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## Merger Control in the Digital Age: From Turnover Thresholds to Ecosystem Scrutiny in India

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# Merger Control in the Digital Age: From Turnover Thresholds to Ecosystem Scrutiny in India

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## **Abstract**

*The pervasive nature of digital transformation has fundamentally altered the structural and behavioral landscape of the global economy, necessitating a profound evolution in the enforcement of competition law. This research project provides an exhaustive comparative analysis of the dual pillars of competition policy merger control and cooperative conduct enforcement within the context of the platform-driven, data-centric digital era. Digital markets, characterized by multi-sidedness, extreme network effects, zero-price models, and massive data aggregation, have rendered traditional antitrust tools, which were largely developed for industrial-era economies, increasingly insufficient. This study investigates the systemic "enforcement gap" in merger control, particularly the phenomenon of "killer acquisitions" where dominant platforms acquire nascent competitors to stifle innovation, often bypassing turnover-based jurisdictional thresholds. Concurrently, the report analyzes the rise of algorithmic collusion and the challenges of regulating coordinated behavior facilitated by artificial intelligence without explicit human agreements. By examining the shift from purely ex-post enforcement toward the implementation of ex-ante regulatory frameworks like the European Union's Digital Markets Act (DMA), the analysis evaluates the emerging "hybrid" model of competition governance. The research findings emphasize the necessity of a qualitative shift in assessment criteria prioritizing contestability, fairness, and dynamic innovation over static price-centric metrics and underscore the vital role of international cooperation through forums such as the G7 and the International Competition Network (ICN) in ensuring a cohesive global response to digital dominance.*

## **The Evolution OF Merger Control in the Digital Age: From Turnover to Ecosystem Impact**

Since the inception of modern competition laws in the middle of the twentieth century, the global architecture of merger control is currently experiencing the most dramatic upheaval it has ever undergone. Over the course of several decades, the turnover-based criterion served as the primary method for determining which transactions warranted the investigation of regulatory authorities. This system, which had its origins in the reality of the industrial age, functioned on the notion that the revenue of a company was a reliable proxy for the economic significance of the company and the possible impact it may have on market competitiveness. This paradigm, which was immobile and focused on revenue, was extraordinarily effective in a society that was dominated by traditional services and physical production. Inevitably, market structures were altered as a result of large-scale mergers between companies that had big yearly sales. The transparent and quantifiable nature of turnover requirements gave a high degree of legal certainty for both businesses and regulators. However, since the digital economy has become the core of global business, the limits of this framework that was developed during the industrial age have become glaringly evident. As a result, there is a need for a change toward a more nuanced and ecosystem-oriented approach to merger monitoring.<sup>1</sup>

Instead than relying on data harvesting, advertising, or future monetization plans to build value, many of the most successful and competitively significant platforms offer "zero-price" services to customers. Examples of these platforms include search engines, social networks, and messaging apps. It is possible for a digital company to have millions of active users and highly inventive technology that has the potential to disrupt an entire industry, but at the same time, it may create zero turnover in its early phases of development.<sup>2</sup> Under the existing regulations, the acquisition of such a company by a dominant incumbent would almost never result in a necessary merger notification.

Consequently, the evolution of merger control is defined by a fundamental shift away from studying mergers inside restricted, siloed product markets and toward a holistic examination of their influence on broader digital ecosystems. This shift allows for a more comprehensive evaluation of the impact that mergers have. In the context of this discussion, the term "ecosystem" refers to a collection of digital products and services that are interconnected with one another. These connections are typically arranged around a central platform that takes advantage of network effects, data benefits, and cross-market synergies. The competitive threat that is

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<sup>1</sup> Stock, Nils. *Big Tech Acquisitions and Merger Control: Challenges Posed by Digital Platforms and Ecosystems*. Vol. 92. Kluwer Law International BV, 2025.

<sup>2</sup> Zoboli, Laura. "Conglomerate mergers in digital ecosystems: EU merger control beyond foreclosure." *Market and Competition Law Review* 10.1 (2026): 139-179.

posed by a merger in the digital age may not be a simple increase in market share within a single category, but rather the further entrenchment of a "gatekeeper" position that allows a firm to control access to users and data across multiple related sectors. This is something that regulators are becoming more and more aware of. New jurisdictional tools, such as transaction value thresholds and increased "call-in" powers, are required as a result of this transition. Additionally, updated substantive theories of harm that are able to account for the long-term effects on innovation and ecosystem dynamics are also required. As competition authorities in the European Union, the United States of America, the United Kingdom, India, and China struggle to find solutions to these difficulties, a complex global picture of regulatory reform has formed.

Through the Digital Markets Act (DMA), which works in conjunction with the EU Merger Regulation (EUMR) to ensure that acquisitions by approved "gatekeepers" are recognized even when they fall below traditional turnover levels, the European Union has been a pioneer in the use of ex-ante regulation from the very beginning. There is a more aggressive posture reflected in the 2023 Merger Guidelines in the United States. These guidelines lower the criteria for presumed illegality and introduce additional theories of harm relating to dominating positions and multi-sided platforms. When it comes to companies who have "Strategic Market Status," the Competition and Markets Authority (CMA) of the United Kingdom has devised a tailored system that places an emphasis on flexibility and a forward-looking review of market power. In the meantime, developing nations such as India have implemented stringent "deal value" standards in order to capture the strategic significance of high-dollar deals that would have been exempt from assessment in the past. These critics warn that the transition toward a merger control regime that is more interventionist and less predictable could have unforeseen effects for the same innovation that it intends to protect. This transformation is not without its critics.

As a result of making acquisitions more difficult, regulators may inadvertently raise the barriers to entry for new firms and stifle the dynamic "innovator/producer symbiosis" that has characterized the growth of the technology sector. Proponents of the "exit incentive" theory argue that the possibility of being acquired by a major technology platform is a primary driver of venture capital investment and the formation of startups. In addition, the transition from quantitative turnover testing to qualitative ecosystem assessments brings about a large increase in legal uncertainty. This is because firms are required to navigate a patchwork of different worldwide standards and regulatory powers that are discretionary. The most important obstacle that will need to be overcome in the next ten years in terms of merger control is to find a way to strike a balance between preventing the accumulation of unconquerable ecosystem power and maintaining an environment in which innovation and entrepreneurship

can continue to flourish. The digital transformation has radically changed the competitive landscape that the world is facing today because it is completely overhauling the basic models of trade, communication and service delivery. Such a shift to data-centric platform structures has made much of the existing competition law frameworks, based on traditional industrial frameworks, insufficient, necessitating a radical reconsideration of the mode of market power identification and regulation.<sup>3</sup>

Traditionally, competition law was founded on the understanding of safeguarding consumer welfare via price-based indicators and turnover ranges, whereas the digital age involves intricacies like zero-price services, network impacts, and the strategic collection of tremendous datasets that do not always promptly create income. Competition authorities have increasingly adopted more dynamic theories of harm as large technology conglomerates increase their influence by developing "digital ecosystems" the interdependent networks of products and services, with long-term contestability of markets being favored over short-term, price impacts. The report offers a comprehensive overview of the development of the merger control and the corresponding emergence of international cooperative control that is the contemporary reaction to the digitalized transformation.<sup>4</sup>

Business models in digital markets often involve services being offered to end-users free of charge, subsidized by the harvesting and sale of user data or can involve multi-sided platforms where one side of the market cross-subsidizes the other. Within these conditions, a startup can have a huge user base and a very advanced technological stack, which is a potential threat to more established players in the market, long before it can turn into high turnover.<sup>5</sup>

This incongruity between the real competitive value of a company and its financial records resulted in the creation of so-called killer acquisitions, wherein large platforms would purchase new, innovative competitors with the express goal of preempting their future competition, usually putting the technology of the acquired company on hold so that it will not disrupt their own core business. Since these takeovers frequently were below the required turnover quotas, hundreds of takeovers by the largest digital ecosystem players in the world- Alphabet, Apple, Meta, Amazon and Microsoft- were not reviewed by the competition authorities over years, which together led to the entrenchment of massive, unchallenged digital empires. To fill this enforcement gap, a number of jurisdictions have been

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<sup>3</sup> Frykman Krans, Matilda. "Examining the Competitive Effects of Digital Ecosystem Mergers: An Analysis of Theories of Harm Applied in Assessments of Digital Ecosystem Mergers under EU Merger Control." (2023).

