in the present matter as that of *online display advertising in India*.
130. To conclude, the Commission delineates following relevant markets in the present case:
- 130.1 Market for OTT messaging apps through smartphones in India; and
- 130.2 Market for online display advertising in India.
131. Further, Meta Group operating through WhatsApp is dominant in the market for OTT messaging apps through smartphones in India.



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### Assessment of alleged abuse of dominant position by the OPs

132. In terms of Section 4 of the Act, an enterprise or a group, enjoying a dominant position in a market, is prohibited from abusing its dominant position in the relevant market. Section 4(2) of the Act lists out various conducts which tantamount to abuse of dominant position. At this stage, it would be prudent to reiterate the provisions of Section 4(2), which reads as follows:

*“.....(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group.—*

- (a) directly or indirectly, imposes unfair or discriminatory—*
- (i) condition in purchase or sale of goods or service; or*
  - (ii) price in purchase or sale (including predatory price) of goods or service.*

*Explanation.— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such condition or price which may be adopted to meet the competition; or*

- (b) limits or restricts—*
- (i) production of goods or provision of services or market therefor; or*
  - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or*
- (c) indulges in practice or practices resulting in denial of market access in any manner; or*
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or*
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.*

133. The subject matter of the investigation in the present case was the privacy policy of WhatsApp and the resultant data collection practice of WhatsApp as well as sharing of the same with other Meta group companies and third parties. Based on the allegations



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made by the Informants and the *prima facie* observations of the Commission, the DG has identified and investigated four allegations against the OPs for examination. The reasoning and findings of the DG, submissions of the parties on these issues and the analysis of the Commission, in this regard, is given in succeeding paragraphs.

**A. ‘Take-it-or-leave-it’ 2021 Update by Meta (through WhatsApp)**

134. The Commission in its PF Order had *inter alia* observed that as per 2021 Update of WhatsApp, users are required to accept the unilaterally dictated ‘take-it-or-leave-it’ terms in their entirety, including the data sharing provisions therein, if they wish to continue using WhatsApp services. It was further observed that WhatsApp users have not been provided with appropriate granular choice, neither upfront nor in the fine print, to object to or opt-out of specific data sharing terms, which *prima facie* appear to be unfair and unreasonable for the WhatsApp users.
135. In this regard, the observations / findings of the DG, after a detailed investigation, are briefed as follows:
- 135.1 Unlike its 2016 and 2019 policy updates, WhatsApp removed the 30 days opt out option for users about sharing their personalized data by WhatsApp with other Facebook Companies. WhatsApp leaves no choice for its users but to accept the update in totality. This makes WhatsApp’s 2021 policy a ‘take-it-or-leave-it’ proposition for the users intending to continue to avail WhatsApp services.
- 135.2 The plain reading of the 2021 policy makes it amply clear that sharing of data with other Meta Companies is one of the conditions the users have to mandatorily accept for availing WhatsApp Services.
- 135.3 The notification after the announcement of 2021 update by WhatsApp was designed in such a manner, wherein only the ‘Accept’ button was prominently visible to the users. Acceptance of the policy has been made compulsory for availing of WhatsApp services as the users were not even aware that they have a right to



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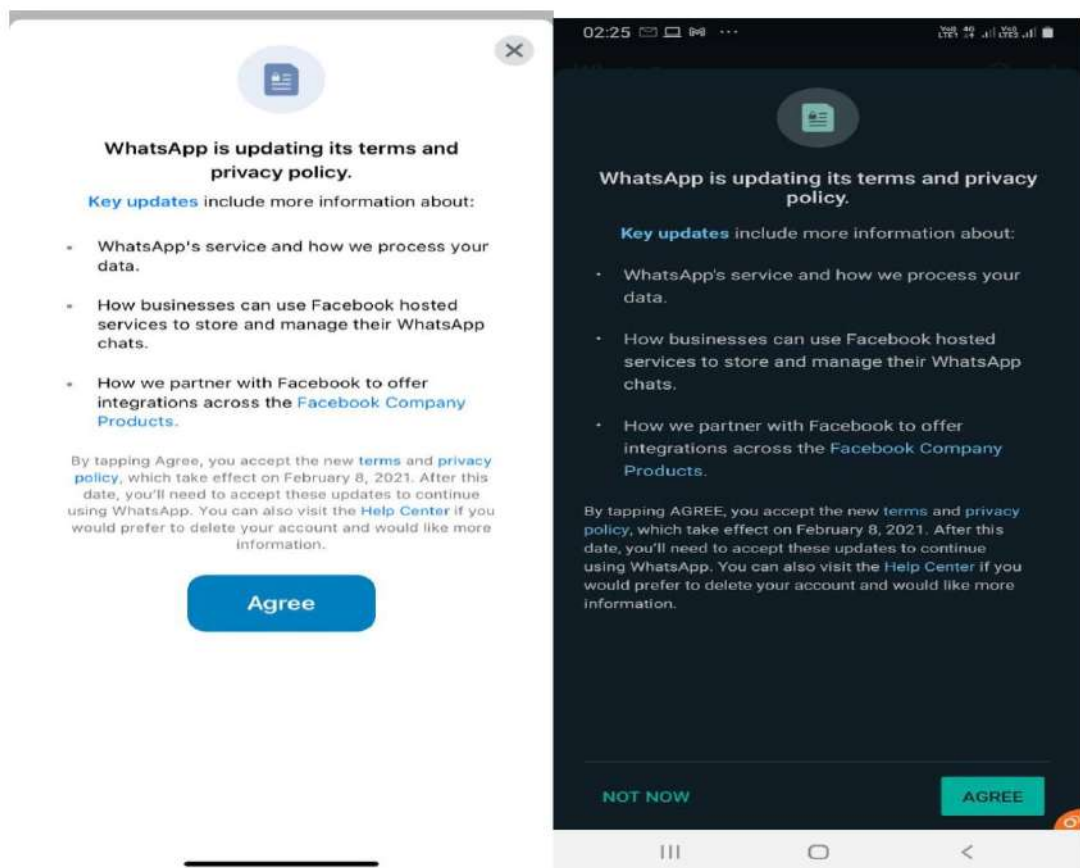


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postpone making a choice. It was also noted that 'Not Now' option was only provided to Android OS smartphone users.

- 135.4 Privacy policy of WhatsApp provides users in the European Union region the option to right to access, rectify, port and erase user information, as well as the right to restrict and object to certain processing of user information. Similar option is not available to Indian users. This discrepancy supports the claim of policy discrimination between Indian and EU users.
- 135.5 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.
- 135.6 The inability of consumers to engage with WhatsApp privacy policy update, and behavioural biases limiting consumers' ability to meaningfully engage with the same have resulted in consumers agreeing to WhatsApp's latest policy update that they do not actually agree with. It seems that given the dependency of users on WhatsApp, WhatsApp users had no other option but to accept the updated terms and conditions of the privacy policy.
- 135.7 Meta has suspended WhatsApp's Privacy Policy for 2021 until the Personal Data Protection (PDP) Bill takes effect. However, users will still need to accept the updated Privacy Policy in order to communicate with businesses.
136. Accordingly, the Investigation has concluded that opt out option is not provided in WhatsApp 2021 update and the users are not voluntarily agreeing on sharing of their personal data. Thus, Meta has unilaterally dictated take it or leave it terms to users in contravention of Section 4(2)(a)(i) of the Act. The OPs on the other hand have contested the findings of the DG.
137. For the purposes of examining the alleged conduct of the OPs, it is apt to elaborate the sequence of events leading to the allegations. In this regard, the Commission notes that,

- 137.1 On 04.01.2021, WhatsApp announced that it was updating the Terms of Service and Privacy Policy applicable to the use of WhatsApp's services and published a banner on its website in this regard.
- 137.2 From 05.01.2021, existing WhatsApp users in India started receiving screen notification from WhatsApp (User Notice) informing them about the new changes in WhatsApp's privacy policy and terms of service (2021 Update) for iOS and Android users respectively, as illustrated below.



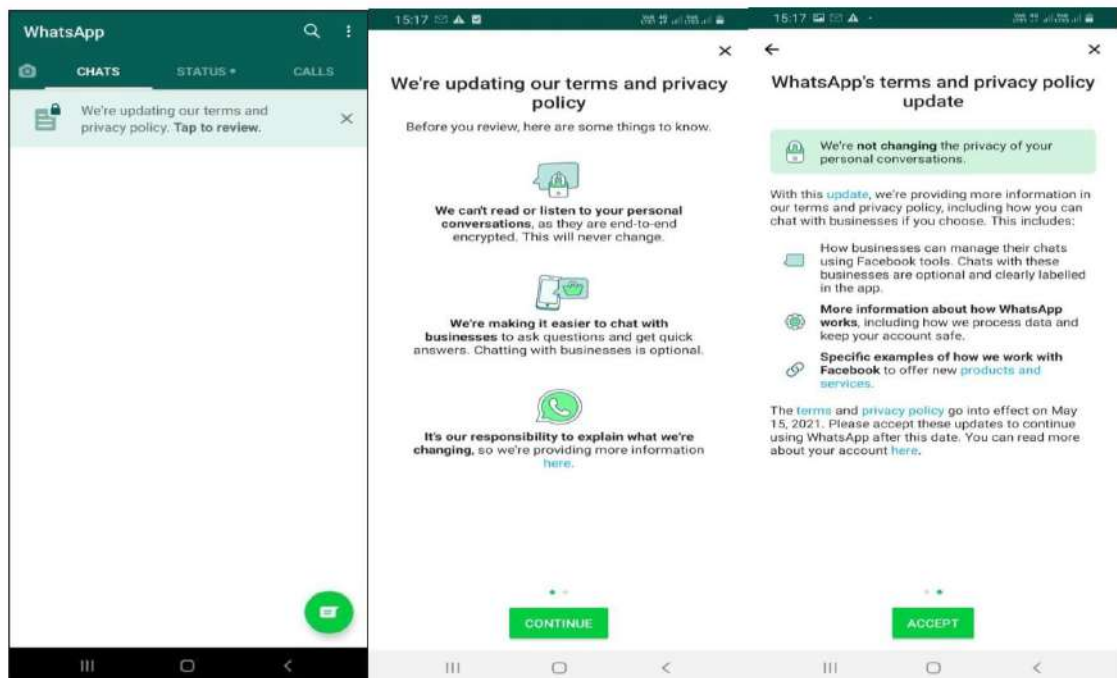
- 137.3 The User Notice provided users with a summary of the “Key Updates” *inter alia* including information about data collection and mandatory sharing of the same with other companies of Facebook (now, Meta). The notification stipulates that users must agree to these terms to continue using the service after 08.02.2021. In the intervening period, they could dismiss the recurring User Notice by tapping on the electronic “X” button at the top-right corner (for iOS users), or an electronic “Not Now” button (for Android users), as illustrated above. It also provides a link to the



*Help Center* for more information and gave users the option to either accept the new terms immediately or explore the changes before agreeing. If the users do not wish to accept the new policy, they were directed to visit Help Center to delete their account. In other words, on 05.01.2021, WhatsApp communicated its users that in order to be able to use the services of WhatsApp, from 08.02.2021 onwards, they are required to mandatorily accept the new terms and policy.

137.4 On 15.01.2021, WhatsApp extended the deadline for users to review and accept the terms of the 2021 Update (from an initial deadline of 08.02.2021 to 15.05.2021).

137.5 WhatsApp also published FAQs and released a second in-app notice (beginning 19.02.2021) to provide users with information about the 2021 Update as illustrated below. The second User Notice gave users time till 15.05.2021 to review and consider the 2021 Update. The notice mandated the users to accept the update to continue using WhatsApp after 15.05.2021.



137.6 On 07.05.2021, WhatsApp released an official statement on its website confirming that no account will be deleted in India on 15.05.2021, nor will users lose



functionality because of the 2021 Update. Few extracts from this statement are as follows:

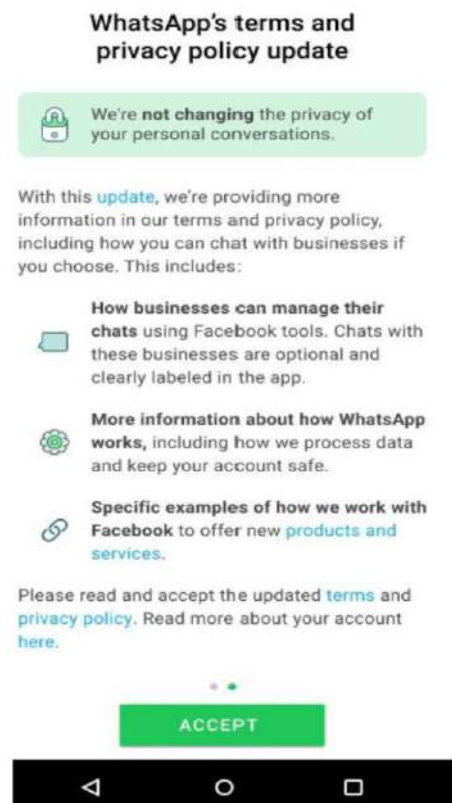
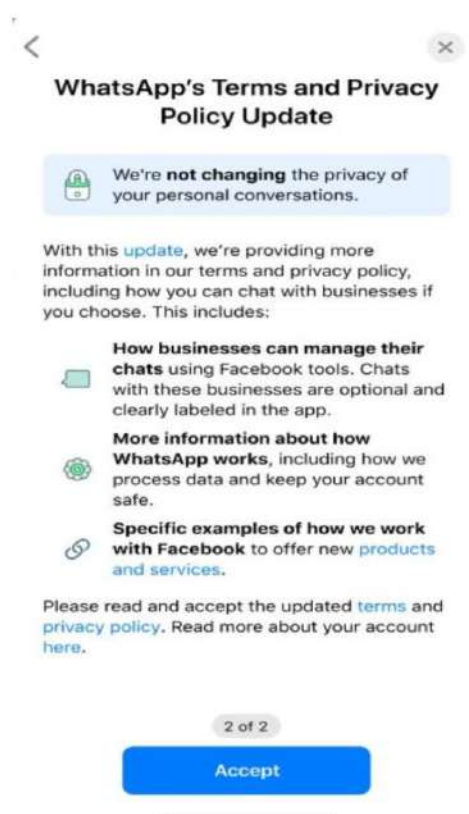
*“...No one will have their accounts deleted or lose functionality of WhatsApp because of this update. The majority of users who have seen the update have already accepted.*

.....

*WhatsApp won't delete your account if you don't accept the update....”*

137.7 As per WhatsApp, updated screens were shown to users, consistent with WhatsApp's confirmation that to communicate with friends and family, users who have not accepted the 2021 Update can continue using the WhatsApp Service without having their accounts deleted or losing functionality of the WhatsApp Service at least until a personal data protection legislation comes into effect in India. However, a perusal of the screenshots given below shows that there was no such information given to users and in fact, users were being led to accept the policy by providing only “Accept” option.

