

DATE – 6<sup>th</sup>–7<sup>th</sup> & 28<sup>th</sup> Sep, 2025



# MAHARASHTRA NATIONAL LAW UNIVERSITY, CHHATRAPATI SAMBHAJINAGAR

*in collaboration with*

## COMPETITION COMMISSION OF INDIA

*Presents*

# 1<sup>st</sup> CCI-MNLUCS

## NATIONAL ANTITRUST MOOT COURT COMPETITION, 2025

# MOOT PROPOSITION

KNOWLEDGE & MEDIA PARTNER





## MOOT PROPOSITION

In the High Court of Dilli at New Dilli  
Writ Petition (Civil) No. 01 of 2025

### Memo of Parties

|                                                                                                                                                                                                                           |                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <b>DataNow Technologies Pvt. Ltd.</b><br><br><u>Regd. Office:</u><br>12th Floor, Aurum Cyber Park<br>Sector 43, New Satpura – 122002<br>State of Vindhya, Republic of Bharat                                              | <b>Petitioner No. 1</b> |
| <b>ConnectVerse Inc.</b><br><br>77 Infinity Loop, Suite 901<br>Palo City, Westlandia – 94027<br>United Federations of Artonia                                                                                             | <b>Petitioner No. 2</b> |
| <b>Fair Competition Authority of Bharat (FCAB)</b><br><br>Statutory Regulatory Authority under the Fair Competition Act, 2003<br>FCAB Bhawan, Plot No. 5<br>Knowledge Enclave<br>New Dilli – 110021<br>Republic of Bharat | <b>Respondent</b>       |

## Parties Involved



1. DataNow Technologies Pvt. Ltd. (“DataNow”) is a leading global technology company that operates a highly popular Over-the-Top (OTT) encrypted instant messaging platform. The application allows users to exchange text messages, voice and video calls, images, documents, and real-time location data over the internet. The platform also supports business messaging, file storage, and multi-device synchronization, enabling seamless use across smartphones, tablets, and desktops. Its end-to-end encryption technology has been widely credited with advancing user privacy in the early years of its operation. As of 2025, the platform commands an active user base exceeding 500 million in the Republic of Bharat alone, making it the most dominant service in the national instant messaging ecosystem by a substantial margin. The app’s wide adoption, intuitive interface, and early-mover advantage have contributed to strong network effects, creating significant entry barriers for new competitors.

2. In the year 2015, DataNow was acquired by ConnectVerse Inc. (“ConnectVerse”), a multinational conglomerate headquartered in Westlandia. ConnectVerse is the parent entity of a diverse digital empire spanning across social networking, online advertising, virtual commerce, cloud-based business services, and artificial intelligence. Its acquisition of DataNow was part of a larger strategy to create a unified digital ecosystem across messaging, social media, business engagement, and personalized advertising. Following the acquisition, ConnectVerse integrated certain backend systems, enabled cross-platform data analytics, and began exploring monetization models built on targeted advertising and user profiling—raising both commercial promise and regulatory scrutiny. The structural integration between DataNow and ConnectVerse’s broader digital suite lies at the heart of the present dispute.

The Fair Competition Authority of Bharat (FCAB) is the apex statutory body established under the Fair Competition Act, 2003, tasked with enforcing competition law across the Republic of Bharat. As an independent market regulator, FCAB is mandated to promote and sustain fair competition, prevent anti-competitive practices, protect the interests of consumers, and ensure freedom of trade in the markets of Bharat.



4. FCAB exercises jurisdiction over a wide range of sectors, including but not limited to digital markets, telecommunications, e-commerce, manufacturing, and financial services. Its regulatory powers include conducting investigations into allegations of abuse of dominant position, anti-competitive agreements, and combinations that may cause appreciable adverse effects on competition. The Authority also has the power to initiate suo moto inquiries based on information received from various sources, including the public, whistleblowers, or market observations.