<sup>4</sup> Lianos, Ioannis, et al. "Dynamic Effects in Merger Control." (2025).

<sup>5</sup> Hilzbrich, Joana Tomaz. "The insufficiency of the turnover threshold in merger control in the digital market: The case of killer acquisitions." *Revista de Concorrência e Regulação* 52 (2023): 135-156.

the first to establish deal-value thresholds (DVT) that impose notification obligations depending on the transaction price, instead of the current revenue of the target, so that high-value acquisitions of data-rich or innovative startups are drawn into the regulatory realm.<sup>6</sup> This change of turnover to deal value is the start of a wider transformation in merger control that moves towards more consideration of ecosystem impact than mere market share calculations. In this regard an ecosystem is understood as a set of products and services that are interconnected because of the same functionalities and technological compatibility, resulting in a great value to the consumers due to the seamless integration of the same, and at the same time the effect of lock-in is considerable. The competitive injury in an ecosystem union frequently comes not out of a direct horizontal overlap in which the parties contend in the identical market but out of the amplifying of the platform power of the acquirer through the exploitation of technological connections and complementarities. This reinforcement may take the form of network effects, in which the usefulness of a service rises with the user base, and through economies of scale and scope which render it virtually impossible to be a standalone competitor to the coordinated service of the incumbent orchestrator. Therefore, competition agencies have started to come up with theoretical approaches of harm based on ecosystem that do not follow the orthodox non-horizontal merger principles.<sup>7</sup>

An analogous case is the European Commission evaluation of the Booking/eTraveli merger whereby the regulator discovered that acquiring an adjacent, interconnected service would create competition issues in case it made an already dominant market position. The ecosystem theory differs with the traditional ones, in which the firm leverages its dominance in one market to foreclose competitors in another market, instead of the reverse; i.e. how acquisition of assets in one market can strengthen the dominance of the firm in its original market. Such structural emphasis alters the analysis of particular future actions, like tying or bundling, and how the alteration in market structure itself intensifies barriers to entry.

The international reaction to the enforcement gap in digital mergers has led to a quilt of legislative adjustments to broaden competition authority jurisdiction. The Competition (Amendment) Act, 2023, in India, came into effect with a DVT of 2,000 crore of 2023, guaranteeing that notices of transactions between targets having substantial business operations in the country are provided irrespective of the turnover. In the meantime, the Digital Markets Act of the European Union (Article 14) obligates so-called gatekeepers to disclose to the Commission all the

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<sup>6</sup> van den Boom, Jasper, and Peerawat Samranchit. "Assessing the long run competitive effects of digital ecosystem mergers." *Available at SSRN 3746343* (2020).

<sup>7</sup> Stevens, Sean. "Killer-acquisitions by the big tech giants and the EU's merger control in a fast-evolving digital era." (2023).

planned acquisitions in the digital market so that they can be referred to in accordance with Article 22 of the EU Merger Regulation. The ARC 10th and 11th Amendments in Germany set a threshold of transaction value of €400 million, whereas the Cartel Act Amendment in Austria set a limit of 200 million Euros. In the United States, the 2023 Merger Guidelines indicate a presumptive structural approach that causes the Herfindahl-Hirschman Index (HHI) levels of highly concentrated markets to be significantly reduced to 1,800-point levels, specifically in relation to the risks of platform competition and nascent threats. These principles adopt the ecosystem theory through examination of how a niche or partially overlapping service is added to a network of capabilities of a conglomerate.<sup>8</sup>

Data has emerged as a key foundation of this new analytical framework, and the concentration of data is often mentioned as a key determinant of ecosystem domination. Consolidations of large, non-copyable datasets can provide the consolidated business with a lasting competitive advantage in algorithm refinement, consumer behavior prediction, and advertising, which effectively moats the underlying business against potential disruptors. This informational influence can be viewed in terms of vertical foreclosure, in which the combined recipient can restrict the access of its competitors to important data inputs, or in terms of conglomerate effects, in which the cross use of information between different services provides an advantaged competitive advantage.<sup>9</sup>

Enforcement actions of recent years have employed theories of harm in dealing with these risks. An example is the case of Meta/GIPHY where Competition and Markets Authority (CMA), in the UK, did not pay attention to the existence of active competition, concluding the merger eliminated a potential threat in the display advertising market. In Adobe/Figma, the CMA as well as the European Commission were concerned about removing a potential competitor that would have spurred future innovation. Equally, the Google/Fitbit and Meta/Kustomer studies included in-depth analysis of data foreclosure and interoperability limits as self-preferencing.

Digital transformation also has led to a shift in how competition authorities engage with one another across borders. Since digital platforms are cross-border, any one merger or anticompetitive action may have an international impact. This has seen the formalization of cooperation with the International Competition Network (ICN) that has put in place Framework for Merger Review Cooperation in 2012. This non-binding framework helps in sharing of non-confidential information, such as review schedules and staff perceptions of theories of harm

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<sup>8</sup> Ramirez, Imanol. "Merger thresholds in the digital economy." *Del. J. Corp. L.* 45 (2020): 433.

<sup>9</sup> Tirole, Jean. "Competition and the industrial challenge for the digital age." *Annual Review of Economics* 15 (2023): 573-605.

and remedies to foster harmony in multijurisdictional reviews. This alignment has been extended by the G7 competition authorities with the release of Compendium of Approaches to Improving Competition in Digital Markets, which lists typical bottlenecks such as cloud computing and generative AI. Projects such as the Digital Transformation in Competition Enforcement (DICE) initiative, initiated by the EU in January 2026, to boost the AI and data science capacity of 15 national competition authorities exemplify support of this shift. Moreover, formal frameworks of collaboration, including the EU-UK Competition Cooperation Agreement signed on February 25, 2026, offer a formal framework of parallel investigations and coordination of enforcement measures, including dawn raids.<sup>10</sup> With the rise of digitalization, competition is being more and more influenced by the algorithms instead of human interaction, moving the analysis towards the perspective of a machine behavior and not a human behavior. Algorithms Competition authorities are now required to examine algorithmic collusion and tacit coordination, where autonomous systems can find themselves at supra-competitive prices by learning in parallel. The case of Google Shopping has confirmed that algorithmic self-preferencing is not an inherent benefit but a type of market power abuse. The next significant challenge is the emergence of Generative AI, and regulators keep an eye on so-called acqui-hiring or de facto merging, like Microsoft hiring Inflection AI or cloud providers collaborating with AI developers, like Amazon or Anthropic.<sup>11</sup>

Competition law change is a dynamic process that strikes a balance between the need to intervene in time and the threat of being a regulator. Although the ecosystem theory and the nascent threat doctrines offer effective instruments, critics believe that they can be too speculative and banish the so-called scaling acquisitions that produce real efficiencies and consumer convenience by way of a one-stop-shop. According to some empirical research, target products do not necessarily get terminated during ICT mergers, which questions the narrative of killer acquisition in certain fields. Nonetheless, the move towards ecosystem impact admits that the greatest competitive risks of the 21st century tend to be a powerful platform consuming innovator to cement its status as a gatekeeper. Competition law is entering a more advanced phase of digital regulation through the addition of algorithmic auditing, data science, as well as international alignment, to maintain the open space to innovate and make the gains of digital transformation accessible to all in a truly competitive marketplace.

