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A WORLD WITHIN A WORLD: NAVIGATING COMPETITION LAW IN INDIA IN THE CONTEXT OF METAVERSE

~Pushpit Singh & Pamidi Swetha[*]

ABSTRACT

Today, leading technology companies such as Meta, Roblox, Microsoft, and Woozworld are researching and developing their own Metaverses for gaming, buying and selling Non-Fungible Tokens, socializing, and hiring and recruiting. The concept of "Metaverse" was popularized in 2021 when Meta (earlier known as Facebook) decided to build its Metaverse. However, even before this, the concept of the "Metaverse" was first introduced in 1992 by Neal Stephenson in his sci-fi novel "Snow Crash." With companies like IKEA and Flipkart entering the Metaverse market, it is lucid that Metaverse is not just for technology corporations but any company that knows how to utilise technology. Thus, the entry of multinational corporations in the Metaverse translates to a high likelihood of various competition law issues in India because of an absence of explicit and inclusive legal frameworks to curb anti-competitive issues in digital spaces like that of the Metaverse. In this research article, first, the Authors analyze India's current competition law framework and compare it to the United Kingdom's recently introduced Digital

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Markets Unit to assess the ability of Indian competition law to address and curb anti-competitive issues in the Metaverse. Second, the Authors analyse the impact of the current jurisprudence given by international Courts on competition law issues in the Metaverse. Lastly, the Authors give specific recommendations to resolve anti-competitive issues in the Metaverse such as the updation of the Indian Competition Act, 2002, giving power to the Competition Commission of India to address and regulate anti-competitive issues in the Metaverse, and other similar recommendations.

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I. INTRODUCTION

Before defining Metaverse and discussing its functions, it is imperative to note that currently, there are no specific laws or policies that define 'Metaverse' and its functions. Due to this, we are currently forced to rely on its generic definition and functions. Metaverse has been defined as: "*…to move from a set of independent virtual worlds to an integrated network of 3D virtual worlds or Metaverse that constitutes a compelling alternative realm for human sociocultural interaction*."[1] This means that Metaverse is an integration of independent 3D virtual worlds that allows individuals to interact. Now, this interaction can be in terms of daily human activities like buying and selling virtual assets, co-working spaces, entertainment, sports, recreational activities, and other similar activities.[2] Transactions generally take place in the Metaverse through Non-Fungible Tokens ("**NFTs**") and cryptocurrencies.[3] For example, the game "Second Life" lets users do almost everything they would do in real life, from shopping to showering.[4] Another recent example of the use of Metaverse in India was a wedding reception held in Tamil Nadu where the wedding took place in the physical world, but the reception was attended by the attendees in the Metaverse.[5]

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[1] John David et al., *3D Virtual Worlds and the Metaverse: Current Status and Future Possibilities*, 5(5) ACM COMPUTING SURVEYS 2, 1-43 (2011).

[2] John Herrman & Kellen Browning, *Are We in the Metaverse Yet?*, THE NEW YORK TIMES (Oct. 29, 2021), https://www.nytimes.com/2021/07/10/style/metaverse-virtual-worlds.html.

[3] EUROPEAN PARLIAMENTARY RESEARCH SERVICE, METAVERSE OPPORTUNITIES, RISKS AND POLICY IMPLICATIONS (2022).

[4] Herman & Browning, *supra* note 2.

[5] Sanya Jain, *Inside A Tamil Nadu Couple's Wedding Reception In Metaverse*, NDTV (Feb. 08, 2022), https://www.ndtv.com/offbeat/metaverse-wedding-inside-a-tamil-nadu-couples-wedding-reception-in-metaverse-2753509.

In this Metaverse wedding reception, the couple hosted the reception and created a 3D avatar of the bride's demised father. Thus, this leads us to the fact that Metaverse is beyond being a mere video game with pre-installed/existing characters. It is imperative to note that there are multiple Metaverse platforms within the Metaverse.[6] Currently, there are more than 160 companies operating in the Metaverse.[7]

The activities mentioned above are made possible in the Metaverse due to its four primary features:

(i) **Realism –** This feature allows Metaverse users to fully feel and experience the Metaverse in an immersive manner[8] using Augmented Reality ("**AR**") and Virtual Reality ("**VR**") technology.

(ii) **Ubiquity –** This feature allows Metaverse users to easily access Metaverse across all devices by ensuring that their virtual identity is maintained regardless of their transition from one device/system to another.[9]

(iii) **Interoperability –** 3D objects include virtual identity, virtual assets, and other similar possessions of Metaverse users in the Metaverse. The interoperability feature allows the creation and movement of such 3D objects anywhere in the Metaverse by ensuring that such creation and movement is throughout

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[6] David et al., *supra* note 1, at 8.
[7] Martin Boyd, *Regulating The Metaverse: Can We Govern The Ungovernable?*, FORBES (May 16, 2022), https://www.forbes.com/sites/martinboyd/2022/05/16/regulating-the-metaverse-can-we-govern-the-ungovernable/?sh=56d0927b1961.
[8] David et al., *supra* note 1.
[9] *Id.*

"seamless" and "uninterrupted." In other words, such creation and movement of 3D objects should not be hampered by the need to change login credentials or constantly create new virtual identities (avatars) in different platforms within the Metaverse.[10]

(iv) Scalability – This feature enables the Metaverse system to accommodate multiple users while maintaining both system efficiency and user experience.[11]

Thus, it is with the help of the features mentioned above that users can freely interact and undertake various activities in the Metaverse. It is due to the existence of the features mentioned above that various companies can enter the Metaverse or create their own Metaverses, causing various anti-competitive issues. These issues can include the following without being limited to:

(i) Major gaming companies/giants can create their own singular Metaverse and enter into horizontal agreements wherein they will be free to directly and indirectly determine the purchase and/or sale prices of virtual commodities. This is because they will be in a dominant position in the Metaverse. Such horizontal agreements shall be void as per Section 3(1) and (3)(a) of the Competition Act, 2002 ("**2002 Act**").

