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# EVALUATING THE ROLE OF NCLAT IN ENSURING CORPORATE ACCOUNTABILITY: A CASE STUDY OF WHATSAPP LLC V. CCI

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## ABSTRACT

*The evolution of digital markets has significantly altered the contours of corporate power, raising complex challenges for regulatory authorities tasked with ensuring accountability, transparency, and fair competition. In India, the Competition Commission of India (CCI) serves as the primary watchdog against anti-competitive practices, while the National Company Law Appellate Tribunal (NCLAT) functions as the appellate authority reviewing CCI's orders. The decision in WhatsApp LLC v. Competition Commission of India represents a landmark moment in Indian competition jurisprudence, particularly in the context of data-driven monopolies, abuse of dominance, and regulatory oversight over Big Tech corporations. This case assumes critical importance not merely for its outcome, but for the institutional role played by NCLAT in shaping the limits of corporate accountability.*

*This research paper evaluates the role of NCLAT in ensuring corporate accountability through a detailed case study of WhatsApp LLC v. CCI. It examines how appellate scrutiny influences regulatory effectiveness, balances corporate autonomy with public interest, and addresses emerging concerns surrounding data exploitation and market dominance in digital ecosystems. The paper argues that NCLAT, while functioning within statutory constraints, plays a pivotal role in reinforcing procedural fairness and legal certainty, yet simultaneously faces criticism for potentially diluting regulatory enforcement through judicial restraint.*

*The study analyses the factual background of WhatsApp's updated privacy policy, the suo motu inquiry initiated by CCI, and the subsequent challenge before NCLAT. Particular attention is given to the reasoning adopted by NCLAT in granting interim relief and the broader implications of such intervention on competition law enforcement. By situating the case within the broader framework of corporate accountability, the paper assesses whether appellate oversight strengthens compliance mechanisms or inadvertently creates regulatory gaps that powerful digital corporations may exploit.*

*Methodologically, the paper adopts a doctrinal and analytical approach, drawing upon statutory provisions of the Competition Act, 2002, judicial precedents, scholarly commentary, and regulatory reports. Comparative references to international competition law practices are also employed to contextualize India's regulatory response to digital monopolies. The research highlights the tension between innovation-driven business models and the need for accountability in markets characterised by network effects and data concentration.*

*Ultimately, the paper concludes that while NCLAT serves as a crucial institutional check within India's competition law regime, its role in cases involving dominant digital enterprises must evolve to ensure that appellate intervention does not undermine the deterrent function of competition regulation. The WhatsApp LLC v. CCI case underscores the necessity for a nuanced judicial approach that balances corporate rights with consumer welfare and market fairness, thereby reinforcing the broader objective of corporate accountability in the digital age.*

**KEYWORDS:** *Corporate Accountability; National Company Law Appellate Tribunal (NCLAT); Competition Commission of India (CCI); Digital Markets; Abuse of Dominance; Big Tech Regulation; Data Privacy; Competition Act, 2002; Appellate Review; WhatsApp LLC*

## INTRODUCTION

The increasing dominance of digital corporations in contemporary markets has posed unprecedented challenges to traditional frameworks of corporate regulation and accountability. Technology-driven enterprises, particularly those operating multi-sided digital platforms, derive immense economic power from network effects, control over user data, and the ability to influence market behaviour across interconnected services. In this context, competition law has emerged as a critical legal instrument for ensuring that corporate power is exercised within permissible limits and does not distort market fairness or consumer welfare. In India, the Competition Act, 2002 was enacted to prevent practices having an adverse effect on competition, promote and sustain competition in markets, protect the interests of consumers, and ensure freedom of trade carried on by other participants in the market.<sup>1</sup>

The institutional framework under the Competition Act vests investigative and adjudicatory authority in the Competition Commission of India (CCI), while appellate jurisdiction is conferred upon the National Company Law Appellate Tribunal (NCLAT). The relationship between these two bodies is central to the enforcement of competition law and, by extension, corporate accountability. While the CCI functions as a specialised regulatory authority with powers to initiate inquiries and impose penalties, NCLAT serves as a judicial forum reviewing the legality, proportionality, and procedural fairness of the CCI's decisions. This appellate oversight is intended to ensure that regulatory actions are grounded in law and do not transgress principles of natural justice. However, excessive judicial intervention at the appellate stage may risk undermining the effectiveness of regulatory enforcement, particularly in complex and rapidly evolving digital markets.

