

CCI must watch Meta's Threads; unprecedented growth raises concerns over privacy and competition law in India

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The recent launch of Threads by Meta Platforms, which also owns Facebook, Instagram and WhatsApp, as a rival to Twitter—is a regulatory and privacy nightmare. Within five days, Threads had amassed a user base of 100 million new users—a feat that took Twitter more than five years to achieve. Is such an unprecedented new entry into the Indian social media market—with substantial entry barriers—a problem for Indian competition law? The answer lies in how Meta achieved this scale of growth.

Social media markets—fraught with network externalities, where the demand for the service depends on its existing user base—are challenging to enter. A critical mass of users must simultaneously switch to the new application for a successful new entry. Over the past few years, there have been several attempts to create an alternative to Twitter—Mastodon, Koo, Bluesky, and Trump-backed Truth Social, but with little success. These alternative micro-blogging platforms have not been able to amass enough user bases to be popular. Threads, which requires an Instagram account to access, is different. Its meteoric growth is owed to the fact that it leverages Meta's 2.35 billion-strong Instagram user base to create momentum for itself, coupled with the fact that once downloaded, Instagram does not allow an existing user to delete Threads without deleting their Instagram account.

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From the perspective of healthy market competition, the launch of Threads is arguably good news for India's digital users. It provides Indian users with a new or improved alternative to the chaotic Musk-era Twitter. However, imagine any other technology firm with no existing captive user base to leverage upon attempting to re-create Meta's success. No doubt Threads broke the record to become the fastest-growing application ever. Whether this allows for creating of more contestable or fair Indian digital markets is a question for India's antitrust agency, the Competition Commission of India (CCI).

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Threads is another example of how platform firms like Meta create a conglomerate ecosystem of related services around their core social-media platform services— Facebook, Instagram, WhatsApp, and Facebook messenger—entrenching their market power, besides reinforcing entry barriers for new entrants. Meta and other platform players have tilted markets in their favour over the last decade either by aggressively acquiring maverick new competitors and folding them into their core platform services or leveraging the existing user base to enter new social media markets. A decade ago, Threads' founder attempted to buy Twitter twice.

Such a strategy to leverage existing market power by firms to grant them a competitive advantage in new or associated markets is a recognised form of market abuse under the provisions of Indian competition law when such leveraging amounts to consumer harm. Does Meta's launch of Threads constitute any form of consumer harm? My argument is yes, it does!

Consider the extensive amount of personal data that Meta already collects from its users on Facebook. Such data gets agglomerated with data collected from other Meta-owned services like WhatsApp and Instagram to create unique user profiles, which are marketed for windfall revenues. The German Federal Court, in June 2020, passed an order forbidding Meta (then Facebook) from combining data collected from users across its social platforms without their consent. This decision was a possible inspiration for the prohibition in Article 5 of the European Union's Digital Markets Act (DMA), which prohibits platform firms from combining users' personal data without their consent. Indeed, Meta appears to be sufficiently concerned that the current data practices of Threads may not comply with the DMA rules, which is why it has postponed its launch within the EU for the foreseeable future. Tim Wu, an architect of the Biden administration's antitrust policy, has publicly expressed regulatory concerns about Meta's ability to entrench its market dominance and collect even more data using Threads.

India has the most significant share of Threads downloads at 27.1%—twice that of the US. India is also one of the top markets for all Meta-owned applications. The country still needs a data protection law or legislation similar to the DMA. The CCI is currently reviewing the privacy policy of WhatsApp—another Meta-owned application, for sharing users' data with Facebook without providing a meaningful option for opting out. To add to this pickle, Thread's privacy policy allows the application to collect highly sensitive information about users to profile their digital activity, including health and financial data, precise location, browsing history, contacts, search history, and more. Given that Meta makes its money from tracking and profiling web users to sell their attention via its behavioural advertising micro-targeting tools, the privacy rights of millions of Indians are at stake.

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Meta is also facing regulatory scrutiny in the EU and the UK for its data usage policies for Facebook Marketplace for "self-preferencing"—a form of market abuse where a dominant firm prefers its services at the expense of its rivals. The EU case also alleges claims of Meta's illegal "tying" of Facebook and Marketplace. Tying by dominant firms is another recognised form of market abuse under Indian competition law. Given that access to Threads requires users to hold an Instagram account, CCI should explore its suo-motu regulatory options for addressing such tying and privacy concerns.

The launch of Threads also provides a few valuable insights into India's proposed digital competition law and neatly illustrates the complexity of regulating competition in digital markets. On the one hand, Threads allows Meta to further entrench its existing dominance over social networking markets, while the application's emergence as a viable

alternative to Twitter, especially in a network-gated market, provides digital users with a rare choice. Legislations similar to those like the DMA—which India is in the process of drafting—add friction and provide a balance. It forces companies like Meta to slow down, review their service, and evaluate how to protect their user’s data while catering to their bottom line.