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**ABUSE OF DOMINANCE POSITION BY META FAMILY IN
VENTURING FROM SOCIAL MEDIA TO E-COMMERCE IN
INDIA – An Analysis**

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ABUSE OF DOMINANCE POSITION BY META FAMILY IN VENTURING FROM SOCIAL MEDIA TO E-COMMERCE IN INDIA — An Analysis

*Shraddha Tiwari**

[Abstract: In the digital age, the profound transformations taking place in the convergence of social media and e-commerce have given rise to a complex web of legal and economic challenges. This research paper delves into the multifaceted transition of the Meta Family from iconic social media platforms to influential players in India's burgeoning e-commerce landscape. The primary objective is to scrutinise whether their actions constitute an abuse of dominance under the Competition Act 2002 and to assess the economic impact on the Indian market. The study commences by exploring the legal landscape, explicating the provisions of the Competition Act 2002 and their applicability. It lays the groundwork for analysing whether Meta Family's actions are in violation of competition law. The criteria for abuse of dominance, notably market power and consumer harm, serve as a litmus test for evaluating the alignment or deviation of Meta Family's actions with these criteria. Subsequently, the paper shifts its focus to the economic impact of Meta Family's e-commerce ventures in India. Data and evidence on the economic benefits brought about by their initiatives are presented, including increased online retail sales, job creation in the e-commerce sector, and the proliferation of digital marketing opportunities. The discussion further explores how these benefits have influenced the Indian market, fostering convenience, expanding business horizons, and generating economic opportunities. An evaluation of the positive and negative economic effects stemming from the Meta Family's actions elucidates a balanced perspective. While their endeavours have certainly unlocked economic potential, concerns regarding market distortion, reduced competition, and data privacy implications warrant careful consideration. The culmination of this research is a comprehensive assessment of whether the Meta Family's actions align with or deviate from the criteria for abuse of dominance and how they impact competition and the economy in India. The conclusions drawn from this analysis have far-reaching implications for competition law and e-commerce in India. They underscore the need for agile regulatory frameworks that can adapt to the evolving digital landscape while promoting fair competition, safeguarding consumer welfare, and fostering innovation. Proactive engagement and cooperation between regulators and tech giants are essential to charting a path forward that ensures India's thriving, competitive, and inclusive digital ecosystem.]

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I

Introduction

In the modern digital landscape, the rapid evolution of technology and the interconnectedness of social media and e-commerce platforms have transformed the way people interact and conduct business. The metamorphosis of digital giants like the Meta Family, which encompasses Facebook, Instagram, WhatsApp, and Twitter (now known as X), is emblematic of this transition. What once started as social media platforms for connecting friends and sharing personal updates have now ventured into the realm of e-commerce, offering a plethora of opportunities for users to engage in online buying and selling, digital marketing, and social commerce. In doing so, Meta Family's transition from pure social media to multifaceted digital marketing and e-commerce platforms raises complex legal and economic questions that warrant meticulous examination.

This research paper embarks on an analysis of Meta Family's expansion into e-commerce and the economic ramifications of this transformation within the context of the Indian market. The central thesis of this study is to establish that while the economic benefits of Meta Family's diversification into e-commerce are undeniable, it is accompanied by a potential abuse of a dominant position within the Indian digital space. The abuse of dominance, if established, would contravene the provisions of the Competition Act 2002, which is aimed at ensuring fair competition and preventing anti-competitive practices.

The notion of e-commerce in India has witnessed exponential growth, and the participation of tech giants like Meta Family further underscores the significance of this phenomenon. Their foray into digital marketing, Facebook Marketplace, Instagram's role in facilitating online sales, and WhatsApp groups becoming hubs for commodities trading are significant examples of how these platforms have evolved from merely connecting users to creating substantial economic opportunities for businesses and individuals alike.¹ However, this transformation has not transpired without concerns related to fair competition, consumer welfare, and market access, raising crucial questions about the boundaries and responsibilities of these tech behemoths.

