NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 6817 of 2025
In
Competition Appeal (AT) No. 1 of 2025

IN THE MATTER OF:

WhatsApp LLC **...Appellant**

Versus

Competition Commission of India & Ors. **...Respondents**

Present:

For Appellant : Mr. Mukul Rohatgi and Mr. Arun Kathpalia, Sr. Advocates with Mr. Yaman Verma, Mr. Shashank Mishra, Ms. Aisha Khan, Mr. Shivek Endlaw, Mr. Aditya Dhupar, Ms. Vedika Rathore and Ms. Devanshi Singh, Advocates for Whatsapp.

For Respondent : Mr. Samar Bansal, Mr. Manu Chaturvedi, Adv. Vedint Kapur, Ms. Devika Singh Roy Chowdhary, Mr. Ahmed Jamal Siddiqui, Mr. Kshitiz Kishor Rai and Mr. Madhav Tripathi, Advocates for R-1/CCI.

Mr. Kapil Sibbal, Sr. Advocate with Mr. Naval Chopra, Ms. Supritha Prodaturi, Ms. Akshi Rastogi, Ms. Parinita Kare, Ms. Ritika Bansal, Ms. Raagini Agarwal, Ms. Anupama Reddy Eleti and Ms. Aparajita Jamwal, Advocates for R-4(Meta).

O R D E R
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

I.A. No. 6817 of 2025 is filed by the Respondent No. 1 - Competition Commission of India seeking clarification in the conclusion drawn in paragraph 264(c) of this Appellate Tribunal's judgment dated 04.11.2025, whereby remedial directions contained in Para 247.1 of the Applicant's

impugned order dated 18.11.2024 have been set aside and remedial directions contained in Para 247.2.1 to 247.2.4 have been upheld.

2. I.A. No. 6817 of 2025, filed by Respondent No.1 – Competition Commission of India (CCI) has following prayers in the above-mentioned I.A:

> "a. Issue directions clarifying paragraph 264(c) of this Hon'ble Tribunal's judgment dt. 04.11.2025 to the extent that remedial directions contained in Paras 247.2.1 to Paras 247.2.4 of the Applicant's impugned order dt. 18.11.2024 will apply to WhatsApp user data collection and sharing for all non-WhatsApp purposes, including non-advertising and advertising purposes; and
>
> b. Pass any other Order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The Applicant – CCI has brought to our notice the findings of this Appellate Tribunal in detail, which are in paragraphs 2 to 6 of the IA, which are extracted as below:

> "...
>
> 2. That vide judgement dt. 04.11.2025, this Hon'ble Tribunal was inter alia pleased to uphold the Applicant's findings whereby the Appellants were found to have violated Sections 4(2)(a)(i) and 4(2)(c) of the Competition Act, 2002 ('Act'). To this end, this Hon'ble Tribunal conducted a detailed analysis of the Appellants' anti-competitive conduct arising from WhatsApp's 2021 Privacy Policy ('2021 Policy') and affirmed the Applicant's finding that the same resulted in (i) imposition of unfair or discriminatory conditions on WhatsApp users, and (ii) denial of market to Meta's competitors in the online display advertising. To this end, this Hon'ble Tribunal noted that:
>
> > "232.1 Section 4(2)(a)(i): Imposition of unfair or discriminatory conditions on users, through a "take it or leave it" policy WhatsApp forced users into accepting expansive data sharing as a condition to using WhatsApp,

> without offering an effective opt-out. We find that mandatory acceptance of broad and vague data sharing terms amounted to coercion and unfair condition on users. We thus find violation of Section 4(2)(i) by WhatsApp by introduction of the WhatsApp Policy 2021 and its subsequent conduct.
>
> 232.2 Section 4(2)(c): Practices that limit or restrict market access of competitors -we find that cross-platform data sharing (between WhatsApp and Meta) enhanced Meta's advantage in the display advertising market, creating an entry barrier for rival firms in digital advertising that did not have equivalent access to WhatsApp data. We note that Meta is not dominant in Market 2 but a leading business entity (As seen by advertisement impressions and also advertisement revenue of meta as noted by separately) and by its conduct has created a situation of market denial and thus Meta has violated Section 4(2)(c). [...]"
>
> (Emphasis supplied)

3. Thereafter, this Hon'ble Tribunal conducted a detailed analysis of remedial directions issued by the Applicant in its impugned order in Paras 247.1 and 247.2. Ultimately, this Hon'ble Tribunal upheld remedial directions contained in Paras 247.2.1 to 247.2.4, i.e. (i) obligating Appellants to not make WhatsApp usage conditional on users consenting to sharing their WhatsApp data for non-WhatsApp purposes; (ii) obligating Appellants to provide WhatsApp users with an opt-out of data sharing for non-WhatsApp purposes, along with a revocable consent mechanism; (iii) obligating Appellants to provide WhatsApp users a detailed explanation of the scope and purpose of data collection. However, this Hon'ble Tribunal set aside the remedial direction contained in Para 247.1, i.e. prohibiting Appellants from collecting and sharing WhatsApp user data for the non-WhatsApp purpose of advertising, for a period of 5 years.