WhatsApp's updated screens displayed to users





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138. Based on the information and documents available on record, the Commission notes that under the previous privacy policy dated 25.08.2016, WhatsApp users were given the option to decide whether they wanted to share their data with Facebook. Users who did not wish to share their account information could opt out within 30 days of agreeing to the updated terms and privacy policy. However, with the latest policy update in 2021, WhatsApp made data sharing with Meta mandatory for all users, removing the earlier option to opt out. As a result, users had to accept the new terms, which include data sharing with Meta, in order to continue using the platform. This marked a significant shift from the 2016 policy.
139. WhatsApp has also asserted that it is continuing to honour the 2016 opt-out for anyone who chose it, and the most recent updates do not change that. If anyone who has previously opted out agrees to the 2021 Update, WhatsApp will acknowledge their agreement to the 2021 Update and also continue to honour their 2016 opt-out. In this regard, IFF has argued that by way of 2021 Update, the opt out of 2016 has also been negated as there is nothing in 2021 Update that suggests that 2016 opt out will be respected. It has been further averred that since the 2021 policy is an update to the 2016 policy, any acceptance of it means that the user will be governed by the new terms, which include mandatory data sharing with Facebook. As per IFF, WhatsApp has only given vague statements that 2016 opt out will be respected, however, the same is not technically feasible and no evidence has been led *qua* the same.
140. In this regard, the DG has noted that the 2021 policy does not create a distinct segment for users who exercised their opt-out option in 2016. Instead, the 2021 policy mandates that all users, including those who previously opted out, must accept the new terms to continue using the service. This acceptance means agreeing to the sharing of data with Meta companies moving forward. While WhatsApp claims it will not share data of pre-2016 opt-out users up until the implementation of the 2021 policy, once these users accept the updated policy, their data from that point onwards will be shared with Facebook companies.



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141. Sections 4(2)(a)(i) of the Act *inter alia* prohibits a dominant enterprise from imposing an unfair condition or price in the purchase or sale of goods or services. The 2021 policy update of WhatsApp demonstrates both "imposition" and "unfairness" for various reasons:

- 141.1 The concept of “imposition” in competition law refers to the element of compulsion wherein a party is deprived of genuine choices. By virtue of 2021 Update, Meta (through WhatsApp) mandates the users to accept new conditions that significantly expands the scope of data collection and sharing (discussed subsequently in this order). This expansion of data obligations without an opt-out provision compels users to accept terms, demonstrating an element of imposition. Further, for users who had specifically opted out of data sharing with Facebook in 2016, the new policy forces them to either accept such broad data-sharing terms they had previously rejected or discontinue using the platform altogether. This represents a clear imposition because the users are coerced into accepting conditions as dictated by Meta (through WhatsApp).
- 141.2 The notion of unfairness in competition law revolves around ensuring that a dominant enterprise does not use its market power to impose arbitrary or one-sided conditions on users. However, the 2021 policy update by WhatsApp disregards the legitimate expectations of the users to decide as to how their data would be collected and used. This arbitrary change is unfair because it undermines users’ trust and deprives them of their right to decide. The absence of an opt-out mechanism for these new conditions makes the terms one-sided and exploitative.
- 141.3 The imposition and unfairness of the 2021 policy update are magnified by the network effects inherent in WhatsApp services. With a massive user base and the convenience of connecting with a broad range of contacts, WhatsApp enjoys a dominant position that makes it difficult for users to shift to alternative messaging platforms without incurring significant costs or inconvenience. Users are thus locked into the platform, and their dependence on WhatsApp as a primary



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communication tool means they have little or no bargaining power when faced with changes in terms and conditions.

- 141.4 The broadening of data-sharing terms under the 2021 policy has adverse implications for consumer welfare and competition in the market. By compelling all users to accept the data-sharing conditions, WhatsApp reduces the level of privacy (an important non-price parameter of competition in digital markets) that users expect, thus diminishing consumer welfare. Additionally, 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. Such anti-competitive effects are particularly harmful in the digital ecosystem, where data is a key competitive asset.
142. On 07.05.2021, WhatsApp announced that no user would have their account deleted or lose functionality due to non-acceptance of the 2021 policy update (*supra*). Further, WhatsApp *vide* its letter dated 22.05.2021 to Ministry of Electronics and Information Technology (MEITY) that it ***will not limit the functionality of how WhatsApp works in the coming weeks as previously planned.*** In this regard, the Commission is of the view that during the period from 05.01.2021 to 07.05.2021, a sense of urgency was created among the users, compelling them to accept the update out of fear of losing essential features or access to the platform. Consequently, many users accepted the policy not out of choice, but due to the pressure and confusion caused by WhatsApp's communication, forcing them to accept the policy out of coercion.
143. During the proceedings, WhatsApp has also submitted data related to number of subscribers as well as those who accepted the 2021 Policy.
- 143.1 On 04.01.2021, WhatsApp had approximately [REDACTED] million cumulative registered users in India, out of whom only [REDACTED] users (*i.e.*, approximately [REDACTED] of the total pre-existing users as on 04.01.2021) had opted out of the 2016 Update.



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- 143.2 Of these pre-existing users, only [REDACTED] had accepted the 2021 Update as on 07.05.2021, when WhatsApp announced that it would not restrict the functionalities of the service post 15.05.2021. Placing reliance on this, WhatsApp has averred that an acceptance rate of only [REDACTED] is inconsistent with compulsion on users, as alleged by the DG.
- 143.3 An additional approximately [REDACTED] of these pre-existing users have accepted the 2021 Update after 07.05.2021 (data gathered as on 28.03.2023), after WhatsApp's commitment that WhatsApp would not restrict the functionalities of the service if users did not accept the 2021 Update.
144. The Commission has carefully considered the submissions of WhatsApp. In this regard, the Commission notes that for the purpose of computing above percentages, WhatsApp has relied on registered users as the base (e.g., [REDACTED] million users). Whereas, WhatsApp has itself stated that “[REDACTED]”  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Therefore, instead of using registered user as the base for calculating percentage of users who have accepted the 2021 Update, it would be more prudent to consider DAU data. As per data furnished by WhatsApp, it had [REDACTED] DAUs as at the end of May 2021 (exact DAUs as on 07.05.2021 are not available on record<sup>2</sup>), out of which [REDACTED] users had accepted the 2021 Update. Thus, [REDACTED] approximately, daily active users had accepted the 2021 Update as against [REDACTED] before WhatsApp's announcement of 07.05.2021 as claimed by WhatsApp. Acceptance of the 2021 Update by [REDACTED] active users under the given circumstances or for that matter even [REDACTED], can by no stretch of imagination be considered as an insignificant number.

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<sup>2</sup> Considering that DAUs of WhatsApp as at the end of April 2021 was [REDACTED] the actual DAUs as on 07.05.2021 is likely to be in close range and thus, would not result in a different outcome.



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145. In this regard, it is also important to note relevant extract from the official statement of WhatsApp released on 07.05.2021 i.e., “...*The majority of users who have seen the update have already accepted...*”. Further, WhatsApp in its letter dated 22.05.2021 to MEITY reiterated this position. This corroborates that significant majority of active users had accepted the 2021 Update before 07.05.2021.
146. Before 07.05.2021, users were under the impression that accepting the 2021 Update was mandatory to continue using WhatsApp. During this period, WhatsApp presented the new terms as a "take-it-or-leave-it" scenario, effectively forcing users to accept the policy to maintain access to WhatsApp Service. Any acceptance during this time was not based on free choice but rather on the compulsion to comply with the new terms or face discontinuation of service. The high percentage of users accepting the policy under such circumstances reflects the level of coercion, as users were left with no practical alternative but to agree. The acceptance rate during this period can indicate the extent to which users felt compelled to accept terms against their will, highlighting the "imposed" nature of the policy. Till that time, anti-competitive harm had already been caused to the WhatsApp users by way of an exploitative conduct on the part of WhatsApp.
147. The other averments of WhatsApp and examination of the same by the Commission is as follows:
- 147.1 WhatsApp has submitted that 2021 Update does not expand WhatsApp’s data collection and sharing ability, therefore, there can be no question of unlawfully forcing users to consent to it. As per WhatsApp, this omission strikes at the root of the findings on mandatory acceptance in the DG Report and, therefore, these findings must be rejected and set aside on this ground. In this regard, the Commission notes that based on information available on record and as elaborated later in this order, there is significant difference in the scope of data collection under the 2016 and 2021 policies.



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- 147.2 It has been further averred that the DG disregards the fact that it is not mandatory for users to accept the 2021 Update to continue communicating with friends and family. WhatsApp also claims that users were given more than four months from the date on which the 2021 Update was first released to review and consider the 2021 Update at their own pace. In this regard, the Commission notes that *firstly*, based on above discussion, it is clear that the initial decision to defer the last date for acceptance of the 2021 Update to 15.05.2021 and thereafter, the decision not to delete the account or reduce functionality of WhatsApp for users who have not opted for 2021 Update is not taken on a *suo motu* basis but after intervention by various authorities as mentioned in this order. *Secondly*, as mentioned above, more than [REDACTED] of total DAUs of WhatsApp had already accepted the policy till 07.05.2021 due to persistent notifications and imminent threat of losing the WhatsApp service.
- 147.3 WhatsApp also avers that the DG has disregarded WhatsApp's submissions on low switching costs which shows that users are not locked in, and instead implies that users will lose contact with their acquaintances if they leave WhatsApp. WhatsApp's rivals offer services mostly free of charge, like WhatsApp. Therefore, users can download and use other messaging services quickly and easily and always have a meaningful choice. WhatsApp has also relied on the decision of the Commission in *Vinod Kumar Gupta - CCI* to assert that the market for instant messaging services using consumer communications apps through smartphones in India is characterised by low switching costs. In this regard, as elaborated earlier in this order, it is noted that switching costs in this market are in the context of network effects and not in monetary terms. Due to strong personal direct network effects, the users are not inclined to switch to alternative applications. The ever-expanding DAU and MAU numbers of WhatsApp are a testament to the same. Further, reliance placed by WhatsApp on the Commission's decision in *Vinod Kumar Gupta - CCI* is misplaced. Unlike Vinod Gupta case, in the present matter, the Commission has the benefit of a detailed investigation which has sufficiently brought out the switching costs associated with OTT messaging apps, as discussed earlier in this order. Therefore, the contentions of WhatsApp are rejected.





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- 147.4 WhatsApp has also submitted that not providing an opt-out is simply industry practice, and not an abuse of any dominant position. WhatsApp has also referred to policies of various digital platforms for this purpose. In this regard, the Commission is of the view that Section 4 of the Act places a special responsibility on the dominant players that their conduct should not impinge on the competition on merits or cause consumer harm. The argument of aligning with industry practice is not sufficient justification for a dominant player because the competitive landscape and consumer impact are viewed differently for dominant firms than for non-dominant ones. Non-dominant players adopting similar practices may not fall under the scrutiny of Section 4 of the Act because their actions do not carry the same potential for anti-competitive result or consumer harm. In contrast, dominant firms have a higher level of responsibility and must avoid conduct that could exploit their market power. Accordingly, a dominant player engaged in conduct proscribed under Section 4 of the Act cannot take the plea of standard industry practice. The Commission's view is that the presence of these practices in the industry does not absolve a dominant firm from its responsibilities under Section 4, which aims to prevent the misuse of market power to the detriment of competition and consumer welfare.
148. The 2021 WhatsApp policy update exemplifies the problematic nature of "take-it-or-leave-it" terms imposed by dominant enterprises. By mandating that all users accept the new data-sharing terms with Meta (formerly Facebook) or lose access to the platform, WhatsApp has effectively stripped users of any real choice. Such terms are inherently coercive, as they force users to either agree to unfavourable conditions or discontinue a service they rely on for communication. This approach becomes particularly concerning in the context of dominant firms like WhatsApp, where network effects make switching to alternative platforms impractical and costly. With a vast user base and market influence of WhatsApp, users are left with no bargaining power, making the acceptance of the new policy a forced decision rather than a voluntary one. This kind of conduct highlights the exploitative nature of "take-it-or-leave-it" terms, where users are





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pressured to accept conditions that prioritize the company's commercial interests at the expense of user autonomy and degradation of privacy protection (a non-price parameter of competition amongst players), ultimately constituting an abuse of market power.

## **B. Data collection and sharing of data by Meta (through WhatsApp)**

149. It has been alleged that the data collected by WhatsApp is in the form of metadata and is very broad in nature. New categories have been added under 2021 policy. Further, many of the categories described in the 2021 policy are too broad, vague and unintelligible. It is also submitted that excessive data collection and inter platform linkage with other Meta companies is not justified *vis-s-vis* the services that the platform offers to the users *i.e.*, messaging services. Identical service is being offered by several other platforms in the market where there is no such condition of collecting excessive data.

150. The observations and findings of the DG in relation to the captioned allegation are summarised below:

150.1 WhatsApp collects information, which is provided by users such as mobile number, profile picture and about information as well as additional information (usage and log information) whenever user uses its services such as user activity, time, frequency and duration of these activities, *etc.* It also uses cookies to collect information regarding consumer behaviour, their choices, language preferences *etc.* In addition, it also receives information from third parties.

150.2 WhatsApp launched Business App services for small businesses in January 2018 and Business API services for large businesses in August 2018. Further WhatsApp Pay service was launched in February 2018. These services require user businesses to provide information regarding their businesses like consumers contact details, business user's photos, videos, metadata, orders *etc.* WhatsApp Pay services enable WhatsApp to collect financial transaction related data of consumers such as credit card number, transactions made, *etc.*



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- 150.3 Although certain basic data is required to provide messaging app services, data collected through cookies, location information does not seem to be essential to provide messaging apps services. Further, data collected from businesses such as user's interaction with businesses, data collected from third parties, business user's photos, videos, metadata, orders placed are not particularly required to provide messaging services and appear to be disproportionate as compared to the services provided.
- 150.4 Businesses that implement the Business API are required to have Meta Business Manager Account and a Facebook profile is required to create a Meta Business Manager account. When a business opens a Facebook profile, Meta collects data from these businesses under its own data policy such as cookies data, data collected from third party services, *etc.* Processing data from third party sources to the extent done by WhatsApp is not required for offering its messaging services. It also supports the allegation that the amount of data collected by WhatsApp is excessive as compared to the services provided by it.
- 150.5 Comparative analysis of data collected by WhatsApp with the competitors shows that collection of such a wide range of user information is not essential for providing instant messaging services, with few players collecting minimal amount of user data.
- 150.6 WhatsApp does share certain categories of information with other Meta companies. The varied purposes for which the data is shared amongst Meta group companies *inter alia* include to meet growing demand to enable businesses to build their businesses and reach their customers globally, *etc.*
151. Based on above, the DG has concluded that the conduct of excessive data collection and sharing of data by Meta tantamount to imposition of unfair conditions violating the provisions of Section 4(2)(a)(i) of the Act.



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152. The OPs on the other hand have contested the findings of the DG. It has been *inter alia* submitted that 2021 Update does *not* expand WhatsApp's ability to collect data and does *not* expand its ability to share data with Meta. The primary aim of the 2021 Update is stated to be two-fold *i.e.*, to provide: (a) users with additional transparency, using examples about how WhatsApp collects, uses and shares data; and (b) additional information about how optional business messaging features work when they become available to users. In particular, it was intended to:
- 152.1 make the WhatsApp terms more understandable to users, including by improving readability and providing additional examples.
  - 152.2 provide additional information on WhatsApp's optional business messaging services and features, including efforts to support businesses of all sizes by enabling better communication between people and businesses over the WhatsApp Service.
  - 152.3 provide additional information about how WhatsApp currently partners with other Meta companies to offer integration across Meta's family of apps and products.
153. WhatsApp has also averred that by virtue of 2021 Update, WhatsApp simply sought to record the user's acknowledgement that its Privacy Policy and Terms of Service had been updated. The 2016 Update already disclosed WhatsApp's ability to share data with Meta.
154. The Commission has perused the information available on record. The Investigation Report based on submissions of the OPs has elaborated in detail instances of data collection as well sharing of the same in the Meta ecosystem. The same is being summarised below for comprehensive examination.