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<sup>10</sup> Sutherland, Ewan. "Merger Control in the Age of Digital Markets." *Available at SSRN 3571467* (2020).

<sup>11</sup> Hutchinson, Christophe Samuel, et al. "Big tech's acquisition challenge to EU merger control." *European Competition Journal* 19.2 (2023): 226-245.

## **The Jurisdictional Gap: Limitations of Turnover Thresholds and the Rise of Transaction Value**

The definition of "consideration" and "domestic activity" in a manner that is both effective and gives legal clarity has proven to be a challenging endeavor. Taking into account not only cash but also stock swaps, the assumption of debt, and contingent future payments such as earn-outs, the German and Austrian regimes have adopted a comprehensive definition of consideration that encompasses all of these aspects.<sup>12</sup> The domestic activity of digital platforms is increasingly being quantified using metrics that are not related to finances. These metrics include the number of monthly active users, the amount of data traffic, and the frequency with which websites are accessed in the country in question. The Competition Commission of India (CCI) followed a similar line of reasoning when it passed the Competition (Amendment) Act 2023, which established a Deal Value Threshold (DVT) of INR 2,000 crore, which is equivalent to around \$240 million. The "substantial business operations" requirement is further refined by the Indian model, which establishes specified quantitative floors. For example, ten percent of a target's global user base or gross merchandise value (GMV) must be situated in India.<sup>13</sup>

A structural shift toward a review procedure that is more discretionary and extensive is represented by the deployment of these new thresholds. A "size-of-transaction" test has been a feature of the Hart-Scott-Rodino (HSR) Act in the United States for quite some time. This test has been modified for the year 2025 to be \$126.4 million for the majority of deals and \$505.8 million for the largest transactions, regardless of the size of the parties involved. On the other hand, the most significant change in the United States' approach to jurisdictional issues can be found in the full revision of the HSR notification form. Parties to reportable transactions will be expected to give much more information regarding their business operations, previous acquisitions, and internal planning papers at the beginning of the transaction beginning in the year 2025. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have expressed a desire to uncover potential competition issues far earlier in the investigation process. In particular, they are interested in identifying issues that are associated with embryonic competition and ecosystem entrenchment with regard to competition. In a similar manner, the State Administration for Market Regulation (SAMR) of China has improved its jurisdictional toolset in order to strike a compromise between comprehensive monitoring and efficient operation. In 2024, SAMR increased its turnover thresholds to RMB 12 billion globally and RMB 800 million for at least two parties in China, a move intended to reduce the number of

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<sup>12</sup> Kuhnert, Heinrich. "Joint Guidance on Transaction-Value Thresholds." *Eur. Competition & Reg. L. Rev.* 2 (2018): 216.

<sup>13</sup> Clinger, James C., et al. "Turnover, transaction costs, and time horizons: An examination of municipal debt financing." *The American Review of Public Administration* 38.2 (2008): 167-179.

non-problematic filings and allow the agency to focus its resources on high-impact deals.<sup>14</sup> The rise of transaction value thresholds and "call-in" powers is indicative of a shift toward a jurisdictional framework that is more flexible, but also less predictable. This means that the "one-stop-shop" idea, which states that a deal only needs to be cleared in a few big jurisdictions with high revenue criteria, is becoming an increasingly relic of the past for multinational firms. It is now possible for a single acquisition of a high-value technology firm to trigger notifications in dozens of nations, each of which utilizes its own unique standards to determine the domestic nexus and strategic importance of the deal. In addition, the ambiguity of terminology such as "significant activity" or "substantial business operations" necessitates a comprehensive, industry-specific analysis of user engagement and data flows that goes far beyond the scope of standard financial auditing. Despite the fact that these measures are successful in closing the gap that allowed "killer acquisitions" to avoid examination, they also introduce a layer of procedural complexity and legal risk that has important ramifications for the worldwide mergers and acquisitions strategy.<sup>15</sup>

### **Theoretical Foundations of Ecosystem Harm: Beyond Horizontal Overlaps**

Within the framework of the industrial model, the fundamental concern of merger control was the direct removal of rivalry between two companies that offered replacement products within the same market. In spite of this, many of the most contentious mergers that have occurred in the digital age are vertical or conglomerate in form. These mergers involve companies that operate at different levels of the supply chain or in areas that are complementary to one another. This has resulted in the development of "ecosystem-based" theories of harm, which investigate the ways in which a merger might boost a company's overall competitive position across a cluster of connected markets, so establishing obstacles to entry and locking in consumers and business users.<sup>16</sup>

An example of this would be a dominating social media platform purchasing a young virtual reality startup or a messaging app. This would not be because the two services are currently in competition with one another, but rather because both services offer additional avenues for data collecting and user engagement that the platform can utilize to strengthen its main advertising business. When the marginal ecosystem value of an extra user surpasses a particular threshold, it becomes rational for the platform to engage in aggressive acquisitions or pricing

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<sup>14</sup> Srivastava, Ankit, Tanmay Doneria, and Arnab Srivastava. "A Study Beyond the See-Saw of Relevant and Global Turnover: Finding a Mechanism for Adequate Penalty." *Competition Commission of India Journal on Competition Law and Policy* (2023): 135-158.

<sup>15</sup> Podszun, Rupprecht. "Thresholds of merger notification: The challenge of digital markets, the turnover lottery, and the question of re-interpreting rules." *Research Handbook On Competition And Technology*. Edward Elgar Publishing, 2025. 232-255.

<sup>16</sup> Yarrow, Matthew M., and Stanley N. Salthe. "Ecological boundaries in the context of hierarchy theory." *BioSystems* 92.3 (2008): 233-244.

that is below the cost of the user in order to expand its footprint.<sup>17</sup> The characteristics of digital markets include strong network effects, which are characterized by the fact that the value of a service increases with the number of other people using it, and high switching costs for consumers who have put time and data into a particular platform. It is conceivable for a market to "tip" toward a single dominating company as a result of a merger that amplifies these network effects. Once this occurs, competition becomes practically impossible. The concept of "cross-market tipping" is particularly worrisome since it includes a company exploiting its dominance in one key area to influence a tipping point in a market that is either complementary or adjacent to the one in which it is dominant. Regulators are currently performing forward-looking evaluations that anticipate market developments five or even ten years into the future in an effort to identify these tipping points in their early stages of development.

The transition toward theories that are based on ecosystems is also reflected in the improved regulatory rules that are being implemented in major legislative bodies. In a similar manner, Guideline 9 covers multi-sided platforms and mandates that agencies investigate the ways in which a merger impacts competition "between platforms, on a platform, or to displace a platform." This allows for a major reduction in the amount of competition that exists.<sup>18</sup>

On the other hand, the implementation of ecosystem-based theories continues to be a contentious topic of discussion among legal experts and economists. Critics contend that these theories frequently rely on speculative assumptions about the events that will occur in the future market and that they can result in "over-enforcement" that is detrimental to the welfare of consumers. By way of illustration, vertical mergers frequently result in major efficiencies, such as the "elimination of double marginalization," which can result in cheaper prices for end users. When "success" or "size" is used as a basis for antitrust liability, there is also the possibility that businesses will be dissuaded from investing in innovative new services that are beneficial to the ecosystem as a whole. As the body of case law in this area continues to evolve, the challenge for competition authorities will be to set clear standards that are based on facts in order to determine when ecosystem synergies cross the line from being pro-competitive efficiency to being anti-competitive foreclosure.