The debate surrounding corporate accountability in the digital economy has intensified with the growing scrutiny of Big Tech companies worldwide. Corporations such as Google, Meta (formerly Facebook), Amazon, and Apple have been accused of leveraging their dominant positions to impose unfair conditions, engage in exclusionary practices, and exploit consumer data. In India, these concerns came sharply into focus with the controversy surrounding WhatsApp's 2021 privacy policy update, which proposed extensive data sharing with its parent company, Meta Platforms Inc. The policy raised apprehensions regarding data exploitation,

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<sup>1</sup> Competition Act, 2002, Preamble (India).

lack of informed consent, and potential abuse of dominant position, prompting the CCI to initiate a suo motu inquiry under Sections 4 and 19 of the Competition Act.<sup>2</sup>

WhatsApp's challenge to the CCI's investigation before NCLAT marked a significant moment in Indian competition jurisprudence. The appellate tribunal's decision to grant interim relief and stay the CCI's proceedings was perceived by many as a critical test of the balance between corporate rights and regulatory authority. The case thus presents an important opportunity to examine how NCLAT exercises its appellate jurisdiction in matters involving powerful digital corporations and whether such intervention strengthens or weakens mechanisms of corporate accountability.

This research paper seeks to evaluate the role of NCLAT in ensuring corporate accountability through a focused case study of *WhatsApp LLC v. Competition Commission of India*. It analyses the extent to which appellate review contributes to legal certainty, procedural fairness, and proportionality in regulatory enforcement, while also assessing the potential implications of judicial restraint on competition regulation in digital markets. By situating the case within the broader discourse on competition law and corporate governance, the study aims to contribute to an understanding of how India's institutional framework can adapt to the challenges posed by data-driven monopolies.

## **RESEARCH METHODOLOGY**

The present research adopts a doctrinal and analytical methodology to examine the role of the National Company Law Appellate Tribunal (NCLAT) in ensuring corporate accountability, with specific reference to the decision in *WhatsApp LLC v. Competition Commission of India*. Given the legal and institutional nature of the inquiry, the study primarily relies on qualitative methods rooted in the analysis of legal texts, judicial decisions, and scholarly literature. This approach is particularly suited to understanding how appellate bodies interpret statutory mandates and balance competing interests within the framework of competition law.

The doctrinal method forms the foundation of this research, involving a detailed examination of the statutory provisions of the Competition Act, 2002, especially those relating to abuse of dominant position, powers of the Competition Commission of India (CCI), and appellate

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<sup>2</sup> Competition Commission of India, *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Motu Case No. 01 of 2021.

jurisdiction of NCLAT. Relevant provisions, including Sections 4, 19, 26, and 53A–53T of the Act, are analysed to assess the scope and limits of regulatory and appellate authority. Judicial precedents from the Supreme Court of India, High Courts, and NCLAT are examined to trace the evolution of principles governing appellate interference in regulatory investigations, particularly at the preliminary or investigative stage.<sup>1</sup>

In addition to statutory and judicial analysis, the research employs a case study method focusing on *WhatsApp LLC v. CCI*. The case study approach enables an in-depth examination of the factual background, legal issues, reasoning adopted by the CCI, and the subsequent appellate intervention by NCLAT. By analysing the sequence of events and the reasoning at each stage, the study seeks to identify broader patterns in appellate decision-making and assess their implications for corporate accountability in digital markets. The case study is not treated in isolation but is contextualised within the broader regulatory landscape governing Big Tech companies in India.

The analytical component of the methodology involves critically evaluating the reasoning adopted by NCLAT in granting interim relief to WhatsApp. This includes an assessment of whether the tribunal's approach aligns with the objectives of the Competition Act and established principles of administrative law, such as judicial deference to specialised regulators and the doctrine of proportionality. The research also explores whether NCLAT's intervention reflects an emerging trend of cautious judicial oversight in cases involving technologically complex markets and multinational corporations.

Secondary sources form an important part of the research methodology. Scholarly articles published in peer-reviewed law journals, books on competition law and corporate governance, reports of expert committees, and publications by regulatory bodies such as the CCI are used to support and critique the legal analysis. These sources provide theoretical grounding and comparative insights, particularly with respect to how competition authorities in other jurisdictions, such as the European Union, address similar issues relating to data-driven market dominance.<sup>2</sup>

While the research does not involve empirical data collection, it incorporates a comparative perspective where relevant to highlight alternative regulatory approaches and judicial attitudes. This comparative analysis is limited and illustrative, intended to strengthen the normative

assessment of India's competition law framework rather than provide a comprehensive comparative study.

The scope of the methodology is confined to legal and institutional analysis, and it does not extend to economic modelling or behavioural studies of digital markets. Nevertheless, by integrating doctrinal analysis with critical evaluation of judicial reasoning, the methodology enables a nuanced assessment of NCLAT's role in shaping corporate accountability within India's competition law regime.