4. While upholding remedial directions contained Para 247.2.2 (i.e. obligating Appellants to not make WhatsApp usage conditional on users consenting to sharing their WhatsApp data for non-WhatsApp purposes), this Hon'ble Tribunal specifically held as under:

> "241.1 [...] We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which

> purposes, and for how long. Any non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent. [...]"
>
> (Emphasis supplied)

5. Similarly, while upholding remedial directions contained Para 247.2.3 (i.e. obligating Appellants to provide WhatsApp users with an opt-out of data sharing for non-WhatsApp purposes, along with a revocable consent mechanism), this Hon'ble Tribunal again specifically held as under:

> "241.3 [...] We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long. Any non-essential collection or cross-use (like advertising etc) can occur only with the concerned user's express and revocable consent. [...]"
>
> (Emphasis supplied)

6. Finally, while setting aside remedial directions contained Para 247.1 (prohibiting Appellants from collecting and sharing WhatsApp user data for the non-WhatsApp purpose of advertising, for a period of 5 years), this Hon'ble Tribunal held as under:

> "241.4 We note that this remedy is contestable as the rationale for the duration of 5 years ban was missing altogether in the Impugned Order. The justification that such a period would "revive competitive conditions" cannot meet the threshold required by law as claimed by the Appellants. CCI has categorized the remedies into two categories one for sharing data for advertisement purposes for which 5 years ban has been imposed and other remedy for sharing of data for other than advertising. We find that once users have been given option to freely decide to opt in or opt out, as in other reliefs, this direction becomes redundant. We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long. Any non-essential collection or cross-use (like advertising etc) can occur only with the concerned user's express and revocable consent. The Appellant cannot assert unilateral or open-ended rights over user data. This takes care of the abuse found in 2021 Policy i.e., coercive, take-it-or leave-it consent by re-establishing opt-in/opt-out which will be with desired transparency, and purpose limitation, while still allowing

> lawful, user-approved uses. Then there is no requirement of these exclusive directions."
>
> (Emphasis supplied)

4. Applicant claims that the aforesaid findings shows that advertising has been mentioned specifically and repeatedly as an example of the Appellants practice under the 2021 policy of using WhatsApp data for non-WhatsApp purposes. It also brings to our notice that this Appellate Tribunal has repeatedly emphasized that "any non-essential collection or cross-use can occur only with the concerned user's express and revocable consent", while referring to advertising. Therefore, Applicant claims that it is abundantly clear that while this Appellate Tribunal has set aside the 5-year ban on using WhatsApp user data for advertising purposes, it has unequivocally extended the application of remedial directions contained in Paras 247.2.1 to 247.2.4 of the impugned order to data collection and sharing by Appellants for non-WhatsApp purposes, including non-advertising and advertising purposes.

5. The Applicants brings to our notice that this Appellate Tribunal in para 264(c) has not only set aside the first part of 247.1 which imposed a 5-year ban on WhatsApp user data collection and sharing by Appellants for advertising purpose but also the second part which provided that after lapse of the 5-year ban, remedial direction contained in para 247.2.2 to 247.2.4 would apply mutatis mutandis to such data collection and sharing for advertising purpose.

6. The Applicants also claims that despite clear analysis and findings of this Appellate Tribunal, the conclusion at para 264(c) of its judgment dated 04.11.2025 may lead to uncertainty in securing the Appellants compliance

with this Appellate Tribunal judgment. It contends that the party may take divergent views on whether remedial directions contained in paras 247.2.1 to 247.2.4, which require Appellants to provide user optionality and practice data transparency - extend to collection and sharing of WhatsApp user data for advertising purpose, or if they apply only to collection and sharing of data for purpose other than advertising.

7. It also brings to our notice that para 247.2 of the impugned order only applies to data collection and sharing by Appellants for 'purposes other than advertising'. And the application of these remedial directions in para 247.2 to data collection and sharing for advertising purposes is ensured by the second part of para 247.1, which provides that after lapse of 5-year ban, the remedial directions contained in para 247.2 will also apply to data collection and sharing by Appellants for advertising purpose.

