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Regulatory Barriers in Digital Mergers and Acquisitions: Antitrust Regulation of Technology Sector

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Keywords

antimonopoly legislation,
competition,
digital economy,
digital technologies,
dominant position,
law,
legislation,
mergers and acquisitions,
technology giant,
technology sector

Abstract

Objective: to determine the nature and degree of influence of the antimonopoly legislation of the European Union and the USA on mergers and acquisitions in the technology sector.

Methods: the work uses a comparative and interdisciplinary approach combining legal analysis and economic modeling. The author performed a comparative analysis of the legislation of the European Union and the US, summarized antimonopoly regulation practices, and considered doctrinal sources and modern empirical data. The methods used include content analysis of regulations, case studies of the largest digital companies, and elements of forecasting the impact of regulatory changes on innovation activity and market dynamics.

Results: various approaches to regulation of mergers and acquisitions in the digital economy were considered. The peculiarities of law enforcement in the European Union and the USA were analyzed. It was proved that strict antitrust measures can both restrain market concentration and create barriers to innovation. The author found that the practice of applying the EU Law on Digital Markets and the US relevant acts significantly affects structural changes in the technology sector, forming new competition models. Recommendations are given on improving international cooperation and developing common and fair regulatory standards for digital markets. Special attention is paid to the problems of determining the dominant position, regulatory control, and specific features of digital markets.

Scientific novelty: the article systematically compares the regulatory regimes of the world's leading jurisdictions through the prism of digital mergers and acquisitions. It expands the categorical apparatus through modern approaches to the analysis of network effects, competition for data, and new forms of market power. The author applies his own criterion for analyzing the comprehensive examination of transactions from the viewpoint of sustainability and innovation potential.

Practical significance: the conclusions and recommendations contribute to the formation of a more flexible and adaptive regulatory policy towards technology giants, which is essential for lawmakers, regulators, corporate strategists and researchers of the digital economy.

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Contents

Introduction

The five biggest technological players Apple, Alphabet (Google), Amazon, Facebook[1] and Microsoft known as GAFAM are some of the largest market capitalization enterprises around the globe (Odrobina, 2023). As platforms with more than one side, they cover a vast network of products, applications, services, content and customers. It covers its costs mainly in the way that they create revenue by providing services to the different user groups discovered around the platform and by connecting them as well as within each group. In 2025, the total investment by GAFAM in research and development (R&D) is anticipated to reach remarkable levels[2]. Collectively, these corporations are expected to allocate more than $140 billion towards R&D initiatives, a figure that considerably exceeds the R&D expenditures of most countries, except for leading nations such as the United States, China, and Japan (Abbott & Spulber, 2024). The GAFAM companies consistently enhance their research and development expenditures each year, motivated by progress in artificial intelligence, cloud computing, augmented reality, and various other cutting-edge technologies (Coveri et al., 2024). Notably, Amazon, Alphabet (the parent company of Google), and Microsoft are at the forefront, with each investing tens of billions of dollars to advance and refine infrastructure, software, and novel technological innovations[3]. This huge investment highlights the crucial influence of these companies in developing the global innovation landscape, emphasizing their commitment to both internal expansion and market supremacy via technological advancement. They are also engaged in a highly vigorous level of M&A activities, alongside these significant investments (Jin et al., 2023).

1. Overview of Mergers and Acquisitions (M&A) in the Digital Economy

Below are the reasons any of the GAFAM platforms would be desirous of acquiring one of the innovative startup companies. First, the platform may require the products that are being offered by that startup to be used avails[4]. The GAFAM are increasingly competing on attention from consumers to keep them on the platform[5]. In this regard, product offer or features expansion is related to competition; acquisition therefore is how the firm

1 The social network belongs to Meta, which is recognized as an extremist organization, its functioning is prohibited in the territory of the Russian Federation.

2 Buntz, B. (2024, June 17). Top 30 R&D spending leaders of 2023: Big Tech firms spending hit new heights. R&D World. https://clck.ru/3MBq4m

3 Nouveau, P. (2022). Falling behind and in between the United States and China: can the European Union drive its digital transformation away from industrial path dependency? In J.-Ch. Defraigne, J. Wouters, E. Traversa, & D. Zurstrassen (Eds.), EU Industrial Policy in the Multipolar Economy (Ch. 11, pp. 332–381). Edward Elgar Publishing.

4 Maitry, R. (2022). Gafam Market Power: the role of a firm's age, data, and overlapping economic activities in merger and acquisition strategies.

5 Ibid.

enlarges its ecosystem. Secondly, the platform may want an input from the startup[6]. They, of course, have the valuable assets that tool might be interesting for the platform: innovation, patent, engineer, talent, customer base (Čirjevskis, 2019). Lastly, acquisition can be used as a way of regulating competition within the platform and keeping it the leading influencer in the market (Kretschmer et al., 2022). Because in the digital economy the most significant sources of value are the network effects, the company with many active users can ultimately become a direct competitor to the owner of the dominant network even if it did not provide similar services when acquiring the target firm (Koch & Windsperger, 2017). Thus, the object that is quantitatively small, but qualitatively significant, in acquiring a start-up is to restrict additional competition in the market. Today there are concerns that the GAFAM merely acquire startups to perpetuate their superiority on the markets (Staab, 2024).

2. Importance of Antitrust Laws in Regulating Tech M&A

Starting in the year 2024 starting offseason, the EU has implemented the first ex ante competition regulation in the digital sector through DMA, has initiated the first investigations into suspected noncompliance with DMA (Pošćić, 2024). At the same time, the EC and several EC member states' competition authorities have also continued to enforce traditional competition laws, launching comprehensive investigations into the conduct of the major incumbents of the digital sector, gradually increasing attention to digital mergers, and only recently actively investigating competition issues in such innovative spheres as generative AI and the metaverse (Graef, 2024).