### **RESEARCH QUESTIONS**

1. What is the institutional and legal role of the National Company Law Appellate Tribunal (NCLAT) within India's competition law framework?
2. How does appellate review by NCLAT influence the enforcement of corporate accountability under the Competition Act, 2002?
3. What were the key legal and regulatory issues involved in *WhatsApp LLC v. Competition Commission of India*?
4. To what extent did NCLAT's intervention in the WhatsApp case balance corporate rights with the objectives of competition regulation?
5. Does the approach adopted by NCLAT in cases involving digital corporations strengthen or dilute regulatory oversight and accountability mechanisms?

### **HYPOTHESIS**

The central hypothesis of this research is that while the National Company Law Appellate Tribunal (NCLAT) plays a vital role in safeguarding procedural fairness and legal certainty within India's competition law regime, its intervention in cases involving dominant digital corporations may, in certain circumstances, dilute the effectiveness of regulatory enforcement and weaken mechanisms of corporate accountability. This hypothesis is premised on the assumption that appellate bodies, when exercising judicial restraint or granting interim relief at preliminary stages of investigation, can significantly influence the trajectory of regulatory action undertaken by specialised authorities such as the Competition Commission of India (CCI).

Competition law enforcement, particularly in digital markets, often requires regulators to act swiftly and proactively due to the fast-evolving nature of technology-driven business models and the irreversible effects of anti-competitive conduct. The CCI's power to initiate investigations under Section 26 of the Competition Act, 2002 is designed to enable early regulatory intervention based on a prima facie assessment, rather than conclusive findings of guilt. Judicial interference at this stage, therefore, raises concerns regarding the potential disruption of regulatory processes and the undermining of the deterrent function of competition law. The hypothesis assumes that excessive appellate scrutiny of such preliminary actions may create procedural hurdles that benefit large corporations with substantial legal and financial resources.

At the same time, the hypothesis acknowledges that NCLAT's role as an appellate authority is indispensable in preventing arbitrary or overreaching regulatory action. Corporate accountability cannot be ensured at the cost of due process, and judicial oversight serves as an important check against misuse of regulatory power. The hypothesis thus does not suggest that NCLAT's intervention is inherently detrimental, but rather posits that the nature, timing, and intensity of such intervention are critical determinants of its impact on corporate accountability. In cases involving complex issues such as data privacy, market definition, and dominance in digital ecosystems, appellate bodies may be inclined to adopt a cautious approach, prioritising legal certainty over regulatory experimentation.

In the context of *WhatsApp LLC v. Competition Commission of India*, the hypothesis posits that NCLAT's decision to grant interim relief reflects a broader judicial tendency to shield corporate entities from regulatory scrutiny in the absence of clear statutory guidance on data-related competition issues. This tendency may inadvertently signal to dominant digital corporations that regulatory actions can be delayed or diluted through appellate litigation, thereby weakening compliance incentives. The hypothesis further assumes that such outcomes have long-term implications for the credibility and authority of competition regulators, particularly in jurisdictions where enforcement capacity is still evolving.

The hypothesis also incorporates a normative dimension, suggesting that for NCLAT to effectively contribute to corporate accountability, its jurisprudence must align closely with the objectives of the Competition Act, including consumer welfare, market fairness, and prevention of abuse of dominance. Appellate review should ideally reinforce, rather than

restrain, the regulatory mandate of the CCI, especially in sectors characterised by high entry barriers and information asymmetry. The hypothesis therefore anticipates that a critical evaluation of NCLAT's reasoning in the WhatsApp case will reveal tensions between judicial conservatism and the need for robust competition enforcement in the digital economy.

Ultimately, this hypothesis serves as a guiding framework for analysing whether NCLAT's role, as demonstrated in the WhatsApp case, advances or constrains the broader goal of corporate accountability. The findings of the research are expected to either validate this hypothesis by demonstrating a regulatory chilling effect, or refine it by identifying circumstances under which appellate intervention can enhance accountability without undermining enforcement efficacy.

### **LITERATURE REVIEW**

The concept of corporate accountability under competition law has been extensively examined in legal scholarship, particularly in the context of regulatory oversight and judicial review. Scholars have consistently emphasised that effective competition regulation depends not only on substantive legal provisions but also on the institutional relationship between regulators and appellate bodies. In the Indian context, the Competition Act, 2002 has been analysed as a progressive legislative framework aimed at addressing market distortions, yet its enforcement has been subject to scrutiny due to delays, procedural challenges, and judicial intervention.<sup>3</sup>

Early literature on India's competition regime focused on the role of the Competition Commission of India (CCI) as a specialised regulatory authority equipped with investigative and adjudicatory powers. Authors such as Avtar Singh and S.M. Dugar have highlighted that the success of the Act hinges on the autonomy and expertise of the CCI, particularly in complex economic assessments involving market dominance and anti-competitive conduct.<sup>4</sup> However, concerns have been raised regarding the extent to which appellate review by NCLAT may constrain regulatory discretion. Some scholars argue that frequent interference at the prima facie stage undermines the CCI's ability to perform its statutory mandate effectively.