*Information users provide*

155. Users provide the following information to WhatsApp:



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- 155.1 Account information: Including a user’s mobile phone number, and profile name. Users may optionally provide a profile picture and “*about*” information;
- 155.2 *Messages*: WhatsApp does not retain users’ individual or group messages in the ordinary course of providing its services (and the content of those personal messages is encrypted). Instead, messages are stored on users’ devices, and not typically on WhatsApp’s servers. Once a message is delivered, it is deleted from WhatsApp’s servers. WhatsApp may store messages in the course of delivering them in the following circumstances:
- 155.3 *Undelivered messages*: If a message cannot be delivered immediately (for example, because the recipient is offline), WhatsApp keeps the message in encrypted form on its servers for up to 30 days as it tries to deliver it. If a message is still undelivered after 30 days, it is deleted; and
- 155.4 *Media forwarding*: When a user forwards media within a message, WhatsApp stores that media temporarily in encrypted form on its servers to aid in more efficient delivery of additional forwards. All forwarded media content is stored by WhatsApp temporarily in an encrypted format on WhatsApp’s servers to enable faster forwarding times, which in turn reduces data usage and potential charges for WhatsApp users and makes it easier for such users to share content in areas where there is limited connectivity. WhatsApp cannot access the content of the media, which is in an encrypted format.
- 155.5 *Connections*: Users can decide to use the contact upload feature and provide WhatsApp with the phone numbers in their address book on a regular basis. If any of these contacts are not WhatsApp users, WhatsApp ensures those contacts cannot be identified by WhatsApp. WhatsApp does not share a users’ contacts with Meta;
- 155.6 *Status* information: Users may provide WhatsApp with their status if they choose to include one on their account;



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- 155.7 *Transactions and payments data:* If users use WhatsApp’s services meant for purchases or other financial transactions, WhatsApp processes additional user information, including payment account and transaction information. This includes information needed to complete the transaction (for example, information about a user’s payment method, shipping details and transaction amount); and
- 155.8 *Customer support and other communications:* If users contact WhatsApp, for example, for customer support, they may provide WhatsApp with information related to their use of WhatsApp’s services, including copies of messages, contact information (for example, an email address), and any other information a user deems helpful.
156. It is further submitted that the following categories of information are also collected by WhatsApp when users choose to use WhatsApp’s services:
- 156.1 *Usage and log information:* WhatsApp collects information about users’ activities on its services, such as service-related, diagnostic, and performance information. This includes information about user activity (including how users use WhatsApp’s services, user services settings, how a user interacts with others (including when interacting with businesses) using WhatsApp’s services, and the time, frequency, and duration of user activities and interactions), log files, and diagnostic, crash, website, and performance logs and reports. This also includes information about: when a user registered to use WhatsApp; the features a user uses, such as messaging, calling, status, groups (including group name, group picture and group description), payments or business features; profile photo and “*about*” information; whether a user is online, when a user last used the WhatsApp Service (a user’s “*last seen*”); and when a user last updated their “*about*” information;
- 156.2 *Location information:* WhatsApp collects and uses location information from a user’s device with the permission of the user when the user chooses to use location-related features, such as when a user decides to share their location with their contacts, view locations “*nearby*” or view locations other users have shared with



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them. It has been stated that WhatsApp cannot see shared location information in personal messages between friends, family or co-workers as this is End-to-End Encrypted (E2ee). In addition, any location information is typically only retrieved, processed and stored locally on a user's device. Even if a user does not use WhatsApp's location-related features, WhatsApp uses IP addresses and other coarse location information (for example, phone number area codes) to estimate users' general location (for example, city and country). WhatsApp also uses coarse user location information for diagnostics and troubleshooting purposes; and

156.3 Cookies: WhatsApp uses cookies to operate and provide its services, including to provide services that are web-based, improve users' experiences, understand how its services are being used, and to customize its services. For example, WhatsApp uses cookies to: provide its services for web and desktop and other web-based services; understand which of its Help Center articles are most popular and to show users relevant content related to its services; to remember users' choices, such as language preferences; to provide a safer experience; and otherwise to customize its services for users.

157. It is also submitted that WhatsApp may receive the following categories of data from third parties:

157.1 Information others provide about users: WhatsApp receives information about users from other users. For example, when users use WhatsApp's services, they may provide WhatsApp with another user's phone number, name, and other information. They may also send messages to another user, send messages to groups to which such other user belongs, or call such other user. WhatsApp requires each user to have lawful rights to collect, use, and share another user's information before providing any information to WhatsApp;

157.2 User reports: Users or third-parties may also choose to report to WhatsApp interactions and messages with others on WhatsApp; for example, to report possible



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violations of WhatsApp's terms or policies. When a report is made, WhatsApp collects information on both the reporting user and the reported user;

- 157.3 Businesses on WhatsApp: Businesses using WhatsApp's services may provide WhatsApp with information about the users' interactions with them. WhatsApp requires each of these businesses to act in accordance with applicable law when providing any information to it;
- 157.4 Third-party service providers: WhatsApp works with third-party service providers, and other Meta Companies, to help it operate, provide, improve, understand, customize, support, and market its services. For example, WhatsApp works with them to distribute its apps; provide its technical and physical infrastructure, delivery, and other systems; provide engineering support, cybersecurity support, and operational support; supply location, map, and places information; process payments; help it understand how people use its services; market its services; help users connect with businesses using its services; conduct surveys and research for it; ensure safety, security, and integrity; and help with customer service. These third-party service providers may provide WhatsApp with information about users in certain circumstances; for example, app stores may provide WhatsApp with reports to help it diagnose and fix service issues; and
- 157.5 Third-party services: WhatsApp allows users to use its services in connection with third-party services and other Meta Companies' services. If a user uses WhatsApp's services with such third-party services or other Meta Companies' services, WhatsApp may receive information about the user from them; for example, if a user uses the WhatsApp share button on a news service to share a news article with their WhatsApp contacts, groups, or broadcast lists on WhatsApp's services, or if the user chooses to access WhatsApp's services through a mobile carrier's or device provider's promotion of its services. When a user uses third-party services or other Meta Companies' services, their own terms and privacy policies will govern the user's use of those services and products.



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***Information about a business made available to WhatsApp by a business on WhatsApp***

158. It is also submitted by WhatsApp that when a business user sets up and uses a WhatsApp Business account, or uses the WhatsApp Business API service, they provide certain information about themselves to WhatsApp. Examples of such information include:

158.1 For WhatsApp Business API

- 158.1.1 business profile data (including business name, address, phone number, business manager admins, website, profile name, email address);
- 158.1.2 payment method information (including accepted payment methods (e.g., credit card, billing address and tax ID);
- 158.1.3 diagnostics data (including server and field statistics which provide crash data, performance data or other technical diagnostic data);
- 158.1.4 business identifiers (including business phone number, WhatsApp Business account ID); and
- 158.1.5 hosting / storage attributes on hosting type of API end-point (*i.e.*, whether the business has chosen to implement the end-point itself (self-hosting) or has engaged a third-party service provider, which in the future could include Facebook).

158.2 For WhatsApp Business App

- 158.2.1 contact information of the business (including business name, e-mail address, phone number, physical address, website, and identifiers to the business' pages or accounts with other Facebook services (if business chooses to enable linking));
- 158.2.2 location of the business (including IP location (regional estimates), Phone number area codes, IP Address, business address using a freeform text field (this may contain coarse location (e.g., Street address, city, *etc.*) or business address by providing a pin on a map);
- 158.2.3 contacts in the business user's phone;
- 158.2.4 content from the business user (including, business user's photos or videos which can then be added to items in the WhatsApp Business App catalogue,





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- catalogue item descriptions and metadata, orders placed, business hours of operation, and business description);
- 158.2.5 business identifiers (including phone number, username, identifiers to the business' pages or accounts with other Facebook services (if business chooses to enable linking));
- 158.2.6 usage data (use of features like away/greeting messages, quick replies, catalogue); and
- 158.2.7 diagnostics data (including server and field statistics which provide crash data, performance data or other technical diagnostic data).

*Information about the business' customer made available to WhatsApp by a business on WhatsApp*

159. It is further submitted that in addition to the business-related information that businesses provide to WhatsApp when they set up and use the WhatsApp Business App or the WhatsApp Business API, businesses may also provide contact information (such as phone numbers) for their customers.
160. As per WhatsApp, when a user messages a business on WhatsApp, it is the business as the message recipient-not WhatsApp-that is in control of the message content. As such, it is up to the business to decide how to use this message content.
161. It is also submitted that section "Third-Party Information" of the 2021 Update, provides that when a user interacts with a business on the WhatsApp Service, then such business may provide information about these interactions to WhatsApp.
162. Further, WhatsApp uses the data collected from businesses on WhatsApp mainly for analytics, to improve product functionality, for troubleshooting, to provide business insights and support functionalities, for app entry point, for product personalisation, to enable WhatsApp businesses that advertise on Facebook's services to contact customers over WhatsApp if the customers click the "Send Message" button to start communicating with the WhatsApp business.



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163. WhatsApp has submitted that various operations viz. [REDACTED] [REDACTED] rely on the Information collected and are essential to provide the WhatsApp Service. It has also submitted a list of essential activities that rely on each type of Information collected.
164. The Commission has perused the information available on record and notes that as already stated, the 2021 Update continues to use vague, broad and open-ended categories of information being collected. Similar approach was taken in the 2016 Policy, based upon which it is being claimed that information being collected as per 2021 Update is similar to that under 2016 Policy. Therefore, the exact scope of data being collected by WhatsApp and accordingly, sharing of same with other Meta companies remains in-determinable. Despite that specific data sets being referred to in the 2021 update have been examined.

164.1 A verbatim comparison of 2021 Update with that of 2016 Policy is provided below:

<b>Policy Dated 25.08.2016</b>	<b>Policy Dated 04.01.2021</b>
<b>Usage and Log Information.</b> We collect service-related, diagnostic, and performance information. This includes information about your activity (such as how you use our Services, how you interact with others using our Services, and the like), log files, and diagnostic, crash, website, and performance logs and reports.	<b>Usage and Log Information.</b> We collect information about your activity on our Services, like service-related, diagnostic, and performance information. This includes information about your activity (including how you use our Services, your Services settings, how you interact with others using our Services (including when you interact with a business), and the time, frequency, and duration of your activities and interactions), log files, and diagnostic, crash, website, and performance logs and reports. This also includes information about when you registered to use our Services; the features you use like our messaging, calling, Status, groups (including group name, group picture, group description), payments or business features; profile photo, "about" information; whether you are online, when you last used our Services (your "last seen"); and when you last updated your "about" information.
<b>Device and Connection Information.</b> We collect device-	<b>Device And Connection Information.</b> We collect device and connection-specific



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<p>specific information when you install, access, or use our Services. This includes information such as hardware model, operating system information, browser information, IP address, mobile network information including phone number, and device identifiers.</p>	<p>information when you install, access, or use our Services. This includes information such as hardware model, operating system information, battery level, signal strength, app version, browser information, mobile network, connection information (including phone number, mobile operator or ISP), language and time zone, IP address, device operations information, and identifiers (including identifiers unique to Facebook Company Products associated with the same device or account).</p>
<p>We collect device location information if you use our location features, such as when you choose to share your location with your contacts, view locations nearby or those others have shared with you, and the like, and for diagnostics and troubleshooting purposes such as if you are having trouble with our app's location features.</p>	<p><b>Location Information.</b> We collect and use precise location information from your device with your permission when you choose to use location-related features, like when you decide to share your location with your contacts or view locations nearby or locations others have shared with you. There are certain settings relating to location-related information which you can find in your device settings or the in-app settings, such as location sharing. Even if you do not use our location-related features, we use IP addresses and other information like phone number area codes to estimate your general location (e.g., city and country). We also use your location information for diagnostics and troubleshooting purposes.</p>
<p>NA</p>	<p><b>Businesses On WhatsApp.</b> Businesses you interact with using our Services may provide us with information about their interactions with you. We require each of these businesses to act in accordance with applicable law when providing any information to us.</p> <p>When you message with a business on WhatsApp, keep in mind that the content you share may be visible to several people in that business. In addition, some businesses might be working with third-party service providers (which may include Facebook) to help manage their communications with their customers. For example, a business may give such third-party service provider access to its communications to send, store, read, manage, or otherwise process them for the business. To understand how a business processes your information, including how it might share your information with third parties or Facebook, you should review that</p>



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	business' privacy policy or contact the business directly.
NA	<p><b>Business Interactions.</b> We enable you and third parties, like businesses, to communicate and interact with each other using our services, such as Catalogs for businesses on WhatsApp through which you can browse products and services and place orders. Businesses may send you transaction, appointment, and shipping notifications; product and service updates; and marketing. For example, you may receive flight status information for upcoming travel, a receipt for something you purchased, or a notification when a delivery will be made. Messages you receive from a business could include an offer for something that might interest you. We do not want you to have a spammy experience; as with all of your messages, you can manage these communications, and we will honor the choices you make.</p>
<p>We joined the Facebook family of companies in 2014. As part of the Facebook family of companies, WhatsApp receives information from, and shares information with, this family of companies. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings. This includes helping improve infrastructure and delivery systems, understanding how our Services or theirs are used, securing systems, and fighting spam, abuse, or infringement activities. Facebook and the other companies in the Facebook family also may use information from us to improve your experiences within their services such as making product suggestions (for example, of</p>	<p>As part of the Facebook Companies, WhatsApp receives information from, and shares information (see here) with, the other Facebook Companies. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings, including the Facebook Company Products. This includes:</p> <ul style="list-style-type: none"> <li>• helping improve infrastructure and delivery systems;</li> <li>• understanding how our Services or theirs are used;</li> <li>• promoting safety, security and integrity across the Facebook Company Products, e.g., securing systems and fighting spam, threats, abuse, or infringement activities;</li> <li>• improving their services and your experiences using them, such as making suggestions for you (for example, of friends or group connections, or of interesting content), personalizing features and content, helping you complete purchases and transactions, and showing relevant offers</li> </ul>



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<p>friends or connections, or of interesting content) and showing relevant offers and ads. However, your WhatsApp messages will not be shared onto Facebook for others to see. In fact, Facebook will not use your WhatsApp messages for any purpose other than to assist us in operating and providing our Services.</p>	<p>and ads across the Facebook Company Products; and</p> <ul style="list-style-type: none"> <li>• providing integrations which enable you to connect your WhatsApp experiences with other Facebook Company Products. For example, allowing you to connect your Facebook Pay account to pay for things on WhatsApp or enabling you to chat with your friends on other Facebook Company Products, such as Portal, by connecting your WhatsApp account.</li> </ul>
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164.2 The above table shows that 2021 Update expands the data points being collected from WhatsApp users. *E.g., time, frequency, and duration of your activities and interactions, profile photo, "about" information; whether you are online, etc.* under *Usage and Log Information*. Similarly, battery level and signal strength are being collected under *Device and Connection Information*. WhatsApp in this regard, has submitted that the language in the 2016 Update was not exhaustive in nature. Hence, it covers all the categories of data under the 2021 Update and that 2021 Update merely made it more transparent.

164.3 There are multiple data sets which are being collected from the users but the reason for collecting this data has not been communicated to the users. *E.g., Device and Connection Information, general location data, etc.*

165. WhatsApp has consistently claimed that the 2021 Update does not expand its ability to collect or share data with Meta (formerly Facebook). According to WhatsApp, the primary purpose of the update is to enhance transparency by providing users with clearer information on how their data is collected, used, and shared. The company argues that the 2016 Update had already disclosed its data collection and sharing practices with Meta, and the 2021 Update merely seeks to record users' acknowledgment of these existing terms.