8. Due to setting aside of the entirety of para 247.1, this Appellate Tribunal conclusion at para 264(c) of the judgment dated 04.11.2025 may benefit from a further clarification that remedial directions in paras 247.2.1 to 247.2.4 will apply to WhatsApp user data collection and sharing for all non-WhatsApp purposes including non-advertising and advertising purposes. It also brings to our notice that such a conclusion is in line with this Appellate Tribunal's unequivocal findings at paras 241.1, 241.3 and 241.4 of the judgment where it has repeatedly noted that any "any non-essential collection and cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent."

9. Both Meta and WhatsApp have vehemently opposed the application of the CCI for issuing clarification as sought by CCI. Since the contention of both WhatsApp and Meta are similar, we are noting them together hereinafter. It is contended that the judgment is clear and does not require any clarification or modification. CCI application is a review application rather than a clarification application, which is not permissible.

10. WhatsApp LLC claims that the commission seeks to impose additional obligation which exceed what the judgment and the impugned order envisaged. They also contend that the existing features involving advertising related data sharing already respects user choice and users are not obliged to use such features; they can simply use not to use optional features such as click to WhatsApp and remain free to continue using the WhatsApp service. This framework fully satisfies the principle underlying the remedies prescribed in the impugned order and renders the commission's request infructuous. They also contend that the Commission cannot seek to extend additional remedies on WhatsApp and Meta at this belated stage especially as it could adversely impact WhatsApp and Meta.

11. Both WhatsApp and Meta contained that an application for clarification is maintainable only to remove ambiguity and cannot be used to modify, supplement or revisit the conclusions of a judgment in the absence of such ambiguity. Where a judgment is complete and self-contained, and free of obscurity, no question of clarification arises. They contend that this Appellate Tribunal has previously refused to issue any clarifications or modifications of a judgment in the absence of any ambiguity, explaining that "while exercising

its jurisdiction under Rule 11, the Hon'ble Tribunal is not empowered to modify its direction as there is no ambiguity or confusion."

12. WhatsApp and Meta claims that there is no ambiguity in paragraph 264(c) of the judgment. It claims that order expressly sets aside the remedy under paragraph 247.1 of the impugned order in its entirety. Therefore, there is no ambiguity to clarify and CCI application should be dismissed at the threshold.

13. It is also contended by both WhatsApp and Meta that this Appellate Tribunals clarification order dated 1 May 2025 in IA No. 2508 of 2025 in **Alphabet Inc. & Ors. v. Competition Commission of India & Ors, Competition Appeal (AT) No. 4 of 2023 (Google Play Store)** does not, as the Commission suggests, support the grant of any clarification in the present matter. The factual matrix of the Google Play Store case is fundamentally different. There, the Hon'ble Tribunal issued a clarification order only because the judgment contained an obvious and inadvertent inconsistency – specifically, the Hon'ble Tribunal had expressly upheld certain directions in one portion of the judgment while inadvertently setting aside those very same directions in the operative part of the judgment. As the Hon'ble Tribunal explained—

> "When in paragraph 93 we have already held "directions under paragraph 395.4 and 395.5 related to the finding of violation of Section 4(2)(e) which directions are sustained" hence order to set aside the said directions 395.4 and 395.5 is obviously an inadvertent error, which needs to be corrected." (emphasis added) [Paragraph 4, Google Play Store]

14. The clarification in the **Google Play Store** case was issued solely to correct the obvious and inadvertent error. And in the present case, no such inadvertent error exists here. Both WhatsApp and Meta contend that paragraph 247.1 of the Impugned Order was set aside in its entirety and there is no portion of the Judgment that upholds any part of the directions in that paragraph.

15. They also claimed that the Commission cannot substitute its own afterthought for this Appellate Tribunal's reasoned conclusion. Nor can it seek, under the garb of seeking a clarification, to reopen or expand the scope of the judgment to impose new obligations.

16. Both WhatsApp and Meta contend that this Appellate Tribunal had ample opportunity to modify the remedies in line with the CCI Application, but it did not do so. Both parties were heard at length and after a considered view this Appellate Tribunal did not modify the remedies prescribed under paragraph 247.2 of the impugned order to make them applicable to advertising related data sharing. Instead the judgment expressly upholds the remedies prescribed in paragraph 247.2 of the impugned order as is without any extension or modification. Further the Appellate Tribunal did not impose broader obligations which the Commission now seeks through the present application.

17. It was also brought to our notice that WhatsApp currently does not share user data with Meta for advertising purposes except in limited scenarios involving the use of optional features on the WhatsApp service i.e. access to

the WhatsApp service is not conditional upon users use of features involving data sharing for advertising purposes. It clarifies that WhatsApp currently shares data with Meta for advertising purposes only if a user chooses to use optional features, and a user can use the WhatsApp service without using these features. And this aligns with this Appellate Tribunal's reasoning in setting aside paragraph 247.1 of the impugned order that once users have been given option to freely decide to opt in or opt out, as in other reliefs, this direction becomes redundant.