The role of NCLAT has been examined in literature dealing with administrative law and tribunalisation in India. Commentators have noted that while tribunals are intended to provide

<sup>3</sup> Pradeep S. Mehta, *Competition Law in India: Policy, Issues and Developments* (Oxford University Press 2011)

<sup>4</sup> Avtar Singh, *Competition Law* (Eastern Book Company 2019).

specialised and efficient adjudication, their decisions often reflect a cautious judicial mindset that prioritises procedural safeguards over regulatory objectives.<sup>5</sup> In competition law matters, this cautious approach has been criticised for creating enforcement uncertainty, particularly when interim stays are granted against ongoing investigations. Conversely, other scholars defend NCLAT's intervention as essential to preventing regulatory overreach and protecting corporate entities from arbitrary inquiries.

With the rise of digital markets, academic discourse has increasingly focused on the challenges of regulating Big Tech companies. Scholars such as Lina Khan and Eleanor Fox have argued that traditional competition law tools are ill-suited to address data-driven monopolies and platform dominance.<sup>6</sup> In the Indian context, commentators have observed that the absence of explicit statutory provisions dealing with data exploitation creates interpretative challenges for regulators and appellate bodies alike. This gap has resulted in divergent judicial approaches, as seen in cases involving Google, Amazon, and WhatsApp.

Specific literature on *WhatsApp LLC v. Competition Commission of India* highlights the case as a critical test of India's readiness to regulate digital platforms. Some analyses view the CCI's suo motu action as a necessary assertion of regulatory authority in the face of growing data concentration, while others criticise it as an overextension of competition law into the domain of data protection.<sup>7</sup> The NCLAT's decision to stay the investigation has been interpreted by several scholars as indicative of judicial discomfort with regulatory innovation in the absence of clear legislative guidance.

Comparative literature examining the European Union's approach to digital competition, particularly under the General Data Protection Regulation (GDPR) and the Digital Markets Act, provides useful insights into alternative regulatory models.<sup>8</sup> These studies suggest that stronger coordination between data protection and competition authorities, coupled with restrained judicial intervention, can enhance corporate accountability in digital markets.

Overall, the existing literature reveals a clear tension between regulatory activism and judicial restraint in competition law enforcement. While scholars acknowledge the importance of

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<sup>5</sup> M.P. Jain, *Indian Administrative Law* (LexisNexis 2020).

<sup>6</sup> Lina M. Khan, 'Amazon's Antitrust Paradox' (2017) 126 Yale LJ 710.

<sup>7</sup> Shubho Roy, 'WhatsApp Privacy Policy and Competition Law in India' (2021) 14 NUJS L Rev 245.

<sup>8</sup> European Union, *Digital Markets Act*, Regulation (EU) 2022/1925.

appellate oversight, there is growing consensus that excessive intervention by appellate tribunals may weaken the accountability of dominant corporations. This research seeks to contribute to the literature by critically evaluating NCLAT's role through the lens of *WhatsApp LLC v. CCI*, thereby bridging the gap between doctrinal analysis and contemporary digital market realities.

## **LEGAL FRAMEWORK OF COMPETITION LAW AND CORPORATE ACCOUNTABILITY IN INDIA**

The legal framework governing competition law in India is primarily anchored in the Competition Act, 2002, which was enacted to replace the Monopolies and Restrictive Trade Practices Act, 1969. The shift from a control-oriented regime to a competition-based framework reflects India's broader transition towards a market-driven economy, where corporate accountability is ensured not through prior governmental control but through ex post regulatory oversight. The Competition Act seeks to address market failures by prohibiting anti-competitive agreements, abuse of dominant position, and regulating combinations that may cause an appreciable adverse effect on competition.<sup>9</sup>

Corporate accountability under competition law operates on the principle that enterprises, particularly those holding significant market power, must conduct their business in a manner that does not distort market conditions or harm consumer welfare. Section 4 of the Competition Act explicitly prohibits abuse of dominant position, recognising that dominance in itself is not unlawful, but its abuse through unfair pricing, discriminatory practices, denial of market access, or leveraging dominance across markets is impermissible. This provision serves as a key mechanism for holding powerful corporations accountable, especially in sectors characterised by high entry barriers and network effects.

