
MERGER CONTROL IN DIGITAL ECONOMY: CHALLENGES AND EVOLVING REGULATORY PARADIGMS UNDER COMPETITION LAW

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ABSTRACT

Digital economy has changed markets the world over where business models are founded on data, networks, and innovation, rather than on the traditional revenue or asset growth. This transformation brought strong inconsistencies with the merger control in Competition Act, 2002, at the beginning of the time when traditional industries were considered where competition was evaluated by the market share, turnover, and price effect. Most services in digital markets, however, are offered gratis, competitive power lies in the centralization of data, and acquisitions are used to reduce the future competition more often than to receive instant revenue. Obsolete notification thresholds based on turnover and assets have not been able to identify such acquisitions, and arguably anti-competitive killer acquisitions have gone unnoticed.

Significant problems include that it is difficult to assess harm in zero-price markets, the risk of data concentration is rising, market-driven dominance by monopolies via network effects, and the stifling of innovation by acquisition of nascent companies. The Competition Commission of India (CCI) has equally been limited in application of algorithmic competition and data-driven business models by its inability to do so due to technical expertise. Observing such shortcomings, the Competition (Amendment) Act, 2023 introduced a value of deals (DVT) according to which the mergers involving more than 2,000 crore of the turnover or assets of the target company would be notified, regardless of the insignificance of their turnover or assets. This amendment is one of the significant steps towards capturing data-driven, high-value acquisitions that have hitherto not been within the regulatory net. The paper critically examines the question of merger control in Indian digital economy, confirms the applicability of the deal value threshold to real-life situations, and emphasizes the necessity of more prospective, innovation-sensitive enforcement. Our conclusion is that recent changes are positive, but that more optimization of legal tools, technical complexity of the CCI, and active regulatory methods are required to ensure competition, innovation,

and consumer welfare in the developing digital market of India.

Keywords: Digital Economy, Merger Control, CCI, Competition Law, Big Tech.

INTRODUCTION

Merger control is among the building block of competition law which seek to deter mergers and acquisition which may be likely to cause the emergence of monopolies, competition, innovation, or unhealthy to consumer welfare. Mergers have so far been scrutinised by competition agencies like the Competition Commission of India (CCI) by turnover/asset, market share and effects on prices.¹ These tools were originally designed in terms of traditional industries where products and services were transactions based on purchases/sale at market based prices, and competitive strength based on market share, production capacity or financial performance. However, as digital economic growth came, a disturbance to this old regime was experienced requiring the need to transpose a new mode of regulation.

The digital economy consists of companies in which the bulk of their business activities occur online and in which data, user interaction, and network effects are the driving force behind their activities. Unlike traditional business, most digital businesses such as Google, Facebook, Amazon, and Zomato do not charge their consumers and instead earn incomes in a form of data-driven advertisement, algorithms, and technologies.² Within such a sphere, the volume and quality of data, algorithmic control, rather than revenue or assets, is becoming a determinant of competitive position. This makes it inefficient and inconclusive to apply merger control rules that were established in a centuries old industry into such a sphere.

Another concern that is one of the biggest when it comes to merger regulation in the digital arena is the so-called killer acquisitions where big dominant companies (big tech) acquire smaller yet innovative startups with the aim to pre-emptively neutralise the potential emergence of potential future competitive situations. Such kinds of mergers are often composed of small target firms that create low turnover and therefore do not have any bearing even under the

¹ Nisha Kaur Uberoi, *Meger Control in India*, Chapter 21, (May, 16, 2023), available at <https://doi.org/10.4337/9781800378193.00033> .

² Shapiro Carl, *Protecting Competition in the American Economy Tech Titans, Merger Control, Labor Markets* 33 Joseph, *Journal of Economic Perspectives* 69 (2019) DOI: 10.1257/jep.33.3.69 at <https://www.aeaweb.org/articles?id=10.1257/jep.33.3.69>.

criterion of Section 5 of the Competition Act, 2002 of a notification threshold.³ They are however valuable strategically in terms of technology, data, or innovation potential assets that they possess and which are of enormous worth in the digital economy. Besides that, data concentration that comes up due to mergers creates new forms of market power that the merged companies can control consumer behavior or create high barriers to entry without the effects being softened in the short-term on price.

