

# **NAVIGATING THE LABYRINTH: DISSECTING CCI'S JURISDICTION ON DATA PRIVACY**

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## **INTRODUCTION**

The Competition Commission of India (hereinafter referred to as CCI) was established in the year 2003 with the primary aim of promoting and ensuring free and fair competition in the Indian Market. It plays a vital role in eliminating anti-competitive practices and promoting and safeguarding the interests of consumers. Over the years, the CCI has grappled with the persistent challenges of the jurisdictional dispute. These disputes have not only raised questions about the CCI's jurisdictional authority but also about the interplay between the regulatory bodies in India.

When the Digital Personal Data Protection Act, 2023 (hereinafter referred to as the DPDP Act) was passed, it sparked the debate on whether the CCI would have jurisdiction to decide matters concerning data privacy even though the DPDP Act explicitly established the Data Privacy Protection Board.

## **OVERLAP BETWEEN DATA PROTECTION ACT AND COMPETITION LAW**

The Digital Personal Data Protection Act, 2023 establishes data fiduciaries, which are entities or individuals that have a legal and ethical obligation to act in the best interest of the individual whose personal data they collect, process, or control. However, if the data is made publicly available by an individual whose data is collected then it will not be protected under DPDP. Hence, an individual needs to give his 'free consent' before a data fiduciary can process their data<sup>2</sup>.

In the case of *WhatsApp LLC v. CCI*<sup>3</sup>, the Supreme Court ruled that CCI will have jurisdiction over the data privacy matters, as WhatsApp was held in violation of Section 4 of the Competition Act, 2002. In the case, of *Matrimony.com v. Google LLC*<sup>4</sup>, the CCI referred data as an oil of the current century. Emphasizing on that it cannot be neglected that data is a special asset, thus it can be used by the companies as a parameter to access power. The

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<sup>2</sup> AZB Partners, <https://www.azbpartners.com/bank/the-digital-personal-data-protection-act-yet-another-jurisdictional-overlap/#fn1> (last visited July 6, 2024).

<sup>3</sup> WhatsApp LLC v. CCI 2022 SCC OnLine Del 2582.

<sup>4</sup> Matromony.com Limited v. Google LLC & Ors. Case No. 7 & 30 of 2012.

collection of data by the big-tech companies should be with ‘free consent’ otherwise it will be used as a tool to ascertain dominant position in the market. This falls within the purview of the Competition Act, 2002<sup>5</sup>.

Hence, it is clear from the above-mentioned explanation that requirement of consent on collection of the data, at least by the dominant entities is covered in both DPDP Act and Competition Act. While the DPDP Act seeks to prevent exploitation of the individual’s data whereas the Competition Act prevents dominant entities to exploit personal data for commercial advantage.

### **THE DISSECTION OF CCI’S JURISDICTION**

On navigating both sides of this labyrinth, one can come up with two lines of reasoning. Firstly, if the data fiduciary lacks market power, then, in that case, CCI will not have jurisdiction. In the case of ***Ramesh Chandra Sankla v. Vikram Cement***<sup>6</sup>, the court stated, ‘*if the jurisdictional fact does not exist, the tribunal cannot exercise the matter*’, therefore CCI jurisdiction is related to competition matters and anti-trust issues and the data privacy matter can be dealt by the Data Protection Board of India established under DPDP Act.

Now, talking about a situation where a data fiduciary has market power, wherein the data privacy concern and the competition-related issue cannot be looked at in a water-tight compartment. This situation creates a parallel jurisdiction between the CCI and the Data Protection Board. For example, in the WhatsApp case, since WhatsApp have substantial market power and it could use the data of people to gain an unfair advantage over its competitors, thereby abusing its position in the market, in this case, CCI shall have jurisdiction over the data privacy matter as the data privacy concern is directly related to competition and anti-trust issues.

Section 18 of the Competitions Act, 2002 highlights the duties of the Commission which states that the role of the CCI is to eliminate practices having adverse effects on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India<sup>7</sup>. Accordingly, it becomes the duty and responsibility of the Commission to eliminate practices in the market that have an

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<sup>5</sup> Taxmann.com,  
<https://www.taxmann.com/research/competition-law/top-story/105010000000023859/the-jurisdictional-quest-between-the-data-protection-and-anti-trust-law-in-india-experts-opinion> (last visited July 6, 2024).

<sup>6</sup> Ramesh Chandra Sankla v. Vikram Cement (2008) 14 SCC 58.

<sup>7</sup> The Competition Act, 2002, § 18, No. 12, Acts of Parliament, 2002 (India).

adverse effect on competition and promote and sustain competition so as to protect the interest of consumers and ensure freedom of trade

Section 62 of the Competition Act, 2002 states that “*The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force*”<sup>8</sup>. The Supreme Court in the case of **Telefonaktiebolaget L.M. Ericsson v. CCI**<sup>9</sup>, interpreted Section 62 of the Act and stated that the Competition Act is an additional legislative framework that works alongside other laws. Hence, the Competition Law is in addition to the DPDP Act, which means that the Competition Law will work alongside the DPDP Act.

In the case of **CCI v. Bharti Airtel**<sup>10</sup>, the Supreme Court stated that a specific sector body would firstly decide on the overlapping issue then the CCI could take over the matter if it involves anti-competitive conduct.

In **Ashoka Marketing Ltd. v. Punjab National Bank**<sup>11</sup>, the court held that the special statute would prevail over general law. Doctrine of Harmonious Construction applies, since there is a conflict of jurisdictional issues both the Competition Act and the DPDP Act can coexist in order to avoid any conflict CCI can take over once the proceedings under the DPDP Act have been concluded or the CCI has carried out the final decision rest at the Appellant Tribunal after the investigation proceedings.

## **CONCLUSION**

It is clear that the paradigm of data privacy overlaps with the DPDP Act and the Competition Law. The Competition Law should not be treated as in derogation of the DPDP Act.

The presence of the special law cannot completely oust the jurisdiction of the CCI if the dominant market entity uses the personal data of an individual to abuse its market power. Thus, if the best solution available in this regard is for the Data Protection Board and CCI to work harmoniously. The Data Protection Board could deal with the data privacy aspect and further, the CCI could take over the matter if it involves competition concerns.

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<sup>8</sup> The Competition Act, 2002, § 62, No. 12, Acts of Parliament, 2002 (India).

<sup>9</sup> Telefonaktiebolaget L.M Ericsson v. CCI, (W.P.(C) 464/2014).

<sup>10</sup> Competition Commission of India v. Bharti Airtel (2019) 2 SCC 521.

<sup>11</sup> Ashoka Marketing Ltd. v. Punjab National Bank [1991] 3 AIR 855.