166. The Commission finds this assertion as problematic, and the associated conduct as anti-competitive for several reasons. The language used in both the 2016 and 2021 policies



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is vague, broad, and open-ended, relying on terms such as "includes," "such as," and "for example." This creates uncertainty regarding the specific categories of information being collected and shared. Phrases like "service-related information," "mobile device information," and "interactions with others" lack clear definitions, leaving room for expansive interpretations that could extend beyond what users reasonably understand. The use of non-exhaustive lists in the policy suggests that WhatsApp retains the flexibility to expand the scope of data collection at any time and justify it as being covered under previous policies.

167. Such opacity and ambiguity in data policies is inherently unfair to users and raises significant competition concerns. Dominant platforms like WhatsApp, by virtue of their market power, can impose these broad terms without providing users a clear understanding of the true cost of using the service in terms of data sharing. This lack of transparency prevents users from making informed decisions and places them at a disadvantage, as they are unable to fully comprehend the extent of data being collected and shared or to seek alternatives that better protect their data.
168. Moreover, the ability of WhatsApp to unilaterally alter or interpret the scope of data collection without an effective choice for the user creates a situation where the platform can continuously increase its data capture without any real accountability. Accepting WhatsApp's position would set a precedent where dominant firms could continue expanding their data collection practices and justify it under vague and broadly worded past policies, effectively undermining user rights and choices.
169. Users in digital markets generally do not possess the same level of information or bargaining power as the platforms they engage with. WhatsApp's opaque policies take advantage of this information asymmetry, resulting in users accepting lopsided 'take-it-or-leave-it' policies. Vague and ambiguous terms of WhatsApp's 2021 Update allow Meta to exploit its dominant position and prevent effective competition by limiting user awareness and choice. Such practices are not only detrimental to consumer welfare but also undermine the competitive dynamics of digital markets, where transparency and



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effective choice is essential for ensuring fair competition and informed consumer decision-making.

170. The DG in its Investigation Report has also compared WhatsApp's Policy updates for rest of the World and European Region and observed that the WhatsApp's privacy policy for its users living in the European Region, is more transparent and detailed on various aspects as compared to its policy for the users living outside the European Region (including Indian users). In this regard, the OPs have averred that the differences between the privacy policies of WhatsApp and WhatsApp Ireland (the entity that provides the WhatsApp Service in the European region) relate to issues relevant only to the European region *inter alia* including compliance with Europe's General Data Protection Regulation (GDPR). In this regard, the Commission is of the view that while the policies may differ across jurisdictions based on local laws, the aforesaid differences demonstrate the scope and feasibility for providing greater transparency and choice for users in India.

171. The Investigation Report has stated that cookies, location information does not seem to be essential to provide messaging apps service. In this regard, WhatsApp has asserted that:

171.1 it uses data collected through cookies *inter alia* to improve user experiences, understand how WhatsApp Services are being used, and customise the WhatsApp Services; understand which of the WhatsApp FAQs are most popular and to show users relevant content related to the WhatsApp Services; ensure the safety, security, and integrity of the WhatsApp Service, *etc.* [REDACTED]

171.2 WhatsApp only uses precise device location if the user has allowed WhatsApp to use it. On the other hand, [REDACTED]





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Therefore, collection of both precise and general location is essential to the operation of the WhatsApp Service.

172. The Investigation Report further states that,

172.1 data collected from businesses such as user's interaction with businesses is not required to provide messaging app services. In this regard, WhatsApp has submitted that

WhatsApp clarifies that while using its business messaging features, the user is in control of what they choose to do and share. Messaging a business using the WhatsApp Service continues to remain optional (*i.e.*, users can contact businesses using other means).

172.2 processing data from third party sources to the extent done by WhatsApp is not required for offering its messaging services. In this regard, WhatsApp has submitted that if a user uses WhatsApp's services with such third-party services, WhatsApp may receive information about the user from the third party.

173. In relation to sharing of information with other Meta companies, it is important to refer to the following extract from WhatsApp's 2021 Update:

*As part of the Meta Companies, WhatsApp receives information from, and shares information (see here) with, the other Meta Companies. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings, including the Meta Company Products. This includes:*

- *helping improve infrastructure and delivery systems;*
- *understanding how our Services or theirs are used;*



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- *promoting safety, security, and integrity across the Meta Company Products, e.g., securing systems and fighting spam, threats, abuse, or infringement activities;*
- *improving their services and your experiences using them, such as making suggestions for you (for example, of friends or group connections, or of interesting content), personalizing features and content, helping you complete purchases and transactions, and showing relevant offers and ads across the Meta Company Products; and*
- *providing integrations which enable you to connect your WhatsApp experiences with other Meta Company Products. For example, allowing you to connect your Facebook Pay account to pay for things on WhatsApp or enabling you to chat with your friends on other Meta Company Products, such as Portal, by connecting your WhatsApp account.*

174. IFF in its rejoinder has also referred to another page when a user clicks on “see here” in the above policy, user will be redirected to below information.

***What information does WhatsApp share with the Meta Companies?***

*WhatsApp currently shares certain categories of information with its parent company, Meta, and the Meta Companies.*

***If you use WhatsApp Messenger***

*The information we share with the other Meta Companies includes your account registration information (such as your phone number), transaction data (for example, if you use Facebook Pay), service-related information, information on how you interact with businesses when using our Services, mobile device information, your IP address, and may include other information identified in the Privacy Policy section entitled ‘Information We Collect’ or obtained upon notice to you or based on your consent.*

***If you use the WhatsApp Business app***

*The information we share with the other Meta Companies includes your account registration information (such as your phone number and information from your business profile and product catalog), transaction data (for example, if you use Facebook Pay), service-related information, information on how you interact with customers when using our Services, mobile device information, your IP address, and may include other information identified in the WhatsApp Business Terms of Service section entitled ‘Our Data Practices - Other Information’ or obtained upon notice to you or based on your consent.*



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*We limit the information we share with Meta in important ways. For example, we will always protect your personal conversations with end-to-end encryption, so that neither WhatsApp nor Meta can see these private messages. We don't keep logs of who everyone's messaging or calling and can't see your shared location so we cannot and do not share this with Meta. We need your contacts to provide the service, but don't share your contacts with Meta. You can learn more about some of these limitations here.*

175. WhatsApp in its submission has also stated that since 2016, WhatsApp may share certain categories of information with other Meta Companies, for instance, to provide both safe and reliable services as well as optional business features.

23. *The specific types of user data that WhatsApp may share with other Meta Companies are described publicly by WhatsApp in its Privacy Policy and in a publicly available FAQ linked within the Privacy Policy and may include:*

- (i) account registration information, such as a user's mobile phone number;*
- (ii) transaction data;*
- (iii) information on how users interact with businesses when using WhatsApp's services, including service-related, diagnostic, and performance information;*
- (iv) mobile device information, such as mobile operating system information and ISP;*
- (v) IP addresses; and*
- (vi) other information identified in the Privacy Policy section titled "Information We Collect" or obtained upon notice to the user or based on their consent.*

24. *The specific user data WhatsApp shares will depend on the development and availability of new products and features and how users decide to use them. Not all data described in the "Information We Collect" section of the Privacy Policy is currently being shared with the other Meta Companies.*

25. *As an example, WhatsApp shares certain data with Meta when Meta (or certain Meta Companies) acts as a service provider. WhatsApp works with these Meta Companies to support its services, such as by providing technical infrastructure, delivery and other systems; marketing WhatsApp's services, conducting surveys and research; protecting the safety, security, and integrity of users and others; and assisting with customer service.*

27. *To meet growing demand to enable businesses to build their businesses and reach their customers globally, there are plans to provide businesses with new features to engage with customers and support their economic growth, while taking consistent measures to reinforce the private nature of the*



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*platform. These include features WhatsApp is developing to enable customer service, discover a business, and shop online. WhatsApp has described these features further in its FAQs. Many of these features rely on Meta services, so as WhatsApp develops and launches them, it may share information with Meta when a user chooses to engage with a business using one of those features. If a business were to choose to use Meta to store WhatsApp messages securely and to respond to customers, Meta will only use data at the instruction of the business and on the business' behalf. These business features are entirely optional, and users always have the option of deciding whether or not to communicate with businesses. WhatsApp will make it clear within the WhatsApp Service when a user is communicating with any business that uses a third-party (including Meta) to facilitate messaging with the user. WhatsApp's philosophy is that users should be in control when messaging a business. It is their choice whether or not to reach out or engage with a business, and WhatsApp will protect their private information.*

28. *WhatsApp limits the information it shares with other Meta Companies in important ways. WhatsApp does not share the following information with other Meta Companies:*

- (i) *personal messages with friends, family and co-workers, including users' shared location, which are E2ee;*
- (ii) *logs of who everyone is messaging or calling; and*
- (iii) *users' contacts. Although WhatsApp may use users' contacts to provide its services, it does not share users' contacts with other Meta Companies."*

176. WhatsApp has stated that data collected by it is shared with Meta companies *i.e.*, Facebook Ireland Ltd., Facebook Payments Inc, Facebook Payments International Limited, Facebook Technologies, LLC, Facebook Technologies Ireland Limited, WhatsApp, WhatsApp Ireland Limited, Novi Financials, Inc. and its affiliated, global Novi entities and Facebook Pagamentos do Brasil Ltds.

177. WhatsApp has also submitted that Meta shares information it collects, infrastructure, systems, and technology with other Meta Companies (including WhatsApp) to provide a seamless, consistent and richer, innovative experience across Meta's services (including the WhatsApp Service) to enable cross app interactions, sharing, viewing and engaging with content, including posts and videos. Meta also processes information that it receives about users from other Meta Companies, according to their terms and policies and as permitted by applicable law.



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178. Further, in this regard, it is also important to note WhatsApp business terms of service set out the terms of service between businesses and WhatsApp LLC. WhatsApp collects, stores and uses information from a) business account and registration, usage, b) log and functional information generated from use of business accounts, c) performance, diagnostics and analytics information, d) technical and support requests e) information about businesses from other sources like other WhatsApp users, businesses, third party companies, and the Meta companies. This information may be shared with Meta companies, and it will be used to develop, operate, provide, improve, understand, customize, support and market business services of WhatsApp, other services and services and products of Meta companies.

179. WhatsApp has averred that [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

[REDACTED] It has been further averred that if the user chooses to engage with these features, WhatsApp informs them about these features and the data that may be shared with Meta through transparency screens.

180. It has been averred that WhatsApp’s data sharing practices are proportionate and not arbitrary as: (a) WhatsApp does not share all the data that it may collect; (b) limited data that is shared from WhatsApp to Meta is necessary to provide services in relation to safety, security and integrity, and (c) [REDACTED]

[REDACTED]  
 [REDACTED].

181. In relation to sharing of data within Meta Group, IFF has stated that based on the policy, there is no restriction of information that may be shared by WhatsApp with other Meta companies. WhatsApp may claim that only a limited set of data is shared which is



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essential, however, the policy puts no such restriction and contractually puts WhatsApp in a position to share unrestricted data with other Meta companies. IFF has further pointed out that it has been claimed by the OPs that WhatsApp does not share individuals' phone numbers with Meta. However, the FAQ screenshot extracted at para 174 shows that phone numbers are shared with Meta.

182. In relation to sharing of information by WhatsApp with Meta, the observations of the Commission are as follows:

182.1 The fundamental business model of data-driven enterprises like Meta relies on collecting vast amounts of user data from multiple sources. The more data a platform collects, the more effectively it can monetize its services and enhance user engagement, creating a self-reinforcing cycle of data accumulation and commercial success. As a result, data aggregation serves as both a driver of market power and a barrier to entry, making it difficult for competitors to enter or expand in the market. Data aggregation enables digital platforms to function as ecosystems of interconnected products and services. User data obtained from one activity such as messaging, browsing, or online purchases can be used to enhance other services within the same ecosystem, creating a seamless user experience and driving further data collection. This cross-utilization of data across multiple services provides established firms with insights and efficiencies that competitors operating in isolated product silos cannot replicate. However, the cumulative impact of such practices can favour data-rich players, thereby limiting consumer choice and undermining the competitive dynamics of the digital marketplace.

182.2 In the present case, WhatsApp contends that it does not share all of the data it collects with Meta. Instead, it asserts that only a limited subset of data is shared, primarily for purposes related to ensuring safety, security, and the integrity of its services. WhatsApp further states that, [REDACTED]



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- 182.3 The 2021 update indicates that WhatsApp may share user data with Meta for purposes such as marketing its own services and promoting offerings across Meta company products. This includes enhancing Meta’s services and improving user experiences by making suggestions (*e.g.*, recommending friends or group connections, or highlighting interesting content), personalizing features and content, assisting with completing purchases and transactions, and displaying relevant offers and advertisements across Meta’s platforms. Thus, sharing of data within Meta group goes beyond what is necessary to provide core WhatsApp services, indicating that user data is being leveraged for commercial purposes unrelated to the primary functionality of the platform. The aggregation of data from multiple sources provides Meta with insights that smaller competitors cannot replicate, potentially blocking new entrants and closing the market in favour of established firms.
- 182.4 The 2021 policy update introduced by WhatsApp has not been revoked and continues to be the operative privacy policy for users. Although on May 7, 2021, WhatsApp stated that users would not lose functionality or have their accounts deleted for refusing to accept the update, this announcement did not withdraw the new terms of service and privacy policy. Instead, the 2021 policy remains effective as a significant majority of users have already accepted the updated terms following the notifications (as per WhatsApp own submissions, more than █████ users as on 28.03.2024 have accepted the 2021 Update).
- 182.5 Additionally, users are still being prompted to accept the 2021 update, particularly when engaging with businesses that use Meta’s Cloud API. This implies that the update continues to influence user behaviour and data sharing practices on the platform. Even if WhatsApp currently claims to share only limited data with Meta, the 2021 policy grants it the unilateral right to expand data sharing at any point, without giving any choice to users. This creates a precarious situation where WhatsApp can begin sharing more data with Meta whenever it chooses, making the policy not only a matter of anti-competitive conduct but also raising concerns over user autonomy and transparency.





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- 182.6 Privacy is increasingly recognized as a critical non-price parameter of competition, which is valued by users on par with other service attributes like quality, customer service, and innovation. In the context of digital services, where many offerings are provided at zero monetary cost, consumers tend to place substantial importance on non-price factors, such as the degree of privacy protection, data security, and transparency of data practices. In this regard, the DG has relied upon several cases and studies namely Facebook/ WhatsApp merger decision dated 03.10.2014 in Case No. COMP/M.7217 by European Commission, Microsoft/ LinkedIn merger decision dated 06.12.2016 by European Commission, Google/ DoubleClick merger assessment by US FTC, TomTom/Tele Atlas and Apple/ Shazam merger by European Commission, Australian Competition and Consumer Commission's '*Digital Platforms Inquiry*' of June 2019 and Facebook decision by German Federal Cartel Office (FCO) *i.e.*, Bundeskartellamt to conclude that there is a consensus behind the idea that 'competition on privacy' can constitute an element of competition. Relevant extracts from these decisions and reports are not being reproduced here for brevity.
- 182.7 Increased data collection or broader data sharing can thus be considered a reduction in the overall quality of service. When a dominant firm like WhatsApp reduces its data protections, it effectively diminishes the quality of its service, impacting consumer welfare and violating competitive principles under antitrust law.
- 182.8 Moreover, the impact of reduced data protection extends beyond just consumer exploitation. When a dominant firm lowers data protection standards, it not only weakens the consumer's position but also has significant exclusionary effects on competition. Consequently, lower data protection standards not only harm consumers by reducing the quality of services but also create insurmountable entry barriers for potential competitors, entrenching the dominant position of established firms and distorting competition across various markets.