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<sup>17</sup> Wagner, Gerhard, and Horst Eidenmuller. "Down by algorithms: siphoning rents, exploiting biases, and shaping preferences: regulating the dark side of personalized transactions." *U. Chi. L. Rev.* 86 (2019): 581.

<sup>18</sup> Kotras, Baptiste. "Mass personalization: Predictive marketing algorithms and the reshaping of consumer knowledge." *Big data & society* 7.2 (2020): 2053951720951581.

## **Killer Acquisitions and Nascent Competition: Preemption In Innovation Markets**

The phenomenon known as "killer acquisition" is the most significant and potentially dangerous obstacle in the way of modern merger control. A killer acquisition takes place when a dominant company purchases a startup that is known for its innovative products or services with the intention of terminating the business's development programs and preventing it from becoming a future competitor.<sup>19</sup> This issue is expressly addressed in the 2023 United States Merger Guidelines, which state in Guideline 4 that mergers have the potential to significantly reduce competition by cutting out a possible new entrant, even if the potential new entrant does not yet have a product that is ready for commercialization.<sup>20</sup>

A more interventionist and forward-looking approach to the "significant impediment to effective competition" (SIEC) test has recently been implemented by regulators as a response to the concerns that have been identified. It is necessary to shift the burden of proof in certain situations, notably in situations where the acquirer is a platform that holds a dominating position. It has been suggested by a number of specialists that in the case of transactions that involve "gatekeepers," there ought to be a presumption of harm that the parties are obligated to refute. The practical consequence of recent changes, such as the European Union's use of Article 22 EUMR to call in below-threshold agreements, is to subject acquisitions of creative firms to far higher levels of scrutiny. This is despite the fact that this has not been completely embraced in all countries. Even though the target had almost no turnover in Europe, the European Commission prohibited a vertical merger between Illumina and Gravel on the grounds that it would put an end to the innovation race in the market for early cancer detection tests. This case is a watershed in this regard because it was the first time that the European Commission had done so.<sup>21</sup>

When it comes down to it, the discussion over killer acquisitions is also fundamentally about the connection between merger control and venture capital. The "kill zone" argument, according to some who are opposed to the current trend toward more stringent inspection, does not take into consideration the "exit incentive" that acquisitions give. When it comes to the key motive for many startup founders and investors to undertake the high risks of research and development and entry, the prospect of being purchased by a major technology business is the fundamental motivation. This "mismatch" between regulatory

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<sup>19</sup> Devlin, Alan J. "Killing nascent innovation as abuse of dominance and monopolization." *Research Handbook on Abuse of Dominance and Monopolization*. Edward Elgar Publishing, 2023. 374-396.

<sup>20</sup> e Lemos, Thales de Melo, and Guilherme Mendes Resende. "Nascent Competition and Killer Acquisitions in Digital Markets: a Decade of Acquisitions by Big Tech." (2023).

<sup>21</sup> Barnett, Jonathan M. "" Killer Acquisitions" Reexamined: Economic Hyperbole in the Age of Populist Antitrust." *Univ. Chi. Bus. L. Rev.* 3 (2023): 39.

theory and market reality suggests that an overly strong policy against fledgling competition could be counterproductive, leading to a drop in innovation rather than a boost. This is because the policy would be compared to the reality of the market. Some authorities in charge of competition are investigating the possibility of employing "innovation theories of harm" in order to overcome this tension. These theories concentrate primarily on the impact that a merger will have on the trajectory of future technological advancement. In order to accomplish this, it is necessary to move away from a static, price-based study and instead proceed with a dynamic evaluation of how a merger will influence the incentives to invest in new goods or features. In the United States, Guideline 4 of the 2023 Guidelines places an emphasis on "objective evidence" of a company's intention and capability to join a market. Internal planning documents or the reallocation of resources toward a particular technology are examples of the kind of evidence that support this assertion. This evidentiary focus is meant to base embryonic competition theories in factual reality; nevertheless, it continues to be challenging to use in practice due to the inherent ambiguity that is present in fast-moving technology marketplaces.<sup>22</sup>

There is a good chance that the future of killer acquisition enforcement will involve a more sophisticated utilization of both ex-ante and ex-post investigation capabilities. There are reporting requirements included in both the Digital Markets Act in the European Union and the Digital Markets, Competition and Consumers Act in the United Kingdom.

### **Institutional Responses and Regulatory Divergence: Dma, Dmcc, and the HSR Overhaul**

The most major move toward ex-ante regulation is represented by the Digital Markets Act (DMA) that was passed by the European Union. A number of big digital platforms are designated as "gatekeepers" by the Digital Media Authority (DMA) on the basis of their turnover, number of users, and established market position.<sup>23</sup> It is mandatory for gatekeepers to notify the European Commission of any acquisition of a company that is engaged in the provision of services in the digital sector or the collection of data, regardless of the magnitude of the transaction, as stipulated by Article 14 of the Digital Market Act.<sup>24</sup>

The United Kingdom has taken a different approach with its Digital Markets, Competition and Consumers (DMCC) Act. This act gives the Competition and Markets Authority (CMA) the authority to monitor companies that have been

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<sup>22</sup> Taladay, John, and Christine Ryu-Naya. "Catching a Killer? Six "Genetic Markers" to Assess Nascent Competitor Acquisitions." *Six "Genetic Markers" to Assess Nascent Competitor Acquisitions* (2025).

<sup>23</sup> van den Boom, Jasper, et al. "Digital Regulation Synthesis: Comparative Analysis of the DMA, Sec. 19a and the DMCCA." *Sec. 19a and the DMCCA (December 15, 2024)* (2024).

<sup>24</sup> Allison, James C. "Gatecrashing gatekeepers: evaluating the enforcement of the digital markets act against major digital gatekeepers and regulatory effectiveness." (2025).

granted "Strategic Market Status" (SMS). In contrast to the DMA, which imposes a predetermined list of obligations on all gatekeepers, the DMCC gives the CMA the authority to devise "conduct requirements" that are special to each SMS company, taking into account the particular business model and market effect of each SMS companies. A one-of-a-kind merger threshold is also introduced by the DMCC. The Competition and Markets Authority (CMA) has the authority to call any deal in for review if one of the parties involved at least has a 33% share of supply in the UK and a turnover that is greater than 350 million pounds, provided that the other party has a "sufficient nexus" to the UK. As a reflection of the CMA's emphasis on ecosystem dynamics, this threshold was developed with the express purpose of identifying vertical and conglomerate mergers in situations where there is no direct horizontal overlap. The response in the United States has been characterized by the strengthening of existing mechanisms rather than the formation of a new regulatory regime. This is where the response has been characterized. A more aggressive interpretation of the Clayton Act is reflected in the 2023 Merger Guidelines, which place an emphasis on the protection of potential competition and the prevention of ecosystem entrenchment.

The United States government agencies have also dramatically boosted their lawsuit activities, exhibiting a willingness to fight complex technology acquisitions in court even when traditional arguments of harm are less obvious. Furthermore, the upcoming revision of the Hart-Scott-Rodino (HSR) filing process will require businesses to provide a substantial amount of information regarding the relationships that make up their "ecosystem" at the time of notification. This will effectively shift the burden of information gathering from the regulator to the parties that are merging.