India has been finding such gaps, and has implemented a critical reform with the Competition (Amendment) Act, 2023, effective as of September 10, 2024, using the deal value threshold (DVT) as a new mandatory merger notification threshold. According to this rule, all merger or acquisitions more than 2,000 crore (approximately USD 240 million) in aggregate value of the deal must now be approved by the CCI even in cases where such company whose target company is low on asset or turnover. It is a decisive move in regards to the coverage of anti-competitive digital mergers that were unnoticed.

DEVELOPMENT OF MERGER CONTROL FRAMEWORK.

The evolution of merger control as a regulatory tool started in the early 20th century as one of the general attempts to make sure that the market is competitive and monopolistic trends are avoided. The primary issue of merger control in early times was to prevent bulk consolidations in the old-line industry such as steel, oil, and manufacture which could give rise to market leadership, price determination and consumer harm. The first systems were largely based on structural analysis and emphasized on the market share, turnover limits and a likelihood of drop in output or increase in costs following a merger.⁴ These were yardsticks that were based on the classical theory of economics perfect competition in which most of the competitions occur on price and market share. In India, merger control was enacted through Competition Act, 2002 which gave authority to Competition Commission of India (CCI) to regulate mergers formed under Section 5 of the Competition Act. The traditional model required firms to submit a notice to the CCI of the mergers and acquisition in case they surpassed specified limits in terms of assets or turnover. The CCI would then consider whether the proposed combination would add

³ Axel Gautier, Joe Lamesch, *Mergers in the Digital Economy*, Information Economics and Policy, Volume 54, 100890 (2021), ISSN 0167-6245, <https://doi.org/10.1016/j.infoecopol.2>.

⁴ Luke Woodward, Caroline Cooper, *Merger Control An Evolutionary Tale*, <https://doi.org/10.4324/9781003509028>

to a significant adverse effect on competition (AAEC) in India principally in taking into account both structural aspects of the market and price competition⁵.

With the advent of the digital economy in and around the turn of the millennium and the speedy advancement of technology, the old paradigm of merger control began displaying key weaknesses. Google, Facebook, Amazon and Zomato changed the way businesses operated because they provided their services to their customers at no cost but had to rely heavily on data collection and processing to make money through advertisements and other systems. Unlike in the old good markets where price rivalry and market concentration are the two key indicators of competition, digital markets rely on network effects, data aggregation, and technological capabilities as primary competitive initiatives. The old reliance on turnover and asset levels was not able to perform well in making smaller yet innovation-driven startups to fall into the hands of the established digital giants. These acquisitions came to be known as killer acquisitions as they could find their way without detection by the regulators due to the fact that they were not reported to have crossed the revenue threshold despite having a market disruption or introduction of innovation potential.

Having observed this kind of structural vacuum, many reforms were conducted in the world, and India introduced a groundbreaking reform, which is the Competition (Amendment) Act, 2023. Most significantly, another new addition was that of the deal value threshold (DVT), increasing the threshold of compulsory disclosure of mergers into those with deal value that are above 2,000 crore irrespective of the turnover or assets of the acquiring entity. This move indicated the increasing understanding that data, user base and innovation were the most important sources of rivalry in the digital economy. The pre-amended regulatory officials failed to take into custody majority of the digital mergers that were not in the present but posed future competition challenges but failed to share the traditional notification criteria. To that, there was an increasing realization that an impact analysis of digital mergers would be not a feature of structural market analysis but it would also require an ex-post facto analysis into data control, network effects, and innovation harm. With the rapid change of digital markets, competition regulators worldwide started to develop special tools and paradigms that extend the traditional

⁵ Dezan Shira & Associates, *Merger Control Regime in India: Analyzing the 2023 Revision to the Competition Law* (2023) available at <https://www.india-briefing.com/news/merger-control-regime-in-india-analyzing-the-2023-revisions-to-the-competition-law-28830.html/>.

turnover measures on the merger to measure it in terms of its data consolidation effects, its effects on consumer choice, and its effects on long-term innovation.

The current day merger control regimes are also trying to keep abreast with the digital economy reality by implementing new parameters like value-based thresholds to deals, qualitative analysis of data centralization and behavioral remedies. Such an event in India is a clear shift in a more favorable direction in regard to competition enforcement, which would enable CCI to be reactive to the threat posed by digital mergers, in a market environment that is rapidly evolving.