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- 182.9 Users typically do not anticipate or desire that their personal data will be shared with third parties beyond what is necessary for the functioning or enhancement of a service. Most users expect that data collected by a platform like WhatsApp will be used solely for the purpose of providing or improving the messaging service itself. However, the language used in the 2021 privacy policy implies a much broader scope for data sharing. It indicates that user data may also be utilized to *“help operate, provide, improve, understand, customize, support, and market our Services and their offerings, including the Meta Company Products”, “improving their services and your experiences using them, such as making suggestions for you (for example, of friends or group connections, or of interesting content), personalizing features and content, helping you complete purchases and transactions, and showing relevant offers and ads across the Meta Company Products”, “providing integrations which enable you to connect your WhatsApp experiences with other Meta Company Products”, etc.*
- 182.10 This implies that user data, instead of being restricted to WhatsApp’s internal functions, may be shared across Meta’s ecosystem to promote & improve other Meta products, recommend content, or tailor advertising, enhance integration across Meta products, *etc.* Such practices contradict users’ reasonable expectations regarding data usage, as they extend beyond the limited context of service provision. Consequently, the data sharing scheme raises concerns about whether users are fully informed about how their personal information is being utilized across multiple platforms within the Meta network.
- 182.11 The sharing of information between WhatsApp and Meta as mandated by the 2021 privacy policy update can be considered an imposition on users due to the absence of choice and the exploitation of WhatsApp’s dominant position in the messaging market. The policy compels users to either accept broad and ambiguous data-sharing terms or risk losing access to essential features and functionalities of the platform (at least till 07.05.2021). This coercive approach leverages WhatsApp’s dominance to impose data-sharing conditions that primarily benefit Meta’s business interests. Such conduct demonstrates the imbalance of power, where users are



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deprived of meaningful autonomy over their data and are pressured into accepting terms they cannot practically negotiate or refuse. The data-sharing arrangement without user choice is also fundamentally unfair as it degrades the quality of service by diminishing privacy standards, which are an essential non-price parameter of competition. This combination of coercive imposition and unfair reduction in service quality underscores the exploitative nature of WhatsApp's conduct, which harms both consumer welfare and market competition.

183. To conclude, the Commission is of the view that the 2021 policy update by WhatsApp on a 'take-it-or-leave-it' basis constitutes an imposition of unfair condition under the Act, as it compels all users to accept expanded data collection terms and sharing of data within Meta Group without any opt out. Given the network effects and lack of effective alternatives, the 2021 Update forces users to comply, undermining their autonomy, and constitutes an abuse of Meta's dominant position. Accordingly, the Commission finds that Meta (through WhatsApp) has contravened Section 4(2)(a)(i) of the Act.

### **C. Denial of Market Access and Leveraging by Meta**

184. The Commission in its PF Order noted that the ability to collect and utilize large volumes of personal data from different sources allows Meta to gain a competitive edge that other players cannot easily replicate. This leveraging of WhatsApp's dominance to strengthen Meta's position in other markets, such as display advertising, results in exclusionary effects, making it difficult for new entrants and smaller players to compete effectively. Such conduct, which involves integration and cross-sharing of data within the Meta ecosystem, could potentially foreclose competition, restrict innovation, and harm consumer welfare by reducing privacy protections and limiting choices. As a result, the Commission determined that WhatsApp's and Meta's practices warrant a detailed investigation to ascertain the extent of the anti-competitive effects.
185. The DG has examined two allegations related to denial of market access and leveraging by Meta, together. Based on its investigation, the DG has concluded that collection of huge user data and data sharing between Meta companies act as an entry barrier to the



new entrant resulting in denial of market access in contravention of the provisions of Section 4(2)(c) of the Act; and the conduct of leveraging its dominant position in the market for OTT messaging app through smartphone in India by Meta (through WhatsApp) to protect its market share in the online display advertising market tantamount to violating the provisions of Section 4(2)(e) of the Act.

186. The OPs on the other hand have contested these findings of the DG. The Commission has perused the evidence collated by the DG, averments made by the OPs and other information available on record.

*Third Party Submissions*

187. As already stated, data gives a strong competitive advantage in the online display advertisement market. During the course of investigation, the DG has collected information from various third parties in the matter in this regard. For the purpose of examining the conduct of the OPs, it is important to note these submissions.

188. The relevant submissions of Snap are summarised below:

[Redacted content]



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[REDACTED]

189. Affle has stated that data led targeting makes advertising more relevant for users, and if advertising is more relevant for the user, there is a higher chance of it being more effective. It also helps maximise user experience as users don't get shown ads which are of no interest or value to them while they surf free apps/sites. With relevant advertising, the open internet economy is kept alive and thriving as users get free or subsidized access to content/apps which make money through ads. Regarding the 2021 policy update of WhatsApp, Affle has submitted that this would help Facebook target advertising better with the additional data they could now use from users' engagement with WhatsApp. This should thus help Facebook to grow its advertising business. However, as the Indian market itself is very fast growing we expect this growth for them to not necessarily come at the cost of other Indian and International players.

190. Ally Digital has submitted that online platforms provide data points such as date, time and target audience *etc.* that helps optimizing the campaign. It has also been submitted that data sharing between WhatsApp and Facebook would increase advertising revenue of Facebook multi-fold as with better targeting options, the brands would spend more on Facebook ads. It is further submitted that better targeting leads to better sales and that would definitely make brands spend more money on display awareness ads by Facebook.

191. Collectcent has submitted that all businesses rely on end-users to get the revenue generated by advertising, in-app purchases, online sales, on-ground services. As per Collectcent, to show ads to the right audience at the right time for the client is key to



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achieving the business goals of clients. This can only be achieved with user data like gender, income group, location. Regarding the WhatsApp-Facebook alliance after the 2021 policy update, Collectcent stated that it will definitely impact the rest of the advertising companies' revenues (Indian or international) big time directly.

192. Google has submitted that it primarily uses data provided to it by users of its services or collected with users' consent to provide, maintain and improve the services it offers to users. As per Google it also uses data to serve users with personalised and non-personalised ads that support Google's provision of a wide range of free services. Further, user data *inter alia* helps Google to train advertisement quality models used in ranking ads, [REDACTED] As per Google its advertisement quality models are based only on relatively recent data and many factors other than user data, [REDACTED] It has been further submitted that the key to success in the online advertising sector continues to be innovative consumer services, rather than just user data.

193. The relevant submissions of Inuxu are summarised below:

193.1 Data plays a very key role in online display marketing. Every advertiser wants to optimize the advertising spends and get maximum ROI within the advertising budgets. This calls for a precise targeting of the audience while marketing, so that the spends happen majorly for the set of audience who have high propensity to convert – without data this is impossible.

193.2 Advertising platforms or Advertising companies use cookie-based data to target audience but social media platforms or platforms which use user registration have access to more personal demographic data which they can leverage for precise targeting. For example, Social Media platforms have access to information on gender, user likings, recent location of the user, salary brackets or age *etc.* which they may leverage for targeted advertising.



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- 193.3 Google & Facebook due to their reach, popularity & product spread (own or acquired) have access to tremendous amount of user data and hence enjoy significant portion of market share of online display advertising market in India. All the user data is behind closed walls of Google & Facebook like companies which have acquired this user data through their various offerings (not initially intended towards advertising) over a period of time. This makes business like Inuxu suffocate on user data.
- 193.4 WhatsApp is being used widely in India now and WhatsApp groups have allowed like-minded or related folks to come together. Hence it has great capability to make information viral in a short time. Also, WhatsApp has lot of personal information sharing in terms of location, phone number *etc.* Having WhatsApp's data available to Facebook can help Facebook cross-leverage the user behavior and demographic data to make its display advertising more relevant and targeted to user's interest. Also, with WhatsApp business now being used by many startups or small / mid-scale businesses, Facebook can leverage its technology along with WhatsApp's user base & data to boost its advertising revenue. Enabling data sharing between Facebook and WhatsApp will give advantage to Facebook for its Ads business. Facebook will further strengthen its market share in digital advertising business making it difficult for businesses like us to increase its market share.
- 193.5 Aggregation of WhatsApp's data with Facebook (as both have user's personal & demographic details) would surely help in more targeted and better user relevant ads and help Facebook boost its display advertising offering. As per Inuxu, Facebook with this cross-leverage of WhatsApp's data would become undisputed leader in knowing and understanding (with use of analytics) user's conversational data that is the core of any digital advertising targeting. Companies that thrive on services of Facebooks Ads would benefit greatly while AdTech companies that are not part of Facebook and WhatsApp ecosystem will face tougher competition.
- 193.6 Facebook's access to WhatsApp data has strengthened Facebook's targeting capabilities for ads. While this has not impacted directly our profitability, it has an



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indirect impact on our demand & cost as more advertisers move to Facebook due to its audience targeting capability (which is enhanced due to this data) and it may need us to integrate with third party DMPs (Data Management Platforms) to have competitive targeting capability which will result in more cost to us.

193.7 It may not be very accurate to say that sharing between WhatsApp and Facebook has created barrier to us, but it has given a competitive advantage to Facebook in our view due to more access to data which will further strengthen Facebook's audience targeting – which is one of the key driving factors for display advertising.

194. The relevant submissions of InMobi are summarised below:

194.1 Online display advertising services on social networks is more effective than online display advertising services outside social networks. Given this facet of display advertising and the relevant development (*i.e.*, 2021 policy update of WhatsApp), it is of the view that Facebook's understanding of its users will be richer and more current, making their reach to the consumers/users deeper. Therefore, they will be preferred as advertising partners.

194.2 Targeted campaigns can be potentially designed using WhatsApp's data, to achieve accuracy, currency, and effectiveness. WhatsApp's dataset including businesses that a user interacts with, makes payments, to may potentially enrich Facebook's existing audience profiles and is likely to assist Facebook in running more effective campaigns. Therefore, they will be preferred as advertising partners.

194.3 Tying-in of acceptance of WhatsApp 2021 policy update with sharing of data with Facebook will further enhance Facebook's status as a dominant advertising partner. The access to data will improve Facebook's ability to target users better and hence may potentially affect the cost of impressions/profitability for InMobi.



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195. OpenX Technologies Inc. has submitted that due to WhatsApp-Facebook alliance, Facebook may leverage its position in the display advertising market further by building even more detailed audiences.

196. The relevant submissions of Magnite Inc. (Magnite) are summarised below:

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[REDACTED]

197. The relevant submissions of Smile Internet Technologies (P) Ltd (Tyroo), a display advertising network, are summarised below:

197.1 Consumer data and understanding of their online behaviour is important as it helps Brands to target their ideal customers and acquire them when they are most suitable for their business. It is also stated that better customer profile helps display advertising become more precise and perform better for advertisers leading to more Dollars moving to display advertising. All large platforms like Google and Facebook have massive amount of consumer data as compared to other companies, enabling the former to perform and take higher share of display advertising.

197.2 Biggest entry barrier for new players is scale and history of consumer data, which requires exponential capital investment/subsidization making business unfeasible on its own.

197.3 Regarding 2021 policy update of WhatsApp, Tyroo has stated that Facebook may get more data on consumer - relationships with more businesses and individuals. It is also stated that display advertising market will see more advertising dollars consolidate with Facebook as it will start to see more consumer data on offline world engagement of consumers - making it more performance friendly for brands.

198. The relevant submissions of SVG Media are summarised below:





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- 198.1 2021 policy update of WhatsApp enables both WhatsApp and Facebook to target wider range of audiences as well as parameters like location, behaviour, demographics are competitive advantage. It has been further submitted that the 2021 update will enable both WhatsApp and Facebook to capture better market share by offering accurate target audiences.
- 198.2 Tying-in acceptance of WhatsApp 2021 policy update with Facebook will substantially increase spends of clients on Facebook platform, thus minimizing the importance of other publishers and websites.
- 198.3 Facebook and WhatsApp have competitive advantage as they have consumer's behavioural data, which helps them to target specific users resulting in low-cost advertisement. Currently, there is no direct impact but there is a possibility in future to impact SVG Media's profitability & performance in business.
199. Twitter is an online micro-blogging platform offering online advertisement space on its website that an advertiser can pay to utilise. Regarding the role of data for online display advertising, Twitter *vide* its reply dated 02.08.2021 has submitted that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Regarding the WhatsApp-Facebook alliance after 2021 policy update, Twitter stated that [REDACTED]  
[REDACTED]
200. Xandr Inc. is a digital advertising technology and analytics company and is stated to be part of the AT&T group. Xandr has submitted that data is required at several levels of the advertising technology stack and for a variety of reasons, in order for digital advertising to operate effectively. Particularly for advertiser customers, access to end-user data and accurate targeting is one of the most important criteria in selecting a provider. One of the key underlying tenets of the programmatic advertising industry is the ability to target users as granularly as possible. Granular user data is particularly



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valuable to advertisers when combined with inventory that has a high reach among different audience types, as this allows for relatively large numbers of very specific audiences to be targeted.

201. The relevant submissions of Xapads are summarised below:

- 201.1 Data plays a crucial role in Digital Marketing and its impact for the Advertisers & Campaigns. Availability of higher amount of user data allows digital marketing companies to target the advertisements to users, generating higher click through rate and higher conversion rates. It is also stated that Xapads have limited resources and opportunity to build data on its end (other than some basic metrics) but for the companies like Google and Facebook, which are generally walled gardens, users knowingly/ unknowingly end up sharing a lot of personal data points like date of birth, gender. Further, Xapads stated that with the users sharing their day-to-day activity on Facebook and exchanging communications via emails, they have data points around likes/dislikes/behaviour/shopping patterns *etc.*, which gives them huge advantage while running digital marketing advertising campaigns.
- 201.2 WhatsApp-Facebook alliance after 2021 policy update will definitely have adverse effects on the Xapads's business once this policy is approved. It is also stated that with the amount of the data WhatsApp and Facebook alliance will have, they can run any kind of display advertisement with higher precision than anyone else on this planet earth. It is stated that it is evidently clear that the brands will increase their advertising spends with Facebook-WhatsApp alliance, and since search advertisement is already the best format, the deduction will come from the display advertisements budgets, which will not only hurt the Xapads but all the new entrants as well.
- 201.3 The policy approval can prove very expensive for digital marketing companies like Xapads, and hundreds of companies will shut down, as the competition is just unfair and non-practical.



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202. Taboola has submitted that data gives online platforms a competitive advantage in the provision of digital advertising. Online platforms provide targeting capabilities which allow advertisers to retarget their current customers and also to target potential new customers. For these purposes, detailed data on consumer demographics, interests, preferences and behaviour is most valuable in terms of profiling consumers, predicting consumers' potential response to advertising and tailoring advertising messages. Online platforms also provide verification and attribution services to advertisers. For this purpose, online platforms' ability to collect data, beyond their own consumer-facing services, from third-party sites and mobile applications, and to combine it with analytics data to present a unified view of campaign performance to advertisers is very important to demonstrate their effectiveness in digital advertising.

203. The relevant submissions of LinkedIn are summarised below:

203.1 Facebook has a significant amount of advertising inventory and leverages the large amount of data about its users obtained both on and off its different platforms (*e.g.*, through social plugins on third party platforms and pixels on third party websites) to offer more targeted advertising and greater ROI to advertisers than most other online advertisement providers.

203.2 Advertisers are able to target specific users (or user characteristics) across the web, regardless of the websites or apps on which the user viewed their ads. Using ad-targeting tools, an advertiser can identify and show ads to a potential business customer anywhere on the web, and this form of targeting is increasing in accuracy day-by-day. It is also stated that the continuing sophistication and growth of ad-targeting tools allow certain digital advertising providers (such as Google and Facebook) to monitor effectiveness and ROI of a given digital advertising across the web regardless of the websites. Further, unlike Google and Facebook, LinkedIn and other platforms have limited access to advertising data outside the logged-in environment, which constrains effective attribution/ROI analysis and limits advertising campaign optimization.