This research paper, therefore, delves into a multi-faceted inquiry. It examines the actions and strategies employed by the Meta Family to transition into e-commerce, analyses the economic impact of these changes in the Indian context, and assesses whether these actions result in an abuse of dominance in contravention of competition laws. It is our objective to offer a nuanced and informed perspective on

¹ *M/s Shubham Sanitarywares v. Hindustan Sanitarywares & Industries (HSIL) Ltd. Ors.*, Case No. 99 of 2013.

the implications of Meta Family's journey from social media to e-commerce, highlighting both the potential benefits and the legal concerns associated with this evolution. In doing so, the researcher aims to contribute to the ongoing dialogue surrounding competition law, the digital economy, and the regulation of tech giants in the twenty-first century.

To achieve this goal, the subsequent sections of this research paper will meticulously analyse the Meta Family's actions, evaluate their compliance with the Competition Act 2002, and provide a balanced assessment of the economic effects of their evolving role in the Indian digital landscape. This research endeavours to offer insights and recommendations that may inform future regulatory and policy decisions in this rapidly changing environment.

Methodology

The methodology employed for this research combines a multifaceted approach to comprehensively investigate the abuse of dominance by the Meta Family in their transition from social media to e-commerce and its economic impact in India. The researcher will use a qualitative research design to explore this complex issue. Data will be primarily collected through document analysis, content analysis of Meta Family's platforms, and in-depth case studies of specific instances in India. These methods will provide a deep understanding of the legal and economic implications of the Meta Family's transformation. The choice of the Competition Act 2002 as the legal framework for analysis is justified by its relevance to competition law in India. The Researcher will examine the pertinent provisions within this act to assess the legality of the Meta Family's actions, particularly with regard to abuse of dominance. To evaluate the economic impact in India, the researcher will employ an economic analysis that involves the examination of relevant data, market trends, and statistics. This evaluation will consider factors such as market growth, employment, consumer welfare, and market competition, allowing us to gauge the broader effects of Meta Family's evolution on the Indian economy. The Abuse of Dominance by Meta Family will be a central focus of this research. The Researcher will delve into their actions and strategies, analysing how these actions may have resulted in an abuse of their dominant position within the Indian digital landscape. Our research aims to offer a comprehensive and well-informed analysis of this multifaceted issue, considering both the legal and economic aspects of the Meta Family's transformation.

II

Abuse of Dominance by Meta Family

In the famous European case of *Hoffmann-Law Roche*² decided upon only 2 years later, the ECJ dealt with the conceptualisation of market dominance and defined it as 'a position of economic strength'³ enjoyed by a relevant corporation with the power to function independently and in a manner that prevents the functioning of a competitive market. This was reiterated in the case of *AstraZeneca v. Commission [2010]*⁴ wherein it was added that a dominant power must be able to hold high prices. An 'undertaking' has also been defined under the European Union Law, in the case of *Höfner and Elser v. Macrotron*⁵, as that which includes any organisation involved in economic activity, irrespective of its legal status or the manner in which it is sponsored.

The European Commission, for establishing dominance, has relied upon multiple factors, including market shares as the first and foremost indicator of dominance. In the case of *KZO Chemie v. Commission*⁶, the presumption that 50% of market share being held by the company results in a presumption of dominance was upheld, and further added that to escape the route of Article 102, the onus of proof against domination lies upon the company itself, but more on this aspect will be covered in the later sections of this essay. However, it must be noted that dominance *does not call for penalties* within the EU Anti-trust laws.

The abuse of dominance by Meta Family represents a complex issue that necessitates an examination of both Indian and international precedents, as well as pertinent data, to provide a comprehensive understanding of their actions and their consequences on competition.⁷

In India, ongoing cases like the Google antitrust investigation initiated by the Competition Commission of India (CCI) highlight how regulatory authorities are scrutinising the actions of tech giants. This serves as a pertinent precedent for evaluating whether Meta Family's transition from social media to e-commerce may infringe upon competition laws as defined in the Competition Act 2002.⁸

² *Hoffmann – Law Roche v. Commission*, Case 85/76, ECR 461, (1979).