For instance, in the case between Google and Fitbit, the Commission accepted a ten-year agreement from Google to refrain from using Fitbit data for its advertising business and to ensure that access is maintained for other wearable device makers who are in competition with Google. The United States of America and the United Kingdom, on the other hand, have developed a growing skepticism toward behavioral cures. They argue that these remedies are difficult to monitor and frequently fail to address the underlying structural harm that is caused to competition. Particularly, the Competition and Markets Authority (CMA) of the United Kingdom has garnered a reputation for being one of the most interventionist bodies in the world. It is known for routinely obstructing acquisitions or mandating significant divestitures in the technology industry. Significant institutional shifts are also taking place in emerging markets that are of greater importance. Even if a deal value criterion is not met, the Competition Commission of India is able to investigate minority stakes that impart strategic rights because it has adopted the concept of "material influence" as a threshold for control. A number of anti-competitive behaviors that occur online, such as

traffic hijacking and algorithm-driven collusion, have been targeted by China's SAMR, which has devised its own "internet regulation provisions" of its own. Because of this, the global landscape of digital merger control is becoming increasingly fragmented. Multinational corporations are now confronted with a "multi-layered" review process, which needs them to satisfy varied legal criteria and remedy preferences in each and every major jurisdiction. This legislative variance generates a considerable amount of friction for global mergers and acquisitions activity, and it highlights the necessity of increased international cooperation through organizations such as the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN).<sup>25</sup>

### **Substantive Assessment Challenges: Data Advantages, Network Effects, and Multi-Sided Platforms**

A multi-sided market is a market in which a platform serves two or more distinct groups of users, such as advertising and social media users, or merchants and customers, where the value of the platform for one group is dependent on the presence of the other group. A merger that increases the position of a platform on one side of the market can have deep and non-linear repercussions on the other side of the market.

These effects frequently result in the quick tipping of the market and the foreclosure of competitors with the platform. Data is the primary source of energy for these digital ecosystems, and its function in the evaluation of substantive aspects has become of the utmost importance.<sup>26</sup> These days, regulators are looking into something called "data-backed market power," which involves determining whether or not the merging of two datasets will provide a combined business with an unbeatable advantage in terms of personalization, targeting, or predictive analytics. In addition to being a horizontal concern, this also entails "conglomerate effects," which refer to the situation in which a company uses data from one market to acquire a "first-mover" advantage in a new sector that is unrelated to the original market. By way of illustration, the Central Competition Commission (CCI) conducted an examination into the modification to WhatsApp's privacy policy. The study focused on how the mandatory sharing of data with Meta would enable the group to utilize its dominance in messaging to strengthen its position in other digital sectors. The concept of "ecosystem leveraging" is an important notion of harm in the context of modern digital merger review.

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<sup>25</sup> Competition Authority, French. "International Competition Network (ICN)." (2017).

<sup>26</sup> Abdelkafi, Nizar, et al. "Multi-sided platforms." *Electronic Markets* 29.4 (2019): 553-559.

The evaluation of marketplaces with "zero-price" is yet another significant obstacle to overcome. Classical techniques, such as the SSNIP test (which stands for "Small but Significant and Non-transitory Increase in Price"), are rendered useless in situations where consumers are not required to pay for services. Instead, regulators should concentrate their attention on "non-price" aspects of competition, such as quality, innovation, and confidential information.<sup>27</sup> The incidents involving Facebook and WhatsApp as well as Google and Fitbit brought to light the growing significance of privacy as a competitive factor. Authorities are currently reviewing whether or not a merger would result in a decrease in the extent to which consumers' data protection standards are compromised.

On the other hand, there is no worldwide agreement over how to assess these non-price aspects, which results in different outcomes with respect to different jurisdictions. In addition, the nature of merger remedies is being altered as a result of the complexity of these marketplaces. Behavioral solutions are becoming increasingly popular among authorities as a result of the fact that structural divestitures are frequently challenging in the digital industry, which is characterized by assets that are intangible and tightly intertwined into the basic design of a platform. "Data silos," in which a merged organization agrees not to integrate datasets, and "interoperability mandates," in which a platform must assure that other services can still connect to its system, are two examples of these types of agreements.<sup>28</sup>

### **Merger Control in India: From Turnover Traps to Ecosystem Scrutiny**

The fundamental concepts of market competitiveness, customer engagement, and company strategy are being reconstructed as a result of digital transformation, which has caused a seismic upheaval in the global economic environment. This move from a traditional, asset-heavy industrial model to a data-driven, platform-centric digital economy has fundamentally challenged the paradigms that are now in place for the implementation of competition laws. Over the course of several decades, antitrust authorities functioned within a framework that was characterized by distinct market boundaries, actual production costs, and price-based indices of consumer welfare respectively. Numerous conventional technologies have been made unsuitable as a result of the emergence of multi-sided digital platforms. These platforms are characterized by strong network effects and the strategic gathering of enormous data sets. The paradigm of business competition has been altered as a result of digital transformation, which has enabled the rapid growth of the digital economic industry. However, at the

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<sup>27</sup> Parker, Geoffrey, and Marshall Van Alstyne. "Platforms: Their structure, benefits, and challenges." *Introduction to Digital Humanism: A Textbook*. Cham: Springer Nature Switzerland, 2023. 523-542.

<sup>28</sup> Karaj, Enxhi. "An exploratory study on the mechanisms that allow value capture when a multi-sided platform activates data network effects." (2021).

same time, it has introduced new problems that are associated with market dominance by large technology firms and the restriction of access to essential digital infrastructure. This makes market penetration extremely challenging for small and medium-sized businesses. Due to the fact that large corporations are utilizing technological advancements to dominate markets and restrict the access of potential competitors, the focus of competition law has had to shift from a static analysis of market shares to a dynamic evaluation of ecosystem influence and innovation potential. A deep reevaluation of the ways in which competition authorities discover, evaluate, and mitigate anti-competitive behavior in the digital age is required because the digital economy is no longer only a segment of the total economy; rather, it is the infrastructure upon which the modern economy is created because it is the foundation upon which the modern economy is built. This era, which is frequently referred to as the "fourth industrial revolution," is a transitional moment for competition law.

It is a time when old conceptual constraints are removed in order to make room for the building of new regulatory paradigms. In this intricate digital economy, the formation of value is driven by positive feedback loops, cross-side network effects, and data-driven learning. These factors frequently result in "winner-take-all" results, which are difficult to reverse using standard ex-post enforcement methods once a market has "tipped."

The ubiquitous influence of network effects also means that the value of a platform increases exponentially with the number of users it has, which creates enormous barriers to entry for smaller competitors. It is possible that a dominating platform is pursuing a "envelopment" strategy when it purchases a company in a complementary industry. This strategy involves the platform utilizing its existing user base and cross-subsidies in order to construct barriers in the new market. The traditional "Chicago School" ideology, which is narrowly focused on price-centric consumer welfare, and the "Neo-Brandeisian" school, which advocates for a broader focus on market structure, bigness, and the protection of the competitive process itself, have both been ignited by this, and the discussion has spread around the world. A trend toward ex-ante regulations that impose proactive obligations on "gatekeepers" has occurred as a result of the argument put forth by Neo-Brandeisian scholars that the consumer welfare criterion is not adequately suited to address the social and economic problems caused by enormous technology companies. The Digital Markets Act (DMA) of the European Union and the Digital Markets, Competition and Consumers Act (DMCC) of the United Kingdom are two examples of instruments that demonstrate this change.<sup>29</sup>

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<sup>29</sup> Kubaric, Ondrej. "Contours of Contestability: A Comparative Analysis of EU and UK Digital Markets Regulation." *NEL Rev.* 10 (2024): 11.