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204. Amazon Seller Services Pvt. Ltd. has submitted that:

- 204.1 Data allows advertisers to optimally identify and address audiences who may be interested in the specific product or services being advertised in the advertisement content.
- 204.2 There are no entry barriers and any entity which has the infrastructure to publish ads and is able to demonstrate a sizable customer reach through a robust and transparent audience measuring system can enter and compete in the market for advertising services.

205. The relevant submissions of Pinterest are summarised below:

- 205.1 Larger, multi-property digital advertising platforms like Facebook and Google enjoy economies of scale that allow them to have access to larger volumes of data and platforms that are used on a more frequent basis than others. This may enable them to better understand their user base and develop and measure more targeted advertising to advertisers.
- 205.2 This scale is self-reinforcing, making them a 'must-have' for advertisers. As per Pinterest, these dynamics lead to certain platforms collecting an increasingly greater share of data, and by extension strengthening their position in the digital advertising market.
- 205.3 Regarding the 2021 policy update of WhatsApp, Pinterest stated that to the extent that WhatsApp shares data with Facebook, it would be to Facebook's competitive advantage in the digital advertising market. Further, as Facebook collects an increasingly greater share of data, it strengthens its position in the digital advertising market, which allows it to further grow its data set.
- 205.4 There are significant barriers to entry in the market for providing online display advertising at scale. New entrants into this market face a very significant challenge in generating a sufficiently large user base, and similarly significant challenges in



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obtaining the data necessary to target advertising and measure its impact. New entrants and small to medium-sized platforms have a greater challenge in providing advertisers with a compelling, measurement-based reason to shift their budgets. Regulation can also serve as a barrier to entry.

205.5 Facebook has significantly greater capacity to collect first-party data about its users within its family of platforms and services. [REDACTED]

[REDACTED] Its other properties, Instagram and WhatsApp, each have well over a billion users themselves. Facebook is able to collect a wide array of data about its users, both through first-party data collection through its family of apps' many features (content, chats, events, photos, marketplace purchasing, *etc.*), as well as third-party collection of purchase and website / app activity, for example through its conversion pixels, 'like' buttons, and Facebook login functionality.

205.6 Facebook's superior access to data enables it to better understand its user base and develop and measure more targeted advertising to advertisers, which can improve the engagement of their audience (the time they spend using the service) and can improve the targeting of ads which improves those ads' performance (the users' engagement with those ads). Third-party purchase and site visitation data also allows Facebook to offer advertisers clear measurement of advertisement performance, which contributes to advertisers' perception that Facebook-served ads are superior to competitors' offerings.

206. In relation to importance of data sharing between various services of Meta, the Commission notes the following extract from the FORM 10-Q filed by Facebook for the quarterly period ended 31.03.2021 before Securities and Exchange Commission, United States. In this extract, Facebook admitted that data sharing between WhatsApp and Facebook helps Facebook to provide services and targeting ads:

*"In addition, we have been managing investigations and lawsuits in Europe, India, and other jurisdictions regarding the August 2016*



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*update to WhatsApp's terms of service and privacy policy and its sharing of certain data with other Facebook products and services, including a lawsuit currently pending before the Supreme Court of India, and also became subject to government inquiries and lawsuits regarding the 2021 update to WhatsApp's terms of service and privacy policy. If we are unable to transfer data between and among countries and regions in which we operate, or if we are restricted from sharing data among our products and services, it could affect our ability to provide our services, the manner in which we provide our services or our ability to target ads, which could adversely affect our financial results.*

*(Emphasis supplied)*

207. The primary objectives of advertisements are to build awareness, drive consideration, generate intent, and ultimately achieve conversion, where the consumer takes a desired action, such as purchasing a product or downloading an application. Effective data collection significantly enhances the ability to meet these objectives. Platforms like Facebook and WhatsApp gather extensive user data such as age, gender, location, income profile, and behavioural patterns which enables advertisers to create detailed profiles of potential customers. This allows them to deliver targeted advertisements that align with users' preferences and interests. Such precision targeting is highly valued by advertisers, as it not only reduces excessive advertising spending but also increases the likelihood of successful conversions, thereby optimizing business outcomes. By leveraging data collected from various sources, Meta enables advertisers to reach specific consumer segments more efficiently, resulting in more personalized ads and better engagement, ultimately improving the effectiveness of advertising campaigns.

208. In relation to business services, the Commission based on submissions made by the OPs as well as investigation by the DG notes that businesses who use the WhatsApp Business App are not required to have a WhatsApp Business Account WABA or a Facebook account. This requirement is there only if the business opts to use the WhatsApp Business API. Further, the WABA is accessed through the WhatsApp Business Manager which is housed within the Meta Business Suite or Meta Business Manager. Business Manager requires a Facebook account to use. [REDACTED]

[REDACTED] WhatsApp



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Business Manager relies on the Meta Business Manager to work, and hence requires a Facebook account. Thus, they are required to accept the Meta terms of Service as well as privacy Policy of Facebook at the time of creation of profile. Thus, by accepting Facebook's Terms of Service and privacy policy, users / businesses agree to share data with Meta.

209. WhatsApp has submitted that while users of WhatsApp Business App are contractually obliged to abide by the WhatsApp Business Terms of Service (and the policies, terms and guidelines incorporated by reference within), the users of the WhatsApp Business API are contractually obligated to abide by the Facebook Terms for WhatsApp Business (and the policies, terms and guidelines incorporated by reference within). In this regard, it is noted from such WhatsApp Business Terms of Service that,

*“...You understand and agree that WhatsApp collects, stores, and uses: (a) information from your business account and registration; (b) usage, log, and functional information generated from your use of our Business Services; (c) performance, diagnostics, and analytics information; (d) information related to your technical or other support requests; and (e) information about you from other sources such as other WhatsApp users, businesses, third-party companies, and the other Facebook Companies. We may share this information with the Facebook Companies, and we and the Facebook Companies will use all the information we have to develop, operate, provide, improve, understand, customize, support, and market our Business Services, our other services, and the services and products of the Facebook Companies. **It is not possible to opt-out of these data practices.**”*

(Emphasis added)

210. Meta has also submitted that WhatsApp Business API requires the business to provide certain crucial identifiers, such as: (a) business profile; (b) display name; (c) category; and (d) business phone number and certain other optional identifiers, such as: (i) email address; (ii) business description; (iii) address; and (iv) websites.
211. It is further noted that to use Cloud API, the Business gives Meta access to its communications to send, store, read, manage, or otherwise process them for the business' own use, as it uses Meta servers and is supported by Meta data centers and



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localized storage options. When a business or business service provider chooses to use Meta to securely host the WhatsApp Business API, Meta acts as a service provider to such business and acts as directed by the business. A business might designate a number of employees, or even other vendors, to store, process and respond to customer communications. A business’s third-party service provider could also include Facebook. When a business chooses Facebook as its third-party service provider, Facebook cannot - on its own initiative - use the customer communications to show the ads that the user may see. The business will however be able to use the content of message threads they receive for their own marketing purposes, which may include advertising on Facebook.

212. The DG has also noted that [REDACTED]

213. The Commission also notes [REDACTED]

214. Meta has also averred that [REDACTED]





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[REDACTED] In this regard, as already stated, the operational text of the 2021 Update allows WhatsApp to share data with Meta for purposes such as marketing its own services and promoting offerings across Meta company products. This includes enhancing Meta’s services and improving user experiences by making suggestions (e.g., recommending friends or group connections, or highlighting interesting content), personalizing features and content, assisting with completing purchases and transactions, and displaying relevant offers and advertisements across Meta’s platforms. There is no such restriction in the Policy and the current limited sharing, assuming to be true, gives unilateral ability to WhatsApp to expand scope of data sharing.

215. Meta also contends that these are optional features and users/businesses are not required or incentivised to opt for the same. In this regard, the Commission notes that the issue being examined is in relation to aggregation of user data with Meta and the resulting competitive edge for Meta’s advertising business. Therefore, whether the features are optional, or mandatory is not material for the issue under determination.

*Presence of Meta in the Display Advertisement Market*

216. The number of Impressions sold has been stated by the DG as an important criterion to assess the position of players in the market. Meta is present in the market for display advertisement through Instagram and Facebook. The number of impressions provided reflects the number of times an advertisement has been served to a user. Based on data collected by the DG, a comparative analysis of the impressions sold by Meta and its other competitors is as follows:

**No. of Impressions sold in India (in billion)**

Company	2016	2017	2018	2019	2020	2021
Facebook (A)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Instagram (B)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Meta (Total A+B)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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Company	2016	2017	2018	2019	2020	2021
LinkedIn	■	■	■	■	■	■
Twitter	■	■	■	■	■	■
ASSPL	■	■	■	■	■	■
Snap		■	■	■	■	■
InMobi	■	■	■	■	■	■
OpenX	■	■	■	■	■	■
Magnite	■	■	■	■	■	■
Tyroo	■	■	■	■	■	■
Affle	■	■	■	■	■	■

Source: Investigation Report data collected from the respective parties

217. From a review of the total number of advertisement impressions sold by Meta in India, it is noted that Meta holds a leading position compared to its competitors. The table above demonstrates a significant increase in advertisement impressions for Meta, which far surpasses that of any other player. Meta has more than ■ of impressions sold by all the players mentioned in the table. While Amazon emerges as Meta's closest competitor, its share of impressions is too small to be considered a serious rival. Other players in the market for display advertisements in India also hold only a minor share in terms of the number of impressions sold, highlighting Meta's un-assailable position in this segment.

218. Meta asserts that impressions are an inappropriate metric to assess advertising shares of supply or to assess the market position of Meta. Further, the number of impressions sold by players like ASSPL, Snap, X, Tyroo and Affle have increased consistently for the period between FY 2017 to 2020. However, it is noted that the advertisements impressions of these rivals are not only non-comparable to Meta but highly insignificant. The Commission also notes that advertisements impressions sold serve as an appropriate metric to assess the market power of players in the online advertising space, as they reflect the reach and visibility a platform offers to advertisers. A higher number of advertisements impressions indicate the platform's ability to capture more user attention and deliver advertisements effectively, thereby demonstrating its influence and competitive strength in the market. Thus, the contentions of Meta are unfounded.



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219. The DG has further noted that some of the players have not provided data related to impressions and therefore, in order to assess the market position of these players, data related to advertisement revenue has been considered. The advertisement revenue of Meta and its competitors is highlighted as follows:

**Advertisement Revenue of players in the online display advertisement market in India**

(in million USD)

Company	2016	2017	2018	2019	2020	2021 (upto Q2)
Meta						
Google						
Snap						
*ASSPL						
LinkedIn						
*InMobi						
Twitter						
*#Collectcent						
*#Xapads						
*#Ally						
*Affle						

Source: Investigation Report data collected from the respective parties

\*INR figures converted into USD using average conversion rates for 1 INR = 0.0149 USD (2016), 0.0154 USD (2017), 0.0146 USD (2018), 0.0142 USD (2019), 0.0135 USD (2020), and 0.0135 USD (2021).

# Revenue figures for 2016 denotes advertising revenue for financial year 2016-17, 2017 denotes 2017-18, and so on.

\*\* Data for the financial year 2021-2022

220. It is evident that Meta's advertising revenue is significantly higher than that of its competitors and has consistently increased over the years. Google, the second-largest player in the display advertising market, generates substantially lower revenue than Meta. Amazon ranks third, followed by LinkedIn, InMobi, Twitter, and Affle. All other players have a minimal presence in comparison to Meta, highlighting its significant



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position in the market<sup>3</sup>. It is further noted that advertisement revenue of Meta increased nearly █████ over 2015 to 2021 (*i.e.*, from USD █████ to USD █████). None of the rivals have been able to match this growth in advertisement revenue of Meta.

221. It has been argued by Meta that players with innovative products can enter the market and challenge the position of Meta. However, it is noted from the data related to impressions served and advertising revenue that rivals of Meta are relatively insignificant and not able to constrain Meta effectively.

222. A cumulative assessment of the available data on advertisement impressions and advertisement revenue clearly demonstrates that Meta is significantly ahead of its competitors in both categories. These comprehensive figures indicate that Meta not only generates far higher advertisement revenue compared to its competitors but also serves an overwhelming number of advertisement impressions in the Indian display advertisement market. Even the closest competitors, such as Google and Amazon, have a considerably lower share of both advertisement impressions served, and revenue generated. Smaller players, such as LinkedIn, InMobi, Affle, and Twitter, hold an even more negligible share, making it clear that Meta's scale and reach are unmatched in this segment. The stark disparity in both revenue and advertisements impressions served highlights Meta's superior ability to attract advertisers, optimize advertisement placements, and leverage its extensive user data, which collectively reinforces its competitive advantage in the display advertising market.

223. Based on the information available on record, the Commission notes that,

223.1 Data is the cornerstone of effective online display advertising, as it enables advertisers to precisely target specific audience segments, ensuring that their

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<sup>3</sup> It is also noted that Pinterest do not display advertising on the platform in the country and accordingly generate no revenue in India. SVG Media has submitted that the company is under closure phase and hence it is not able to submit data regarding number of impressions sold. Taboola has submitted that it is not in the business of providing online display advertisement.



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marketing spend is directed towards users with the highest likelihood of conversion. Every advertiser aims to maximize the return on investment (ROI) within their advertising budgets, which requires reaching audiences that have a strong propensity to take the desired actions, such as purchasing a product or engaging with content. Without access to detailed user data, this level of precise targeting becomes impossible. The ability to analyse parameters such as user behaviour, preferences, and demographics ensures that advertising spend is optimized, avoiding wasted resources on uninterested audiences. The aggregation and utilization of data are therefore essential for delivering effective advertising campaigns and achieving optimal business outcomes.

- 223.2 The responses of third-party advertisers indicate that WhatsApp’s 2021 Privacy Policy update will provide Meta with a significant competitive advantage over its rivals. WhatsApp claims that 2016 Policy itself enables sharing of data between WhatsApp and Meta. In this regard, the Commission is of the view that removal of opt out from the 2021 Update coupled with expanded scope of data collection furthers the ability of Meta to benefit from a wider reach and a deeper understanding of user behaviour. This cross-platform integration of data not only strengthens Meta’s ability to offer more personalized and targeted advertisements but also positions Meta as a more attractive partner for advertisers. By leveraging the user data from WhatsApp, Meta can enhance its targeting capabilities and make more informed decisions about advertising placements, which competitors without access to such comprehensive data pools cannot match.
- 223.3 Entering the online display advertising market requires substantial investment in technology and user acquisition. A new entrant must develop a product that is engaging enough to capture users’ attention and encourage them to spend significant time on the platform. Given Meta’s existing dominance and access to vast user data, it becomes exceedingly difficult for new players to replicate a similar level of engagement and data-driven insights. The need to build a robust platform and collect relevant data to compete with Meta creates a prohibitive barrier for new entrants, making it challenging for them to gain a foothold in the market.