5. FCAB is composed of a Chairperson and multiple Members, appointed by the Government of Bharat, who are experts in law, economics, public policy, and business. It functions through its investigative wing, headed by the Director General (Investigations), who is empowered to collect evidence, summon parties, and submit detailed reports to the Authority for further action.

6. Over the past decade, FCAB has increasingly focused on digital markets due to the growing concentration of data and market power among a few technology platforms. Recognizing the critical interplay between data privacy, consumer choice, and market competition, FCAB has adopted a forward-looking approach to regulate digital conduct that may adversely affect competition, innovation, or consumer autonomy.

### **Statement of Facts**

1. On 15th March 2016, DataNow Technologies Pvt. Ltd. issued a comprehensive revision of its Terms of Service and Privacy Policy, referred to as the “2016 Update.” This update marked a significant departure from its earlier user-centric privacy posture. Under the revised terms, DataNow introduced cross-platform integration features that enabled user data collected through its messaging platform to be shared with other digital services operated by its parent company, ConnectVerse Inc., including its social media, advertising, and business analytics divisions.

2. Crucially, users who had signed up prior to the 2016 Update were provided a one-time, time-bound "opt-out" option. This mechanism allowed existing users



to withhold consent for data sharing with ConnectVerse, thereby preserving the original privacy framework under which they had registered. However, no such option was made available to users who joined the platform after the update, for whom acceptance of the new data-sharing terms was mandatory.

3. Subsequently, in January 2021, DataNow announced a second major revision to its privacy framework—commonly referred to as the “2021 Update.” Unlike the 2016 Update, this version did not offer any opt-out provision, making consent to the revised terms a precondition for continued use of the platform. Users were notified that failure to accept the updated terms would result in limited or discontinued access to the service.

4. The 2021 Update significantly expanded the scope of permissible data-sharing with ConnectVerse’s corporate ecosystem. The categories of data included not only traditional identifiers such as contact lists and usage patterns but also metadata, payment and transactional data, device-level information, and records of user interactions with businesses employing ConnectVerse’s enterprise solutions. The policy language used broad and open-ended phrases such as “including but not limited to,” raising concerns about the granularity and boundaries of the information collected and shared.

5. In response to growing criticism, DataNow asserted that the 2021 Update was limited in application to those users who had either accepted the 2016 Update or signed up subsequently. It further claimed that the update was intended to enhance transparency, offer clarity regarding business communication features, and did not compromise the content of personal or end-to-end encrypted messages.

6. Nonetheless, the rollout triggered widespread public backlash. Civil society groups, digital rights activists, and consumers expressed strong concerns regarding forced consent, erosion of privacy, asymmetry of information, and lack of meaningful user control. Critics argued that the absence of any granular consent mechanism or opt-out choices, combined with vague and expansive data categories, effectively forced users into a “take-it-or-leave-it” arrangement, contrary to principles of digital autonomy.



7. In light of these developments, multiple constitutional challenges were filed before the Supreme Court of Bharat, contending that the 2021 Update violated the fundamental right to privacy guaranteed under Article 21 of the Constitution.

8. Simultaneously, the Fair Competition Authority of Bharat (FCAB) took suo moto cognizance of the matter and formed an opinion that DataNow is dominant in the relevant market for OTT messaging apps through smartphones in India. It further found DataNow to have has prima facie contravened the provisions of Section 4 of the Fair Competition Act, 2003, through its exploitative and exclusionary conduct, in the garb of policy update, and noted that a thorough and detailed investigation is required to ascertain the full extent, scope and impact of data sharing through involuntary consent of users.

9. Accordingly, noting potential concerns under competition law arising from abuse of dominant position and invoking its powers under Section 26(1) of the Fair Competition Act, 2003, the Authority issued a formal direction to the Director General (Investigations) to initiate a detailed inquiry into whether DataNow's conduct amounted to imposition of unfair terms, denial of consumer choice, cross-platform data-sharing with its parent entity, ConnectVerse or leveraging of dominance in one market to strengthen its position in another, in contravention of Section 4 of the Act.