The role of algorithms has also been upgraded as a result of digital transformation, moving from that of basic tools to that of strategic assets that might promote anti-competitive behavior. Examples of such behavior include tacit collaboration or "dark patterns" that manipulate consumer choice. As a result, dominant incumbents have the ability to engage in "killer acquisitions," which include purchasing out emerging competitors in order to eliminate potential future competition before it can arise.<sup>30</sup> It was proposed by research conducted in other industries, such as the pharmaceutical industry, that as much as six percent of acquisitions could be of this kind, with the intention of limiting innovation. A formal identification of this gap was made by the Competition Law Review Committee (CLRC) in its report for the year 2019, which stated that the Competition Commission of India (CCI) did not possess the legislative capability to address transactions in the digital domain, where value was derived from data and potential rather than immediate turnover.<sup>31</sup>

The Competition (Amendment) Act of 2023, which was enacted in response to these recommendations, introduced the Deal Value Threshold (DVT), which was a significant shift that shifted India toward a "size of transaction" model. The Central Competition Commission (CCI) is required to be notified of any transaction that exceeds INR 2,000 crore (roughly USD 240 million) in accordance with the new Section 5(d), provided that the target has "substantial business operations" (SBO) in India. With this level, which is independent and supersedes the de minimis exemption, it is made certain that high-value transactions will no longer be able to slip through the cracks simply due to the fact that the target is either asset-light or revenue-poor. The "value of transaction" is a comprehensive concept that encompasses all forms of compensation, whether they are direct, indirect, immediate, or deferred. These forms of consideration include cash, share swaps, non-compete fees, the value of call options (both the premium and the exercise price), and interwoven commercial collaborations. The SBO requirements are designed in such a way as to ensure that a local nexus is maintained. For digital services, a target is considered to have SBO if ten percent or more of its global users are located in India, or if its Indian turnover or Gross Merchandise Value (GMV) surpasses ten percent of its entire global turnover. In addition to the 10% guideline, a monetary floor of INR 500 crore in Indian turnover or GMV is applicable to sector that does not involve digital technology. Moreover, India has established itself as a frontrunner in the field of global digital governance by signing memorandums of understanding (MoUs) with twenty-three countries for the purpose of collaborating on digital public infrastructure

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<sup>30</sup> Barnett, Jonathan M. "' Killer Acquisitions' Reexamined: Economic Hyperbole in the Age of Populist Antitrust." *Univ. Chi. Bus. L. Rev.* 3 (2023): 39.

<sup>31</sup> Régibeau, Pierre. "Killer acquisitions? Evidence and potential theories of harm." *Research Handbook on the Law and Economics of Competition Enforcement*. Edward Elgar Publishing, 2022. 300-323.

(DPI).<sup>32</sup> Additionally, the Indian government is leaning toward a hybrid approach that combines ex-post merger control with ex-ante regulation. This is happening as the Indian system continues to undergo change. On the basis of quantitative thresholds of financial strength and user spread, the Digital Competition Bill (DCB) 2024 that is now being presented aims to identify certain big platforms as "Systemically Significant Digital Enterprises" (SSDEs). These SSDEs would be subject to proactive rules that prohibit self-preferencing, bundling, and the improper use of data. The purpose of these rules is to prevent markets from "tipping" before enforcement bodies have the opportunity to take action. In the digital marketplace, this strategy, which was influenced by the Digital Market Act (DMA) of the European Union, marks the next frontier of Indian competition law.

As a result of India's efforts to close the turnover trap through the DVT, widen the definition of control to include material influence, and apply sophisticated theories of harm in cases such as Reliance-Disney, the country has positioned itself as a sophisticated participant in the global antitrust discourse. The rising technological competence of the Commission, along with its dedication to international cooperation, ensures that it is able to successfully manage the intricacies of data asymmetries and network effects. As India moves toward an ex-ante framework with the Digital Competition Bill, the country is continuing to refine its toolkit to protect innovation and competition in the economy of the 21st century. This is done to ensure that the digital transformation continues to be a driver of consumer benefit and equitable growth for its 1.4 billion citizens. Refinements that are currently being made to the "substantial business operations" test and the "material influence" criterion are indicative of a regulator that is no longer content with reactive enforcement but is actively influencing the competitive structure of the digital future.<sup>33</sup>

### **The Historical Genesis and the Limitations of Traditional Merger Control**

The MRTP regime was greatly concerned about the unequal distribution of economic power, and preliminary study showed that 85 percent of industrial regions were extremely concentrated. The MRTP Act, on the other hand, was not actually punitive but rather reformatory; it focused more on structural reforms and did not have the authority to impose any severe punishments or fines<sup>34</sup>. The Multi-Rate Transaction Processing (MRTP) system, which was built on the basis of a suspicion of size and required the registration of the majority of transactions, was a burden on the quickly developing market when India opened its doors in a year 1991. A current competition legislation that is adaptable to the realities of

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<sup>32</sup> Cunningham, Colleen, Florian Ederer, and Song Ma. "Killer acquisitions." *Journal of political economy* 129.3 (2021): 649-702.

<sup>33</sup> Chen, Zi Xuan. "Premerger Review of" Killer Acquisitions" in Tech." *UC Davis Bus. LJ* 25 (2025): 112.

<sup>34</sup> Wilson, Joseph. "Globalization and the limits of national merger control laws." (2003): 1-402.

globalization was created by the Raghavan Committee, which was established by the Indian government in the year 1999. A fundamental shift in mindset would be represented by the Competition Act of 2002, which was based on the blueprint of a report that was submitted by the Committee in the year 2000. Rather than concentrating on the regulation of monopolies, the Competition Act of 2002 would foster competition.

It was urged by the Raghavan Committee that the new law should focus on behavior rather than size, that it should contain the rule of reason in order to challenge anti-competitive behavior, and that it should be extraterritorial. It is important to note that it demanded the establishment of the Competition Commission of India (CCI) as a specialized institution that would be staffed by specialists, as opposed to the judiciary alone, which did not have any prior experience dealing with issues pertaining to free markets. When they were finally put into effect in 2011, the requirements on merger control that were included in Sections 5 and 6 of the Competition Act of 2002 were initially meant to apply to conventional industries that rely heavily on assets. On the basis of physical resources and turnover, the competitive power was evaluated, and it was determined that there was a correlation between the financial size and the competitive strength.

Due to the fact that the digital economy had begun to make these revenue-focused measures porous, the CCI had spent its first ten years creating a consistent jurisprudence and providing almost one thousand alerts on the green channel treatment of no-issue trades. The digital market does not rely on tangible assets or direct income to generate value; rather, it produces value through the utilization of data and user bases in addition to intellectual property.<sup>35</sup>

Due to the fact that the targets were lower than the minor target or de minimis exemption, high-profile acquisitions such as WhiteHat Jr. by BYJU, Myntra by Flipkart, and TaxiforSure by Ola were able to dodge any regulatory notice all. Kill zones were created as a result of incumbent acquisitions, which involved the purchase of new competitors in order to have a head start on future competition.<sup>36</sup>

This led to the suppression of innovation. A target company that has a large user base and appears to have minimal turnover (which is something that is typically seen in the blitzscaling period of young companies) would be fully opaque to the CCI in the original arrangement. For instance, when Facebook purchased Instagram in 2012, the application had no revenue and a tremendous user base.

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<sup>35</sup> Buch-Hansen, Hubert. "Rethinking the history of European level merger control: A critical political economy perspective." (2009).