18. Both WhatsApp and Meta contends that the Commission is seeking a review of the Judgment under the guise of this application for clarification, even though clarification applications cannot be used to re-litigate a matter or alter the outcome of a judgment. This Appellate Tribunal has conclusively held that it does not have the power to review its own judgments [Paragraph 27, **Union Bank of India v. Dinkar T. Venkatasubramanian, 2023 SCC OnLine NCLAT 283]**. The CCI Application thus attempts to accomplish indirectly what this Appellate Tribunal is prohibited from doing directly.

19. Both also contend that if the Commission has reservations with the Judgment, the appropriate remedy is to appeal to the Hon'ble Supreme Court under Section 53T of the Competition Act, 2002. Instead, the Commission attempts to disguise a request for review as a request for "clarification", cherry-picking phrases from the judgment to suggest that this Appellate Tribunal must have intended to extend the remedies in paragraph 247.2 of the Impugned Order to advertising-related data sharing. On this basis, the

Commission is asking the Appellate Tribunal to impose additional obligations in the name of "clarification". This is, in substance, a request for review and not the resolution of any genuine ambiguity.

20. Both WhatsApp and Meta also claim that the Commission seeks the imposition of additional remedies on WhatsApp and Meta for advertising-related data sharing, i.e., the requirement to provide additional details on user data sharing with Meta in the WhatsApp privacy policy [Paragraph 247.2.1, Impugned Order]. However, the paragraphs of the Judgment on which the Commission relies to impose these obligations relate to the users' ability to provide and revoke their acceptance to data sharing [Paragraphs 241.1, 241.3, 241.4, Judgment]. Those paragraphs do not uphold, refer to, or in any manner imply that the transparency and disclosure obligations prescribed under paragraph 247.2.1 of the Impugned Order apply to advertising-related data sharing. Therefore, there is no basis to apply the remedy in paragraphs 247.2.1 of the Impugned Order to advertising-related data sharing. This confirms that the CCI Application is in substance a request for review of the Judgment.

21. They also claim that extending the transparency and disclosure obligation in paragraph 247.2.1 of the impugned order, which applies only to data sharing for non-advertising purposes to advertising related data sharing directly contradicts the remedies prescribed by the Commission in the impugned order. Specifically, the impugned order clearly stated that after expiry of the 5-year ban on data sharing for advertising purposes, the

directions in paragraph 247.2 of the impugned order would apply mutatis mutandis to advertising related data sharing except paragraph 247.2.1. By this application, the Commission requests that the Appellate Tribunal to extend all the remedies issued under paragraph 247.2 (including paragraph 247.2.1) of the impugned order to data sharing for advertising purposes. This is imposition of obligations that the Commission itself did not contemplate and is impermissible.

22. WhatsApp and Meta claims that WhatsApp user data sharing for advertising purposes is limited and occurs only if the users choose to use features involving data sharing. The existing features are specifically as follows:

a) WhatsApp currently does not share user data with Meta for advertising purposes except in limited scenarios involving the use of optional features on the WhatsApp service, for example, CTWA advertisements, where a Facebook / Instagram user chooses to interact with an advertisement on Facebook / Instagram and further chooses to have a conversation with a business / advertiser on the WhatsApp service;

b) Even in the limited scenarios that WhatsApp currently shares user data with Meta for advertising purposes - such as CTWA - users are not obliged to use such features. For example, WhatsApp does not incentivise users to interact with businesses through CTWA advertisements. Businesses are free to, but not forced or incentivised to, choose the option of using CTWA advertisements to communicate with their relevant audiences. Importantly, users are free not to use the optional feature if they do not want to allow such user data sharing; and

c) WhatsApp does not share the following information with Meta: (i)

> personal messages with friends, family, and co-workers, including users' shared location, which are end-to-end encrypted; (ii) logs of who everyone is messaging or calling; and (iii) users' contacts.

23. WhatsApp and Meta contends that the existing features involving advertising-related data sharing already respect "user choice", as users are not obliged to use such features; they can simply choose not to use optional features such as CTWA and remain free to continue using the WhatsApp service. This framework fully satisfies the principle underlying the Commission's concern and renders the Commission's request infructuous.

24. WhatsApp and Meta claims that the commission cannot seek to extend additional remedies on WhatsApp and at this belated stage, especially as it could adversely impact WhatsApp and Meta. It notes that this Appellate Tribunal's order dated 23.01.2025 (Interim Order) granted interim relief to WhatsApp by staying the advertising-related remedy under Paragraph 247.1 of the Impugned Order, while permitting the remedies related to data sharing for non-advertising purposes to proceed.