(ii) One major gaming company can create a Metaverse in collaboration with a major clothing company. In this Metaverse, the gaming company can create entry barriers for new users by

[10] David et al., *supra* note 1, at 22-23.
[11] *Id.*

mandating them to purchase a Metaverse membership alongside a product sold by the clothing company. This would be a vertical agreement, specifically a tie-in arrangement, and void as per Section 3(1) and 3(4)(a) of the 2002 Act.

However, the problem with the aforementioned anti-competitive issues is that it is unclear whether the 2002 Act would apply to the Metaverse or not. Even if the 2002 Act is applicable to the Metaverse, it is unclear as to how exactly will the provisions of the same will be applicable to the Metaverse as the 2002 Act's provisions primarily deal with physical markets and not digital markets. Thus, there still exists a gaping hole in Metaverse in terms of its legal regulation in India that shall be subsequently dealt with.

II. THE INTERPLAY BETWEEN COMPETITION LAW REGIME IN INDIA AND THE METAVERSE

The Monopolistic and Restrictive Trade Practices Act, 1969 was replaced by the 2002 Act primarily to prevent those practices which have or are likely to have an adverse and significant effect on competition.[12] Further, the 2002 Act was introduced to ensure that competition in markets is promoted and sustained while protecting the consumers' interests at the same time. Lastly, the 2002 Act also aims to ensure that the competition in the markets mentioned above is achieved by allowing and ensuring the freedom of trade by other market participants in India, i.e., ensuring that there are multiple market participants in a specific market without having

[12] The Competition Act, 2002, preamble, No.12, Acts of Parliament, 2002.

one or a few players dominating the entire market and creating entry barriers. Considering these objectives of the 2002 Act, it is imperative to note that such objectives were framed while keeping the nature of market practices in mind, i.e., physical trading of goods, products, and services. This means that the 2002 Act was not formulated to cover and encapsulate market activities that happen or are bound to happen in the virtual sphere, i.e., the Metaverse.

Considering that the Metaverse is a virtual sphere of AR and VR wherein there is no physical and tangible exchange of goods, products, or services, it becomes of quintessence importance for us to scrutinise the 2002 Act's efficacy in the context of market activities that happen or are bound to happen in the Metaverse.

A. NO BOUNDARIES IN THE METAVERSE: UNCERTAINTY OF "RELEVANT GEOGRAPHIC MARKET"

According to Section 2(s) of the 2002 Act, "Relevant Geographic Market" ("**RGM**") requires two components:[13]

(i) The market should be comprised of an area where competition conditions are distinctly homogenous compared to neighboring market areas. In other words, the competition conditions in the RGM should be similar but not the same as those in neighboring market areas.

(ii) The competition conditions in the RGM should be distinguishable from those in the neighboring market areas.

[13] The Competition Act, 2002, § 2(s), No.12, Acts of Parliament, 2002.

From the definition and composition of an RGM, it is evident that for a market area to be categorized as an RGM, there should be neighboring market areas with similar but distinguishable competition conditions. However, the problems that arise regarding Metaverse are as follows.

First, the possibility of neighboring market areas existing in the Metaverse is blurry and unclear because Metaverse is a virtual world with no other virtual world as a competitor. This means that there are no neighboring market areas with similar but distinguishable market competition conditions, thereby making the Metaverse a single market area with a fixed type of market competition conditions.

Second, even if we assume that the different Metaverse platforms [within the Metaverse] would constitute different market areas, it remains unclear how they will be categorized as market areas as such Metaverse platforms do not have defined physical geographical boundaries in the Metaverse. In a 2014 case,[14] the Competition Commission of India ("**CCI**") held that for the application of Section 4 of the 2002 Act, i.e., a provision related to what constitutes an abuse of dominant position, the RGM is and must generally be India (or any part of it) and it cannot be global. This means that for an RGM to be defined and categorized, the physical geographical boundaries must be in India. This need for the existence of "physical geographical boundaries" for defining and categorizing an RGM is evident from the bare reading of the definition of RGM that consists of the word "geographical." This means that the market area must be

[14] Sai Wardha Power Company Ltd. v. Coal India Ltd., 2014 SCC OnLine CCI 133. *See also* Bharti Airtel Limited v. Reliance Industries Limited, 2017 SCC OnLine CCI 25.

physically definable with the help of latitudes and longitudes. However, the absence of latitudes and longitudes in the Metaverse makes it even more difficult to define boundaries virtually geographically.