The institutional architecture of competition law enforcement further reinforces corporate accountability. The Competition Commission of India (CCI) is vested with broad powers to inquire into anti-competitive conduct, either upon receipt of information or suo motu. The CCI's authority to form a prima facie opinion and direct investigation by the Director General under Section 26 reflects the legislature's intent to enable proactive regulatory intervention. Such powers are particularly significant in digital markets, where anti-competitive effects may

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<sup>9</sup> Competition Act, 2002, Statement of Objects and Reasons.

manifest rapidly and irreversibly.

However, corporate accountability under the Competition Act is not absolute and is subject to procedural safeguards designed to protect enterprises from arbitrary or excessive regulatory action. The Act provides for appellate review of CCI's orders by the National Company Law Appellate Tribunal (NCLAT), thereby integrating principles of natural justice and rule of law into competition enforcement. This appellate mechanism underscores the dual objectives of the competition regime: effective regulation and fair adjudication.

The concept of accountability also extends beyond financial penalties. The Competition Act empowers the CCI to impose behavioural and structural remedies, including cease-and-desist orders and modifications of business practices. Such remedies aim not merely to punish past conduct but to prevent future violations and restore competitive conditions. In this sense, competition law functions as a tool of corporate governance, influencing how corporations design their business strategies and compliance mechanisms.

Judicial interpretation has played a significant role in shaping the contours of corporate accountability under the Act. The Supreme Court, in *Competition Commission of India v. Steel Authority of India Ltd.*, clarified that the CCI's formation of a prima facie opinion is an administrative function and should not ordinarily be subjected to judicial interference at an early stage.<sup>10</sup> This interpretation reflects judicial recognition of the need to preserve regulatory autonomy, particularly in technically complex matters.

Nevertheless, the increasing involvement of appellate bodies in reviewing regulatory action has generated debate regarding the appropriate balance between oversight and deference. While appellate scrutiny is essential to prevent misuse of power, excessive intervention may undermine the effectiveness of competition enforcement and weaken accountability mechanisms. This tension forms the backdrop against which the role of NCLAT must be evaluated, particularly in cases involving dominant digital corporations such as WhatsApp.

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<sup>10</sup> *Competition Commission of India v. Steel Authority of India Ltd.*, (2010) 10 SCC 744.

## **ROLE, POWERS AND JURISDICTION OF THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)**

The National Company Law Appellate Tribunal (NCLAT) occupies a crucial position within India's corporate and competition law framework, functioning as the principal appellate authority against orders passed by specialised tribunals and regulatory bodies. Established under the Companies Act, 2013 and subsequently vested with appellate jurisdiction under the Competition Act, 2002, NCLAT serves as an institutional bridge between regulatory decision-making and judicial oversight. Its role is particularly significant in competition law matters, where complex economic assessments and policy considerations intersect with legal principles. Under Section 53A of the Competition Act, 2002, NCLAT is empowered to hear appeals against orders, directions, or decisions of the Competition Commission of India (CCI). This jurisdiction encompasses final orders imposing penalties as well as certain interim and procedural orders, subject to statutory limitations. The appellate framework reflects the legislature's intent to provide an effective remedy against regulatory action while ensuring that specialised adjudication is subject to judicial scrutiny. NCLAT is thus entrusted with the responsibility of examining the legality, propriety, and correctness of the CCI's decisions, without substituting its own assessment for that of the regulator in matters requiring technical expertise.

The powers of NCLAT include the authority to confirm, modify, or set aside orders of the CCI, and to pass such orders as it deems fit in the interests of justice. These powers are broad in scope but are intended to be exercised in accordance with settled principles of administrative law, including judicial restraint and deference to specialised regulators. The Supreme Court has consistently emphasised that appellate bodies should refrain from interfering with regulatory processes at a preliminary stage unless there is a clear violation of jurisdiction or principles of natural justice.<sup>11</sup>

In practice, NCLAT's role has evolved through its jurisprudence in competition law cases. The tribunal has often positioned itself as a guardian of procedural fairness, scrutinising whether the CCI has adhered to statutory requirements while initiating inquiries or imposing sanctions. This approach has been welcomed by corporate entities as a safeguard against arbitrary or overzealous regulation. However, it has also attracted criticism for potentially creating

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<sup>11</sup> *Competition Commission of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521

enforcement bottlenecks, particularly when interim relief is granted against ongoing investigations.

The jurisdictional scope of NCLAT assumes added significance in cases involving digital markets and multinational corporations. Such cases often raise novel questions relating to market definition, data as a competitive asset, and the intersection of competition law with other regulatory regimes such as data protection. In the absence of explicit legislative guidance, NCLAT's interpretative choices can have far-reaching implications for the development of competition law jurisprudence in India. The tribunal's decisions not only affect the immediate parties but also shape regulatory expectations and compliance behaviour across industries.