<sup>36</sup> Rai, Ashwani Kumar, and Shruti Sriram. "Killer Acquisitions: How Big Tech's Startup Buyouts Threaten Innovation and Market Competition." *Available at SSRN 5708702* (2025).

In the traditional turnover trigger, a transaction of this nature might go unnoticed, despite the fact that it would have a significant impact on the level of competition in the future market. Due to the existence of this regulatory gap, it was necessary to adopt a deal value approach in order to account for transactions in which the purchase price, rather than the balance sheet, takes into account the true competitive value of the target.

### **Legislative Evolution and the Transition to Deal Value Thresholds**

The Competition (Amendment) Act of 2023 and the Competition Commission of India (Combinations) Regulations of 2024 were the two pieces of legislation that contributed to the institutional resolution of the turnover trap. As a result of these amendments, a new jurisdictional trigger known as the Deal Value Threshold (DVT) was established. A transaction of any kind (whether it be an acquisition, merger, or amalgamation) that is worth more than INR 2,000 crore (roughly 238 million dollars) is required to be notified to the Commerce Commission of India (CCI) under the new system. This is the case providing that the target has substantial business in India. This is the criterion that particularly overcomes the *de minimis* exemption; despite the fact that a target may have extremely modest assets or turnover, the transaction should be considered in case of passing the deal value and Indian nexus tests.<sup>37</sup>

The definition of transaction value in the 2024 Regulations is purposefully ambiguous in order to prevent a scenario in which businesses may organize transactions in a manner that would allow them to avoid being scrutinized. A wide range of direct and indirect considerations, deferrals, and even the value that is attributed to non-compete agreements are all included in this comprehensive approach. Furthermore, when a transaction is related to a series of interconnected steps, the cumulative value of all of the interconnected steps that have been made in the preceding two years should be counted. Because they are broken down into smaller, less significant acquisitions that do not require notification, this strategy ensures that the "serial acquisitions" do not slip through the cracks. India is now comparable to other sophisticated jurisdictions, including as Germany and Austria, who have also implemented value-based triggers to supervise digital and pharmaceutical consolidations. Through the adoption of the DVT, India has become comparable to these other jurisdictions.<sup>38</sup>

Another test that was added was called the Substantial Business Operations (SBO) test, and its purpose was to offer some light on what is meant by the term "local nexus." Each section of the examination is divided into digital and non-

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<sup>37</sup> Chauhan, Sidharth, and Dhruv Mehta. "Deal value threshold and M&A: A competition law analysis." *The Antitrust Bulletin* 69.2-4 (2024): 90-110.

<sup>38</sup> Barua, Mony. "Addressing Anti-Competitive Practices in Bangladesh: Gaps in the institutional and Statutory Framework." *Available at SSRN 5937238* (2023).

digital categories. In the case of the digital industry (SBO), the target must have at least ten percent of its worldwide business or end consumers in India. This is a requirement. On the other hand, the test is considered successful if the target has a turnover of the overall global market or a Gross Merchandise Value (GMV) of 10% to the Indian market. The 10% share must also exceed an absolute worth of INR 500 crore in the non-digital sectors in order to be considered successful. By engaging users and collecting data well before they begin to generate considerable quantities of local wealth, digital platforms have the potential to achieve systemic importance. It is vital to stress that this distinction is made because digital platforms have the power to achieve this.<sup>39</sup>

The 2023 Amendment placed an emphasis on both the effectiveness of the procedures and the deterrence of the situation. The CCI reduced the maximum amount of time it could take to make a final decision by fifty days, bringing the total number of days it might take to 210. Additionally, the timeframe within which it may form a prima facie conclusion was reduced to thirty calendar days. In spite of the fact that these shortened timetables are designed to provide confidence regarding the transaction, they placed a significant amount of pressure on the regulator to perform complex economic evaluations within a short period of time. In order to ensure that there is no ambiguity, the penalty for providing incorrect and misleading information was increased by a factor of five, specifically from 10 million Indian Rupees to 50 million Indian Rupees.

The new structure also includes a Green Channel, which is a method of executing transactions that do not include any horizontal, vertical, or complimentary overlaps between the parties involved. Through the use of this deemed-approval method, consummation can occur upon filing, which significantly reduces the administrative burden associated with transactions that are not contentious. But in high-value technology agreements that meet the criteria for the DVT, the CCI will most likely go beyond the examination of simple market share to evaluate the power of the "ecosystem" and the market for innovation. This will ensure that the acquisition of a promising company does not cement the fly-wheel effect of a dominant platform.<sup>40</sup>

### **Ecosystem Scrutiny and the Redefinition of Market Power**

A notion known as ecosystem inspection has emerged as a result of the implementation of digital enforcement. In contrast to the traditional method of evaluating mergers, which is centered on the study of limited markets of products, ecosystem scrutiny focuses on the ways in which a deal could strengthen the

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<sup>39</sup> Martyniszyn, Marek. "Competition law and policy in crisis and the rise of the expansive state." *Journal of Antitrust Enforcement* (2025): jnaf020.

<sup>40</sup> Jaure, Ngonidzashe. "Competition Law, Trade and Sustainability Development Goals (SDGs) for the BRICS Bloc in Turbulent Times."

control of a platform over a variety of services that are tied to the platform. It is possible to think about online markets and platforms as either a gatekeeper or an inescapable trading partner for both consumers and businesses. The capacity to regulate access to gateways and the pooling of information that creates barriers to entry are now more important than ever before in terms of competitive power. Price is no longer the only factor that determines competitive power.<sup>41</sup>

This shift is demonstrated by the case that was brought before the Competition Commission of India (CCI) in India under Case No. 16 of 2021. In these food-tech ecosystems, the National Restaurant Association of India (NRAI) asserts that there are a number of behaviors that are anti-competitive. One of these practices is called coerced bundling, and it is a situation in which businesses are obliged to use the delivery services of the platform in order to gain access to listing. Another concern that was brought to light by the National Restaurant Association of India (NRAI) was the phenomenon known as "data masking." According to this theory, platforms are ostensibly not disclosing data to end-consumers to restaurant partners. As a result, these platforms are unable to create direct relationships with the restaurant partners, but rather rely on the algorithms of the platforms. A prima facie conflict of interest was found by the Competition Commission of India (CCI) due to the fact that the two companies have a relationship of neutrality and competition by providing their own labels and cloud kitchens (for example, Swiggy the Bowl Company). A situation known as self-preferencing can occur when platforms have a dual status, which gives them the ability to perhaps favor their own brands in search results lists.<sup>42</sup>

To put things into perspective, the 2023 Merger Guidelines that were developed by the United States Department of Justice (DOJ) and the Federal Trade Commission (FTC) specifically target what they refer to as entrenchment and serial acquisitions that accumulate platform authority. This paradigm moves the emphasis away from the consumer welfare standard, which placed an emphasis on the short-term price consequences, and onto a framework that places an emphasis on the contestability of markets and the protection of potential competitors. The rules emphasize that examinations of mergers are a game of probabilities, and that a merger that even has the potential to significantly undermine competition can be disallowed.

Article 22 EUMR Referrals have been applied increasingly frequently by the Commission in the European Union in order to investigate transactions that do not meet the requirements for national turnover but that constitute a threat to competition in innovation. This occurred during the merger between Illumina and

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<sup>41</sup> Crane, Daniel A. "Market power without market definition." *Notre Dame L. Rev.* 90 (2014): 31.

<sup>42</sup> Biely, Katharina, Dries Maes, and Steven Van Passel. "Market power extended: from Foucault to Meadows." *Sustainability* 10.8 (2018): 2843.