Much needs to be said about the current state of the merger control. Its enforcement in Europe has been gradually moving up the scale becoming much more interventionist, if not aggressive, both in the EU and in particular in the United Kingdom that brought additional unpredictability into the global M&A market (Mateev, 2017). Academic literature has rather recently turned its concern to 'killer acquisitions,' wherein incumbent firms take over especially innovative targets or Nasch, or potential competitors (Saouma et al., 2023). There are also an increasing extent assessing non-barrier factors, meaning non-price remedies (quality, innovation), non-horizontal or ecosystem theories of harm (Robertson, 2024). Another novel somewhat controversial tool in the hands of the EC in digital mergers is a shift of its policy in Article 22 of the EU Merger Regulation (EUMR) (Krzykowski, 2024). The policy has since been transformative and has been relevant in three instances almost, none of which is exclusively in the digital sector (Illumina/Grail, Qualcomm/Autotalks and EEX/Nasdaq) (Tzanaki, 2023). The digital mergers under consideration in this section were

[6] Andersson, L., & Vergeer, V. L. (2023). Acquisitions vs corporate-startup collaboration: corporations quest to bemore innovative: A case study on the advantages and disadvantages of startupacquisitions and startup collaboration.

declared to the EC through the traditional means, these mergers show that the merged companies were satisfied with the traditional way asking for merger notification. Also, the March 2023 ECJ judgment – Towercast, allows national regulators to examine closed transactions ex post using abuse of dominance rules (Kyle et al., 2024). On the national level, Germany and Austria implemented a transaction value in 2017 due to an assumed lack of effectiveness against potential killer acquisitions, particularly in the digital economy and pharma/healthcare sectors (Kızılay, 2024).

The year 2023 saw high-profile challenges to transactions in digital markets in Adobe/Figma: Figma was a target of acquisition by Adobe, a software company that bought in for US$20 billion in December 2023, but both companies declared that they had decided to call off the deal[7]. This followed protests from the EC in November 2023, and the Competition and Markets Authority (CMA). The EC had two concerns about the transaction: the Committee for the investigation of this business argues that it being interoperable might have anticompetitive effects in the market of interactive product-design tools and that it would deny Figma from being able to compete with Adobe for the digital asset-creation tools. What the EC feared most was a so-called reverse killer acquisition, where Adobe could impair the development of the competing design tool.

Amazon/iRobot: Regarding the business combination deal, a retailer and technology giant Amazon and a home appliance manufacturer making robot vacuum cleaners (RVC) iRobot announced on 29 January 2024 that they were withdrawing from the proposed merger deal due to the hostile stand of the regulators[8]. The EC delivered a statement of objections to the companies on 27 November 2023 and in mid-January signaled its intention to intervene[9]. To the ECs consideration, Amazon may be interested in refusing other robot vacuum cleaner's manufacturers to access to Amazons own online mart after the transaction. The parties opted out of the deal rather than giving assurances to the EC about the effect.

Booking/eTraveli: On September 25, 2023, the EC prohibited take-over of the Stockholm based online flight bookings service provider eTraveli by Booking Holdings through £1.5bn bid[10]. The EC noted that the synergistic deal would have further enhanced Booking. Com's dominance in the HOTs OTA market enabling it to use the eTraveli capacities to be the best flight OTA in the EU and to grow the framework of travel services of Booking. The EC stated that the 'choice screen' remedies that were provided by Booking to be

7 Kloub, J., Carroll, D., & Signoret, L. D. (2024, June 7). European Union: How the European Commission is leading the charge in digital market regulation. GCR. https://clck.ru/3MBqKH

8 European Commission. (2023, July 6). Mergers: Commission opens in-depth investigation into the proposed acquisition of iRobot by Amazon. https://clck.ru/3MBqN9

9 Amazon Scraps Deal to Buy Maker of Roomba Amid Regulatory Scrutiny. (2024, January 29). The New York Times. https://clck.ru/3MBqPY

10 European Commission. (2023, September 25). Mergers: Commission prohibits proposed acquisition of eTraveli by Booking. https://clck.ru/3MBqQe

insufficient. It must be pointed out this is also the first EC decision where an 'ecosystem' theory of harm has been employed which suggests the European agencies are looking for different theories of harm in Digital Market. It is also the first not to apply the EC's merger guidelines on horizontal/non-horizontal mergers, instead relying on the EUMR. The company also sought to contest the decision and said in its response that the ruling challenges 'the ratio decidendi of this court and all other appellate courts'[11].

3. Strategic Drivers of M&A in Technology

In addition, these data driven economies of scope may arise as a byproduct of mergers which can be of value to multisided platforms as they also provide horizontal and vertical platform integration strategies (Henten & Windekilde, 2022). As such, platforms can disseminate insights made from exercising the data they collected to operate into similar horizontal markets (Almeida, 2023; Parker et al., 2021). Vertical opportunities: through data, platforms can identify new verticals that make sense for them and provide a direct threat to both upstream producers that depend on their platforms (Khan, 2019). Not only does the platform contain all the market players' operating data but they offer a vantage point superior to that of any single producer. Such data has helped most of the mobile operating system platforms to penetrate profitable upstream applications including music, maps, news, and fitness. Secrecy in an operating system's underlying technical data gives preferential treatment to apps created under the platform rather than third-party developers (Khandelwal et al., 2024). To evaluate the social utility of mergers, the role of information and whether it can create a sequence of monopolies which merge to form an organization covering an expanded range of markets by excluding competition needs to be questioned. Fourth, and finally, any good welfare analysis must always consider the impact of network externalities, tightly connected with the nature of multisided platforms (Tan & Zhou, 2021). Merchant effects occur because a user benefits from his participation on a platform depending on other users participating in the same platform. If so, mergers can create more value by intensifying and extending those forms of network effects (Chaoxian & Wei, 2024).

