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DELHI HIGH COURT RULING ON WHATSAPP'S PRIVACY POLICY – AN ATTEMPT TO BELL THE CAT

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WhatsApp - the most widely used mobile based messaging application has recently announced a change in its privacy policy. This generated concerns among many of its users and privacy advocates. According to the recent privacy policy which came into effect on September 25, 2016, the WhatsApp users' data would be collected and shared with its parent company Facebook for generating targeted advertisements for the users. The company had given 30 days window for its users since August 25, 2016 to opt out of this privacy policy if they wish to not share their data. However, this change in privacy policy of WhatsApp was in contrast to its initial policy of not sharing any of its users' data with its parent company Facebook.

It is a well known fact that the California based company 'WhatsApp' which started in January 2010 was purchased by the Social Media giant 'Facebook' on February 19, 2014 for a whopping sum of \$19.3 billion. However, when the merger was officially finalised on October 6, 2014 the price tag of the purchase was reported to be much higher at \$22 billion owing to the increased value of Facebook's stocks in the previous few months.¹

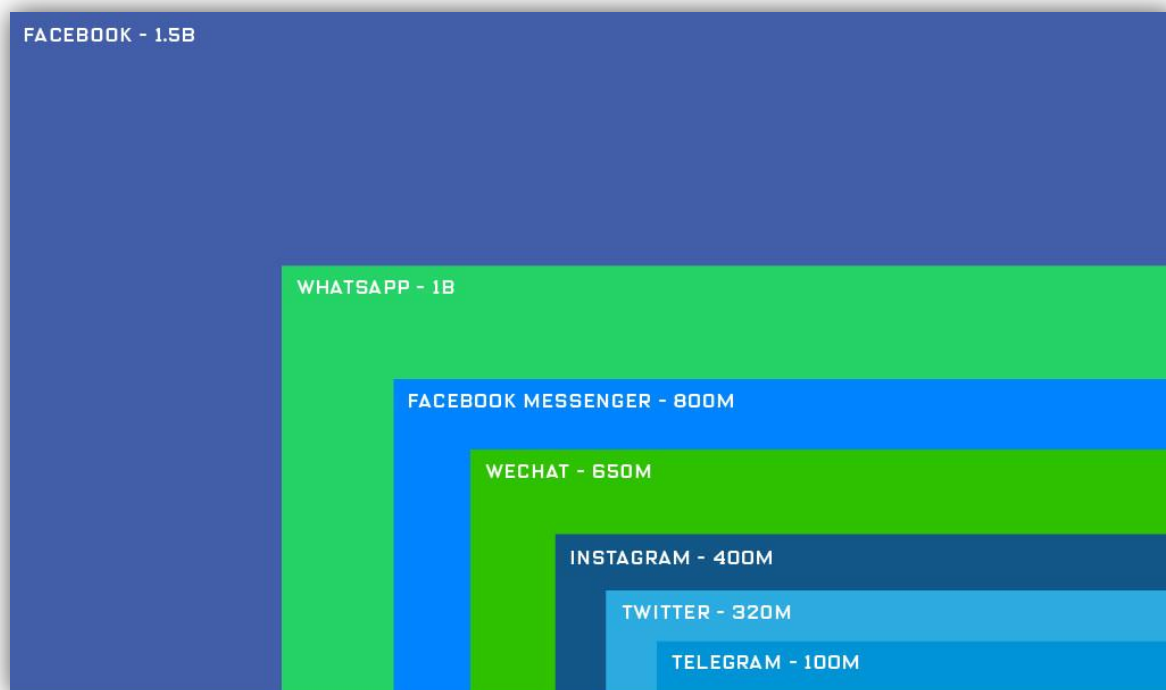
The enormous value of the purchase had raised many eyebrows around the world since the announcement of the deal and had also led to many questions related to the real intentions of Facebook behind such a lavish deal. In fact, the valuation of the deal was already regarded as lofty, as it was more than 19 times overpriced and generated doubts as to how far Facebook would go in order to get its money back. In order to clear such doubts, the Chief Executive Officer of Facebook, *Mark Zuckerberg* stated that his company was in no rush to make money from WhatsApp, or Facebook's other growing applications, until they reach 1 billion users. He stated that "*The right strategy is to*



focus on connecting the people before aggressively turning them into businesses,... Once we get to that scale, then we think they will start to become meaningful businesses in their own right.”²

It should be noted here that when Facebook made the deal in February 2014, the number of users in WhatsApp was around 450 million across the globe and the goal of one billion users in WhatsApp was reached on February 2016 according to an official announcement in WhatsApp’s Blog post.³

Image: The relative size of various social networks and communications services. With one billion users, WhatsApp is second only to the social network run by its parent company, Facebook.



Source: Cade Metz, “Forget Apple vs. the FBI: WhatsApp Just Switched on Encryption for a Billion People”, Wired, April 05, 2016, <https://www.wired.com/2016/04/forget-apple-vs-fbi-whatsapp-just-switched-encryption-billion-people/>, accessed on September 30, 2016.

Therefore, correlating the statement of *Mark Zuckerberg* in October 2014 and the increase in WhatsApp user statistics clearly reveal that the recent change in WhatsApp’s privacy policy was a well planned strategy to enable Facebook to divert the messaging app into the path of business and to regenerate the money that the company invested in its purchase.