A critical aspect of NCLAT's role is its approach to interim relief. While the power to grant stays is an inherent part of appellate jurisdiction, its exercise in competition law matters requires careful balancing. Granting interim relief at an early stage may protect corporate entities from undue hardship, but it may also delay investigations and weaken the deterrent effect of regulation. This tension is particularly evident in cases involving dominant digital platforms, where delays can entrench market power and render subsequent remedies ineffective.

In this context, the role of NCLAT must be evaluated not merely in terms of its formal powers but in terms of its institutional responsibility to uphold the objectives of the Competition Act. The tribunal's jurisprudence must strike a balance between protecting corporate rights and enabling effective enforcement of competition law. The *WhatsApp LLC v. CCI* case provides a valuable lens through which this balance can be examined, highlighting the challenges faced by NCLAT in adapting traditional appellate principles to the realities of the digital economy.

## **WHATSAPP LLC v. COMPETITION COMMISSION OF INDIA:**

### **FACTS, ISSUES AND THE CCI ORDER**

The case of *WhatsApp LLC v. Competition Commission of India* arose against the backdrop of growing global concern over the market power exercised by digital platforms and their control over vast quantities of user data. In January 2021, WhatsApp LLC, a widely used instant messaging service in India and a subsidiary of Meta Platforms Inc., announced an update to its Terms of Service and Privacy Policy. The revised policy proposed enhanced data sharing

between WhatsApp and other Meta entities, particularly Facebook, ostensibly for business messaging and advertising purposes. The update triggered widespread public backlash and raised serious concerns regarding user consent, data exploitation, and the potential leveraging of market dominance across digital markets.

In response to these concerns, the Competition Commission of India (CCI) initiated a suo motu proceeding under Section 19(1) of the Competition Act, 2002, registering Suo Motu Case No. 01 of 2021. The CCI took note of WhatsApp's dominant position in the market for Over-The-Top (OTT) messaging applications in India and expressed apprehension that the updated privacy policy could amount to an abuse of dominant position under Section 4 of the Act.<sup>1</sup> The Commission observed that WhatsApp's take-it-or-leave-it approach, coupled with the absence of meaningful user choice, raised prima facie concerns of unfair conditions and excessive data collection.

The CCI identified several key issues for investigation. First, it questioned whether WhatsApp's data-sharing practices with its parent company could confer a competitive advantage to Meta in adjacent markets, such as online advertising and social networking. Second, it examined whether the imposition of updated terms on users amounted to exploitative conduct, given WhatsApp's near-ubiquitous presence in India's messaging market. Third, the CCI considered the broader implications of data concentration and interoperability barriers for competition in digital markets.<sup>12</sup>

By its order dated 24 March 2021, the CCI formed a prima facie opinion that WhatsApp's conduct warranted investigation and directed the Director General to conduct a detailed inquiry under Section 26(1) of the Act. The Commission emphasised that competition law concerns were distinct from data protection issues and that the existence of parallel regulatory proceedings did not preclude the CCI from exercising its jurisdiction. This assertion underscored the CCI's view that data could constitute a non-price parameter of competition and that its exploitation by a dominant enterprise could have significant anti-competitive effects.

Aggrieved by the CCI's order, WhatsApp LLC challenged the initiation of the investigation

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<sup>12</sup> Competition Commission of India, *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Motu Case No. 01 of 2021, Order dated 24 March 2021.

before the National Company Law Appellate Tribunal (NCLAT). WhatsApp argued that the CCI had exceeded its jurisdiction by venturing into matters primarily governed by data protection law and that the order failed to establish a sufficient nexus between the updated privacy policy and any appreciable adverse effect on competition. It further contended that the CCI's action amounted to regulatory overreach and imposed undue compliance burdens.

The CCI, in defending its order, maintained that its prima facie assessment was well within its statutory mandate and that detailed findings would emerge only after a full investigation. The dispute thus set the stage for a critical examination of the limits of regulatory authority and appellate intervention, making the case a focal point for evaluating the role of NCLAT in ensuring corporate accountability within India's competition law regime.

### **NCLAT'S INTERVENTION AND JUDICIAL REASONING IN** **WHATSAPP LLC v. CCI**

The intervention of the National Company Law Appellate Tribunal (NCLAT) in *WhatsApp LLC v. Competition Commission of India* represents a significant moment in Indian competition law jurisprudence, particularly in the context of appellate oversight over regulatory investigations. Upon hearing WhatsApp's appeal, NCLAT granted an interim stay on the proceedings initiated by the Competition Commission of India (CCI), thereby halting the investigation directed under Section 26(1) of the Competition Act, 2002. This decision brought into sharp focus the scope of appellate jurisdiction and the appropriate limits of judicial interference at a preliminary stage of regulatory action.