25. WhatsApp and Meta brings to our notice that the interim order's findings directions which have been issued in paragraph 247.1 and 247.2 are with respect to "for advertising purposes" and "for purpose other than advertising" underscores the Hon'ble Tribunal's deliberate intention to maintain a distinction between advertising-related remedies and non-advertising-related remedies. Indeed, the Hon'ble Tribunal segregated and selectively stayed the advertising-related remedy under paragraph 247.1 of

the Impugned Order because it "may lead to the collapse of business model" [Paragraph 17, Interim Order].

26. It claims that remedies issued under paragraphs 247.1 and 247.2 of the Impugned Order addressed two different categories – data sharing for advertising purposes and data sharing for non-advertising purposes and it clearly intended this distinction to remain when granting the stay. there is nothing in the judgment which suggests that this reasoning was abandoned or superseded.

27. WhatsApp and Meta brings to our notice that Commission has not advanced an argument that if paragraph 247.1 (advertising related remedies) is set aside that paragraph 247.2 (non-advertising related remedies) should apply to advertising related data sharing. Commission had sufficient time to raise this contention but is being raised for the first time through a clarification application. Doing so would deprive WhatsApp of a fair opportunity to demonstrate the harm that would flow from indefinitely extending the remaining remedies to advertising related data sharing, including disrupting business and user experience and degrading service quality.

28. WhatsApp and Meta contends that these additional obligations may create a number of technical challenges for WhatsApp and Meta, such as potential changes to product architecture. Given the integrated nature of the Meta infrastructure which powers its products (including the WhatsApp service), implementing such additional obligations may adversely impact user

experience and the rollout of new and innovative features on the WhatsApp service. It prays that to dismiss the CCI Application.

29. Without prejudice to WhatsApp's submissions above, in the event this Hon'ble Tribunal is inclined to allow the CCI Application, WhatsApp humbly submits that it should not be required to comply with these additional requirements immediately. Instead, WhatsApp be granted appropriate time to comply with these requirements. At the very least, this Hon'ble Tribunal should provide WhatsApp with a minimum of three months' time from the order allowing the CCI Application to comply with the additional remedies (i.e., to comply with paragraph 247.2 of the Impugned Order if it is extended to advertising-related data sharing). WhatsApp and Meta claims that three months' time is consistent with the time line provided in the impugned order at paragraph 247.3. Accordingly, should any additional obligations be imposed, a similar timeframe for compliance would be appropriate in light of the time and effort required to implement such obligations and in alignment with the Impugned Order. Both the WhatsApp and Meta brings to our notice that Government acknowledges that building the architecture for user notice and implementing a legal basis for data processing is time consuming under the new privacy and data protection law.

30. It brings to our notice that the Government recently published the Digital Personal Data Protection Rules, 2025 (DPDP Rules), together with the timelines for bringing specific provisions of the Digital Personal Data Protection Act, 2023 (DPDP Act) and the DPDP Rules into force. Notably, the

Government has provided Data Fiduciaries a timeframe of eighteen months to build the architecture for providing user notices and implementing a legal basis for data processing in compliance with the DPDP Act and DPDP Rules. This clearly demonstrates that the Government itself recognizes that modifying systems to build for compliance with user notice and legal basis requirements is a complex and time-consuming undertaking.

31. In light of this, this it is claimed that this Appellate Tribunal should provide WhatsApp with sufficient time to comply in the event it is inclined to allow the CCI Application.

Appraisal

32. Heard Counsels of both sides and also perused the material placed on record.

33. On the issue of maintainability, both WhatsApp and Meta have relied on the judgment of **Union of Bank of India Vs. Dinkar T. Venkatasubramanian, 2023 SCC OnLine NCLAT 283**, decided on 25.05.2023 wherein it has been held that clarification applications cannot be used to re-litigate a matter or alter the outcome of a judgment. The relevant portion are as follows:

> "27. In view of the foregoing discussion, we answer the questions referred to this Bench in following manner:
>
> I: This Tribunal is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction this Tribunal can entertain an application for recall of judgment on sufficient grounds.

> II & III: The judgment of this Tribunal in "Agarwal Coal Corporation Private Limited vs Sun Paper Mill Limited & Anr." and "Rajendra Mulchand Varma & Ors vs K.L.J Resources Ltd & Anr." observing that this Tribunal cannot recall its judgment does not lay down the correct law."