While the company’s stand is clearly focused towards business, the countries around the world are concerned about its citizens’ privacy. For instance, Germany, which has more than 35 million WhatsApp users, has informed Facebook as well as WhatsApp to stop collecting and storing data on all its country’s users. The Hamburg Commissioner for Data Protection and Freedom of Information,

Johannes Caspar, even ordered Facebook on September 27, 2016 to delete all data that has already been forwarded from WhatsApp since August.⁴

In case of India, a Public Interest Litigation case (PIL) was filed in the Delhi High court by two students namely *Karmanya Singh Sareen* and *Shreya Sethi*, expressing concerns over the change in the company's terms and privacy policy in August 2016 accusing WhatsApp of "endangering" privacy of millions of users, and "severely compromising the rights of its users."⁵ WhatsApp has more than 70 million users across the country and is the most widely used messaging application in India. The ruling of the PIL case was announced on September 23, 2016 by a bench of Chief Justice of the Delhi High Court comprising of Justice *G. Rohini* and Justice *Sangita Dhingra Sehgal*. The bench ordered WhatsApp to delete data of users who choose to opt out of WhatsApp's policy changes before September 25, 2016. The ruling also asked WhatsApp to not share data collected before September 25 2016 with Facebook even for those users who did not opt out of WhatsApp's new policy, which came into effect on September 25, 2016.⁶

Although the Delhi High Court's decision is clear, it remains unclear as to how far WhatsApp and Facebook would comply with the court's verdict as the companies do not come under the legal jurisdiction of Delhi High court and therefore the court's ruling does not have a binding effect on them. Nevertheless, an official statement from the company's spokesperson to *Deccan Chronicle* states that: "*WhatsApp will comply with the order from the Delhi High Court. We plan to proceed with the privacy policy and terms update in accordance with the Court's order. The court's emphasis on the importance of user choice and consent is encouraging,*"⁷ In spite of such statements, knowing the global reach and business orientation of the company it remains unclear as to how much of this promise would actually transform into action.

Another important point to be noted in the Delhi High Court ruling is the fact that the judgement asked the government to look into the matter of introducing a **statutory regulatory framework** for instant messaging applications. Such a process, if picked up by Telecom Regulatory Authority of India (TRAI), would be a long drawn one but definitely a necessary move in order to inject some sort of regulation into this highly unregulated space. The process would mean a consultation paper will be issued seeking feedback on introducing the guidelines. Stakeholders would reply to that consultation paper, and these responses would be churned into a regulatory framework for all instant messaging applications operating within the ambit of the country irrespective of the location of their operations headquarters or servers.

However, the process may not be as simple as it sounds for one country to achieve. Therefore, it requires a multi-national approach by likeminded countries collaborating together in infusing regulation into the operations of the internet giants like Facebook and WhatsApp. In this aspect India, Brazil, Germany and France can collaborate with each other owing to their sheer size of user base as well as their common concern for privacy, safety and security of their respective country's citizens. Such a collaborative effort and a multi-national approach might have a compelling effect on the internet giants in regulating their operations in the future.

To conclude, it could be stated that the recent Delhi High Court ruling on WhatsApp was a welcome attempt to 'bell the cat' by India. However, if some regulatory actions are to be seen on the ground, then more strict regulatory policies are required from the highest level of the government and simultaneously a multi-national approach has to be followed as mentioned earlier. As the world is edging towards a complete 'digital revolution', it would be wise to regulate this space at the earliest in order to provide a safe and secure environment for the future.

(Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the position of the Centre for Air Power Studies [CAPS])

Notes

¹ Alexei Oreskovic, "Facebook's WhatsApp acquisition now has price tag of \$22 billion", *Reuters*, October 06, 2016, <http://www.reuters.com/article/facebook-whatsapp-idUSL2N0S11N520141006>, accessed on September 30, 2016.

² Sarah Frier, "Facebook \$22 Billion WhatsApp Deal Buys \$10 Million in Sales", *Bloomberg Technology*, October 29, 2014, <http://www.bloomberg.com/news/articles/2014-10-28/facebook-s-22-billion-whatsapp-deal-buys-10-million-in-sales>, accessed on September 30, 2016.

³ "One Billion", <https://blog.whatsapp.com/616/One-billion>, accessed on September 30, 2016.

⁴ Mohit Kumar, "Germany Bans Facebook from Collecting WhatsApp Data", *The Hacker News*, September 27, 2016, http://thehackernews.com/2016/09/whatsapp-facebook-privacy.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+TheHackersNews+%28The+Hacker+s+News++Security+Blog%29&_m=3n.009a.1332.wa0a08cx4.s36, Accessed on September 30, 2016.

⁵ Manish Singh, "Indian court orders WhatsApp to not share user data with Facebook collected before Sept. 25", *Mashable*, September 23, 2016, <http://mashable.com/2016/09/23/india-delhi-high-court-whatsapp-facebook/#XBb4mxyWAKql>, accessed on September 30, 2016.

⁶ Ibid.

⁷ "Will comply with Delhi High Court ruling: WhatsApp eases privacy woes", *Deccan Chronicle*, September 30, 2016, <http://www.deccanchronicle.com/technology/inothernews/300916/will-comply-with-delhi-high-court-ruling-whatsapp-eases-privacy-woes.html>, accessed on September 30, 2016.