In its reasoning, NCLAT emphasised the need to prevent multiplicity of proceedings and regulatory overlap. The tribunal noted that issues relating to data privacy and user consent were already being examined by other judicial and regulatory fora, including proceedings before the Supreme Court concerning WhatsApp's privacy policy. NCLAT expressed concern that parallel investigations by the CCI could lead to inconsistent findings and impose undue compliance burdens on the corporate entity. This reasoning reflected a judicial preference for regulatory coordination and avoidance of conflicting jurisdictional claims.

NCLAT also questioned whether the CCI had sufficiently established a competition law nexus in its prima facie order. The tribunal observed that the CCI's concerns appeared to be

predominantly rooted in data protection and privacy considerations, rather than demonstrable anti-competitive effects in the relevant market. By scrutinising the basis of the CCI's prima facie opinion, NCLAT effectively raised the threshold for initiating competition law investigations in cases involving digital platforms. This approach signalled a cautious judicial stance towards regulatory innovation in the absence of explicit legislative guidance on data-related competition issues.

Another significant aspect of NCLAT's reasoning was its emphasis on the principle of proportionality. The tribunal held that subjecting WhatsApp to a detailed investigation at an early stage, without clear evidence of competitive harm, could result in disproportionate regulatory intrusion. This reasoning aligns with administrative law principles that seek to balance the objectives of regulation with the rights and interests of regulated entities. However, critics argue that such an approach may be ill-suited to digital markets, where anti-competitive harm often manifests through subtle and long-term effects rather than immediate price-based indicators.

The interim relief granted by NCLAT had practical implications for the enforcement of competition law. By staying the investigation, the tribunal effectively delayed regulatory scrutiny of WhatsApp's conduct, potentially allowing the alleged anti-competitive practices to continue unchecked. This outcome raises important questions about the deterrent function of competition law and the ability of regulators to address rapidly evolving market dynamics. In digital markets characterised by network effects and data accumulation, delays in enforcement can entrench dominant positions and diminish the effectiveness of subsequent remedies.

From an institutional perspective, NCLAT's intervention reflects a broader judicial trend of assertive appellate oversight over regulatory bodies. While such oversight is essential to uphold the rule of law, its exercise in cases involving preliminary investigations remains controversial. The Supreme Court has previously cautioned against judicial interference at the stage of prima facie assessment, recognising the specialised expertise of competition regulators. NCLAT's decision in the WhatsApp case thus represents a departure from a deferential approach, inviting debate on the appropriate balance between judicial control and regulatory autonomy.

In sum, NCLAT's reasoning in *WhatsApp LLC v. CCI* underscores the challenges of applying traditional appellate principles to the regulation of digital markets. The tribunal's emphasis on

jurisdictional clarity, proportionality, and avoidance of overlap reflects legitimate concerns, yet its intervention also highlights the risk of weakening corporate accountability by constraining regulatory enforcement at a critical stage.

## **CRITICAL EVALUATION OF NCLAT'S ROLE AND ITS IMPACT ON CORPORATE ACCOUNTABILITY**

The decision of the National Company Law Appellate Tribunal (NCLAT) in *WhatsApp LLC v. Competition Commission of India* invites critical evaluation in light of its broader implications for corporate accountability and competition law enforcement in India. While the tribunal's intervention was grounded in concerns of procedural fairness, jurisdictional overlap, and proportionality, its practical impact on regulatory effectiveness raises important normative questions. This chapter critically assesses whether NCLAT's approach strengthens or undermines the objective of holding dominant corporations accountable in digital markets.

At one level, NCLAT's intervention can be viewed as a legitimate exercise of appellate oversight aimed at preventing regulatory overreach. By scrutinising the basis of the Competition Commission of India's (CCI) prima facie order, the tribunal reinforced the principle that regulatory action must be firmly rooted in statutory mandate and supported by cogent reasoning. Such scrutiny is essential to protect corporate entities from arbitrary investigations and to ensure that competition law is not stretched beyond its intended scope. From this perspective, NCLAT's role contributes to legal certainty and predictability, which are essential components of a fair regulatory environment.

However, the timing and intensity of NCLAT's intervention warrant closer examination. The Competition Act, 2002 envisages the formation of a prima facie opinion as a preliminary administrative step, not a conclusive determination of liability. Judicial interference at this stage risks converting the appellate process into a substantive review of issues that are yet to be investigated. In digital markets, where evidence of anti-competitive harm often emerges only after detailed inquiry, raising the threshold for investigation may significantly weaken enforcement. This concern is particularly acute in cases involving multinational digital corporations with substantial resources to engage in prolonged litigation.