³ *British Airways v. Commission*, Case T-219/99, ECR II-5917, (2003).

⁴ *AstraZeneca AB and AstraZeneca plc v. European Commission*, Case T-321/05, ECR II-2805, (2010).

⁵ *Hoffmann – Law Roche v. Commission*, Case 85/76, ECR 461, (1979).

⁶ *Akzo Chemie BV v. Commission*, Case C-62/86, ECR I-3359, (1991).

⁷ Re: *Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited*, Case No. 40 of 2019 (Competition Commission of India, 13/01/2020).

⁸ *Ashish Ahuja v. Snapdeal and Anr.*, Case No. 17 of 2014 (Competition Commission of India, 06/11/2014).

Furthermore, the rivalry between Flipkart and Amazon within the Indian e-commerce market offers insight into the competition and market dynamics, demonstrating how the strategies and dominance of these tech giants can impact the competitive landscape.

On the international stage, the European Commission's case against Google in 2017, specifically regarding the Google Shopping service, exemplifies how regulatory authorities have dealt with allegations of abuse of dominance in online markets. Similarly, the *Facebook v. FTC case* stemming from the Cambridge Analytica scandal underscores how tech companies' data practices can raise competition and privacy concerns, potentially resonating with Meta Family's data utilisation.⁹

Data and statistics are also integral in this analysis. Data on the rapid growth of e-commerce in India, including market size and the increasing share of e-commerce in retail, underscores the economic significance of the e-commerce sector. Additionally, statistics related to Meta Family's user base and market share in India provide insights into their dominant position, which is a key element in assessing potential abuse of dominance.

Incorporating these case laws and data into the research paper enriches the analysis, offering real-world examples and quantifiable evidence to underscore the potential implications of Meta Family's actions on competition in India and the broader digital landscape. By examining both the legal precedents and the statistical insights, the research endeavours to present a holistic perspective on the evolving role of tech giants like Meta Family in shaping markets and competition.

III

Competition Law Analysis

The competition law analysis is a pivotal component of this research, as it provides a legal framework for assessing Meta Family's actions in their transition from social media to e-commerce, specifically in the context of the Competition Act 2002. The analysis encompasses several key parameters:

⁹ Raychaudhuri, T. (2020) "Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence", *Competition Commission of India Journal on Competition Law and Policy*, 1, pp. 1-27.
<https://ccijournal.in/index.php/ccijoelp/article/view/5>.

Relevant Provisions of the Competition Act 2002 and their Applicability

The Competition Act 2002¹⁰ serves as the foundational legal framework for assessing competition-related matters in India. It encompasses various provisions pertinent to this study. Section 4 of the Act pertains to the abuse of a dominant position, providing the legal foundation for evaluating Meta Family's actions. This section prohibits enterprises with a dominant position from engaging in practices that have an appreciable adverse effect on competition within India. Section 4(2)¹¹ enumerates certain practices that are considered abusive, including imposing unfair or discriminatory conditions, predatory pricing, and leveraging a dominant position in one market to enter or protect another. These provisions are central to determining whether Meta Family's actions, such as the integration of e-commerce features within their platforms, constitute an abuse of dominance.¹² Furthermore, Section 3 of the Act, which deals with anti-competitive agreements and arrangements, may also be relevant if Meta Family is found to have engaged in anticompetitive collaborations or exclusivity agreements.