Leading to first movers are post economies of scope and economies of scale and network effects that result from structural and resource asymmetries – One consequence are super platforms or platforms of platforms: The BSP Banking model is a good example for that (Albert, 2020). On the other hand, M&As created what one could call winner-take-most gatekeepers over the digital ecosystems in which platforms operate (Parker & Van Alstyne, 2024). They arrange numerous interactions between their users who depend on the gatekeeper to address group phenomena and market failures that cannot be addressed on a one-off basis. Another way of putting this is that gatekeepers have exclusive control over multi-sided markets antitrust problems (Marty & Warin, 2023).

[11] Ibid.

4. Growth of the Digital Economy

In the initial half of 2024, preliminary indicators suggest a resurgence of initial public offerings (IPOs) and significant technology mergers and acquisitions[12]. Although elevated interest rates, inflationary pressures, geopolitical influences, and uncertainties surrounding the upcoming election results may hinder certain deal-making activities, it is anticipated that mergers and acquisitions will gain momentum as market conditions begin to stabilize[13]. Software remains the predominant catalyst for mergers and acquisitions within the Technology, Media, and Telecommunications (TMT) sector[14]. While the volume of transactions has not yet returned to historical highs, the value of deals reported in the software industry during the first half of 2024 is poised to exceed that of the previous year. In the initial six months of 2024, Synopsys's proposed acquisition of Ansys, valued at $32.5 billion, represented the second-largest transaction disclosed worldwide across all sectors[15]. During this period there are total of six software megadeals or transactions more than $5 billion as compared to four megadeals that all together were witnessed in 2023 only[16].

Some factors that may affect the incidence of software transactions include transferring cyber products from being packed as on-premises/IT service solutions to being in the SaaS modality (Gupta et al., 2024). With governmental authorities tightening reporting of cyber threats and incidents and increasing appreciation of the risks, this sector is expected to emerge as one of the most interesting segments for software acquisition soon. Looking at the recent acquisitions within the cybersecurity industry, one can conclude that the trend is rather solid. More specifically, it is important to mention Cisco's $28bn takeover of Splunk, which was the biggest software deal of 2023[17]. Further, Thoma Bravo concluded its plan to buy the artificial intelligence-backed cybersecurity company Darktrace for $5.3 billion[18]. CyberArk is also in the process of acquiring Venafi, a specialist in machine identity, for $1.5 billion[19]. Furthermore, Airbus has expanded

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12 Levy, B. (2025, January 28). M&A in 2025: Big deals, winning hands, and wild cards. PWC. https://clck.ru/3MBuVY

13 Berlin, M. (2025, May 20). US M&A activity fell in April as business leaders seek more clarity on tariffs and their impacts. EY Parthenon. https://clck.ru/3MBueD

14 TMT M&A Global Review, H1-24 and Outlook. (2024, July). https://clck.ru/3MBqfV

15 Synopsys to Acquire Ansys, Creating a Leader in Silicon to Systems Design Solutions. (2024, January 16). Synopsys. https://clck.ru/3Mkuvc

16 2024 Mid-Year Outlook, Global M&A Trends in Technology, Media & Telecommunications, June 25, 2024. PWC. https://clck.ru/3MBqjB

17 Bradshaw, T., Fontanella-Khan, J., & Edgecliffe-Johnson, A. (2024). HPE agrees $14 bn Juniper deal. Technology US group bulks up its networking offering in sign of M&A revival. The Financial Times, 7–7.

18 Joseph, I. (2024, October 2). Thoma Bravo Completes $5.3 bn acquisition of Darktrace. PE Hub. https://clck.ru/3MBqn6

19 Waldman, A. (2024, May 20). CyberArk to acquire Venafi from Thoma Bravo for $1.5B. TechTarget. https://clck.ru/3MBvbm

its portfolio by acquiring INFODAS, a provider of cybersecurity and IT solutions. These transactions collectively highlight the sustained interest in this critical subsector[20].

Several favorable elements, such as alleviated fears regarding a potential recession, stabilized inflation rates, substantial reserves of unallocated capital, and valuations that do not adequately represent the increasing enthusiasm for mergers and acquisitions, indicate that the TMT sector is well-positioned for growth in M&A activities over the forthcoming six to twelve months[21]. The initial quarter of 2024 experienced a persistence of the deceleration observed in the previous year, as evidenced by the initiation of 291 initial public offerings (IPOs)[22]. This figure represents a 22% decline compared to the preceding quarter and a 13% reduction when assessed year-over-year. Global proceeds reached $23.2 billion, reflecting a quarter-over-quarter increase of 7% and a year-over-year rise of 3%, suggesting a movement towards larger initial public offerings (IPOs). The TMT sector has notably illustrated this trend, representing the two largest IPOs in the first half of 2024. Reddit's $860 million offering and Astera Labs' $820 million offering could serve as indicators for forthcoming IPOs[23]. However, it is possible that some of the more prominent companies may choose to postpone their IPOs until 2025 due to prevailing macroeconomic challenges and increased regulatory oversight[24].

In the technology industry, software represented 69% of transaction volumes and 64% of transaction values. In the first half of 2024, there was a 42% decline in software transaction volumes compared to the same period in 2023. However, transaction values rose by 41%, largely attributed to six significant megadeals. The subsequent largest subsector, IT services, represented 18% of both deal volumes and deal values, experiencing a 23% reduction in deal volumes alongside a significant 68% rise in deal values during the initial half of the year, largely attributed to three major transactions[25]. Similarly, the semiconductor sector reported a 29% decrease in deal volumes; however, it witnessed an impressive 93% increase in deal values, predominantly driven by a single substantial transaction.