The impact of NCLAT's approach on corporate accountability must also be assessed in terms

of regulatory deterrence. Competition law serves not only to punish past misconduct but also to deter future violations by signalling the consequences of anti-competitive behaviour. Interim stays and prolonged appellate proceedings can dilute this deterrent effect, potentially encouraging dominant firms to adopt aggressive business practices with the expectation of judicial protection. In the context of WhatsApp's privacy policy, the stay on investigation arguably delayed regulatory scrutiny of data-sharing practices that could have far-reaching competitive implications.

Furthermore, NCLAT's reasoning reflects a cautious judicial attitude towards the regulation of data-driven markets, often characterised by uncertainty and rapid technological change. While caution is understandable in the absence of clear legislative guidance, excessive restraint may impede the evolution of competition law to address new forms of market power. International experience suggests that competition authorities must be afforded a degree of flexibility to experiment with regulatory approaches in digital markets, subject to ex post judicial review rather than ex ante intervention.

From an institutional standpoint, the case highlights the need for clearer delineation of roles between regulators and appellate bodies. While NCLAT plays a vital role in upholding the rule of law, its jurisprudence must also align with the broader objectives of the Competition Act, including consumer welfare and market fairness. A more deferential approach at the investigative stage, coupled with rigorous review of final orders, may better serve the goal of corporate accountability.

In conclusion, NCLAT's role in *WhatsApp LLC v. CCI* illustrates the complex trade-offs inherent in appellate oversight of competition regulation. While the tribunal's intervention reinforces procedural safeguards, it also underscores the risk of weakening accountability mechanisms in digital markets. Striking an appropriate balance between judicial oversight and regulatory autonomy remains essential for the effective enforcement of competition law in India.

### **CONCLUSION AND SUGGESTIONS**

The examination of *WhatsApp LLC v. Competition Commission of India* provides valuable insights into the evolving role of the National Company Law Appellate Tribunal (NCLAT) in shaping corporate accountability within India's competition law framework. As digital markets

continue to expand and consolidate, the effectiveness of competition law enforcement increasingly depends on the institutional balance between regulatory authorities and appellate bodies. This research has demonstrated that while NCLAT plays an indispensable role in ensuring procedural fairness and adherence to the rule of law, its approach in cases involving dominant digital corporations must be carefully calibrated to avoid undermining regulatory objectives.

The WhatsApp case highlights the tension between judicial oversight and regulatory autonomy. On one hand, NCLAT's intervention reflects legitimate concerns regarding jurisdictional overlap, proportionality, and the protection of corporate rights. The tribunal's insistence on a clear competition law nexus and its caution against regulatory overreach underscore the importance of legal certainty in a system governed by statutory mandates. Such oversight is essential to prevent arbitrary action and to maintain confidence in the fairness of regulatory institutions.

On the other hand, the study reveals that early-stage appellate intervention, particularly in the form of interim stays on investigations, may weaken the enforcement capacity of the Competition Commission of India (CCI). In digital markets characterised by rapid innovation, network effects, and data accumulation, delays in regulatory scrutiny can entrench market power and render subsequent remedies ineffective. The deterrent function of competition law is compromised when dominant corporations are able to postpone investigations through prolonged appellate litigation. This dynamic risks creating an enforcement gap that undermines corporate accountability, especially in the absence of explicit statutory guidance on data-driven competition concerns.

The findings of this research suggest that NCLAT's role should evolve in response to the unique challenges posed by the digital economy. While appellate oversight remains essential, greater judicial deference to the CCI at the investigative stage may be warranted, particularly where the regulator has acted within its statutory mandate and followed due process. A distinction must be maintained between prima facie assessments and final determinations of liability, with substantive judicial review reserved for the latter. Such an approach would preserve regulatory flexibility while safeguarding corporate rights through robust appellate scrutiny at an appropriate stage.

From a policy perspective, the case underscores the need for legislative and institutional reforms to strengthen corporate accountability in digital markets. Clearer statutory provisions addressing the intersection of competition law and data governance would reduce interpretative uncertainty and guide both regulators and appellate bodies. Enhanced coordination between competition authorities and data protection regulators could further ensure coherent and effective oversight of digital corporations.

In conclusion, *WhatsApp LLC v. CCI* serves as a critical case study in evaluating the role of NCLAT in ensuring corporate accountability. The tribunal's intervention reflects the challenges of applying traditional appellate principles to emerging digital markets. For India's competition law regime to remain effective, a balanced approach is required—one that respects judicial oversight while empowering regulators to act decisively against anti-competitive conduct. Achieving this balance is essential not only for corporate accountability but also for the protection of consumer welfare and the integrity of competitive markets in the digital age.

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