OBJECTIVES

This paper is based on four generalized objectives which have a unifying goal of providing an synthesized examination of the evolving dilemma of merger control in the digital economy. Firstly, the paper tries to assess **how the existing merger control mechanisms have not succeeded in equalizing anti-competitive digital merger** transactions by mentioning the propensity of conventional market share or revenues based criteria to not detect deals wherein digital platforms purchase innovative yet revenue-deprived firms. Although these deals appear to be harmless according to the existing laws, they may significantly harm the competitiveness of the market by entrenching the market power of the giants. The examples of such cases were the acquisition of Instagram and WhatsApp by Facebook, the acquisition of Waze by Google, etc. The examples demonstrate that through the well-established merger control technologies, which are based on market share and revenue-based thresholds, such kinds of deals, which redefine the way the market structure works by stymying innovation, would be off the radar.⁶

Second, the paper aims at researching the **phenomenon of killer acquisitions takeovers by dominant companies** of fresh market entrants essentially to obviate imminent rivalry and investigate whether the currently used merger controls are an efficient method of notifying and regulating this kind of transaction. Such takeover bids are a challenge in the fast-innovating digital markets where the benefits of data and network effects are high since in many cases the target companies have limited current market presence but tremendous potential in the long run. A review of how these marking of acquisitions have been achieved by jurisdictions like

⁶ *An Indian Perspective on Merger Control in Digital Markets: Looking Ahead by Looking Across*. Kluwer Competition Law Blog, (1 June 2023).

EU and US will identify loopholes and possible reform locations of merger evaluation tools.

Third, the paper is interested in exploring **how effective a tightening of the regulatory**⁷ framework in India has been over the recent years with reference made to the introduction of the deal value threshold (DVT) through the Competition (Amendment) Act, 2023. This reform attempts to address the shortcomings of asset- and turnover-based thresholds by putting under Competition Commission of India scrutiny such assets that with significant revenue contribution, imply high deal values indicating high competitive implications. The analysis of the DVT with respect to its capacity to improve the supervision of the digital merger consolidation will determine whether the DVT is a useful tool capable of discouraging anti-competitive consolidation.

This paper tries to compare the legal control regimes of EU, US, and India of mergers with a perspective of determining best practices and learning by the changing regulatory regime in India. When EU has experimented with the use of flexible tests of jurisdiction and ex-post tests, the US has been busy with improving tests of substantive tests of anti competitive effects.⁸ In contrast to the methods in India, the legal evolution in India is compared in the study, trying to offer an insight on how India can perfect its merger control regime to manage the challenges of the digital age better. Collectively, these goals will create a formulated vision on how competition law should develop to provide protection to innovation and consumer welfare in the digital market.

RESEARCH QUESTIONS

QUES-1 WHAT IS THE IMPACT OF THE DIGITAL ECONOMY ON THE CONVENTIONAL PATTERNS OF MERGER CONTROL IN THE COMPETITION LAW?

The digital economy has significantly disrupted traditional forms of competition law merger control largely due to the fact that the traditional tools were designed to apply to physical markets where market power was reliably measured by revenue, market share and degree of concentration. However, in the digital economy, companies have data-driven or platform

⁷ Supra Note 5

⁸ Levy, Nicholas, Henry Mostyn, Bianca Buzatu, *Reforming EU Merger Control To Capture Killer Acquisitions - The Case Against Haste.*, Competition Law Journal, Vol. 19, Issue 2 (2020).

business models that are not easily related to such measures. The majority of leading companies in the digital economy are operating on low prices or even below-cost prices and raising revenue by exploiting information of users and not sales per se. Such conditions make the traditional level of revenues inadequate since the takeover targets experience low or zero turnover in most of the cases.⁹

The other one is the definition of the relevant market. The borders of the digital market are permeable since the product and the services are developing at a rapid pace and competition usually takes place across two or in multiple industries at the same time (social media, advertising, and e-commerce). Network, the larger the base of users to the platform the larger the value of the same the higher the barriers of incumbency and entry barriers poses challenges that the traditional tools of mergers might not be adequately captured.¹⁰ The control and ownership of data also turned out to be significant sources of market power in which popular theories do not take into account the competitive importance of data aggregation.

The traditional competition analysis goes further to assume a relatively stable market structure, which the internet markets are very dynamic and prone to innovation. The regulators cannot easily predict the long-run effects of mergers in the fast-paced industries where the small company of the day could become a giant company of the future. This uncertainty raises the authorities to the task of striking a balance between the prevention of disastrous concentration and the prevention of over-regulation that kills innovation.