Last, this need for physical geographical boundaries for defining and categorizing an RGM is also evident from the *Coal India case*, wherein the CCI observed that RGMs are generally "located" in specific geographical and physical areas such as Hyderabad, Delhi, and so on. Thus, this means that RGMs must have a "physical location," which does not seem possible in the Metaverse as it is a virtual space with no physical locations.

B. APPLICABILITY AND ENFORCEABILITY OF SECTION 4 OF THE 2002 ACT: A ROADBLOCK BY METAVERSE

From the preceding layers of analysis, it is evident that defining and categorizing RGMs in the Metaverse is highly vague and ambiguous. This leads us to the following conundrum: due to the inability to define and categorize market areas in the Metaverse as RGMs, the applicability of Section 4 of the 2002 Act is severely hampered.[15] This is because, to scrutinize whether firms in the Metaverse are in a dominant position and are abusing the same, the relevant market must be defined and categorized as per Section 4 of the 2002 Act which generally prevents the abuse of dominant position in the Relevant Market. However, the relevant market in the case of the Metaverse would be the RGMs, and as earlier argued, it is difficult to define and categorize market areas in the Metaverse as RGMs.

[15] The Competition Act, 2002, §4(s), No.12, Acts of Parliament, 2002.

This adds another layer of difficulty because now, it becomes difficult to assess the abuse of dominant position by a firm in the Metaverse as the RGMs are not defined and categorized in the Metaverse, which is a requirement under Section 4 of the 2002 Act. This, in turn, means that firms in the Metaverse in India would be able to dominate the market without being categorized as having a dominant position in the market because of the incomplete and inadequate coverage given to such firms in the Metaverse under Section 4 of the 2002 Act. This would essentially lead to the firms obtaining a dominant position in the Metaverse and abusing the same. The same can be comprehended with the following illustration.

Illustration: Suppose there are multiple companies in the fashion industry, but only Company A can gain access to the Metaverse due to state-of-the-art technology, infrastructure, and funds as compared to other companies in the fashion industry. Company A is also one of the market leaders in the fashion industry. Company A established its Metaverse platform and can interact with users/consumers daily (through the Metaverse), wherein such users have virtual avatars in the Metaverse. These virtual avatars can be dressed as per the users/consumers' tastes and preferences, wherein Company A stores such user/consumer preferences in its database.

In the illustration mentioned above, there are multiple competition-related issues. *First*, Company A can utilize the user/consumer preferences in the fashion industry obtained from the Metaverse and analyze the same. This would essentially lead to Company A producing and selling clothing items that are more in demand as Company A was able to receive an edge

to obtain consumer preferences data way earlier than other companies in the fashion industry. After receiving such an edge, Company A could sell its goods, products, and services faster than other companies, thereby increasing its sales and profits. This leads to Company A obtaining a dominant position and abusing the same in the physical market. *Second*, other companies in the fashion industry were disadvantaged from having access to such consumer preferences data because such companies did not have the requisite state-of-the-art technology, infrastructure, and funds to enter the Metaverse. This inherently leads to the creation of a problem of lack of accessibility in the Metaverse that can disadvantage the majority of the firms in the market. *Third*, it is difficult to apply and enforce Section 4 of the 2002 Act on Company A as it is difficult to assess whether Company A has a dominant position in the Metaverse due to the inability to define and categorize RGMs in the Metaverse. This means that Company A will be able to continue abusing its dominant position in the market without legal accountability and corrective measures, thereby putting other companies in the fashion industry at a disadvantageous and unfair market position.

C. GATEWAY TO ANTICOMPETITIVE AGREEMENTS: HOW METAVERSE ACTS AS A CATALYST FOR ANTICOMPETITIVE PRACTICES

Section 3 of the 2002 Act defines anticompetitive agreements as those that cause or are likely to cause an "Appreciable Adverse Effect on

Competition" ("**AAEC**") within India.[16] According to Section 3(3) of the 2002 Act,[17] this AAEC is caused by anticompetitive agreements when such agreements have the effect of directly or indirectly determining the purchase or sales prices; limiting or controlling the production, supplying, technical development, investment, or provision of any service; sharing the market or the source of production or provision of services through allocating a specific geographical market area; or directly or indirectly resulting bid-rigging or collusive bidding.

The question arises is that how an agreement is determined to have an AAEC under Section 3 of the 2002 Act. The answer to this lies in Section 19(3) of the 2002 Act[18] which outlines various "guiding factors"[19] that the CCI must consider while determining whether an agreement has an AAEC under Section 3 of the 2002 Act. According to Section 19(3) of the 2002 Act, the CCI must consider all or any of the following factors such as the agreement creating market barriers for new entrants; driving out existing market competitors; causing foreclosure of competition; causing specific benefits or harm to the consumers; causing any improvements in the production or distribution or provision of goods or services; or promoting the economic, scientific, and technical development through production, distribution, or provision of goods or services.

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[16] The Competition Act, 2002, §3, No.12, Acts of Parliament, 2002.
[17] *Id.* at § 3(3).
[18] *Id.* at § 19(3).
[19] Ajay Devgn Films v. Yash Raj Films Private Limited, Case No. 66 of 2012, ¶4.