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20 Airbus Completes Acquisition of Infodas to Strengthen Cybersecurity Portfolio. (2024, September 6). Manufacturing and Business Technology. https://clck.ru/3MBvem

21 Preiskel, R., Vittala, K., Preiskel, D., & Stelges, P. (2024, December 12). Technology M&A 2025. Chambers and Partners. https://clck.ru/3MBw2s

22 Sabater, A. (2024, April 15). IPO activity slowdown stretches through Q1 2024. S&P Global. https://clck.ru/3MBvqK

23 Blum, S. (2024, December 2). Despite Pops from Reddit and Astera Labs, the Sluggish IPO Market Dragged on in 2024. Inc. https://clck.ru/3MBvse

24 Thought Leadership. (2024, September 30). IPO Market Trends & Outlook 2025. https://clck.ru/3MBvu3

25 Jaber, B., & Spiegel, B. (2025, January 28). Global M&A Industry Trends in Technology, Media & Telecommunications. PWC. https://clck.ru/3MBwKQ

5. Challenges of Regulating the Digital Markets

The distinctive features of multi-sided platforms present considerable challenges for competition policy (Marty & Warin, 2023). It is essential for competition authorities and judicial bodies to account for the intricate interconnections and complexities inherent in multi-sided platform markets when evaluating specific cases (Nobrega et al., 2024). A comprehensive analysis of a platform necessitates the examination of all its facets, as well as a thorough assessment of both the direct and indirect network effects in relation to their economic implications. Regulatory bodies overseeing competition have been engaged in discussions regarding the most effective strategy for managing digital markets (Kira, 2024). One perspective advocates for an ex-ante framework, which emphasizes proactive measures aimed at preventing anti-competitive practices (Bougette et al., 2024). On the other hand, another perspective resulting from the analysis of enforcement actions advocates for an ex-post scheme that only targets individual cases (Cini & Czulno, 2022). Notably, some countries are currently trying to adopt the so-called 'mixed' model that draws elements from both frameworks[26]. The EU was among the world's first movers in the diversification of its regulatory approach through the adoption of an ex-ante regulation like with the P2B Regulation in 2019 and more recently the DMA in 2022 (Larouche & de Streel, 2021). The latter pertains to anti-competitive conduct through engaging in unfair trade practices by so called 'gatekeeper' digital platforms, which allows for swift and effective market remedies.

The DMA has been accused of possibly slowing down innovation and incurring unpredictable costs; its effectiveness will, therefore, depend on the implementation process[27]. The United Kingdom has undertaken the role of reflecting the general disposition of the regulation alignment of the European Union, albeit with some modifications. The DMCC was intended to enable the DMU to issue codes of conduct for selected companies with an emphasis on the digital marketplace[28]. In contrast to the EU's desire

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[26] BRICS Competition Law & Policy Centre. (2023, May 25). Session on "Ex-ante vs ex-post regulation of digital markets", EEF 2023. https://clck.ru/3MBw5Y. In the words of Maxim Shaskolsky, a FAS Russia official. He noted the problems FAS encounters due to the digitalization of the public procurement sphere (use of pricing algorithms and auction robots by businesses) and added that in June 2023 the FAS intends to introduce Rules and Standards Model for the Collaboration between Participants of Digital Markets in CIS Member States.

[27] Portuese, A. (2021, May 24). The digital markets act: European precautionary antitrust. Information Technology and Innovation Foundation. https://clck.ru/3MBw7t

[28] Egerton-Doyle, V., Hunter, J. (2024, October 7). The UK's New Digital Markets Regime: Unfettered Discretion and Power for the CMA. Kluwer Competition Law Blog. https://clck.ru/3MBwMi. The DMCC represents the first two decades of the most monumental reforms to competition and consumer law in the UK. It strengthens the CMA's current powers that current legislation focuses on its new digital markets regime, aimed at perceived competition concerns connected to a handful of the most prominent tech firms in the country – "SMS Regime". This regime will be administered by a new directorate, the Digital Markets Unit ("DMU"), which has begun in "shadow" form since 2021 to now take on its role. In the DMCC, the following three major shifts are recognized: (i) the introduction of a new-ex-ante-digital markets regime; (ii) the augmentation of CMA's consumer law enforcement powers; (iii) the built-up growth of CMA's broader administrative and investigative powers.

for a homogenous approach of putting equal burdens on all gatekeepers, the United Kingdom encourages cooperation between the authorities and companies in the country. This approach allows the firms to collaborate with the DMU to establish conducts that answer their needs while taking into consideration the features of the strategic business models. In accordance with market investigations and studies, the CMA in the United Kingdom has exclusive rights, the existence of which implies that corrective actions might be taken against certain members of the market. In the United States, the Federal Trade Commission examines anti-competitive practices individually and possesses the authority to conduct market investigations. Initiatives like the American Innovation and Choice Online Bill, which sought to implement ex-ante regulations, failed to garner significant backing[29]. Critics contended that the bills' intent was not to benefit consumers but rather to impose penalties on specific American technology companies for their anti-competitive actions, such as self-preferencing, which do not necessarily harm the market or consumers[30].