10. It may be pointed out that, at the time of passing the order under Section 26(1) of the Fair Competition Act, 2003, the FCAB was functioning with an Acting Chairperson and a single Member, thereby falling short of the statutorily prescribed quorum of three Members. However, the validity of the said action was sought to be justified by the provision contained in Section 15 of the Fair Competition Act, 2003, which states that no act or proceeding of the Commission shall be deemed invalid merely on account of any vacancy in, or defect in the constitution of, the Commission. In addition, the doctrine of necessity was invoked to justify continuity of regulatory functioning citing various pronouncements of the Hon'ble High Courts and the Hon'ble Supreme Court, wherein such doctrine has been upheld to prevent institutional paralysis and preserve the larger public interest.



11. While passing the aforesaid order directing investigation, no notice or hearing was provided to the Petitioners.

## **Challenge Before High Court**

Aggrieved by the aforesaid direction issued by FACB opening investigation, DataNow and ConnectVerse filed writ petition before the Hon'ble High Court of Dilli at New Dilli.

### **Issues for Consideration**

1. Whether the investigation order issued by the Fair Competition Authority of Bharat (FCAB) is vitiated by the lack of statutory quorum, and whether the invocation of the doctrine of necessity to justify the proceeding was legally tenable under the Fair Competition Act, 2003. This issue concerns the procedural validity of FCAB's suo moto directive to the Director General under Section 26(1) of the Fair Competition Act, 2003. It raises questions about whether the Authority was properly constituted at the time of issuing the order and whether, in the absence of quorum, the reliance on the doctrine of necessity to proceed was legally permissible and compliant with principles of institutional integrity, natural justice, and statutory interpretation.
2. Whether the Fair Competition Authority of Bharat (FCAB) was legally obligated to issue a prior notice or afford an opportunity of hearing to the Petitioners before passing the investigation order under Section 26(1) of the Fair Competition Act, 2003, and whether the absence of such procedural safeguards renders the said order invalid.
3. Whether the FCAB's suo moto initiation of investigation into the 2021 Update violates the principles of judicial discipline, given the pendency of constitutional challenges before the Supreme Court. This issue invites analysis of whether the FCAB should have exercised institutional restraint in deference to parallel proceedings concerning the same subject matter, particularly the right to privacy under Article 21. It also raises the broader question of concurrent jurisdiction between regulatory authorities and



constitutional courts and whether FCAB's actions amounted to judicial overreach or were within its independent mandate under competition law.

4. Whether the conduct of DataNow, in enforcing the 2021 Update, constitutes an abuse of dominant position under Section 4 of the Fair Competition Act, 2003. This issue examines whether DataNow, as a dominant enterprise in the OTT messaging market in Bharat, leveraged its market power to impose unfair conditions on users, limit consumer choice, and create entry barriers for competitors. It further invites a legal and economic analysis of lock-in effects, network externalities, and leveraging across markets as forms of exploitative or exclusionary conduct prohibited by the Act.

5. Whether the imposition of forced consent and non-granular data-sharing policies under the 2021 Update amounts to an unfair trade practice and undermines consumer sovereignty under competition jurisprudence. This issue interrogates whether the “take-it-or-leave-it” nature of the updated terms without offering users meaningful opt-out options, purpose limitation, or data minimization—violates the principles of informed consent and user autonomy. It further requires a determination of whether such practices degrade quality of service, a recognized non-price parameter of competition.

6. Whether ConnectVerse, as the parent company of DataNow, can be subjected to competition investigation despite not being the direct issuer of the 2021 Update. This issue focuses on the question of attribution of liability within corporate groups. It examines whether FCAB's inclusion of ConnectVerse in the investigation—based on its potential role in processing or benefitting from user data collected by DataNow—meets the legal thresholds for economic unit doctrine, enterprise liability, or decisive influence under competition law.