Additionally, in *Ajay Devgn Films v. Yash Raj Films Private Limited*,[20] the CCI examined through the facts of the case as an example to show: (*i*) what is "appreciable adverse effect"; and (*ii*) how "appreciable adverse effect" is not caused in the present case. In essence, the CCI stated that, if a distributor of mega-starrer films books single-screen theatres for the release of the films during a specific period of festivities, such an act does not cause appreciable adverse effects for namely three reasons: (*i*) the theatre owners have the free choice to agree or deny the screening of the requested films as other mega starrer films compete with each other; (*ii*) the single-screen theatres do not hold a significant position in the market; and (*iii*) the market cannot be restricted to certain periods of time but must be considered for the overall year to determine whether there is an appreciable adverse effect or not. Although this case was appealed before the Competition Appellate Tribunal ("**COMPAT**"), the Appellate Tribunal dismissed the appeal stating that there was no merit in the appeal and that the CCI was correct in holding that there was no AAEC.[21]

However, in the intersectional context of Metaverse and Section 3(3), the factors that cause or are likely to AAEC are likely to remain hidden from the CCI authorities because of two primary reasons:

(i) **Anonymity in blockchain transactions -** Metaverse operates on blockchain technology wherein users can store their data in end-to-end encryption and pseudonymous forms. This data that can now be anonymously stored may include

[20] *Id.* at ¶5.
[21] Ajay Devgn Films v. Yash Raj Films Pvt. Ltd., Appeal No. 130 of 2012 with IA No. 264 of 2012.

communications related to bid-rigging, tie-in arrangements, and other anti-competitive-related practices and conduct as mentioned in Section 3 of the 2002 Act. This means that the user who stores data in the Metaverse will remain anonymous and hidden from the CCI authorities. In other words, neither the true identity of the anticompetitive firm nor the evidence of anticompetitive practices and conduct will be found. This is because such information can primarily be accessed by users [anticompetitive firms] who have the permission of the blockchain owner [anticompetitive firms], thereby blocking out the CCI authorities [who do not have the permission to access such information from the blockchain owner] from accessing such evidence and punishing such anticompetitive conduct. It is imperative to note that this is directly in contrast to the physical world wherein the CCI authorities can choose to raid the anticompetitive firms' physical facilities to obtain evidence. The same type of conduct by the CCI authorities is not possible in the Metaverse due to blockchain technology. This essentially leads to difficulty pinpointing legal liability on the anticompetitive firm. Even if the identity is found, the communications, documents, and other evidence related to the anticompetitive practice and conduct will not be found as it is end-to-end encrypted. It may be argued that such evidence on the blockchain can be decrypted; however, decrypting such massive amounts of data would take enormous amounts of

computing power, which is not currently available in India or any other country. Lastly, it is also noteworthy to mention that even if the identity and communications of the anticompetitive firm are found by the CCI authorities, proving AAEC with the same will still be arduous because such AAEC should or be likely to happen in India. However, Metaverse does not have a specific location as it is a virtual space. Due to this, pinpointing and proving that AAEC is happening or is likely to happen within India becomes another conundrum.

(ii) **Smart contracts in blockchain and how they cause collusive behavior -** When we discuss smart contracts, we comprehend that they are "…*an agreement entered into between parties through machine-readable code. This code is integrated into a decentralized blockchain, which automatically executes the smart contract based on pre-determined 'trigger-events'. The terms of the smart contract are thus coded in an 'if-then' format – if the trigger event occurs, then the smart contract shall automatically execute a certain action*."[22] In the Metaverse context, such smart contracts act as a breeding ground for collusive practices. This is because collusive firms in a cartel can now enter into smart contracts with deviant firms. Deviant firms are those firms that are likely to deviate from pre-agreed conduct. Once the collusive firms in a cartel enter into a smart contract with deviant firms, one of the agreed

[22] Deepti Pandey & Harishankar Raghunath, *Stationing Smart Contract as A 'Contract': A Case for Interpretative Reform of the Indian Contract Act, 1872*, 13(4) NUJS L. REV. 1, 5 (2020).

conditions/trigger events in the smart contract would be the following:

- ***If condition*** = If the smart contract is breached.
- ***Then condition*** = Then there would be an automatic deposit of money to the other Party who has suffered the breach.

This breach is likely to happen because a deviant firm is likely to deviate from its pre-agreed conduct which can be due to multiple reasons such as inability to perform the terms and conditions of the smart contract because of the deviant firm's limited capability to handle production, daily operations, and technological requirements regardless of having the access to resources and funding.

The question arises is that: what is the incentive for deviant firms to enter into such smart contracts? The answer to this lies in the characteristics of the collusive firms. We understand that collusion generally happens in the competitive market wherein two firms enjoy a certain position/power which they intend to exploit by joining hands. This means that collusive firms will have access to increased resources, networks, and capacity to survive in the competitive market. Now, such collusive firms are likely to share this access with deviant firms with an ulterior motive to put such firms at a disadvantageous position wherein the collusive firms can extort significant sums of money from these deviant firms. The deviant firms are likely to accept the same because such access to increased resources, networks, and capacity gives them

a chance to survive and grow in a competitive market like the Metaverse wherein technological giants are already developing their technology.[23]

Thus, when such collusive practices and conduct happen between collusive and deviant firms, the smart contracts are encoded on the blockchain,[24] are end-to-end encrypted,[25] and are pseudonymous.[26] This, in turn, means that formulation and execution of such collusive smart contracts are kept hidden from the radar of the CCI authorities as such contracts would be anonymous and encrypted from the CCI authorities due to blockchain technology utilized by collusive smart contracts.