The emergence of proposals aimed at regulating competition within digital markets can be attributed to a growing dissatisfaction with conventional competition law (Gorecka, 2024). This discontent stems from the perception that investigations are often sluggish and limited in scope, while the powers to impose remedies are insufficient. Consequently, competition authorities struggle to establish the comprehensive market framework necessary for the effective functioning of these digital environments. The discussion concerning suitable regulatory frameworks for digital markets is complex, featuring advocates and opponents of regulation who present persuasive arguments and divergent perspectives on the future of competition policy in the context of the digital era (Kuenzler, 2022). The barriers to equitable competition within digital marketplaces arise not solely from traditional antitrust issues, such as tying, leveraging, foreclosure, denial of market access, and the suppression of potential competition, but also from the influence of data-centric and platform-oriented business models. The proliferation of data significantly enhances business models that rely on user-generated information

[29] Heather, S. (2022, June 17). Striking Similarities: Comparing Europe's Digital Markets Act to the American Innovation and Choice Online Act. US Chamber of Commerce. https://clck.ru/3Mkxqr. The bill covers only the largest "online platform", which, for the purposes of this bill, is defined as "a website, online or mobile application, operating system, digital assistant, or an online service" designed to: (A) enable a user to generate or upload content for other users to view or otherwise engage with on itself; (B) facilitate commerce through a website for consumers or third-party businesses; or (C) enable user searches that display a significant amount of information. Apart from those platforms specifically covered in the previous definition, subsection (e) gives the power for the FTC and DOJ jointly to designate a covered platform, and such designation will be effective for seven years.

[30] Ibid. The bills are being criticized for undermining the integrity of cyberspace and privacy of users by compelling U.S. companies to share sensitive data with foreign competitors. These bills stranglehold markets that are in any case already evolving, apply a one-size-fits-all model to disparate business models that have very unalike implications, and generally suck the life and potential out of many small players in the ecosystem. Like the DMA, domestic antitrust bills carry with them excessive sanctions unconnected in any way with actual consumer harm, thereby blighting pro-competitive conduct.

(Saura et al., 2021). The integration of a new data stream into an established dataset results in a nonlinear transformation of the overall value derived from the complete data repository. An extreme manifestation of increasing returns could significantly influence the classification of market competition.

By limiting certain anticompetitive practices through ex-ante regulation, regulatory effectiveness may be improved, and resource allocation may be optimized (Lancieri & Pereira Neto, 2022). The ruling by the Court of Justice regarding the case brought by the EC against Google concerning its comparison-shopping services (Petrucci, 2023). According to the decision, the Court of Justice confirmed the decision of the EC that restricted Google from abusing its dominant position on the online search markets. In simple terms, the court sided with the commission's argument that Google officials considered its comparison-shopping service over other similar services in violation of opposition laws. Deciding on this appeal against an earlier judgment of the EC General Court that was in favor of the commission, the Court of Justice ruled that the General Court had rightly concluded that, having regard to the characteristics of the relevant market and the particulars of the case, Google's behavior was exclusionary and did not constitute 'competition on the merits.

The European General Court ruling in the Google AdSense case annulled an EC decision imposing a fine of almost €1.5 billion on Google regarding its online advertising intermediation service, AdSense for Search, by arguing, among other things, that the EC did not consider all the relevant circumstances in its assessment of the duration of the contractual provisions concluded to be abusive (Rikap et al., 2021). The ruling further clarifies the meaning and application of the concept of exclusivity obligations within Article 102 of the Treaty on the Functioning of the European Union and clarifies the proofs necessary for the EC to carry its burden of demonstrating ability to bring about anticompetitive effects, which was followed by rulings of the Court of Justice in the Intel and Unilever Italia cases.

Another notable case is that of the EC opening an official competition on Microsoft for bundling its Teams software, a cloud-based communication and collaboration site, with the Microsoft 365 and Office 365 suites marketed to business clients (Bergqvist, 2024). Teams were bundled in with the business suite purchase, and the users were not given the option to integrate competing workplace communications services like Slack or Zoom into their Microsoft 365 or Office 365 packages. Microsoft's announcement comes ahead of a definitive decision by the EU, which has yet to be reached, about the separation of Teams from the Microsoft 365 and Office 365 suites for business customers in the EU. This move aims to mitigate potential antitrust concerns, and as a result, Microsoft 365 subscriptions that do not include Teams will be offered at a reduced price. They also revealed intentions to enhance their documentation regarding interoperability, enabling users to incorporate alternative solutions such as Slack or Zoom alongside their current offerings, including Exchange and Outlook. Thus, the actual implementation of ex-ante

regulations to bar tying and bundling would not have been required, by implication of the below investigative process.

Some key opinions that have dominated this consideration include the fear of regulation inhibiting further development, especially in this field. However, the black and white division between the concept of regulation and the concept of innovation is so firmly entrenched that people often limit their vision to a binary choice between the two. Consequently, stressing more detailed institutional and especially legal overhauls instead of disregarding regulation should help innovation and growth among organizations working in digital markets. Therefore, the task of describing essential characteristics of these regulations may be passed to individual jurisdictions that will then adapt and implement them according to their need.

6. Regulatory Scrutiny in Tech M&A

There is evidence that corporate acquisition activity is shifting more toward small deals to avoid the attention of the regulator (Enriques & Gatti, 2015). This strategic move not only avoids some regulatory impacts but is also more in tune with a move back to more selective and quick strategic growth plays. It has also affected the time that transactions take, due to long approval processes and regulatory analysis that is increasing the time that deals are open. This situation does signify the need to be very particular about planning. With the advancement and integration of technology in operations, acquisition of technology has become incredibly important and has birthed what is now famously known as “techquisitions” (Ioramashvili et al., 2024). This is referring to the tendency of more dominant firms to buy out technology startups; meaning there is a consistent morphing to growth through the application of innovative strategies. As technology increasingly serves as a fundamental element of business success, organizations are incorporating innovative solutions into their offerings.