Assessment of Meta Family's Actions for Abuse of Dominance

To assess whether the Meta Family's actions amount to an abuse of dominance, it is imperative to scrutinize their behaviour in the Indian market. Key factors include their market share and dominance within the social media and e-commerce sectors, the impact of their actions on competition, and any evidence of unfair or discriminatory practices.¹³ The conduct of Meta Family, such as promoting their e-commerce features, could be examined for practices like leveraging their dominant position to enter or protect another market or engaging in exclusionary conduct that hinders the entry of competitors. Any such practices would be evaluated for their compliance with Section 4 of the Competition Act.¹⁴

Comparison with Legal Precedents and Case Studies

Comparing the Meta Family's actions with legal precedents and case studies is vital for contextualising their behaviour within the broader landscape of competition law. Reference to Indian and international cases, such as the ongoing Google antitrust case in India or the European Commission's case against Google, provides valuable insights into how regulators have approached allegations of abuse of

¹⁰ The Competition Act, 2002 (Act 12 of 2003).

¹¹ S. 4(2) (a)(i), The Competition Act, 2002.

¹² CCI (2020). Market Study on E-Commerce in India: Key Findings and Observations. Competition Commission of India, https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-one-Commerce-in-India.pdf.

¹³ *American Tobacco Co., et. al. v. United States* 328 US 781.

¹⁴ *XYZ v. Alphabet Inc*, Case No. 07 of 2020 (Competition Commission of India, 09/11/2020).

dominance by tech giants. These cases can serve as benchmarks for assessing the legality and competitive implications of the Meta Family's actions. By drawing parallels and distinctions with such precedents, the analysis can shed light on the unique characteristics and challenges posed by the Meta Family's transition from social media to e-commerce within the Indian legal context.

The competition law analysis, grounded in the provisions of the Competition Act 2002, aims to ascertain whether Meta Family's actions align with the principles of fair competition and, if not, to delineate the potential legal consequences, taking into account both Indian and international precedents.¹⁵ This analysis is crucial in determining the legality and regulatory implications of their evolving role in the Indian digital landscape.

IV

Economic Impact in India

The economic impact of Meta Family's e-commerce ventures in India is a pivotal aspect of this research, focusing on the implications of their actions on the Indian market. The economic analysis involves several key parameters:

Data and Evidence on Economic Benefits

Data and evidence related to the economic benefits brought about by Meta Family's e-commerce ventures are instrumental in understanding their impact. It is essential to gather statistics on aspects such as increased online retail sales, job creation in the e-commerce sector, and the boost in digital marketing and advertising opportunities facilitated by platforms like Facebook, Instagram, WhatsApp, and Twitter. Data could also include information on the growth of small and medium-sized enterprises (SMEs) that have leveraged Meta Family's platforms for their businesses.

Influence on the Indian Market

The discussion should centre on how these economic benefits have influenced the Indian market. Meta Family's e-commerce ventures have introduced convenience, accessibility, and new business opportunities. The impact extends to various sectors, from retail to advertising and digital marketing.¹⁶ Analysing the increased

¹⁵ Singh, S. and Mukherjee, S. (2020, March 06). Insights into Platform Markets and Abuse of Dominance: Innovation versus Competition in India. Paper presented at the CCI National Conference on Economics of Competition Law, New Delhi, India, https://www.cci.gov.in/sites/default/files/whats_newdocument/Papers.pdf.

¹⁶ Areeda, P. and Turner, D.F. (1975). Predatory Pricing and Related Practices Under Section 2 of the Sherman Act. *Harvard Law Review*, Vol.8, No.4, pp. 697, 716-717.

participation of Indian businesses and consumers in online transactions and the growth of e-commerce infrastructure can provide insights into the evolving economic landscape.