7. To what extent can data privacy concerns and informational asymmetries be considered as non-price parameters of competition within the analytical framework of the Fair Competition Act, 2003. This issue explores the evolving doctrine that privacy, transparency, and control over personal data are elements of quality-based competition, particularly in digital markets. It invites analysis of whether degradation in data protection standards—such as broad, vague, or excessive data-sharing—can constitute harm to competition even in the absence of price-related effects.

## Submissions of the Petitioners



1. The Fair Competition Authority of Bharat (FCAB) erred in invoking the doctrine of necessity to issue the investigation order despite lacking the statutory quorum, rendering the action ultra vires and procedurally unsustainable.
2. The Petitioners submit that at the time of passing the impugned order under Section 26(1) of the Fair Competition Act, 2003, FCAB did not have the requisite number of members constituting a valid quorum as mandated under Section 15 of the Act read with the relevant provisions of the FCAB (Conduct of Business) Regulations, 2004. The Authority's reliance on the doctrine of necessity—a constitutional exception developed for rare, unavoidable circumstances—was unwarranted and cannot be extended to bypass statutory requirements or institutional safeguards. The Petitioners argue that no emergent or exceptional situation was shown to exist justifying such invocation, and the doctrine cannot cure a jurisdictional defect resulting from institutional incompleteness. The order, having been passed by an improperly constituted authority, is thus void ab initio and liable to be quashed.
3. The FCAB's suo moto action violates the principle of judicial discipline, given the concurrent and pending adjudication of privacy-related issues before constitutional courts.
4. The order passed by the FCAB was issued without affording any opportunity of hearing to DataNow and ConnectVerse, and is therefore in gross violation of the principles of natural justice.
5. The Petitioners contend that critical issues relating to the legality, proportionality, and constitutional validity of the 2021 Update—including the right to privacy, user consent, and data protection norms—are already sub judice before the Supreme Court of Bharat. In such a context, FCAB's decision to initiate a parallel inquiry into the same factual matrix amounts to regulatory overreach, offends the principle of comity, and risks producing conflicting determinations. The Petitioners submit that the Authority ought to have exercised institutional restraint and deferred its inquiry until the constitutional courts had rendered their verdicts on the foundational rights questions involved.



6. The FCAB lacked jurisdiction to direct an investigation into the 2021 Update, as its concerns lie outside the legitimate scope of competition law.

7. The Petitioners argue that the FCAB has mischaracterized privacy and consent issues—which are fundamentally questions of constitutional law and data regulation—as matters of competition. The Petitioners assert that the alleged harms cited by the Authority relate primarily to informational privacy, transparency, and data ethics, none of which independently fall within the elements of “abuse” under Section 4 of the Act. The FCAB’s assumption of jurisdiction in such matters not only stretches the statutory mandate beyond permissible limits but also undermines sectoral coherence, especially in the absence of a dedicated data protection authority.

8. ConnectVerse has been wrongly implicated in the investigation despite having no direct nexus with the 2021 Update, violating principles of corporate separateness.

9. The Petitioners submit that the 2021 Update was solely authored, issued, and enforced by DataNow, which operates independently in Bharat under a licensed corporate structure. ConnectVerse, being the parent entity located offshore, has not played any direct operational or legal role in the formulation or imposition of the updated terms and conditions. The mere fact of corporate affiliation cannot be the basis for dragging a foreign holding company into a competition inquiry in the absence of decisive influence, direct participation, or control over day-to-day commercial policy. The inclusion of ConnectVerse in the investigation, therefore, lacks factual foundation and amounts to vicarious liability without legal basis.

### **Submissions by the Fair Competition Authority of Bharat (FCAB)**

1. The invocation of the doctrine of necessity was lawful and justified in the interest of preserving institutional continuity and preventing regulatory paralysis.