To mitigate the competitiveness factor emerging from the platform M&A, we cannot rely on the classic ex-post regulation interventions. An ex-post antitrust approach alone is too specific and overly conservative for active markers, in many instances the damage has already been done (Stephan, 2020). Collectively these economic forces can generate market-tipping behavior for which the opportunity losses cannot be recovered ex-post. Legal remedies also require modernization, even traditional antitrust legal instruments. Most platform markets resist using the ex-post tools of antitrust analysis to determine the proper sphere of markets (Bostoen, & Vanwamel, 2024).

The current high growth digital markets require more structural approaches that rely on ex-ante regulation before harm sets in as an extra tool to the ex-post enforcement (Prado, 2022). Thus, this paper builds on this foundation by investigating how we may integrate ex-ante regulatory instruments with merger control and antitrust enforcement. It concerns those platforms which, while being specific enough to be described

as infrastructure gatekeepers due to the number of interactions they process. On this subject, it examines the M&A strategies of these platforms when expanding, and the effects on competition. One cannot examine the competition antecedents of the phenomenon and state that innovative new ex-ante regulatory mechanism for information exchange together with the right upgrade of the merger analysis policy can assist the development of competitive more competitive and innovative nature of online ecosystems by embracing the platform M&As that proportionately provide efficiency and consumer welfare.

7. Different Approaches to Regulatory Scrutiny

Mergers and acquisitions strategies have the potential to create added value by incorporating new functionalities within either the horizontal or vertical supply chain (Carril-Caccia & Pavlova, 2020). Nevertheless, it is essential to address various competition-related issues. These concerns can be categorized into three main types: dynamic competitive concerns, horizontal and conglomerate merger concerns, and vertical merger concerns.

It is essential to establish a clear distinction between the second and third categories. To achieve this, we adhere to the "End-to-End" principle, which helps differentiate the components that belong to the network layer (platform) from those that are associated with the endpoints. The principle indicates that essential functions, which are frequently utilized by most users, ought to be positioned at the core of a system to ensure their constant availability to all users. Conversely, functions that are used less often and cater to specific niche groups should be located at the periphery, accessible solely to those who have a need for them. The rationale behind this is that incorporating each system function results in an overhead cost that diminishes execution efficiency. Consequently, this suggests that ecosystem partners, such as application developers, ought to offer highly variable and less frequently utilized functions to deliver tailored solutions within specific industry sectors. This function is not applicable universally, as not all users of operating systems engage in gaming. In contrast, the platform ought to offer functions that are widely utilized across various industries, albeit with limited variety. An example of a horizontal function is the cut-and-paste feature, which is utilized by all users and the majority of office and productivity applications (Goldsmith, 2017). It is therefore more effective to integrate the functionality directly into the operating system, allowing any application to utilize it. This principle is essential to the architecture of the internet and aligns with the perspective of platforms as a foundational set of stable, gradually evolving functions, which are situated beneath a layer of modular, rapidly changing functions.

The term 'killer' acquisitions, when utilized in the context of the digital industry, may equally pertain to the acquisition of emerging companies, the competitive relevance of whose offerings could be considered largely uncertain (Ivaldi et al., 2023). A 'killer' acquisition would likely have a detrimental effect on consumer welfare by

eliminating innovative alternatives from the market (Letina et al., 2024). However, it is considerably more challenging to reach the same conclusion regarding the acquisitions of emerging competitors within the technology sector. Many of these acquisitions undoubtedly contribute positively to consumer welfare by broadening the availability of innovative products. This objective can be accomplished by incorporating newly acquired features, applications, and functionalities into the current services.

The issue of "killer acquisitions" has garnered heightened attention within the antitrust community, particularly due to their significant detrimental impact on digital innovation (Eben & Reader, 2023). On the contrary, most acquisitions of small firms by established companies are not aimed at reducing competition; rather, they significantly enhance innovation by leveraging synergies and integrating complementary technologies (Čirjevskis, 2019). These transactions are referred to as "bolt-on acquisitions" (King et al., 2018). Most times, there are valid grounds to believe that established digital companies may have occasionally suppressed potential competition through what are referred to as "killer acquisitions"[31]. The existing enforcement framework ought to be modified to incorporate a dual approach: (i) an ex-ante control mechanism that mandates entities granted "strategic market status" to report their transactions (Manganelli & Nicita, 2022); and (ii) an ex-post implementation of Article 102 Treaty on the Functioning of the European Union (TFEU) by a specialized digital markets unit (Eroğlu & Koksal, 2024).

8. Effects of Antitrust Laws on Tech M&A

In the realm of merger control, various global antitrust authorities have expressed opposition to several transactions involving prominent technology firms. During the initial half of 2024, vertical acquisitions proposed by two major players, Meta[32] and Microsoft, encountered significant pushback[33]. The FTC initiated legal challenges against both companies, while Microsoft's attempt to acquire Activision experienced tumultuous scrutiny from the EC and the CMA, culminating in a temporary block by the CMA before the parties restructured the deal[34].

The scope of merger control has expanded beyond the conventional analysis of horizontal market shares to encompass a variety of newly identified competitive threats (Gilbert & Melamed, 2024). These include potential market entry, conglomerate

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31 Hansson, D., & Tran, J. (2024). Is Tougher Application of Article 22 of the EU Merger Control the Deal Breaker?: Examining the Commission's Enforcement Against Killer Acquisitions in the Digital Economy. https://clck.ru/3MBwdp

32 The organization is recognized as extremist, its functioning is prohibited in the territory of the Russian Federation.