Positive and Negative Economic Effects

An evaluation of both the positive and negative economic effects is crucial for a balanced analysis. Positive effects include increased economic opportunities, enhanced digital literacy, and access to a broader consumer base. However, the negative effects may encompass concerns such as the potential for market distortion, reduced competition due to Meta Family's dominant position, and privacy issues related to data handling. Additionally, addressing the impact on traditional brick-and-mortar businesses, including potential challenges they may face in competing with the digital e-commerce sector, is a significant aspect of this evaluation.¹⁷

This economic analysis aims to offer a comprehensive assessment of how Meta Family's e-commerce initiatives have shaped the Indian economy. By presenting a multifaceted view of the economic benefits, influence on the market, and an evaluation of both positive and negative economic effects, it seeks to contribute to the broader discourse on the economic implications of tech giants' evolving roles in emerging markets like India.

V

Violation of Competition Act 2002

The assessment of whether Meta Family's actions violate the Competition Act 2002 hinges on several critical legal considerations. This section will make a legal argument, delving into the nuances of the Competition Act and addressing the criteria for abuse of dominance. The legal argument begins with a detailed examination of whether Meta Family's actions can be deemed in violation of the Competition Act 2002. The Act promotes and sustains market competition, fostering consumer welfare and protecting against anticompetitive practices. Within this framework, Section 4 of the Act addresses abuse of dominance, prohibiting enterprises from engaging in practices that have an appreciable adverse effect on competition within India. These practices include imposing unfair or discriminatory

¹⁷ Wismer, S. and Rasek, A. (2017, November). Note on Market Definition in Multi-sided Markets. Organisation for Economic Co-operation and Development, <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD%282017%2933/FINAL&docLanguage=En>.

conditions, predatory pricing, and leveraging a dominant position in one market to enter or protect another.

Criteria for Abuse of Dominance

To evaluate whether Meta Family's actions constitute an abuse of dominance, it is necessary to consider specific criteria prescribed by the Competition Act:

Market Power: A fundamental criterion involves an assessment of Meta Family's market power. This necessitates an analysis of their dominant position within the Indian digital landscape, particularly in the social media and e-commerce sectors. The extent to which they control and influence these markets is a pivotal determinant.¹⁸

Consumer Harm: An essential aspect of this evaluation is examining the impact of Meta Family's actions on consumer welfare. Any practices that harm consumers, restrict choices, or increase prices can be indicative of abuse.

Analysis of Meta Family's Actions and Compliance with Criteria

Meta Family's actions in India, including introducing e-commerce features and integrating digital marketing tools, present an intricate scenario. Their extensive user base and dominant position in the social media space provide them with significant market power, which can potentially be leveraged in a manner that restricts competition. Their actions may lead to concerns about exclusionary conduct, possibly deterring smaller businesses or new entrants from effectively participating in these markets. These practices can align with the criteria for abuse of dominance as defined in the Competition Act.

However, it's essential to recognise that the Competition Act allows for pro-competitive justifications. If Meta Family can demonstrate that their actions lead to overall economic efficiency, innovation, or consumer benefits that outweigh any anticompetitive effects, it may mitigate concerns about violation.

This legal analysis forms the foundation for determining whether Meta Family's actions infringe upon the Competition Act 2002. By scrutinising the criteria for abuse of dominance, particularly in terms of market power and potential consumer harm, and evaluating the alignment of Meta Family's actions with these criteria, the research aims to provide a well-informed perspective on the legal implications of their evolving role in the Indian digital ecosystem.

¹⁸ Russo, F. and Stasi, M. L. (2016, June 20). Defining the Relevant Market in the Sharing Economy. *Internet Policy Review*, Vol. 5, Issue 2, <https://doi.org/10.14763/2016.2.418>.

VI

Conclusion

This research has explored the multifaceted transition of Meta Family, encompassing Facebook, Instagram, WhatsApp, and Twitter (now X), from social media platforms to influential players in the Indian e-commerce landscape. The study delved into the legal and economic dimensions, analysing the abuse of dominance under the Competition Act 2002 and assessing the impact of their actions on the Indian market.

