

Facebook abuse of dominance - will prosecution be recognised in California?

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Per their [media release of 14 March 2022](#), the Competition Commission referred to the Competition Tribunal for prosecution the social media group, Meta Platforms Inc (previously known as Facebook Inc), and its subsidiaries, WhatsApp Inc and Facebook South Africa for abuse of dominance.



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The Commission alleges that Facebook decided in or about July 2020 and expressed an ongoing intention to offboard Gov Chat and #LetsTalk, a technology startup that connects government and citizens, from the WhatsApp Business Application Programming Interface (WhatsApp Business API). In addition, Facebook imposed and/or selectively enforced exclusionary terms and conditions regulating access to the WhatsApp Business API, mainly restrictions on the use of data.

It is commendable that our government stands up against unilateral amendments to the terms and conditions of WhatsApp. While it is not yet known whether or not the referral to the Tribunal will be successful, it is high time that governments stand up to the large international companies / entities, to keep them accountable to their anti-competitive unilateral amendments to business structures and terms and conditions.



Facebook prosecuted for abuse of dominance

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What will be interesting to consider is the following:

- Should judgment and penalty be awarded by the Competition Tribunal against Facebook, Meta and Whatsapp, the judgment will need to be applied abroad as these entities hold the majority of their assets in California USA.

- What we need to consider is how one will apply any judgment handed down in SA in California, USA.
- Foreign judgments may be enforced in California in the same manner as California judgments are. However, before a foreign judgment may be enforced, it must be recognised by the California Courts.
- Therefore, there will be an application to USA courts to enforce the SA judgment there.
- Subject to some exceptions, California will recognise a foreign-country judgment to the extent that the judgment both: (1) grants or denies recovery of a sum of money; and under the law of the foreign country where rendered, is final, conclusive, and enforceable. Cal. Code of Civ. Proc. §1715(a). California, however, will not recognise a foreign-country judgment even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is for taxes, a fine, or a penalty. Cal. Code of Civ. Proc. §1715(b).

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