Thus, it is evident from the aforementioned reasons that the AAEC caused or likely to be caused by the anticompetitive and collusive firms' conduct in the Metaverse is likely to remain hidden from the CCI authorities, thereby allowing such firms to evade the purview of the 2002 Act. Even if such conduct is found, the applicability of the 2002 Act in the Metaverse remains highly ambiguous and vague. Therefore, this means that even if an attempt is made to apply and enforce the 2002 Act in the Metaverse, it would reap little to no benefit owing to the multiple

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[23] Jack Kelly, *Battle Between Tech Giants Google, Apple, Microsoft And Meta To Build Virtual And Augmented Reality Headsets*, FORBES (Jan. 21, 2022), https://www.forbes.com/sites/jackkelly/2022/01/21/the-metaverse-set-off-a-battle-between-tech-giants-google-apple-microsoft-and-meta-to-build-virtual-and-augmented-reality-headsets/.

[24] Shafaq Naheed Khan et al., *Blockchain smart contracts: Applications, challenges, and future trends*, 14 PEER-TO-PEER NETW. APPL. 2901, 2901 (2021).

[25] *Id.* at 2909.

[26] *Id.* at 2911.

ambiguities surrounding the 2002 Act in the context of a virtual marketplace, i.e., the Metaverse.

III. CHARTING THE COURSE FOR THE METAVERSE IN AN INTERNATIONAL CONTEXT: EVALUATING JUDICIAL INTERPRETATIONS AND THE UK'S APPROACH TO ENSURING COMPETITION IN THE DIGITAL MARKETS AND METAVERSE

A. HOW THE UK REGULATES (OR PLANS TO REGULATE) COMPETITION IN THE DIGITAL MARKET

United Kingdom's ("**UK**") Competition Act, 1998 ("**1998 Act**")[27] prohibits anti-competitive behavior and the abuse of dominant position in the physical market under Chapters I[28] and II.[29] Further, in 2002, the Enterprise Act, 2002 ("**Enterprise Act**")[30] was introduced in the UK to establish offices for fair trade and competition tribunals for the protection of interests of consumers and disqualification of those enterprises entering into anti-competitive agreements.[31] In 2013, the office of fair trade and competition commission merged to form the Competition and Market Authority ("**CMA**").[32] The CMA draws its powers and functions from the

[27] The Competition Act, 1998 (UK).
[28] *Id.* at Chapter I; Id. at § 2.
[29] *Id.* at Chapter II; Id. at § 18.
[30] The Enterprise Act, 2002 (UK).
[31] *Id.* at Preamble.
[32] *Id.* at §5, 6, 7, 8A; Thomas Pope and Dan Goss, *Competition and Markets Authority*, INSTITUTE FOR GOVERNMENT (July 25, 2022), https://www.instituteforgovernment.org.uk/explainer/competition-and-markets-authority#footnoteref2_dh3hbqh.

1998 Act and the Enterprise Act respectively.[33] CMA protects people against unfair trade practices and takes actions against those individuals who indulge in cartels or anti-competitive behavior. However, it is important to note that this is limited to the physical markets and the question arises: how is competition regulated in the UK's digital markets? Recently, the UK Government set up a Digital Markets Unit ("**DMU**") within the CMA to promote and regulate competition in digital markets "*by addressing both the sources of market power and the economic harms that result from the exercise of market power.*"[34] Presently, the DMU has no statutory backing and works under the aegis of the CMA.[35]

According to the UK government,[36] once a new statutory competition regime for digital markets is introduced, DMU shall have the statutory power to:

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[33] Practical Law Competition, *CMA powers to enter and search premises*, THOMSON REUTERS PRACTICAL LAW, https://content.next.westlaw.com/practical-law/document/I8cf1f411e82f11e398db8b09b4f043e0/CMA-powers-to-enter-and-search-premises?viewType=FullText&transitionType=Default&contextData=(sc.Default); Competition & Markets Authority, *Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8*, CMA GOVT. OF UK (Jan. 31, 2022), https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases.

[34] Secretary of State for Digital, Culture, Media & Sport and the Secretary of State for Business, Energy and Industrial Strategy, *A new pro-competition regime for digital markets* (2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003913/Digital_Competition_Consultation_v2.pdf.

[35] *Id.*

[36] Department for Digital, Culture, Media & Sport and The Rt Hon Oliver Dowden CBE MP, *Government Unveils proposal to increase competition in UK digital economy*, UK GOVT. PRESS RELEASE (July 20, 2021), https://www.gov.uk/government/news/government-unveils-proposals-to-increase-competition-in-uk-digital-economy.

(i) Suspend and block any unfair terms and conditions or changes in algorithms which breach the mandatory code of conduct and pass any such orders to make enterprises comply with this code.

(ii) Tackle any anti-competitive practices in the digital markets.

(iii) Implement measures to promote interoperability to ensure a smooth transition between multiple digital platforms within a single Metaverse or multiple Metaverses.