34. Meta and WhatsApp also rely upon **Punjab National Bank Vs. Ashish Chhawchharira & Ors. 2003 SCC OnLine NCLAT 1332, para 12** wherein it was held that in the absence of any ambiguity, explaining that "while exercising [its] jurisdiction under Rule 11, [the Hon'ble Tribunal is] not empowered to modify [its] direction as there is no ambiguity or confusion." And since there is no ambiguity, no clarification application is maintainable and the Appellate Tribunal is prohibited from reviewing the judgment which is in the guise of clarification.

35. We find that both above judgments relate to matters of Insolvency and Bankruptcy Code, 2016, which may not be relevant for a matter relating to Competition Act. Therefore, both above judgments are of no assistance to Meta and WhatsApp.

36. The Applicant – CCI has also vehemently opposed the argument presented by the Meta and WhatsApp on maintainability and brings to our notice the provisions of Section 53(O)(2)(f) of the Competition Act, which explicitly provides for power for review of its own decisions with the Appellate Tribunal. The relevant extract is reproduced as follows:

> **"53-O. Procedure and powers of Appellate Tribunal**
> **1....**
> (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of

1908) while trying a suit in respect of the following matters, namely:--

(a)
....
....

(f) reviewing its decisions;"

37. We therefore reject the arguments canvassed by both Meta and WhatsApp questioning the jurisdiction with respect to the powers of review with this Appellate Tribunal. Accordingly, we are not fettered to review our own decision as per the Competition Act, if the present case of seeking clarification is found to be review in the guise of clarification.

38. Hereinafter we delve into the issue whether in the facts and circumstances of the case, the Applicant is seeking clarification on the judgment or in the guise of clarification it is a review and relitigating the case.

39. Perusal of our judgement dated 5.11.2025 reveals that, in our conclusions on abuse we have clearly stated as follows:

- "Section 4(2)(a)(i): Imposition of unfair or discriminatory conditions on users, through a "take it or leave it" policy WhatsApp forced users into accepting expansive data sharing as a condition to using WhatsApp, without offering an effective opt-out. We find that mandatory acceptance of broad and vague data sharing terms amounted to coercion and unfair condition on users. We thus find violation of Section 4(2)(i) by WhatsApp by introduction of the WhatsApp Policy 2021 and its subsequent conduct." [Para 232.1]

- “Section 4(2)(c): Practices that limit or restrict market access of competitors -we find that cross-platform data sharing (between WhatsApp and Meta) enhanced Meta's advantage in the display advertising market, creating an entry barrier for rival firms in digital advertising that did not have equivalent access to WhatsApp data. We note that Meta is not dominant in Market 2 but a leading business entity (As seen by advertisement impressions and also advertisement revenue of meta as noted by separately) and by its conduct has created a situation of market denial and thus Meta has violated Section 4(2)(c).” [Para 232.2]
- “[...] We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long. Any non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent. [...]” [Para 241.1]

And on the issue of five-year ban, we had observed as follows:

> “We note that this remedy is contestable as the rationale for the duration of 5 years ban was missing altogether in the Impugned Order. The justification that such a period would "revive competitive conditions" cannot meet the threshold required by law as claimed by the Appellants. CCI has categorized the remedies into two categories one for sharing data for advertisement purposes for which 5 years ban has been imposed and other remedy for sharing of data for other than advertising. We find that once users have been given option to freely decide to opt in or opt out, as in other reliefs, this direction becomes redundant. We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long. Any non-essential collection or cross-use (like advertising etc) can occur only with the concerned user's express and revocable consent. The Appellant cannot assert

> unilateral or open-ended rights over user data. This takes care of the abuse found in 2021 Policy i.e., coercive, take-it-or leave-it consent by re-establishing opt-in/opt-out which will be with desired transparency, and purpose limitation, while still allowing lawful, user-approved uses. Then there is no requirement of these exclusive directions." [Para 241.4]

40. The above findings unambiguously state that core principle is to remove exploitation by restoring user choice. And the users can be given choice if users retain the right to decide what data is collected from them, for which purposes, and for how long. We had also stated in our findings that any non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent.

41. While dealing with directions of five-year ban, we had noted in our findings that once users have been given option to freely decide to opt in or opt out, as in other reliefs, this direction becomes redundant. We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long. Any non-essential collection or cross-use (like advertising etc) can occur only with the concerned user's express and revocable consent. The Appellant cannot assert unilateral or open-ended rights over user data. This takes care of the abuse found in 2021 Policy i.e., coercive, take-it-or leave-it consent by re-establishing opt-in/opt-out which will be with desired transparency, and purpose limitation, while still allowing lawful, user-approved uses. Then there is no requirement of these exclusive directions.