33 Kheriwala, S. (2024, December 16). Antitrust actions against major tech firms: A global overview. Storyboard18. https://clck.ru/3MBwqX

34 See for example, FTC. (2024, November 13). In the Matter of Microsoft/Activision Blizzard. https://clck.ru/3MBxak

effects, the strengthening of ecosystems, innovation-related harms, killer acquisitions, self-preferencing practices, access degradation, and other vertical issues. This shift is particularly pertinent in sensitive sectors, notably the digital and healthcare industries. Merger control authorities have increasingly concentrated on issues related to innovation (Mendelsohn & Breide, 2024). Their focus extends beyond merely evaluating pipeline overlaps; they are also committed to safeguarding the conditions necessary for emerging innovations, which refer to innovations that have not yet culminated in market-ready products.

The European Commission and various other merger control authorities have grown increasingly apprehensive that significant transactions are being overlooked, leading to potential competitive detriments that cannot be addressed through conventional merger control legislation. The claim posited that major technology firms and other entities were eliminating potential competitors before they had the opportunity to emerge, a phenomenon referred to as "killer acquisitions". This term also encompasses "reverse killer acquisitions", wherein the acquiring company effectively suppresses its own innovations in favor of those developed by the target company.

The EU has adopted an alternative approach. In the merger case involving Illumina and Grail, which pertained to a consolidation of two American firms that did not meet the turnover thresholds for merger control at either the EU or national level, the European Commission nonetheless asserted its jurisdiction by revising its policy regarding the application of the referral provision within the European Merger Regulation[35]. This provision grants the EC authority to oversee a merger when one or more member states submit a referral to the Commission, particularly due to apprehensions that the merger may substantially influence competition within those member states. It is yet to be determined whether the European Court of Justice will support the European Commission's stance to scrutinize transactions under Article 22 of the EUMR, despite the absence of national merger control filings and the failure to meet EUMR thresholds, provided that the criteria outlined in Article 22 EUMR are satisfied[36]. The Illumina case has introduced ambiguity regarding the applicability of EU merger control to acquisitions of innovative firms or those deemed essential to a supply chain, even in instances where such transactions do not meet the established thresholds. In several transactions that engage innovative or supply-critical firms, the analysis of merger control concerning the involved parties can no longer be limited to evaluating turnover and market shares.

35 Article 22 EUMR.

36 Illumina/Grail: European Court of Justice strikes down the European Commission's policy of accepting referrals of non-notifiable deals. (2024, September 13). Dentons. https://clck.ru/3MBx6B. In a ruling on the Illumina/Grail case, the European Court of Justice set aside the interpretation the General Court (GC) gave to Article 22 of EU Merger Regulation 139/2004 (EUMR). This judgment is a fundamental shift, bringing to an end the EC's practice of accepting referrals under Article 22 EUMR for transactions which fell outside the scope of national review powers of a Member State of the EU.

It is essential to consider the potential for a referral under Article 22 of the EUMR, and similar considerations should be applied to other jurisdictions that possess comparable pull-in authorities[37].

Behavioral remedies, such as supply commitments or the licensing of technology to rival firms, have historically been met with skepticism as solutions for anti-competitive mergers (Glick et al., 2023). In many instances, these commitments are deemed inadequate to address the anti-competitive consequences of a merger, despite their acceptance in a few specific cases, particularly following a comprehensive Phase II investigation.[38] The recent approval by the EC regarding the Microsoft/Activision Blizzard merger exemplifies this situation (Ziermann, 2023). The EC granted a complimentary license to consumers within the European Economic Area (EEA), enabling them to stream all existing and forthcoming Activision Blizzard PC and console games through any cloud gaming service of their preference, provided they hold a valid license. Additionally, a similar complimentary license was extended to cloud gaming service providers, permitting EEA-based gamers to stream any of Activision Blizzard's PC and console titles (Norris, 2024).

The EC continues to strongly advocate for remedies that include the divestiture of certain segments of the target company or potentially even portions of the buyer's current operations.[39] The standards set by merger authorities regarding divestment remedies have become increasingly stringent. To address competition-related issues, it is often inadequate to divest merely individual assets, products, or contracts. Rather, the divestment process now generally requires the separation of an entire business that can operate independently of the merging entities, potentially necessitating the inclusion of a wider array of assets beyond those directly related to the identified concerns. For a divestment business to operate independently, it generally needs to encompass all relevant assets and business operations. Additionally, it may be necessary to integrate comprehensive central functions, including accounting, finance, human resources, information technology, and research and development. Transitional support may be necessary and allowed for a limited period after the completion of the divestiture transaction; however, the essential functions must ultimately reside within the divested entity if the merger authorities determine this to be essential.

37 Article 22 EUMR Referrals Post-Illumina: Back to the Drawing Board? (2024, September 23). European Law Blog. https://clck.ru/3MBx9v

38 Bengtsson, C., Carpi, J. M., & Subočs, A. (2021). Anticompetitive effects. In EU Competition Law Volume II: Mergers and Acquisitions (pp. 363–562). Edward Elgar Publishing.

39 EC – Competition Policy. (2009, February 24). Official Journal of the European Union. https://clck.ru/3MBxBq

9. Global Perspectives on Tech M&A Regulation

9.1. Russia

Russian legislation and regulations on antitrust in M&A remain under contemporaneous development to address novel and advanced economic and technology trends (Redkina et al., 2023). Being the governmental authority, the Federal Antimonopoly Service (FAS) is also charged with the examination and application of competition law within the Russian Federation, which includes M&A (Khokhlov, 2017). This means that the regulation of antitrust is in a phase of constant change, which provides for the ability of the Federal Antitrust Service of Russia to adopt, analyze and act on new forms of economic and technological activities. The latest changes in the antitrust legislation were adopted on July 28, 2015, and concern the shifts in the regulating of M&As and changes the procedure for performing operations and introduce the new criterion for the transaction approval (Tsyganov et al., 2023).