DMU's powers mentioned above are specifically beneficial in the Metaverse as Metaverse can now be recognized under the concept of "digital markets". This is because "digital markets" have been defined as, "*…to broadly encompass markets where digital technologies are a core component of the business models of firms active in those markets. The term 'digital firms' refers to the firms that produce or trade products and services in digital markets.*"[37] In the context of Metaverse, digital technologies like AR and VR are the core components of the business model of the Metaverse as it is built and marketed around these digital technologies, thereby bringing it under the banner of "digital markets". Further, there will now be a specific regulatory authority to curb anti-competitive practices and promote competition in digital markets like the Metaverse in the UK.

Additionally, DMU is responsible to allot certain enterprises the tag of Strategic Statutory Marketing ("**SMS**"). DMU intends to allot this SMS tag based on the revenue that each enterprise generates.[38] Once the enterprises are allotted the SMS tag, they will be expected to follow certain

[37] Secretary of State*, supra* note 35.
[38] Secretary of State*, supra* note 35.

mandatory stringent codes of conduct that will be enforceable by law and practice pro-competitive activities in the digital markets.[39] This is to ensure that such enterprises do not abuse their dominant position in the digital markets. Thus, the use of this tag is beneficial to Metaverse as major enterprises that would be operating in the Metaverse are likely to be assigned this tag because Metaverse can now be categorized under "digital markets". In other words, the applicability of SMS tag allows regulation of major enterprises in Metaverse.

When we come to the discussion of India, the only competition regulatory authority is the CCI which draws its powers from the 2002 Act. CCI has the power to promote and maintain competition, remove anti-competitive practices, and ensure "freedom of trade".[40] Although the workings of the DMU and the CCI look similar at a glance, they vastly differ especially in the context of digital markets.

First, as discussed in the previous chapter, the 2002 Act is silent on any provisions for the regulation of competition in the Metaverse/digital markets. In other words, the CCI and the outdated 2002 Act have dealt with anti-competitive conduct in online marketplaces on a highly varied basis without a fixed standard due to the lack of an appropriate definition and regulation for "digital markets" in the Indian competition law regime.[41] This severely limits the ability of the CCI to investigate the

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[39] *Id.*

[40] *The Commission,* COMPETITION COMMISSION OF INDIA, https://www.cci.gov.in/contents/institutional-framework.

[41] Simran Dhir et al., *Digital Markets Must Be Defined Well For Competition Regulation*, MONDAQ (May 20, 2022), https://www.mondaq.com/india/antitrust-eu-competition-/1194564/digital-markets-must-be-defined-well-for-competition-regulation.

Metaverse/digital markets and impose fines and grant remedies. Further, it limits the ability of various businesses in the Metaverse/digital markets to approach the CCI or any other Courts to stop anti-competitive practices by other businesses. To the contrary, this is not the case in the UK as it has formed the DMU and is currently deliberating upon a new competition law regime to help curb anti-competitive practices in the digital markets.

Second, there is no statutory authority designated for digital markets in India. On the contrary, in the UK, the Government has introduced the DMU to identify and investigate the present requirements for governing and regulating digital markets/Metaverse. This identification and investigation by the DMU shall be done through the collection of evidence. Based on such evidence, DMU shall have the power to give its opinions and suggestions for formulating the requisite regulatory provisions for regulating digital markets. On the other hand, in India, the power of the CCI to investigate and collect evidence related to digital markets/Metaverse and provide suggestions to the government regarding the same for amendment of competition laws remains unclear. In fact, CCI has not even briefly discussed Metaverse in any of its studies or decisions. It was only in a '2022 CCI Keynote Address' that Metaverse was briefly mentioned in a speech as follows: "[I]*n fact, many expect the battle for the metaverse globally will be between a few companies. Others may just have to reconcile with aligning with one or more of these giants*."[42] This lethargic attitude of the CCI for its failure to

[42] Competition Commission of India, *Regulating competition in an era of tech giants*, CCI (Mar. 4, 2022), https://cci.gov.in/images/economicconference/en/keynote-address-of-7th-national-conference-on-economics-of-competition-law-2022-delivered-by-mr1652350019.pdf.

accordingly update the 2002 Act and promptly deal with the rapidly evolving business market in terms of digitization raises a serious doubt regarding its competency and power to regulate anti-competitive behavior in the digital markets/Metaverse.

Third, the UK Government plans to increase the ease of doing business in the digital markets as one of the powers of the DMU is to implement measures to promote interoperability. This allows various businesses to develop their technology in the Metaverse and transfer it with ease between multiple digital platforms within a single Metaverse or multiple Metaverses and give the best consumer experience. At the same time, the UK Government proposes to induce stringency in the digital markets through the introduction of the SMS tags. Thus, having lenient laws to operate in the digital markets/Metaverse that, at the same time, stringently penalize contraventions, and enable growth and development in the digital markets/Metaverse while protecting the consumers' needs and interests. However, on the other hand, the Indian competition law framework does not discuss digital markets and interoperability as it is still heavily reliant on the outdated 2002 Act which does not provide for the regulation of competition in the digital markets. Due to such lapse, ease of doing business and regulation and promotion of competition in the Metaverse remains within the grey area.

