

NCLAT STAYS CCI'S FIVE-YEAR BAN ON DATA SHARING BY WHATSAPP WITH META AND ITS COMPANIES FOR ADVERTISING

In a significant ruling, the National Company Law Appellate Tribunal (NCLAT) vide its order dated January 23, 2025 in the interim application filed by WhatsApp in its appeal, has stayed the Competition Commission of India's (CCI) directive imposing a five-year ban on WhatsApp from sharing user data with Meta (WhatsApp's parent company), or other Meta companies, for advertising purposes. This decision comes as a relief to WhatsApp, which argued that the ban would collapse its business model under which free services are provided by WhatsApp to its users.

The case stems from the Competition Commission of India (CCI) taking *suo motu* cognizance of WhatsApp's 2021 update to its Terms of Service and Privacy Policy. The CCI determined that WhatsApp had violated Section 4 of the Competition Act, 2002. CCI observed that WhatsApp's data-sharing practices were anti-competitive as WhatsApp has abused its dominance and *inter alia* issued i) a directive imposing a five-year ban on WhatsApp from sharing user data with Meta or other Meta companies for advertising purposes; ii) certain directives pertaining to sharing of data for purposes other than advertising purposes; and iii) imposed a monetary penalty of ₹213.14 crore on Meta.

NCLAT heard the submissions of all concerned parties in the interim application filed by WhatsApp. It analysed the proceedings before the Delhi High Court as well as the Apex Court of India which were filed *inter alia* in relation to the WhatsApp's privacy policies.

Key takeaways from the NCLAT's order as follow:

1. **Interim Relief Granted:** The NCLAT has stayed the CCI's order with respect to the five-year ban on data sharing for advertising purposes, noting that such a ban could severely impact WhatsApp's business model.
2. **Compliance with Other Directions:** The tribunal, however, upheld the CCI's other directives related to data sharing for non-advertising purposes.



3. **Monetary Penalty:** The NCLAT directed WhatsApp to deposit 50% of the imposed penalty, considering that 25% had already been deposited

The NCLAT's decision underscores the complexity of balancing regulatory oversight with business operations in the digital age.

This ruling comes at a time when data privacy and protection are increasingly becoming focal points of regulatory scrutiny worldwide. The Digital Personal Data Protection Act, 2023, (DPDPA) which has been gazetted but not yet enforced, is expected to bring significant changes to how data is managed and protected in India. The NCLAT's decision to stay the five-year ban reflects a cautious approach, allowing time for the new legislation to come into effect and potentially address the issue at hand.

In view thereof, both parties have been granted leave to seek modification of the NCLAT's order if the DPDPA is enforced or if any other relevant statutory provisions come into effect. The appeals (two appeals filed by WhatsApp and Meta, respectively) are scheduled for hearing on March 17, 2025.

For businesses, this case serves as a critical example of how regulatory decisions may impact business operations. It is advisable that companies operating in the digital space stay abreast of regulatory changes and be prepared to adapt their practices accordingly.

The NCLAT's order is a pivotal moment in the ongoing debate over data privacy and competition in the digital age. It highlights the need for a balanced approach that protects consumer rights without stifling innovation and business models that rely on data-driven advertising.

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