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- 223.4 Meta's unique ability to precisely target audiences and optimize advertising campaigns gives it a significant edge in the advertising market. With access to detailed user profiles and data from multiple platforms, Meta can promise advertisers the best returns in terms of clicks, engagement, and conversions per dollar spent. This advantage makes Meta the preferred advertising partner for sellers, thereby reinforcing its status as the dominant player in the display advertising market. This is also evidenced from the advertisement revenue data in the display advertisement market as mentioned above wherein none of the rivals is near the position enjoyed by Meta. Even the closest competitors remain significantly behind Meta's market presence. The integration of WhatsApp's data further augments Meta's capabilities, allowing it to provide more value to advertisers and solidifying its position as the market leader.
- 223.5 With the increasing adoption of WhatsApp Business by small and mid-sized businesses, Meta is able to capitalize on this user base and the associated business interactions. By integrating WhatsApp's user data with its advanced advertising technology, Meta can build even more detailed audience profiles, enhancing its ability to deliver highly targeted ads. This capability not only strengthens Meta's advertising revenue potential but also enables it to offer tailored solutions for businesses of all sizes, making it a versatile and dominant player in the advertising ecosystem.
- 223.6 The integration of WhatsApp's data into Meta's advertising ecosystem contributes to a positive feedback loop, further entrenching Meta's dominant position in both social networking and private messaging markets. The extensive user data allows Meta to offer superior advertising solutions, which attract more advertisers and drive more revenue. This, in turn, enables Meta to invest further in improving its platforms and expanding its data capabilities, creating a self-reinforcing cycle that consolidates its market power. Such dynamics make it extremely difficult for competitors to challenge Meta's dominance, effectively leading to a near monopolistic position in these markets.



223.7 2021 policy update enables Meta to target a broader range of audiences and gain expanded access to user parameters which in-turn allows Meta to provide more precise and accurate targeting to advertisers, giving it a distinct competitive advantage in the market. The ability to offer better-defined target audiences enables Meta to capture a larger market share and attract more advertisers seeking to optimize their advertising spend. UK CMA’s *Online Platforms and Digital Advertising Report*, as mentioned earlier, also noted that Meta (earlier Facebook) enjoy significant competitive advantages in both targeting advertising and measuring its effectiveness because of their extensive access to user data.

223.8 Meta has submitted number of advertisers which purchased ads from Meta in India for the period 2015 to 2022 which is mentioned below:

Year	Number of advertisers
2015	████████
2016	████████
2017	████████
2018	████████
2019	████████
2020	████████
2021	████████
2022 (01.01.2022- 30.06.2022)	████████

223.9 The increase in numbers of such advertisers from ██████ in 2015 to ██████ evidence the attractiveness of Meta ecosystem for the advertisers. Importantly, the number of advertisers got almost doubled from ██████ in 2016 to ██████ in 2017 (after the implementation of 2016 privacy policy which as admitted by WhatsApp enabled it to share data with Meta). The increase in number of advertisers also indicates strong indirect network effects with increasing number of users on the WhatsApp platform.

223.10 Advertisers favour publishers that offer effective targeted advertising capabilities. They prefer platforms that can display ads to users who are most likely to be interested and willing to engage with the content. The effectiveness of targeted



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advertising depends on the scope, size, and diversity of the data set held by the media provider. Meta gains an advantage by collecting extensive first-party data directly from its users which is shared across services, as well as additional third-party data through various tools, giving it a comprehensive data set. This vast data pool is a key factor behind Meta's un-assailable position in the online display advertising market and acts as a barrier to entry for new competitors, as they are unable to match the scale of data Meta possesses.

224. The averments made by Meta and examination of the same by the Commission are as follows:

224.1 Meta has averred that the Investigation Report bases its conclusions on the incorrect premise that the 2021 Update expanded Meta's access to user data, despite evidence to the contrary. The Commission has examined this aspect and is not in agreement with the arguments put forth by Meta for reasons mentioned *supra*. A verbatim comparison of the 2016 and 2021 policy indicates significant variations in the data collection and sharing abilities of WhatsApp. The 2021 Update is the present operational policy and governs the business operations of WhatsApp.

224.2 Meta has further averred that the Investigation Report assumes that the sharing of user data from WhatsApp to Meta is an outlier and does not consider the fact that sharing information within group companies is standard practice, as evidenced from the privacy policies of other internet-based applications and websites. Meta further contends that barriers to entry and expansion in digital markets are minimal because data is non-rivalrous, meaning that its use by one entity does not prevent others from using it as well. Meta also argues that data is universally accessible, can be acquired from a range of third-party providers.

224.3 In this regard, it is noted that the issue is sharing of information/data by a dominant entity with no effective user choice, with other group companies which is resulting in competitive advantage for the group and causing anti-competitive harm to smaller rivals. Third parties have even confirmed that only Meta and Google have





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access to comprehensive user data for targeted advertisement and other players are not in a position to match them, thus, putting them in a disadvantageous position. UK CMA Report referred to in this order also corroborates the same. The Commission also notes that Google and Meta operate in different online advertisement segments *i.e.*, while Meta operates in online display advertisement, Google, though present in display advertisement, is primarily active in online search advertisement.

224.4 The Commission further notes that Meta’s competitive advantage lies in its ability to collect and aggregate data from multiple sources, including first party apps *viz.* Facebook, WhatsApp, Instagram, Facebook Messenger, and external third parties, and then link this data to user profiles. This process enables Meta to collect data at a pace and scale unmatched by many other competitors. For example, the ratio of daily active users (DAU) to monthly active users (MAU) for WhatsApp shows a higher rate of user engagement (at █%) *vis-à-vis* its rivals, implying that WhatsApp is acquiring new user data at a faster rate compared to other platforms. As a result, the volume of data collected by Meta is continually growing, and when combined with its ability to capture diverse user interactions across various applications, Meta can create comprehensive and nuanced user profiles.

224.5 In contrast, while third-party data providers offer businesses the opportunity to purchase large volumes of data without incurring the fixed costs of collecting it independently, third-party data comes with significant limitations. Businesses must repurchase data periodically, leading to variable costs. Moreover, third-party data often lacks the depth and scope of first-party data collected directly by platforms like Meta. For instance, data collected *via* cookies and pixels can reveal browsing patterns but cannot capture the socio-demographic details or specific user interests that Meta’s first-party data provides. Additionally, Meta operates a closed ecosystem, or “walled garden,” where it retains full control over its vast data repository, allowing it to offer unique insights to advertisers and measures the performance of advertising campaigns using exclusive metrics and tools. This level of control and completeness of data provides Meta with a significant competitive



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advantage in the digital advertising market, making it an indispensable partner for advertisers seeking detailed analytics and targeted advertising.

- 224.6 Given the extensive scale and scope of Meta’s data collection, it is not feasible to agree with Meta’s assertion that data does not present a barrier to entry in the online display advertising market. Competitors cannot easily replicate Meta’s comprehensive data set, and third-party data, while useful, does not provide the same strategic value. Meta’s ability to leverage its vast and unique data set effectively blocks new entrants from competing on equal footing, solidifying its dominance and creating high entry barriers in the market.
- 224.7 As per Meta, relevant market for online display advertising in India is characterised by high levels of competition and fragmentation with large number of players, as well as sustained growth. The Commission is of the view that there are various players in the relevant market, but the market remains concentrated with Meta as evidenced with number of impressions sold as well as advertisement revenue of Meta. Therefore, the contention of Meta that market is competitive with large number of players does not allay the competition concerns. Further, the growth in the overall market requires ensuring fair opportunities for all players as also large players do not engage in any conduct which denies equal opportunity in the market.
- 224.8 Meta has also relied on submissions of Google and Amazon to claim that there are no entry barriers. In this regard, the assessment of the Commission is based on comprehensive examination of submissions of all parties coupled with data and market structure.
225. Meta has also asserted that the Investigation Report does not factor in the benefits to consumers and advertisers, and pro-competitive benefits in its analysis. Meta has submitted that improvement in its’ advertising products and services are likely to be advantageous to advertisers as well as users are shown relevant and quality ads, which in turn enhances the user experience. It has been further submitted that rivals would react to any improvements in Meta’s service by competing more fiercely and improving



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their own offers, rather than by competing less or discontinuing their services. In this regard, the Commission is of the view that such economic justification has very high threshold to be accepted under the Act and the onus for the same lies on the entity under investigation. In the present case, it has not been met. As already examined in detail above, the conduct of Meta provides significant competitive edge over its rivals in the display advertisement market thereby resulting in competition concerns.

226. One of the fundamental characteristics of data in digital markets is that the more data a firm possesses, the greater its ability to extract insights and predict user behaviour. Meta's integration of data across Facebook, Instagram, and WhatsApp allows it to refine its algorithms and make increasingly accurate predictions about user preferences and behaviours. Meta's access to vast amounts of user data, particularly from WhatsApp's user base of ██████████ in India, enables it to optimize algorithms and improve the effectiveness of its display advertisements. This creates an entry barrier that is difficult for new competitors to overcome. Without comparable access to such data, rivals cannot offer similar levels of precision in targeted advertising, personalization, or consumer insights, which are now crucial for attracting advertisers. Competitors in the display advertisement market, such as smaller social networks or digital advertising platforms, find it harder to compete for advertiser revenue (as corroborated by third party responses), as they would be unable to offer the same level of personalization and effectiveness in targeted advertising. As a result, other competitors particularly smaller companies or start-ups may struggle to gain a foothold in the display advertising market, resulting in a denial of access to market opportunities. This reflects how a dominant platform, like Meta, can raise entry barriers and strengthen its market power by relying on its access to more comprehensive datasets from one of its services to enhance others.
227. For example, the sharing of even general location data from WhatsApp with Meta services enables hyperlocal targeted advertising, giving Meta an unparalleled advantage over rivals. When a WhatsApp user visits a particular area, Meta can serve them targeted ads for nearby businesses through Facebook or Instagram, which smaller competitors would find hard to match. Meta's control over both the platform and user data allows it



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to adapt and enhance its advertising offerings continuously. This competitive advantage, enabled by combining user data from multiple services, reinforces Meta's stronghold on the display advertisement market. Such access to vast user data allows Meta to tailor advertisements and user experiences in ways competitors cannot.

228. As Meta continues to amass more data, its targeting becomes more precise. This creates a "lock-in" effect, where users and advertisers are both drawn deeper into Meta's ecosystem, further denying rivals access to the market. Meta's broad ecosystem across social media, messaging, and digital advertising, combined with its vast user base, gives it a significant competitive advantage. Its rivals neither have the same breadth of services nor the same level of user engagement. This enables Meta to drive users across its services in a manner that other platforms cannot, further entrenching its dominance. By leveraging its ecosystem, Meta can comprehensively gather and utilize user data to dominate the digital advertising space, while its competitors lack the same scale and depth of data.
229. This practice increases the "switching costs" for advertisers, who would have no incentive to move to rival platforms due to the superior targeted advertising offered by Meta. Such control over data, especially through integrations across Meta services, thus denies market access to both new entrants and existing competitors in the display advertising space. Moreover, personalizing services based on user data reinforces the lock-in effect by guiding users toward recommendations within Meta's own ecosystem, thus reducing the chances of users engaging with competing platforms. This, in turn, increases the likelihood that advertisers will continue to invest in Meta's services, further denying access to rivals in the display advertising market.
230. Meta's strategy can also be viewed through the lens of an envelopment strategy, where user data is bundled across services via privacy policies that allow data sharing across markets. By acquiring user data from WhatsApp and combining it with data from Facebook and Instagram, Meta strengthens its position in the display advertising market. This integration gives Meta a dominant data advantage, allowing it to monetize user



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data across its ecosystem in ways that competitors cannot replicate. This bundling strategy, facilitated by privacy policies, results in coercive effects on users who must accept cross-platform data sharing, and on advertisers who are forced to stay within Meta's ecosystem for effective targeted advertising.

231. Dominant platforms must exercise caution when integrating data sets from their various services, as their actions can result in the exclusion of rivals. The ability of multiple-product ecosystem operators (*viz.* Meta) to combine vast amounts of user data across different platforms can lead to insurmountable barriers for competitors, as they may not have access to comparable data sets. This practice will result in distortion of competition by providing the dominant firm with an unfair advantage, amplifying its market power. In contrast, similar data integration practices by non-dominant firms may not have the same exclusionary effects. Non-dominant firms may integrate data sets to enhance competitiveness and innovation without causing market-wide harm, as they lack the scale and scope to impact multiple markets. Under the Act, dominant firms, are vested with a special responsibility to ensure that their conduct does not harm competition or gives them an unfair advantage.
232. To conclude, Meta's practices of data sharing across platforms (in this matter, from WhatsApp to Meta) lead to both the denial of market access to advertisers in the display advertising market and amounts to leveraging of its dominance in the OTT messaging market to protect and consolidate its position in the display advertising market.
233. In relation to finding of denial of market access under Section 4(2)(c) of the Act, Meta has submitted that establishing denial of market access under Section 4(2)(c) of the Act requires that the enterprise should be dominant in a relevant market. However, the Investigation Report does not find that Meta enjoys a dominant position in the alleged relevant market for online display advertising in India. In this regard, the Commission is of the view that there is no statutory or technical requirement that an enterprise must hold dominance in the market where the denial of market access is alleged. This is particularly relevant in multi-product platform markets that operate as ecosystems,



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where a dominant firm's conduct in one market can have exclusionary effects in another, related market. In multi-product ecosystems like Meta's, services are closely integrated in terms of functionality, data, and target groups. As already elaborated, Meta's dominance in the OTT messaging market (through WhatsApp) allows it to collect vast amounts of user data. This data is shared across its ecosystem, including its display advertisement services (Facebook, Instagram). By combining and using this data, Meta can offer highly targeted ads, which competitors in the display advertising market cannot easily match due to their lack of access to similar data. As a result, this creates a denial of market access for these rivals, who cannot compete effectively for advertisers.

234. In the instant case, denial of market access stems from Meta's dominant position in the OTT messaging space. By leveraging user data from WhatsApp, Meta consolidates its position in other markets, creating entry barriers and reducing competition in markets like display advertising. This integration of services and data sharing in platform ecosystems is particularly problematic as market power in one domain can spill over and adversely affect competition in related or neighbouring markets. Therefore, in ecosystem-driven markets, dominance in one product market (such as OTT messaging) can lead to anticompetitive outcomes in other related markets (such as online display ads), where the dominant firm leverages its data and functional advantages across its entire platform and denies market access to players in other markets. In this regard the Commission finds the observations of the Hon'ble Supreme Court in Competition Commission of India Vs. M/s Fast Way Transmission Pvt. Ltd. & Ors. (Civil Appeal No.7215 of 2014) in judgement dated 24.01.2028 relevant wherein the Hon'ble Court stated that the term denial of market access "*in any manner*" is of wide import and must be given its natural meaning.
235. Based on the foregoing, the Commission concludes that (a) sharing of WhatsApp users' data between Meta companies for purposes other than providing WhatsApp Service creates an entry barrier for the rivals of Meta and thus, results in denial of market access in the display advertisement market, in contravention of the provisions of Section 4(2)(c) of the Act; and (b) Meta has engaged in leveraging its dominant position in the



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OTT messaging apps through smartphones to protect its position in the online display advertising market and the same is in contravention of Section 4(2)(e) of the Act.