B. JURISPRUDENTIAL BACKGROUND FOR METAVERSE: HAVE THE COURTS HELPED?

The jurisprudential background for Metaverse is still in its nascent stage because the courts have not widely discussed the same in the context

of competition law. As of now, there are approximately 5 cases that explicitly discuss or briefly describe Metaverse. However, 2 out of these 5 cases are not in the context of competition law.[43]

In the context of competition law, the 2021 case of *Epic Games, Inc. v. Apple Inc*[44] is the most substantial case for the development of Metaverse. This is because the US Court dealt in-depth with the concept of Metaverse. In this case, the Complainant alleged that the Defendant had a monopolistic control over the Internal Operating System ("**IOS**") App Store. The major point of dispute was as to what constituted the "Relevant Market." For this, the US Court held that the Relevant Market was not gaming in general and not Apple's IOS App Store. The Relevant Market was held to be "digital mobile gaming transactions". To arrive at this Relevant Market, the US Court began by defining "video game" as follows:

> "*Some of Epic Games' fact witnesses suggested in their testimony that Fortnite was much more than a video game: it is a metaverse. The Court previously discussed Mr. Sweeney's sincere beliefs as to Fortnite and the metaverse. A metaverse is a virtual world in which a user can experience many different things—consume content, transact, interact with friends and family, as well as play. According to Mr. Sweeney, game play need not be a part of a user's metaverse*

[43] Hermes Int'l v. Rothschild, 22-CV-384 (JSR) (S.D.N.Y. May. 18, 2022); Dfinity Found. v. Meta Platforms, Inc., 22-cv-02632-CRB (N.D. Cal. Nov. 10, 2022).
[44] Epic Games, Inc. v. Apple Inc., 559 F. Supp. 3d 898 (N.D. Cal. 2021).

> *experience, which is more to mimic the reality of life than to present game play*."

This need to define a video game and club it with the definition of Metaverse as observed above was quintessential to enable the Court to scrutinize whether California's "Unfair Competition Law" ("**UCL**") can be applied to the Complainant's product – Fortnite. In other words, if the Complainant's product was not defined as video game but strictly under Metaverse, applicability of UCL would have become a grey area. For this, the US Court *first* observed that it is not necessary to conclusively define what is a "video game" or "game" as Fortnite is a "video game" by all means. According to the US Court, this was because Fortnite was marketed to the public as a video game and promoted in video game-related events. *Second*, the US Court observed that there is no evidence or opinion that Fortnite is accepted in "parts". In other words, there is no evidence or opinion that shows some game modes within Fortnite are considered as a part of the Metaverse and while other games modes are considered as a part of Fortnite. Instead, it is the full video game in and of itself, inclusive of all game modes, that is considered as Fortnite. *Third*, the US Court observed that the general video game market does not recognize the Metaverse and the corresponding game modes in Fortnite as anything "separate and apart" from the video game market. In other words, the general video game market recognizes the Metaverse and the corresponding game modes in Fortnite as a singular part of the video game market.

After this, the US Court went on to hold that although the Defendant had considerable market share of over 50% and enjoyed

substantial profit margins, it was not sufficiently shown by the Complainant as to how the Defendant was an antitrust monopolist. However, the US Court did hold the Defendant violative of anti-competitive behavior for its anti-steering provisions (which are not related to the Metaverse). Thus, this case essentially shows that products like Fortnite which are capable of being defined under "Metaverse" can be defined under their conventional definition to apply competition laws and regulate competitive behavior of such products. However, this is only a temporary measure as Metaverse and the laws around it are still undeveloped.

Second is the 2022 case of *Doe v. Roblox Corp.*[45] In this case, the Defendant owned and operated a Metaverse. In this Metaverse, the users were allowed to create an avatar of themselves, purchase in-game currency, and utilize this currency to purchase virtual items for the avatars. The Complainant alleged that the Defendant deleted these virtual items without giving any warning to the users and this is violative of California's UCL. The Defendant argued that there was no economic injury as losing of virtual items does not constitute an economic injury. However, the US Court held that: "*Doe has adequately alleged an economic injury: she purchased Robux that she alleges was done without adequate warning that she would fruitlessly spend them on items that would be unjustly deleted.*" Thus, it is imperative to note here that, although the US Court applied competition law to Metaverse, it failed to explain how exactly competition law is applicable to the Metaverse. The US Court did not follow the pattern of the *Epic Games case* as the Court failed to club Defendant's Metaverse (Roblox) under the conventional definition of a

[45] Doe v. Roblox Corp., 3:21-cv-03943-WHO (N.D. Cal. May. 9, 2022).

video game. Due to this, the rubrics of applicability of competition law to Metaverse become a grey area.

Third is the 2022 case of *FTC v. Meta Inc. & Mark Zuckerberg.*[46] FTC brought a lawsuit against Meta Inc. as it believes that the latter is trying to eliminate every competition in the Metaverse by buying them out instead of fairly competing against them. FTC believes that this wholly goes against the anti-trust laws. The report released by FTC[47] states that all the acquisitions that Meta is making (Instagram, WhatsApp, and other companies) are killing competition which would, in turn, reduce the innovations in the Metaverse. FTC is of the opinion that acquiring/buying out competitors is part of the plan of Meta Inc. to become a monopoly in the Metaverse. The Complaint states, "*As Meta fully recognizes, network effects on a digital platform can cause the platform to become more powerful – and its rivals weaker and less able to seriously compete – as it gains more users, content, and developers.*"[48] Currently, this case is still pending in the US District Court. However, it is evident that Meta Inc. is planning to take an aggressive stand in the Metaverse which the FTC plans to halt as the same would constitute monopolistic practices, thereby promoting healthy competition in the virtual space and protecting the consumers' best interest.