42. While this being so, in our conclusions we have noted in the judgment dated 04.11.2025 that:

> "The directions issued by the Commission to cease and desist in paragraph 247.1, i.e. "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 Competition Appeal No. 1 & 2 of 2025 184 of 184 mutandis in respect of such sharing of data for advertising purposes." is not sustainable and is set aside, the rest of directions i.e. 247.2.1, 247.2.2, 247.2.3 and 247.2.4 are upheld."

And we have set aside the direction in para 247.1 of the order of the Commission.

43. We have perused both the findings and conclusions / order and we find that there is a mismatch between findings in our judgment and the conclusions/orders which is the operative part.

44. To address this peculiar situation Applicant has filed I.A. No. 6817/2025 for seeking clarification. Applicant also brings to our notice, the judgment of Hon'ble Supreme Court in **Jayalakshmi Coelho Vs. Oswald Joseph Coelho (2001) 4 SCC 181**, wherein it was held that under Section 152 of Civil Procedure Code, 1908 no party should suffer due to mistake of the Court. The relevant paragraph is noted as below:

> "…
>
> 13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or

clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made."

Furthermore, we note that in the above cited judgment of **Jayalakshmi Coelho (supra)** it has been held that:

"14. As a matter of fact such inherent powers generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise that is to say while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. There should not be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have

committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention."

We find that the cited judgment supports the case of the Applicant in issuing clarification to align the operative part with the findings in the judgment and supports the case of the Applicant to issue clarification so that findings and the operative part could be aligned and are in sync.

45. We have already noted herein earlier that Section 53(O)(2(f) does not prohibits us to consider even review, in a case the clarification goes beyond the limits of clarification and falls within review. Accordingly, to advance the ends of justice, we proceed to consider this application of the Commission for issuing clarification.

46. We observe that the basic principle for data sharing has been very clearly enunciated by us in various parts of the judgment, particularly, in detail in paragraph 241.4 wherein remedy at 247.1, which was relating to data sharing for advertising purposes has been analysed by us. We have clearly noted that:

"….. CCI has categorized the remedies into two categories one for sharing data for advertisement purposes for which 5 years ban has been imposed and other remedy for sharing of data for other than advertising. We find that once users have been given option to freely decide to opt in or opt out, as in other reliefs, this direction becomes redundant. We need to note that the core principle is to remove exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes, and for how long.

> Any non-essential collection or cross-use (like advertising etc) can occur only with the concerned user's express and revocable consent. The Appellant cannot assert unilateral or open-ended rights over user data. This takes care of the abuse found in 2021 Policy i.e., coercive, take-it-or-leave-it consent by re-establishing opt-in/opt-out which will be with desired transparency, and purpose limitation, while still allowing lawful, user-approved uses. Then there is no requirement of these exclusive directions."

47. We have observed that the remedies were classified into two categories, one for sharing of data for advertisement purposes for which 5 years' ban has been imposed and the other for sharing of data for other than advertising purposes. We have noted that once a user is given option to freely decide to opt in or opt out, the direction in paragraph 247.1 becomes redundant because the user has choice to opt in or opt out at any point of time. We have also noted that the core principle is to remove exploitation by restoring using choice and opt in or opt out irrespective of whether it is for advertising purposes or non-advertising purposes will provide user a choice and help remove exploitation. We have also noted that "users must retain the right to decide what data is collected, for which purposes and for how long. Any non-essential collection or cross use (like advertising) can occur only with the concerned users expenses and revocable consent. The Appellant (Meta and WhatsApp) cannot assert unilateral or open ended rights over user data. This takes care of the abuse found in 2021 policy i.e. coercive, take it or leave it consent by reestablishing opt in /opt out which will be desired transparency and purpose limitation while still allowing lawful user approved uses". And for these reasons only we had concluded that 5-year ban which doesn't have

any rational is not required but generic directions for reestablishing opt in or opt out irrespective of whether data sharing for advertising or non-advertising purposes is taken care of. And this removes the abuse found in 2021 policy. In simple terms we can conclude that the remedial directions contained in paras 247.2.1 to 247.2.4 will apply to WhatsApp user data collection and sharing for all non-WhatsApp purposes i.e. both non-advertising and advertising purposes. Nowhere did we discuss to provide any exception to data sharing for advertising purposes.

48. In our findings, we have stated that core principle is to remove exploitation by restoring user choice. And the users can be given choice if users retain the right to decide what data is collected, for which purposes, and for how long. We had also stated in our findings that any non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent. But inadvertently in operative part while setting aside 247.1, we have also set aside "except 247.2.1". The specific para which has been set aside reads as follows:

> "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."

