The Antitrust Suit against Facebook

Why in news?

- The US federal government and governments of 48 states and territories have sued Facebook for illegally crushing competition.
- The lawsuits filed have put under the scanner the acquisition by Facebook of Instagram and WhatsApp.

What are the charges against Facebook?

- The US Federal Trade Commission's (FTC) lawsuit accused Facebook of eliminating competition with the acquisitions, even though the FTC itself had approved the deals.
- The FTC has alleged that Facebook "is illegally maintaining its personal social networking monopoly through a years-long course of anticompetitive conduct".
    - The case has been filed under Section 2 of the Sherman Act, which the FTC enforces through Section 5 of the FTC Act.
    - Section 2 of the Sherman Act prohibits companies from using anti-competitive means to acquire or maintain a monopoly.
- Facebook's 2012 acquisition of Instagram for $1 billion and the 2014 acquisition of WhatsApp for $19 billion are being cited as attempts to illegally eliminate competition.
- The FTC has also accused Facebook of imposing "anti-competitive conditions on software developers".
- Facebook restricted its "third-party software developers' access to valuable interconnections to its platform".
    - It did this by exercising strict control over its application programming interfaces or APIs.
    - E.g. Facebook shut down API access for Twitter's short video app Vine (introduced in 2013), effectively restricting its ability to grow.
- In all, FTC says Facebook's practices have -
    i. harmed competition and left "consumers with few choices for personal social networking
    ii. deprived advertisers of the benefits of competition

What about Facebook's acquisition of Instagram and WhatsApp?

- **Instagram** - The FTC has noted that the acquisition of Instagram came at a time when users were switching "from desktop computers to smartphones".
    - Users were thus "increasingly embracing photo-sharing".
- Facebook quickly recognized that Instagram would be an existential threat to Facebook's monopoly power.
- So, when Facebook was not able to compete with Instagram, it "ultimately chose to buy" the app to eliminate the threat.
- Likewise, when a rising Snapchat was seen as a potential competitor to Facebook, the company made an unsuccessful attempt to buy it.
- Later, it copied Snapchat's most popular feature Stories in Instagram, followed by Facebook and WhatsApp.
- Instagram now has more than a billion users; Snapchat has around 250 million daily active users.
- **WhatsApp** - The FTC says that Facebook did the same with WhatsApp too.
- When it realised that WhatsApp was "clear global 'category leader' in mobile messaging," it bought out the competition.
- FTC notes that Facebook acquiring WhatsApp also meant that "any future threat will have a more difficult time gaining scale in mobile messaging".
- This has largely been true.
    - WhatsApp dominates the mobile messaging space, and currently has over 2 billion users globally; more than 400 million in India alone.
    - No other messaging app comes even close, except perhaps Facebook's own Messenger.
- Notably, Instagram and WhatsApp are two products that are more appealing to younger users and in new geographies.
- These are therefore crucial to driving Facebook company's growth.

What does the FTC lawsuit aim for?

- Notably, the FTC had approved the Instagram and WhatsApp deals.
- It says that it can, and often does, challenge approved transactions when they violate the law.
- But FTC says its "action challenges more than just the acquisitions".
- The aim now is to roll back Facebook's anti-competitive conduct and restore competition.
- The lawsuit seeks "divestitures of assets, including Instagram and WhatsApp".
- So if the FTC wins, Facebook might be forced to sell Instagram and WhatsApp.
- FTC also wants to "prohibit Facebook from imposing anti-competitive conditions on software developers".
- This means Facebook will have to "seek prior notice and approval for future

mergers and acquisitions".

How has Facebook responded?

- The company has said it is not true that it has no competition, and named "Apple, Google, Twitter, Snap, Amazon, TikTok and Microsoft".
- It said that the lawsuits ignored the fact that users could and did move often to competing apps.
- Facebook has also questioned the "attack" on its acquisitions.
    - It recalled that the FTC had cleared the Instagram deal after an in-depth review.
    - The WhatsApp transaction had been reviewed by the European Union as well.
    - Regulators correctly allowed these deals to move forward because they did not threaten competition.
- It said the FTC has "seemingly no regard for settled law or the consequences to innovation and investment".
- Facebook has thus called the lawsuits "revisionist history".
- According to Facebook, this is not how "antitrust laws are supposed to work" and "those hard challenges are best solved by updating the rules of the Internet."
- Regarding the API restrictions, Facebook argues that it is allowed to choose its business partners.
    - YouTube, Twitter, and WeChat have done well despite these API policies.

Source: The Indian Express

SHANKAR IAS PARLIAMENT
Information is Empowering