### **Preliminary submissions by the OPs**

236. It is apt to refer to another preliminary submission by WhatsApp. It has been submitted that Investigation Report should be rejected and set aside for failing to include an effects analysis. In this regard, WhatsApp has referred to the decision dated 29.03.2023 of the Hon'ble National Company Law Appellate Tribunal in *Google LLC v. Competition Commission of India*, Competition Appeal (AT) No. 01 of 2023.
237. WhatsApp has also relied on the Court of Justice of the European Union's (CJEU) decision in *Konkurrensverket v. TeliaSonera Sverige AB (TeliaSonera)* wherein the court observed that, "*in order to establish whether such a practice is abusive, [the] practice must have an anticompetitive effect on the market, but the effect does not necessarily have to be concrete, and it is sufficient to demonstrate that there is an anti-competitive effect which may potentially exclude competitors who are at least as efficient as the dominant undertaking*" (emphasis added). As per WhatsApp, the Investigation Report contains no analysis of the exclusion (or even potential exclusion) of any as-efficient competitors, or any competitors at all.
238. The Commission notes that even under an effect-based doctrine, for an action to be deemed abusive, it is not necessary for anti-competitive effects to have already materialized. 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 anti-competitive outcomes to surface before intervening, which could render their actions too delayed and ineffective. In some instances, such effects may take a long time to become apparent or may not be measurable during the review period. To address this challenge, the potential impact of the conduct is also assessed when determining abuse. If there is a likelihood of anti-competitive market foreclosure, the conduct may be classified as abusive even if the harmful effects have not yet fully developed. This is inferred from not only the interpretation of the provisions





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of the Act but also the global jurisprudence in this regard. The CJEU decision in *TeliaSonera* relied upon by WhatsApp also corroborates the same.

239. Under the scheme of the Act, the Commission is, amongst others, obligated “to prevent” practices having adverse effect on competition. This is clearly borne out from the long title to the Act, which reads as under:

*“An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to **prevent** practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto”.*

240. In view of the above regulatory framework as provided under the Act, the Commission has carefully perused the provisions of Section 4 of the Act and on a holistic consideration thereof, it is observed that “dominant position” under the Act has been defined as meaning a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces or to affect its competitors or consumers in its favour. Thus, once an entity is found to be dominant in the relevant market, the Act recognizes its ability to adversely affect competition in the market unilaterally through its conduct. As such, the dominant enterprise is clothed with a special responsibility not to indulge in conduct enumerated in Section 4(2) of the Act.
241. Section 32 of the Act which deals with “Acts taking place outside India but having an effect on competition in India”, clearly inter alia provides that the Commission shall notwithstanding that any enterprise abusing the dominant position is outside India, have the power to inquire into abuse of dominant position by such player if such dominant position has or is likely to have an appreciable adverse effect on competition in India. That being the statutory scheme in respect of anti-competitive acts taking place outside India, there cannot be any higher threshold for examining the abusive conduct which has taken place within the limits of India.





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242. Furthermore, the statutory architecture is also in accord with the underlying objectives of the Act by empowering the Commission to issue peremptory interim orders when an act in contravention of the provisions of the Act *is about to be committed*. This is exemplified from a plain reading of the provisions of Section 33 of the Act and for felicity of reference, the same are reproduced hereinbelow:

Power to issue interim orders

*Section 33*

*Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is **about to be committed**, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.*

243. The Commission is of the view that in the present case, the information on record clearly evidences that users were made to accept the 2021 Update, which mandated sharing of data for purposes other than providing WhatsApp services, without offering any choice to opt out from the same. This imposition disregards legitimate expectation of users to decide as to how their data would be collected and used. Further, such sharing of data results in an undue competitive edge to Meta over its rivals. This would result in increasing entry barriers for rivals and thus potentially leading to their exclusion from the market. The reasoning of the same has already been elaborated *supra* and the same is not being reproduced here for brevity.

**ORDER**

244. In view of the foregoing analysis, the Commission delineates the following relevant market(s) in the present matter:

244.1 Market for OTT messaging apps through smartphones in India; and

244.2 Market for online display advertising in India.



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245. The Commission holds Meta to be dominant in in the first relevant market. Furthermore, Meta is found to be in contravention of provisions of Section 4 of the Act as follows:

- 245.1 Meta (through WhatsApp) has contravened Section 4(2)(a)(i) of the Act;
- 245.2 Sharing of WhatsApp users' data between Meta companies for purposes other than providing WhatsApp Service creates an entry barrier for the rivals of Meta and thus, results in denial of market access in the display advertisement market, in contravention of the provisions of Section 4(2)(c) of the Act; and
- 245.3 Meta has engaged in leveraging its dominant position in the OTT messaging apps through smartphones to protect its position in the online display advertising market and the same is in contravention of Section 4(2)(e) of the Act.

#### *Remedies*

246. Accordingly, in terms of the provisions of Section 27(a) of the Act, the Commission hereby directs the OPs to cease and desist from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act, as detailed in this order.

247. The Commission is of the view that remedies are a critical component of enforcing competition law in cases of abuse of dominance, ensuring that anti-competitive harm is effectively addressed. The remedies in competition law matters need to correct anticompetitive practices. As markets grow more complex, the design of remedies must also evolve to tackle emerging competition challenges. Remedies must be effective in removing the anti-competitive harm and restoring competitive conditions that would have existed without the abuse. They must also be proportional, ensuring the measures do not exceed what is necessary to rectify the harm. Tailoring remedies to the specific nature of the abuse and market characteristics is essential to ensure both immediate correction and long-term deterrence. Furthermore, remedies should not only correct past behaviour but also prevent future abuses, maintaining market fairness and safeguarding



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competition moving forward. The ultimate aim is to re-establish conditions that revive the competitive process, allowing rivals to compete on merit. Thus, the competition authority has the inherent powers to direct necessary measures to restore and promote competition in the relevant market. Recognising these principles, Section 27(g) of the Act also empowers the Commission to issue such other orders or directions, as it may deem fit. Therefore, in view of the anti-competitive harm elaborated in this order and for the purpose of addressing such harm, the OPs are further directed to implement the following directions:

- 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:



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- 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.

#### *Imposition of Penalty*

248. The Commission has also considered the issue of imposition of monetary penalty upon OPs and has given it a thoughtful consideration. WhatsApp and Meta have averred that even if the Commission were to find that they have violated the Act, it should not impose any penalty or remedies on them for various reasons mentioned in their respective submissions. The Commission has perused the same and notes that these assertions have already been dealt in this order. For example, WhatsApp has claimed that it did not compel any user to accept the 2021 Update. However, as observed earlier in this order, by providing a limited window for accepting the update, a sense of urgency was created among the users coercing them to accede to the take-it or leave-it terms dictated by Meta (through WhatsApp) out of fear of losing access to the platform which enjoys dominance in the relevant market. It has also been claimed that the present matter involves novel facts and unique theories of harm. In this regard, the Commission notes that the competition issues emanating from data, network effects and leveraging in digital markets have assumed huge significance, particularly in the last decade, and the Competition Authorities across jurisdictions have been intervening to address the same. Of course, the exact nature and impact of issues vary on case-to-case basis. As per Section 4 of the Act, every dominant entity is vested with the responsibility that it does not indulge in abusive conduct prohibited therein, such as imposition of unfair



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conditions, denial of market access, leveraging, *etc.* Further, Competition Act being an independent statute in India, the conduct of the entities needs to be examined as per the provisions of the same and the plea taken that they are in compliance with existing data protection and privacy legislation does not absolve them of the contraventions found under the Competition Act.

249. The objective behind imposition of penalties *inter alia* is to reflect the seriousness of the contravention, and also to ensure that the same deters the entities from violating the provisions of the Act. The decision to impose penalty as well as determining the quantum of penalties imposed must correspond with the gravity of the offence and also have due regard to the mitigating and aggravating circumstances of the case.
250. Section 27(b) of the Act provides that the Commission may impose such penalty upon the contravening parties as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse. The Competition (Amendment) Act, 2023 (Amendment Act 2023) amended the said section by adding two explanations *inter alia* to provide that "turnover" means global turnover derived from all the products and services by a person or an enterprise. In relation to the Amendment Act 2023, it has also been submitted that the said amendment is prospective and, therefore, should not apply to the present matter, where the impugned conduct pre-dates the amendment. It has been further averred that it is an accepted position of law that amendments which impact substantive rights and obligations apply prospectively, unless the legislation expressly or impliedly provides for retrospective application (In *Zile Singh v. State of Haryana (2004) 8 SCC 1* and *Videocon International Limited v. Securities and Exchange Board of India (2015) 4 SCC 33*). The OPs have further relied on the judgement of the Constitution Bench of the Supreme Court in *M/s Khemka & Co (Agencies) Pvt. Ltd v State of Maharashtra (1975) 2 SCC 22* to assert that penalty provisions in a statute are substantive in nature. It has been further averred that even if the provision is applied retrospectively, imposing penalties on the basis of global turnover would be disproportionate.



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251. In this regard, the Commission notes that Section 27(b) has been amended by way of adding two 'explanations' which are extracted below:

*Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.*

*Explanation 2. - For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.*

252. The Hon'ble Supreme Court in plethora of judgements has clarified the intent, purpose and legal effect of an Explanation. The Commission notes that the objective of explanation to a section is to clarify or elucidate the intent of the legislation without expanding or narrowing its original scope. It serves to make the meaning clear and consistent, aiding interpretation without altering or restricting the substantive provision itself. Thus, the contentions of the OPs are rejected.

253. Be that as it may, the primary contention of the OPs is that penalty should not be based on their global turnover. As elaborated *infra*, the Commission has computed the penalty based on the turnover of the OPs in India and therefore, no prejudice has been caused to the OPs by application of amended Section 27(b) of the Act. On the contrary, the OPs have benefited from the application of a more transparent and predictable framework for penalty computation, as provided under the Turnover Regulations and the Penalty Guidelines (both of which have been issued pursuant to Amendment Act 2023 only). The adoption of these measures underscores the Commission's commitment to fairness and transparency in its decision-making process, ensuring that penalties are proportionate and reflective of the impact of the violation within India.

254. Accordingly, the Commission is guided by the amended Section 27(b) as well as the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 (Turnover Regulations), and general methodology laid down in the Competition



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Commission of India (Determination of Monetary Penalty) Guidelines, 2024 (Penalty Guidelines) in relation to computation of monetary penalty.

255. In terms of Penalty Guidelines issued by the Commission, the first step is determination of ‘relevant turnover’. Thereafter, the Commission would consider an amount up to thirty percent of the average relevant turnover of the enterprise for the purpose of determination of penalty to be imposed on an enterprise under Section 27(b) of the Act. The amount so determined would be adjusted for mitigating and aggravating factors applicable to a given case. Further, subject to legal maximum, the Commission may further increase the amount of penalty, if the amount of penalty so determined is not sufficient to create deterrence.
256. The OPs have further asserted that penalty should be (a) based on relevant turnover and not total turnover of the entity concerned; and (b) imposed on relevant turnover of WhatsApp alone and not Meta. In this regard, the Penalty Guidelines issued by the Commission, itself prescribes that the starting point for computation of penalty is linked to the ‘relevant turnover’, therefore, the contention of the OPs in this regard stands appropriately accounted for. Further, clause 2(1)(h) of the Penalty Guidelines provides that *‘relevant turnover’ means the turnover derived by an enterprise directly or indirectly from the sale of products and/or provision of services, to which the contravention relates and determined for the purposes of imposition of penalty.* Thus, the relevant turnover is to be determined with reference to the products or services directly or indirectly linked to violation of the Act.
257. In relation to second contention of the OPs *i.e.*, the penalty should be imposed on relevant turnover of WhatsApp alone and not Meta, the Commission notes that, as discussed in detail in the order, the contravention of the provisions of the Act relates to both the OTT messaging services provided by WhatsApp as well as display advertising services provided by Meta. Therefore, relevant turnover derived from both of these services offered by the OPs must be considered for determining penalty. Additionally, the Commission notes that WhatsApp was wholly acquired by Meta in 2014 thereby assuming full control of WhatsApp. Further, WhatsApp and Meta *vide* their replies dated



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05.07.2021 have submitted that the President of WhatsApp, who is responsible for the general management and control of the business and affairs of WhatsApp and the general supervision and direction of all its officers, employees, and agents, is also one of the Executives of Meta. Further, another executive at Meta is designated as Chief Product Officer and is responsible for leading Facebook products including both WhatsApp and Messenger services. It is further noted that WhatsApp does not maintain stand-alone financial statements and instead its assets/turnover are included in the financial statements of Meta. Thus, Meta enjoys full control over the activities and operations of WhatsApp. In view of the foregoing, the Commission is of the view that relevant turnover of both the entities should be considered for computation of penalty and the averments of the OPs in this regard are rejected.

258. Coming to the determination of relevant turnover, it is noted from the submissions of WhatsApp that penalty should be based on its relevant turnover *i.e.*, WhatsApp's turnover in India which is stated to be [REDACTED] (presumably as the OTT messaging services are provided to users at zero monetary cost). Further, it is noted from Meta's submissions that its revenues from online digital display advertising in India is the relevant turnover for computation of penalty. Meta has furnished details related to its revenues from online digital display advertising in India. Therefore, the Commission observes that relevant turnover in the present matter is the turnover derived by WhatsApp in India and turnover derived by Meta from display advertisement services in India.
259. Para 3 of the Penalty Guidelines also provides that for calculating average relevant turnover, the Commission, may consider the relevant turnover or income of three years of the enterprise preceding the year in which the DG's Investigation Report is received by the Commission. In the present matter, the DG's Investigation Report was received by the Commission on 12.01.2023 and accordingly, the Commission had considered relevant turnover of Calendar Years (CYs) 2020, 2021 and 2022 of the OPs.
260. The Commission *vide* its order dated 18.10.2024 sought turnover data from all the three OPs for the CYs 2020, 2021 and 2022 within 7 (seven) days of receipt of the said order.





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This data was furnished by the OPs on 14.11.2024 after seeking an extension of three weeks. Based on the said data, relevant turnover of WhatsApp and Meta as determined above for the CYs 2020, 2021 and 2022 is tabulated hereunder:

(In INR crore)

Year	Relevant Turnover of WhatsApp (A)	Relevant Turnover of Meta (B)	Total Relevant Turnover (A+B)
CY 2020	██████	██████	██████
CY 2021	██████	██████	██████
CY 2022	██████	██████	██████
<b>Total</b>	██████	██████	██████
<b>Average of three years</b>	██████	██████	██████

261. The nature and gravity of the contravention can be gauged from the sheer number of WhatsApp users affected by the 2021 Update wherein an unfair condition was imposed upon them by Meta in coercing them to accept the said update. As a result of such coercion, approximately ██████ million users had accepted the policy by May 2021. Further, as of March 2023, ██████ million WhatsApp users have accepted the 2021 Update *i.e.*, Meta has the unilateral ability to use data of these ██████ million users for advertising purpose. As already elaborated in detail in this order, user data is crucial in offering targeted advertisements creating a lock-in for advertisers to prefer Meta over rivals. This is corroborated by the ever-increasing revenue numbers for Meta from display advertising. The anti-competitive effect has already been elaborated in this order and the same is not being repeated for brevity. Therefore, considering the nature and gravity of contravention as well as nature of the industry or sector affected by the contravention, the Commission concludes that an amount of 4 % (four per cent) of the average total relevant turnover as stated above is the basis for determination of penalty to be imposed on the OPs under Section 27(b) of the Act. Accordingly, the amount so determined is ██████ crore based on average total relevant turnover as computed above.

262. Coming to assessment of mitigating and aggravating factors, the OPs have submitted various mitigating factors *viz.* co-operation with the Commission and the DG throughout





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of Section 57 of the Act read with Regulation 36 of the General Regulations 2024. For convenience, it is directed that the confidential version of this order may be provided to such ring members/ individuals through one of the ring members, who may then share the same with the other ring members nominated by the OPs.

265. The Secretary is directed to forward certified copies of the present order to the parties, in terms of the directions above.

**Sd/-  
(Ravneet Kaur)  
Chairperson**

**Sd/-  
(Anil Agrawal)  
Member**

**Sd/-  
(Deepak Anurag)  
Member**

**New Delhi**

**Date: 18 / 11 / 2024**