In that regard, competition authorities worldwide are reconsidering their thresholds, with a possible qualitative dimension of access to data and prospects of innovation, and with other emerging instruments like transaction value thresholds and ex-post merger examination. The digital economy thus requires a more futuristic and multidimensional strategy to merger regulation to attain adequate competition and innovativeness.

QUESTION-2 ARE THE EXISTING COMPETITION STATUTES SUFFICIENT TO ADDRESS KILLER ACQUISITION AND DATA-DRIVEN MERGER?

The most common competition law regimes such as Competition Act, 2002 in India are meant

⁹ Alexander Iken, Terezia Kianickova and ors., *EU Merger Control, Competition Policy Briefs*, available at, https://competition-policy.ec.europa.eu/document/download/b0042baf-a258-4c31-b31a-6331cb8d54a2_en?filename=kdak24001enn_competition_policy_brief_non-price_merger-control.pdf

¹⁰ Supra Note 7

to control mergers and acquisitions (M&A) that have an appreciable adverse impact on competition (AAEC). Combinations are regulated by the Sections 5 and 6: The Section 5 offers thresholds in terms of assets and turnover, and the Section 6 prohibits combinations that are likely to cause harm to competition. The Competition Commission of India (CCI) evaluates combinations facilitated by regulations such as Competition Commission of India, 2011, the Competition Competition Regulations, 2011.¹¹ However, these rules have been designed to apply in normal markets and do not lend themselves well to killer acquisitions when big firms buy start-ups with disruptor potential or mergers and acquisitions that are driven by user information and not by revenue. The sale with young companies is generally below the level of notification, so it is between the cracks. To illustrate, acquisitions, such as WhatsApp (2014) or Giphy (2020) at first sight were considered innocent but on the scale of market power implications were enormous. Although the CCI may conduct suo motu review of Section 20(1), that has rarely been applied in cases of any merger within the digital arena. To close such gaps, the Competition (Amendment) Act of 2023 has established a minimum deal value (transactions exceeding 2,000 crore) to allow acquiring the effect of technology and pharmaceutical deals (where revenue is not a useful measure of market impact).

Internationally, authorities are also overhauling frameworks, with the EU deploying Article 22 referrals and the US FTC embracing wider innovation-oriented assessment. The transformation of India with horizon-sensing evaluation instruments (e.g., network effects, data dominance) indicates the increasing trend of enabling the competition law to address such problems in the digital age in an efficient manner.

QUES-3 WHAT ARE SOME OF THE COMPARATIVE LESSONS INDIA CAN LEARN ON THE REGULATORY MODELS IN THE EU AND US?

The changing competition law system in India can greatly gain as it can seek to borrow comparative lessons on the regulatory models of the European Union (EU) as well as the United States (US) as far as digital market merger is concerned. The EU pays great attention to non-price impacts of data control, privacy, and innovation impact. And the brightest illustration is the case of Google-Fitbit merger, where the European Commission accepted the deal with the condition that the companies handle health-related information with the strict requirements not to engage in anti-competitive behavior. Moreover, EU has special referral mechanisms where

¹¹ Aline Alves Fulgenci, *Killer Acquisitions And European Merger Control In The Digital Era*, HARN 63 (2021).

the regulators can also review the mergers that may not have been triggered by the usual financial thresholds but at the discretion of its impact on the market.¹²

In the US, the scrutiny of big tech mergers and acquisitions has increased notably following the acquisition of Instagram by Facebook. The US regulators do not only concentrate on the market share and price impacts but they also aim at maintaining the competitive market structures and eliminating data monopolization. The US position of objecting to deals that are already approved indicates a dynamic regulating attitude that is receptive to the changing market power issues.

These strategies can be adopted by India through the adoption of flexible and impact-based assessment instruments, particularly in data control, innovation, and possible damage to competition in low-revenue markets. These lessons would assist to make the Indian merger control structure lean and digitally economy-oriented.