The analysis revealed that Meta Family's integration of e-commerce features and digital marketing tools raises significant concerns. While the economic benefits, including enhanced convenience and expanded business opportunities, are evident, the potential abuse of their dominant position poses challenges. The scrutiny of their actions within the legal framework of the Competition Act 2002 showcased potential violations, particularly concerning market power and consumer harm. The research also highlighted the need to balance innovation and economic efficiency with ensuring fair competition in the digital landscape.

Upon thorough examination, Meta Family's actions suggest a possible abuse of dominance under the Competition Act 2002. Their substantial market power and integration of e-commerce functionalities may hinder competition and limit consumer choices. While pro-competitive justifications could exist, the overall impact on the competitive environment warrants regulatory attention.

The implications of this research are significant for competition law and e-commerce in India. Regulators must consider evolving market dynamics, ensuring dominant players do not stifle competition. Balancing innovation and consumer benefits with market inclusivity is crucial. Effective enforcement and periodic review of competition regulations are imperative to foster a vibrant and competitive digital economy.

In conclusion, the study underscores the need for nuanced regulatory frameworks that adapt to the rapidly changing digital landscape. It emphasises the importance of proactive measures to prevent anti-competitive practices and promote fair competition. As Meta Family's role continues to evolve, regulatory vigilance and strategic policy-making are essential to fostering innovation, safeguarding consumer welfare, and sustaining a competitive e-commerce ecosystem in India.

VII

Recommendations

Based on the comprehensive analysis conducted in this research, a set of recommendations emerges to address the challenges and concerns associated with the Meta Family's evolving role in the Indian digital landscape. These recommendations are twofold, addressing both regulatory bodies and the Meta Family itself.

An enhanced regulatory framework is crucial for regulatory bodies, such as the Competition Commission of India (CCI) and data protection authorities. Firstly, proactive regulatory scrutiny is necessary to scrutinise tech giants' actions, especially when transitioning across sectors, in order to prevent potential anti-competitive practices. Additionally, conducting periodic market studies and assessments of digital markets is essential to ensure that competition regulations remain relevant and adaptive to the evolving landscape¹⁹. Clear guidelines, complete with thresholds that define abuse of dominance in the context of the digital economy, should be formulated and communicated, providing businesses with a clearer roadmap for compliant practices. Moreover, alongside competition laws, data privacy and security regulations should be reinforced to address concerns regarding tech companies' collection and handling of user data.

For Meta Family, the conglomerate should prioritise proactive compliance with competition laws and cooperate closely with regulatory bodies to ensure they remain aligned with the evolving legal landscape. Transparency is key; enhancing transparency in data practices and algorithms can help alleviate concerns regarding market manipulation and privacy issues. Providing users with more control over their data and privacy can foster trust and goodwill. Responsible innovation, balancing the drive for innovation with considerations of potential impacts on market competition and consumer welfare, is pivotal. Collaborating with small and medium-sized enterprises (SMEs) can promote inclusive growth.²⁰ Offering tools, resources, and support to SMEs can diversify economic opportunities and mitigate concerns about monopolisation. Lastly, constructive engagement with regulatory bodies and proactive participation in regulatory processes can allow Meta Family to address concerns, provide input into the formation of effective competition and data

¹⁹ AZB & Partners, CCI Dismisses Allegations of Abuse of Dominance against Google, Lexology, available at <https://www.lexology.com/library/detail.aspx?g=f38ccb1-9773-4cfc-a52f-f7a1e1cf6b49>, last seen on 27/10/2023.

²⁰ Tushar Chitlangia & Niksheta Jain, Deconstructing the Google Meet Case under Competition Law, IndiaCorp Law, available at <https://indiacorplaw.in/2021/05/deconstructing-the-google-meet-case-under-competition-law.html>, last seen on 26/10/2023.

protection regulations, and contribute to the evolution of a more transparent, competitive, and consumer-centric digital ecosystem. When collectively implemented, these recommendations offer the prospect of a digital landscape in India that nurtures innovation while upholding principles of fair competition, consumer welfare, and data protection.