Therefore, from the judgments and pending case mentioned above, it is evident that the questions of how exactly competition law is applicable

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[46] *FTC v. Meta Inc., Mark Zuckerberg & Within Unlimited* Inc., FTC (Oct. 7, 2022), https://www.ftc.gov/legal-library/browse/cases-proceedings/221-0040-meta-platforms-incmark-zuckerbergwithin-unlimited-ftc-v.

[47] *Id.*

[48] *Id.*

to the Metaverse and to what extent remain unanswered to a large extent. Clubbing modern concepts like Metaverse with conventional concepts like video games means restricting the capability of Metaverse because it can undertake tasks way beyond mere video games. If Metaverse is restricted to such conventional concepts, it can prove counterproductive because it limits the applicability of competition laws to conventional concepts like that of a video game and fails to embrace and apply competition law to modern concepts of VR and AR in the Metaverse. This failure leads to lack of protection for the consumers in the digital market and inability to regulate and control anti-competitive behaviors in the Metaverse that traverse beyond mere video games.

IV. CONCLUSION

Although the development of the Metaverse and its technology is moving at a slower pace, several people are still actively engaging in the Metaverse in its current phase. The competitors in the Metaverse are keenly working on developing the technology, yet India's laws for the Metaverse are absent. A few countries around the world are developing their existing laws to suit the future of the internet such as the European Union[49] and the UK. However, India is yet to develop or modify its laws for the same. These regulations are the need of the hour as the Metaverse opens numerous new doors, both good and bad, since it proposes to be the digital version of the real world, where people can eventually conduct business and live. Such

[49] RESOLUTION ON COMPETITION POLICY — ANNUAL REPORT 2021, EUR. PARL. DOC. C 465/124 (2022).

rapid development without proper regulations would result in fraud and abuse of technology. Thus, this renders it necessary to regulate the Metaverse like the real world. Such regulation can be done with the help of the following recommendations:

(i) The 2002 Act must be updated wherein its confines, definitions, and scope are expanded beyond the physical trading of goods, products, and services to cover the virtual trading of goods, products, and services that can happen in the Metaverse or any other virtual world/digital market. This would also give the requisite powers to the CCI to investigate and collect evidence and pass requisite Orders for anticompetitive conduct in the digital markets/Metaverse, obviating the need to create a separate body like the DMU, and increasing accessibility and simplicity to legal remedies in the digital markets/Metaverse. Additionally, this updation of the 2002 Act will allow the courts to develop a standard for testing the provisions of competition law in the Metaverse and prevent divergent views.

(ii) Metaverse must be "virtually" defined with geographical boundaries in the form of 3D coordinate systems. This will allow the application of Sections 3 and 4 of the 2002 Act because both Sections mandate the defining and categorizing of RGMs. Additionally, this would allow CCI authorities to pin down its investigation on anticompetitive enterprises.

(iii) A significant concern in the current scenario is the method of buying out competition instead of tackling them in the market

fairly and competitively. Such killer mergers make specific competitors highly dominant in the digital markets. India must consider introducing reforms to manage killer mergers/acquisitions in the digital markets/Metaverse. For instance, Meta Inc. is a dominant player already in the Metaverse, whose position is only strengthened by the acquisition of WhatsApp and Instagram. Without a law regulating such mergers, the Metaverse will be built on the data collected from all the merged companies, targeted advertisements, and other coercively collected data. The EU is already deliberating upon developing existing laws and reforms to tackle this problem.[50] Similarly, India must commence with such deliberations.

(iv) Interoperability will provide great freedom to various businesses to develop in the Metaverse as it allows various enterprises to operate in different Metaverses, allowing to grow and develop their digital businesses. However, the scope of abusive practices is high because enterprises might collude and share consumer data such as their tastes and preferences, buying patterns, search history and other similar data. This will allow such collusive enterprises to form a dominant position in the Metaverse and abuse the same by violating consumer privacy. It also restricts consumer choices because now collusive

[50] *Metaverse: Opportunities, risks and policy implications*, EUROPEAN PARLIAMENT (June, 2022), https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733557/EPRS_BRI(2022)733557_EN.pdf.

enterprises are likely to only develop those goods and products which the consumer is likely to buy. However, the other enterprises with whom such data is not shared are likely to lose out on their sales because the likelihood of their goods and products being purchased by the consumer is lesser as it does not serve their tastes and preferences. Due to such tailored development of goods and products to consumers' choices by very few specific enterprises, the overall option for the consumers drastically reduces and causes them to choose between fewer options in the market. Thus, interoperability within multiple Metaverses must be promoted and appropriately regulated for healthy competition and consumer protection.

Therefore, considering the above discussion, it is evident that the Metaverse is a very challenging virtual space that needs to be tackled in a highly strategic manner to regulate the Metaverse and its activities.