MAJOR CHALLENGES OF MERGER CONTROL IN DIGITAL ECONOMY

The digital economy has brought some of the fundamental problems that undermine the efficiency of traditional merger control. First of all, there is the factor of zero-pricing that poses a major problem to the regulators. Numerous online services including Google Search, Instagram, WhatsApp, and Facebook offer their services to final consumers at no cost. The control of mergers is usually driven by the price effects test whether the merger would bring about increased costs or less output. With services being offered at a price of zero monetary value, competition authorities find it hard to measure the harm to customers using the normal price measures. The regulators are inquiring on how market power or anti-competition effects can be measured when the price is held at zero despite consolidation. Killer acquisition has also been a pervasive strategy of the digital economy in the second place.¹³ BigTech companies buy smaller startups which are not usually bought based on their turnover or revenue, but rather because of their innovation potential, users, or their technologies. These transactions are often below standard notification levels due to the fact that the acquiring firms are small or start-up firms with little revenue or assets. However, such deals eliminate potential competitors in the future and minimize the innovation potentials based on long-term competitive factors, which

¹² Merger Control and Competition Policy by Debojoyti Chakraborty

¹³ *Merger Control Challenges*, Asian Journal, available at, <https://doi.org/10.1177/0003603X1405900104>.

existing systems could not identify or discourage.¹⁴

The third underlying issue is the issue of data concentration and the associated privacy issues. A lot of digital mergers result in a merger of colossal volumes of user information, giving merged constituents an unequivocal extent of information regarding consumer habits.¹⁵ It enables them to master the targeting algorithms, optimize advertising performance, and create high barriers to entry against competitors, which is hard to evaluate using conventional competition analysis tools. Moreover, there is a grey area between the competition law and the data protection law, and it is difficult to determine whether data acquisition can be an anti-competitive advantage or harm to consumer welfare. Fourthly, merger control is also made difficult by network effects and tipping markets.¹⁶ The more users are part of such digital platforms the more value they add to the platform, thus generating high positive feedback. As an example, a consolidation between two platform companies can combine their bases of users and render it extremely difficult to enter such a market effectively in such a way that the platform market is tipped to be controlled by a merged company. The determination of such market effects requires a substantial amount of expertise regarding digital ecosystems or user behaviour, which standard structural analysis tools are incapable of providing.

The other issue of concern is the harm of innovation. The typical merger appraisal is very minimal on price and output effects, but does not consider the effect of mergers on innovation in the future. A merger between two firms in a digital economy may not respond by increasing the price but could gravely reduce the pace of technological innovation in the future by eliminating potential competitors or reducing the amount of money invested in the research and development. Projections of these types of innovation damages are extremely complicated and theoretical, and the competition authorities in most situations do not have appropriate methods of taking them into consideration during merger reviews. Besides this, there are also issues related to valuation where digital mergers are valued due to the fact that most digital firms are unprofitable or poorly profitable yet have data stores, algorithms and user bases of great value. The failure to recognize such intangible competitive advantages in which the majority of digital companies are leading within is backward valuation like the valuation based

¹⁴ Combination Registration No. C-2014/05/170, Competition Commission of India (2014).

¹⁵ Competition Law Review Committee, *Report of the Competition Law Review Committee* (July 2019), available at, <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>.

¹⁶ European Commission, Case M. 9960, available at, https://ec.europa.eu/competition/mergers/cases1/202120/m9660_3314_3.pdf.

on turnover or assets. Consequently, it is all the harder that Competition Commission of India (CCI) can assess the real impact of the merger.

In addition, regulatory challenge is in the form of jurisdictional voids. Digital companies in the world can have cross-border activities, and a merger may pose significant cross-border competition effects that can go unnoticed in one jurisdiction. This allows giants to formulate transactions in a way that is below the national levels or take advantage of fragmented regulatory frameworks. Final, lack of technical capacity in competition authorities is a barrier to effective digital merger scrutinies.¹⁷ A self-assessment or a commitment by closing parties may be used by regulators since they lack indigenous technical capacity to evaluate highly complex algorithms, data practices, or digital network effects. Therefore, when a merger is under evaluation, market structures may have shifted which may have inefficient or untimely effects. They jointly provide the requirement of a redesign of merger control regimes in order to make them effective in the rapidly evolving digital economy.