Gravel, in which the European Union (EU) desired to maintain its authority over a transaction in the developing market for early diagnosis of multiple cancers. Another area of worry for the European Union is the concentration of conglomerates, which can have a positive impact on network effects. The EU places a special emphasis on the access to personal data as a source of market power. An example that can be used is the historic issue between Facebook and WhatsApp. In 2017, the European Commission levied a fine of 110 million Euros against Facebook for providing misleading information during the review of the subject in 2014, which concerned the technological capabilities of matching user accounts. Due to the fact that it demonstrated that transparency in data integration is an essential component of a credible merger assessment, this fine marked the beginning of a new era in implementation.<sup>43</sup>

A further illustration of the worldwide trend of analyzing the ecosystem is provided by the instance of the merger between Microsoft and Activision Blizzard. In the beginning, the Competition and Markets Authority (CMA) of the United Kingdom blocked the transaction on the grounds that they believed Microsoft would profit from the contents of Activision in order to exert control over the cloud gaming industry, which is undergoing rapid transformation. The European Commission was pleased to accept behavioral remedies to improve cloud gaming; however, the Competition and Markets Authority (CMA) sought a structural remedy that would exclude cloud streaming rights. This would allow market forces, rather than regulatory intervention, to drive the growth of the sector. The fact that this difference occurred demonstrates that, despite the fact that there is international collaboration, different agencies are able to reach different findings depending on their assessment of whether or not a transaction is securing consumers' participation in a specific platform ecosystem.<sup>44</sup>

### **Cooperative Enforcement and the Advent of Ex-Ante Paradigms**

Since digital markets are borderless and isolated national acts have been replaced by collaboration, the application of competition law has also shifted to collaborative "ex-ante" models. This is because of the fact that digital markets already exist. Taking a significant step in this approach is the Draft Digital Competition Bill (DCB) 2024 that is being put up in India. In accordance with the Digital Markets Act (DMA) of the European Union, the Digital Competition Bureau (DCB) has the objective of exercising control over Systemically Significant Digital Enterprises (SSDEs) prior to the occurrence of anti-competitive behavior. Once a company has reached specific criteria, it can be called an SSDE. These levels include having at least 10,000 business users or 1

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<sup>43</sup> Li, Mx Yibo. "Characterising Ecosystem Power: the Use of Pricing and Contractual Leverages." *Utrecht Law Review* 21.1 (2025).

<sup>44</sup> Johnston, Jason Scott. "On the Market for Ecosystem Control." *Virginia Environmental Law Journal* (2002): 129-187.

crore (10 million) end users in India, as well as having strong financial indications such as Indian turnover or market capitalization worldwide when the company reaches the threshold.<sup>45</sup> The Digital Communications Board (DCB) has identified nearly 10 of its Core Digital Services, which include cloud services, social networking, and online search. SSDEs are required to adhere to per se responsibilities once they have been appointed. These obligations include refraining from engaging in self-preferencing, refraining from anti-steering (which means not allowing business users to direct consumers to third-party offers), and restricting the use of non-public data received about business users in order to compete with aforementioned business users. In light of the fact that digital market power is formed in a matter of months, this ex-ante regulation is intended to combat the time-consuming feature of traditional investigations, which can take years to complete. Not only is the DCB interested in creating rules of the game prior to the beginning of digital ecosystems, but they are also concerned in maintaining transparency and contestability of these rules.

When it comes to the management of these digital players all around the world, global collaboration has become an absolutely necessary component. A model of collaboration between the agencies in the field of merger review is provided by the International Competition Network (ICN). This model enables the agencies to alter the schedule of their investigation and exchange material that is not considered confidential.<sup>46</sup>

When all is said and done, the purpose of these shifting frameworks is to strike a balance between innovation and regulation. An argument that has been made by some who are opposed to the DCB is that stringent ex-ante laws have the potential to hinder innovation and discourage investment in the dynamic startup ecosystem that exists in India. Advocates, on the other hand, contend that if action is not taken, the network effects and data moats of existing companies will build an infinite set of kill zones that will prevent future disruptors from entering the market. There is a growing recognition that the digital frontier requires a dynamic law that is as dynamic as the markets it intends to control. This realization is a part of the evolution that has occurred between the turnover-driven stimulus of the past and the advanced ecologies of scrutiny and ex-ante of the current day.<sup>47</sup>

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<sup>45</sup> Bougette, Patrice, Oliver Budzinski, and Frédéric Marty. "Ex-ante versus Ex-post in competition law enforcement: Blurred boundaries and economic rationale." *International Review of Law and Economics* 82 (2025): 106264.

<sup>46</sup> Syed, Robayet Ferdous. "Intertwine preventive (ex-ante) and deterrent (ex-post) mechanisms for compliance with and enforcement of labor laws: a comprehensive approach for Bangladesh." *Humanities and Social Sciences Communications* 11.1 (2024): 1-13.

<sup>47</sup> Pangkey, Dicky Yulius, et al. "Integrating Preventive (Ex-ante) and Deterrent (Ex-post) Mechanisms in Labor Law Compliance and Enforcement: A Comprehensive Approach for Indonesia." *Jurnal Ilmiah Gema Perencana* 4.3 (2026): 2067-2086.

## Conclusion

Within the context of India's history of competition law enforcement, a strategic coming-of-age process has been taking place with the objective of aligning local regulations with the reality of the global digital economy. The purpose of this paper is to elucidate on how the historical turnover trap of the 2002 Act, which was based on revenue and asset metrics derived under the traditional models of industries, could not assist in capturing the strategic acquisitions of new technology businesses that were competitively important. Through the adoption of the Competition (Amendment) Act, 2023 and the 2024 Combination Regulations, India has made the transition to a Deal Value Threshold (DVT) of INR 2,000 crore. As a result, the acquisition price has become a modern proxy of the competitive potential of data-rich and innovation-driven objectives.

This modification to the legislation is not only a technical alteration, but also a conceptual one. This shift to "ecosystem scrutiny" is a shift away from the consumer welfare norm and toward an emphasis on market contestability and platform neutrality. A discussion of difficulties such as forced bundling and data masking, which may prevent competition in hyperlocal markets, is included in the case study of Zomato and Swiggy. This emphasizes the fact that the Competition Commission of India (CCI) has been eager to investigate the architectural power of platforms. The Draft Digital Competition Bill 2024, which is a new paradigm of proactive, ex-ante regulation, has established the category of so-called Systemically Significant Digital Enterprises (SSDEs) and enforced the responsibility to prevent anti-competitive behavior before it is too late. This is all taking place at the same time.<sup>48</sup>

On the basis of the comparative analysis with the European Union and the United States, it is reasonable to anticipate the globalization of the tendencies toward these proactive and structural models. In the United States Department of Justice and Federal Trade Commission's 2023 Guidelines and in the European Union's Article 22 referrals, it is clear that everyone wants to avoid lock-in effects and killer acquisitions. Nevertheless, the success of this new period in India will be contingent on the manner in which it is able to triumph over significant obstacles. The CCI has to have more institutional freedom in order to utilize specialist technical competence that will be able to understand algorithmic pricing and data-driven supremacy. Additional institutional freedom is required. In addition, the idea of collaboration in good faith ought to be taken into consideration outside the boundaries of the rules in order to minimize interference with the DPDP Act and to guarantee a stable environment for digital businesses.<sup>49</sup>

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<sup>48</sup> Pierros, Ioannis. "Time Series Forecasting for Energy Demand." (2022).

<sup>49</sup> Svetiev, Yane. "Settling or learning: commitment decisions as a competition enforcement paradigm." *Yearbook of European Law* 33.1 (2014): 466-500.

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