2. The Respondent submits that while the Fair Competition Act, 2003 prescribes a quorum requirement under Section 15 for the discharge of certain statutory .



functions, exceptional circumstances can warrant invocation of the doctrine of necessity—a well-recognized principle under both constitutional and administrative law. In the absence of a full bench due to unforeseen vacancies and pending appointments, FCAB faced a situation where inaction would result in regulatory void and potential irreversible harm to the competitive process in digital markets. The doctrine, rooted in the maxim “that which is otherwise not lawful is made lawful by necessity”, has been upheld by the Hon’ble Supreme Court in various cases, where the courts recognized that necessity may justify deviation from formal procedures to uphold broader institutional purposes. FCAB submits that the doctrine was invoked narrowly, proportionally, and in good faith to protect public interest, preserve evidence, and prevent market distortion during a critical enforcement window.

3. The direction to investigate under Section 26(1) of the Fair Competition Act, 2003 is purely administrative and preliminary in nature, and does not determine any legal rights or liabilities of the Petitioners at this stage.

4. FCAB respectfully submits that the impugned order is a non-adjudicatory, departmental communication directing the Director General (Investigations) to conduct a fact-finding exercise based on a prima facie view. Such orders under Section 26(1) do not attract the application of audi alteram partem, nor do they entail any civil consequences. The investigation itself does not amount to a finding of guilt or liability and merely initiates the statutory process of inquiry that is subject to subsequent procedural safeguards, including notice, hearing, and adjudication under the Act. Accordingly, the Petitioners’ challenge is premature, speculative, and intended to stall a lawful investigation.

5. The matter squarely falls within FCAB’s statutory jurisdiction, particularly in view of issues concerning data concentration, market foreclosure, and privacy as a parameter of non-price competition.

6. FCAB submits that the crux of the investigation pertains to whether DataNow, by virtue of its entrenched market dominance, has imposed unfair terms on consumers through the 2021 Update, thereby reducing quality of service, foreclosing the market to new entrants, and leveraging its position across



adjacent digital sectors via cross-platform data processing. The competition regulator is empowered to assess unilateral or concerted conduct that affects market structure, consumer welfare, or entry conditions, even where overlapping regulatory domains exist. The issue at hand is not merely one of privacy in isolation, but of how data asymmetry, opacity, and denial of consumer choice may serve as tools of exclusionary or exploitative behavior—core concerns under Section 4 of the Fair Competition Act, 2003.

7. There is no legal or constitutional bar on FCAB proceeding with its statutory functions during the pendency of constitutional or civil proceedings before higher courts. FCAB respectfully contends that the pendency of litigation before the Hon'ble Supreme Court concerning constitutional validity of data policies does not oust or freeze its jurisdiction under the Fair Competition Act, 2003. Jurisdiction under competition law is independent, concurrent, and aimed at addressing market-based harms. Citing rulings of the Hon'ble Supreme Court, it was contended that regulators must act within their respective domains, and mere factual overlap with proceedings before other forums does not amount to res judicata, nor does it impose a doctrine of subordination. FCAB has taken due note of the pending petitions and has confined its inquiry to issues of market power, consumer harm, and anti-competitive conduct, which are distinct from the constitutional rights arguments advanced before the superior courts. To stay its hand in such circumstances would amount to abdication of statutory duty.

### **Prayer**

The Petitioners, having been aggrieved by the investigation order dated issued by the Fair Competition Authority of Bharat (FCAB) under Section 26(1) of the Fair Competition Act, 2003, prayed before the Hon'ble High Court of New Dilli for the following reliefs:

(i) That the Hon'ble Court may be pleased to quash and set aside the impugned investigation order on the ground that it is arbitrary, ultra vires, and procedurally invalid due to lack of quorum and improper invocation of the doctrine of necessity;