CASE STUDY ANALYSIS

In The Merger Wave: Trends in Merger Enforcement and Litigation, Richard G. Parker and David A. Balto¹⁸, The paper provides a vivid view of the new dynamics of enforcement of mergers in the big wave of mergers in the late 1990s in the United States. As explained by Parker and Balto, the high rates of merger filings which were estimated to be around 1,700 in the year 1991 rose to above 4,700 in 1998 to the point of marketplace concentration going on a rampage in all sectors. The authors narrate the reaction of the antitrust officials, in particular, the Federal Trade Commission (FTC), in terms of increased litigation and increased scrutiny despite their very limited resources.

The change in the philosophy of enforcement is one of the themes. The FTC was no longer dependent on surface solutions or partial solutions but moved to structural solutions which fully restored competitive conditions. The authors rely on landmark cases to describe how the courts adopted more limited definitions of the market as well as how the courts were skeptical of proposed divestitures that were not bound to provide effective competition.

¹⁷ Competition Commission of India, *Market Study on E-Commerce in India: Key Findings and Observations* (Jan. 8, 2020).

¹⁸ *Richard G. Parker and David A. Balto, The Merger Wave: Trends in Merger Enforcement and Litigation*, available at <https://www-jstor-orgchristuniversity.knimbus.com> (via Christ Univeersity Knimbus Portal).

Another direction indicated by the journal is the development of the legal doctrine of the possible competition, coordinated effects, and vertical integrations. It observes the growing consideration of the future evolution of the market, the ability to enter the market and the dangers of tacit collusion in the enforcement. The literature indicates that a shift towards more sophisticated evidence-based process of merger review has been executed by abandoning the conventional market share analysis.

This work is a valuable read because it is possible to see how the enforcement agencies responded to the complex and high-profile mergers and acquisitions in the service and digital economy. It is a priceless pillar to research contemporary merger control or as is the case with the technologies, healthcare and pharmaceutical industries; the most important topics are innovation and market access.

Moritz Lorenz, in the article "Merger Control" printed with An Introduction to EU Competition Law (2013)¹⁹, gives a broad summary of the scope and objective of merger control in the European Union. Lorenz singles out the issue of merger control as being primarily preventative in nature and are aimed at discouraging mergers that would lead to the creation of or the combination of a dominant market position, and therefore end up hurting consumer welfare and overall market efficiency. Although Article 102 TFEU does not prohibit anti-competitive behavior ex post, which is the case with Article 102 TFEU, Merger control is ex ante, which is, the proposed transactions are investigated in advance before their consummation to avoid their ability to disrupt the competitive market structures.

Lorenz notes that mergers also tend to reduce the ability to compete effectively by removing motivation or ability of firms to compete which may lead to higher prices, poor quality, reduced choice or stifled innovation. He explains how the market can be altered structurally following a merger to enable tacit collusion especially in oligopolies. The EU approach will help to preserve competitive forces by not concentrating the market where market dominance is likely to be coordinated or unilateral. Literature predetermines merger control in its role as one of the major tools of consumer protection and increasing economic efficiency on the internal market. It also contrasts the prospective nature of the merger policy with retrospective nature of control of monopolistic behavior. The case study of Lorenz has provided an understandable structure

¹⁹ Moritz Lorenz, **Merger Control, An Introduction to EU Competition Law (Cambridge University Press)**, available at <https://www-cambridge-org-christuniversity.knimbus.com/core/books/abs/an-introduction-to-eu-competition-law/merger>.

of the regulation justification as far as the necessity to maintain the structural factors conducive to the rivalry and market openness. The book can find much application in the field of the digital market, where the domination of a certain platform can take place very quickly and in a sneaky manner and, therefore, requires a complex and a visionary approach to regulation.

Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets" (2019) by Carl Shapiro²⁰, where he provides a critical and current review of the US merger control in with digital economy and labor market impacts in particular. Another leading antitrust economist, Shapiro, argues that the enforcement of mergers has to evolve in order to address the structural and behavioral problems of contemporary markets, and especially dominance to tech giants. Shapiro emphasizes that in spite of the fact the historical merger analysis focused on the effects of prices and market concentration the most, the modern enforcement should also address non-price concerns such as innovation, privacy, data control, and monopoly power in the labor market.

Shapiro is attacking the rising power of Tech Titans (i.e., Google, Amazon, Facebook) and is ringing the bells over under-regulation in both those markets where network effects and data-driven benefits allow companies to become leaders in a short time. He points to the fact that existing designs of merger reviews are incapable of capturing long term dangers of anti-competition particularly in cases where giant platforms buy emergent or potential competitors. In addition, the paper raises issues in the labor markets i.e. how the concentration of the employers will repress their wages, decrease mobility, and diminish labor bargaining power.