It is to be seen that we had set aside the para as was contained in the impugned order of the Commission, inadvertently including the "*(except para 247.2.1)"* and that para reads as follows:

> "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."

The implication of setting aside the Clause at para 247.2.1 is that WhatsApp gets an exception for data sharing for advertising purposes by not providing any explanation, as is noted in in this Clause. And this is not intended by us. Such a construction does not align with the core principle which we have upheld for all users for the purposes of data sharing which has been stated by us many times in our order. If *"except 247.2.1"* is also set aside, which has happened inadvertently, it would imply that the core principle will not be applicable for sharing of data for advertising purposes. Even at the cost of repetition it would a give go by to the core principle to remove exploitation of the users by restoring user choice. And it will not give the users a choice to decide what data is collected, for which purposes, and for how long. It will also give a go by to the principle that non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent.

49. In the facts and circumstances of the case, we therefore find that the operative part in the judgment is not in sync with the findings. Accordingly, it is clarified that, even though our findings, which was based on the extracted para of impugned order of the Commission, and led us to set aside 247.1 in entirety (including except 247.2.1). But when we had upheld the core principle which applies to data sharing for both advertising and non-advertising purposes-without any differentiation - such generic direction will apply to both situations, which are contained in paragraph 247.2. And it was in this

background, it was observed by us that there is no requirement of specific direction in paragraph 247.1. But inadvertently "except 247.2.1" has also been set aside by us. And if it we don't clarify to exclude this, operative part will misalign with the findings. Accordingly, in our conclusions and order the words "except 247.2.1" shall stand deleted.

50. On the arguments that the Commission through this clarification, which is a review, is seeking to impose additional remedies on WhatsApp and Meta for advertising related data sharing i.e. the requirement to provide additional details on user data sharing with Meta in the WhatsApp privacy policy. We have earlier noted that this clarification aligns the operative portion with our findings and is in no way an additional remedy. Such contentions of Meta and WhatsApp, that it will impose additional burden, and which was not sought for by the Commission is cannot be countenanced as we had clearly held that "users must retain the right to decide what data is collected, for which purposes and for how long. Any non-essential collection or cross use like advertising etc. can occur only with the concerned users express and revocable consent. The Appellant cannot assert unilateral or open ended rights over user data". In such a situation, we don't find that this is an additional burden or new remedies as claimed by Meta & WhatsApp. We again clarify that with such directions, we have reiterated the core principle of removal of exploitation by restoring user choice. Users must retain the right to decide what data is collected, for which purposes and for how long. Once the users have been given option freely to decide to opt in or opt out, whether

data sharing for advertising purposes and other than advertising purposes, the abuse found in 2021 policy will be taken care of.

51. Both Meta & WhatsApp claim that WhatsApp currently shares user data with Meta from optional features on the WhatsApp service for advertising purposes in limited scenarios and for this reason CCI Application is infructuous. Even in limited scenario that WhatsApp currently shares user data with Meta for advertising purposes – such as CTWA – users are not obliged to use such features. It contends that users are free not to use the optional features, if they do not want to allow such user data sharing. We are not into specific scenarios presented by both Meta and WhatsApp. However, we are concerned about the core principle which is origination of data from users of WhatsApp and sharing with Meta. Once users are provided optionality at any stage to opt in or opt out of data sharing – whether using regular features or optional features - their rights are protected for all times and there is a removal of exploitation, which has been the issue in 2021 WhatsApp policy. As a consequence of the core principle, if users accept to share data for using optional features, they should also be having option to opt out of data sharing at any stage and in that case they will not be able to use the optional features and this very well aligns with the core principle of data sharing. We need to reemphasise that at para 247.1, we have clearly stated that "Any non-essential collection or cross-use (like advertising etc.) can occur only with the concerned user's express and revocable consent." [Para 241.1] We also need to reiterate from the judgment of this Appellate Tribunal that "the Appellant cannot assert unilateral or open-ended rights

over user data. This takes care of the abuse found in 2021 Policy i.e., coercive, take-it-or leave-it consent by re-establishing opt-in/opt-out which will be with desired transparency, and purpose limitation, while still allowing lawful, user-approved uses. Then there is no requirement of these exclusive directions."

52. Basis above analysis, we therefore, allow the application of the Commission. Accordingly, it is clarified that "remedial directions contained in Paras 247.2.1 to Paras 247.2.4 of the Applicant's impugned order dated 18.11.2024 will apply to WhatsApp user data collection and sharing for all non-WhatsApp purposes, including non-advertising and advertising purposes". Furthermore, WhatsApp is allowed three months to comply with the directions for bringing about necessary changes at their end.

[Justice Ashok Bhushan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
December 15, 2025.

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