



State of Israel  
The Consumer Protection and Fair Trade Authority



Jerusalem, May 13, 2021

Mr. Will Cathcart  
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RE: **WHATSAPP POLICY UPDATE – MAY 15, 2021**

In January 2021 WhatsApp LLC (hereinafter: the company) announced an update in the terms of service and privacy (hereinafter: the update) regarding the WhatsApp application (hereinafter: the application), which will take effect on May 15, 2021.

According to the announcement, the company's policy is that a consumer who does not approve the update, will not be able to use the application from a certain date, which has not yet been published (hereinafter - the policy).

In the last two weeks, a dialogue has been held with the company's representatives regarding the nature of the update and regarding the company's policy. Although it was apparent from the discussion, that the cessation of use will be gradual, but ultimately it will not be possible to use the messaging and conversations interface of the application.

Without detracting from difficulties and concerns regarding other aspects that were raised in our discussion (and although we already take the position that the change regarding correspondence with WhatsApp Business accounts, where Facebook is the business' service provider, is a significant change for users and consumers), we would like to focus this letter on the company's policy whereby **a consumer that does not agree to approve the update, will not be able to use the application**. Our position vis-à-vis this policy is not influenced by the question of whether the current update is material or not.

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It is the position of the Israel Consumer Protection and Fair Trade Authority (hereinafter: the Authority), that this policy violates the Israel Consumer Protection Law, 1981 (hereinafter: the Law) and more specifically section 3(a) of the law that states as follows:

"A business shall not do, by act or by omission (in this section: act), in writing or orally or in any other way, anything that may impair a consumer's ability to make a decision whether to engage in a transaction with him, in a way that negates the consumer's freedom of engagement or materially infringes on his freedom of engagement (hereinafter: exerting unfair influence)".

The Authority considers the company's policy as an unfair influence especially in circumstances where the company and the application have significant market power and the consumer is significantly bound to the application, inter alia, due to long-term use of the service, the existence of shared groups (network effect), the extensive personal information stored in it and the limited ability to transfer it to other instant messaging applications. This all amounts to an act that may impair the consumer's ability to make a decision whether to approve the update in a manner that materially infringes on his freedom of choice. The consumer's consent in these circumstances to the approval of the update ,while the alternative is to block the use of the application altogether, is not free consent but consent without choice and under pressure.

The abovementioned, does not constitute a general position regarding the ability of a business in an ongoing transaction to update its terms from time to time. As explained above, the policy violates the law in the circumstances described therein - the ability of a business in an ongoing transaction to unilaterally deny a consumer the right to continue using the service, insofar as he does not agree to approve terms/updates in the transaction, in circumstances where the business has significant market power and the consumer is significantly bound to the transaction.

Whereas we therefore request that the company refrain from this policy regarding consumers in the State of Israel and immediately announce that the continued use of the application is not conditional on the approval of the update.

The Authority's position is that the Israeli Consumer Protection Law applies in relation to the Company's policy toward the consumer public in the State of Israel.



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Since this policy will take effect on May 15, 2021, I request that we will be notified of the Company's position as to our request and no later than the date of entry into force as stated.

This letter does not preclude the possibility of enforcing the sanctions provided in the relevant laws regarding this violation.

Michael Atlan, Adv.  
Head of the Authority

CC: Yannick Carapito, Director and Associate General Counsel, WhatsApp LLC