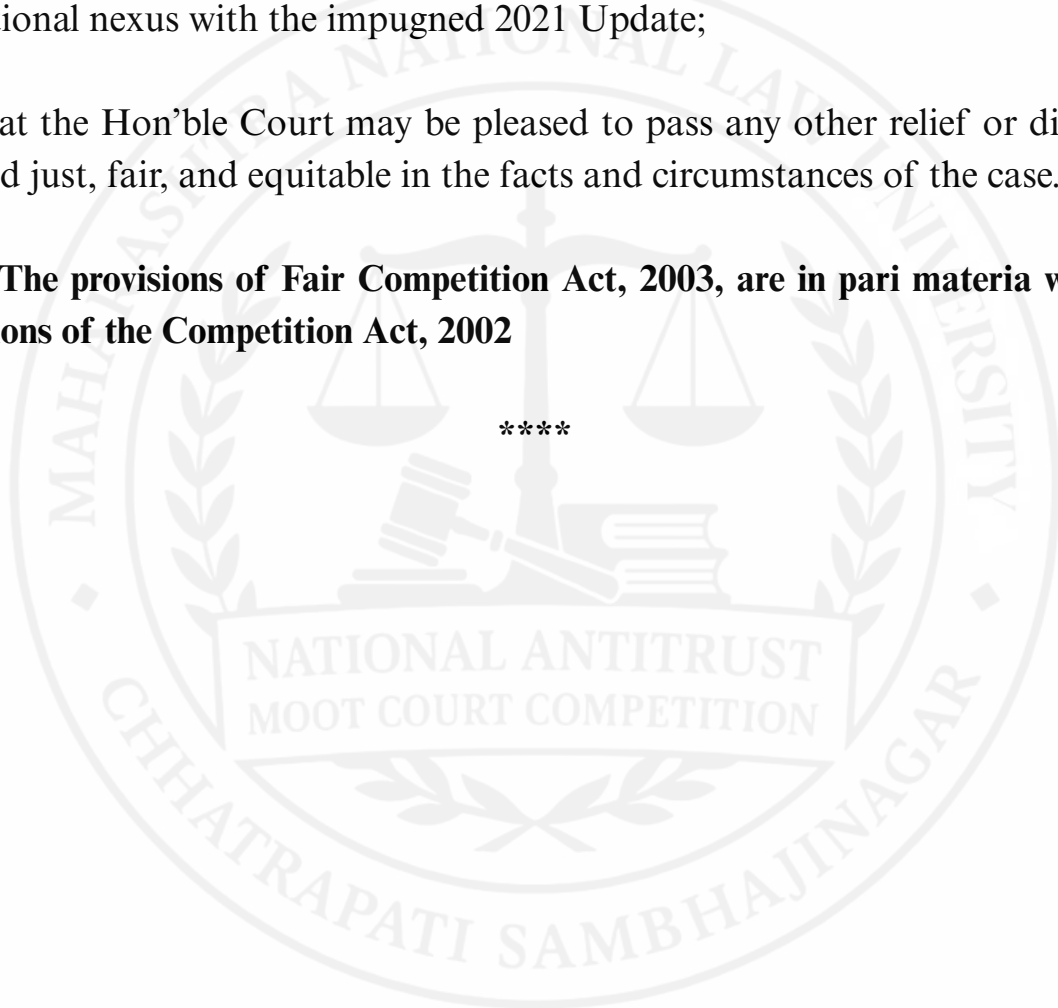
(ii) That the Hon'ble Court may declare that FCAB acted beyond its jurisdiction by initiating a suo moto inquiry into issues that are already pending adjudication before constitutional courts and lie outside the scope of competition law;

(iii) That the Hon'ble Court may be pleased to hold that ConnectVerse has been wrongfully impleaded in the investigation in the absence of a direct legal or operational nexus with the impugned 2021 Update;

(iv) That the Hon'ble Court may be pleased to pass any other relief or direction deemed just, fair, and equitable in the facts and circumstances of the case.

**Note: The provisions of Fair Competition Act, 2003, are in pari materia with the provisions of the Competition Act, 2002**

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# **1<sup>ST</sup> CCI-MNLUCS NATIONAL ANTITRUST MOOT COURT COMPETITION 2025**