By broadening the analytical range to more effectively include the more recent forms of harm in the digital and the labor economies, this book contributes to the scholarship on merger control. Shapiro is an ardent believer in more vigorous and creative antitrust enforcement that is able to detect and preclude anti-competitive results that are not limited to the consumer price prism. His ROI is especially pertinent in the reevaluation of the tools of merger policy within the framework of accelerated technological advancement and the tendencies toward the concentration of the market.

Recent Developments in EU Merger Control Hawk, Barry E.; Venit, James S.; Huser,

²⁰ Carl Shapiro, *Protecting Competition in the American Economy: Merger Control, Tech Titans*, available at <https://www-jstor-org-christuniversity.knimbus.com/stable/26732322?>

*Henry L*²¹ in his current journal, an authoritative survey of the evolving image of the EU merger control, including through particular focus on enforcement, procedural development, and policy amendment. The authors take care of the way the European Commission has strived to revise its approach to deal with mergers in fast-evolving markets, conglomerate implications as well as the demands of digitalization and globalization.

The article identifies the continued EU reliance on structural analysis concentration ratios, market shares and barriers to entry and acknowledges greater attention to theories of harm such as unilateral and coordinated effects of mergers and non-horizontal concerns. The authors detail the way in which the Commission has been advancing its examination of vertical and conglomerate consolidations, particularly by data-intensive platforms and firms, that may quietly obliterate competitors or establish the control of an ecosystem.

Particularly, the article discusses such process reforms as increasing the use of pre-notification consultations and market testing to increase transparency and cut merger review. Another critique made by the authors is the overly formalistic and traditional policy design by the EU authorities and demand a more adaptable and innovation-based policy model especially in the digital markets where the traditional indicators might fail to effectively gauge the competition harm.

CONCLUSION

Concisely, the rapid dynamics of digital markets has caused the old merger control tools to become useless since they were modeled taking into consideration the traditional brick-and-mortar markets and industries. They also prefer the asset and turnover tests that fail to reflect the greater part of strategic acquisitions in the digital economy since the market power resides in the revenue, but equally in the data, innovation potential, and network effects. This has led to a high number of potentially anti-competitive mergers escaping detailed scrutiny whilst a profound synergistic impact on the pace of competition and innovation in markets-some examples that stand out the most being Facebook acquiring Instagram and WhatsApp or Google receiving Waze amongst others. All these contain an urgent demand that the competition enforcers should reconsider its tools and indexes so as to be able to counter the

²¹ Barry E Hawk, James S., Venit & Henry L. Huser, *Recent Developments in EU Merger Control*, available at <https://heinonline-org-christuniversity.knimbus.com>.

pressures of the digital markets with more productive tools.

This need is also marked by the increasing trend of the killer acquisitions. Killer acquisitions are whereby large organizations purchase new innovative firms whose primary scope is to secure neutralization against the future business since future competitors may never have been able to produce revenues to such companies. Ordinary tests that rely on current market shares or anticipatory market shares or instant competitiveness cannot be used to realize such smoky yet highly crucial deals. The analysis of mergers should undertake projections of the future of the possible rivals, innovation streams, and informational benefits, rather than weighing only the dead structures of markets.

As a response to these issues, jurisdictions are redefining their merger control regimes. India competition (Amendment) Act, 2023 is one of the steps to make its regulatory framework more consistent with the modern age. The DVT aims to capture the digital and new-age mergers that have so far remained unscanned by the Competition Commission of India (CCI) by enabling the latter to examine high-value deals even without meeting the traditional turnover and asset worth levels. However, its success will only be achieved by implementing it appropriately, clarifying it appropriately on valuation metrics as well as appropriate analytical structures.

The most recent lessons of the EU and the US also confirm that it is a multi-faceted approach across thin jurisdictional boundaries with more intensive substantive analysis and post-merger oversight that has the most protective effect on anti-competitive consolidation in digital markets. When India tightens its merger control regime, it will be necessary to blend the best global practices and domestic market needs. Reformulation of merger control that is necessary to effectively deal with killer acquisitions and digital age issues is ultimately needed to ensure protection of competition, but also enhance innovation, consumer protection, and long-term health of digital economy.

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