When conducting the analysis of the merger, the FAS used dynamic rather than static methodology that looked at market definitions in relation to various products (Shastitko et al., 2022). The FAS believed that the relevant markets were the "integrated agro-tech markets" and argued that the value of seeds, agro-chemicals, and digital solutions, separately, was lower because the competitive environment of this sector shifted thanks to continuous technology advancement. The FAS put much focus on the assessment of the effects of the merger for both the vertical and the horizontal competition (Tsyganov et al., 2023).

9.2. India

Most of the rules of merger control and competition policy in India are set by Competition Act of 2002 with the watchdog agency being the Competition Commission of India (Hiwarale et al., 2024). In these regulations, the government seeks to reign in anti-competitive behavior, encourage acceptable competition and support the consumer. There is a gradual evolution of India's merger controls and competition policies for responding to the emerging challenges in modern markets especially technology and digital space (Reddy, 2016). The current Changes in the Competition Act of 2023 depicted a movement to a more tough and extended act that is expected aim and protect consumers to regulate and encourage competition, check mergers, and acquisitions that may hamper the competition within the relevant market.

The Indian government has made recent changes to the Indian Competition Act of 2002 finer, to incorporate modern international standards and adapt to novel issues emerging in the digital economy. In addition, the government is contemplating the ex-ante regulatory mechanism compatible with the proposed work model that might be adopted in India akin to the EC's DMA now alongside the existing competition legislations (Afuwape, 2024; Soni & Kumar, 2024).

The Competition Act 2023 reduces the time within which the Competition Commission of India (CCI) must review a transaction and come up with a preliminary view. The CCI is now given 30 calendar days, against 30 working days, exclusive of clock stops. In addition, the limit of the deemed approval has reduced to a maximum of 150 calendar days with clock stops from 210 calendar days. While this switch would seem to be positive for the industry, it is important that the intensified appurtenance of approval schedules be matched with a substantial boost in the CCI's performance capability. This will allow the regulator to avoid work overload and acquire M&As at the same pace as before.

9.3. The United Kingdom

New legislation in the United Kingdom known as the Digital Markets, Competition, and Consumers Act (DMCC) comes into operation as of 1st of January 2025 (Alexiadis, 2024). This act provides the CMA with powers of greater scope for its merger control, digital markets, competition and consumer protection legislation. The extension of the number of transactions that are under merger control is possible due to the new alternative merger threshold provided by the DMCC (Alexiadis, 2024). This strategic move aims at improving fairness of the digital market, for example, by introducing new tough notification regimes for companies given 'Strategic Market Status'. Further, it greatly improves the enforcement powers of the CMA in a wider sense of the term. The CMA, however, is keen on acknowledging the need for new thresholds and proceedings to boost the volume of assessments of mergers and acquisitions aspiring to solve the market challenges with emerging competitors, also known as "killer acquisitions," whereupon the DMCC implemented new thresholds and proceedings for the CMA.

The dark line there introduced a new threshold under which the previous condition stating that the acquirer and target had to carry out overlapping activities in the UK, or the target had to have important operations in the UK, was disposed of. This change extends jurisdiction of the CMA to review acquisitions of targets where the revenue from the sale of goods and services in the United Kingdom is either nominal or in some cases nil, in addition to reviewing vertical and conglomerate mergers. However, as one will discover, achieving this figure does not mandate a filing but does allow the CMA to review a transaction. Consequently, this may encourage voluntary submissions when the threshold is satisfied, as many acquirers will seek assurance regarding the potential for CMA review of their transactions.

The DMCC grants authority to the CMA's Digital Markets Unit (DMU) to oversee the activities of significant enterprises operating within digital markets (Marinova, 2024). Upon receiving the designation of "Strategic Market Status" (SMS), these companies will be subject to obligations and stipulations as outlined by the DMCC (Highfield, 2024). The CMA has announced that its preliminary investigations will concentrate on three to four firms. Sarah Cardell, the CMA's chief executive, has underscored that these investigations will be characterized by an "evidence-based, targeted, and proportionate"

approach[40]. One of the primary responsibilities of SMS companies is to comply with customized conduct requirements (CRs) that govern their behavior concerning the activities for which they have been appointed. Since CRs are specific to each firm, they are expected to differ significantly, in contrast to the more prescriptive guidelines outlined in the European Union's DMA.

9.4. US Antitrust Scrutiny

Antitrust legislation in the US is essential for overseeing business conduct and fostering equitable competition within the market (Ganguli, 2024). The two dominant pieces of legislation profiled are the Sherman Antitrust Act and the Clayton Antitrust Act (Linneman, 2022). Sherman Antitrust Act was passed in 1890 to avoid activities that cause a hindrance to trade and thus give rise to monopoly (de Carvalho, 2024). They banned those arrangements of contracts or business affiliation that tend to restrict free competition. Among them are the Sherman Anti-Trust Act, the Clayton Antitrust legislation, which was also passed in the same year that the Interstate Commerce Act was passed, builds further these antitrust laws by prohibiting practices including price discrimination and tying arrangements and exclusive dealing. It can be argued that the level of the error of 'false negatives' is larger in merger control as opposed to sections 1 and 2 of the Sherman Act (Casey & Niblett, 2021). This may be attributed to the high standard of proof that has been put in place by the US antitrust regulations, which undergo a tough judicial scrutiny on substantive merit, basically, and not conforming to the administrative law tests. Moreover, the financial consequences of violation of the anti-trust laws are incredibly grave. The principle of the separation between the antitrust regulations and sector-specific authorities is strictly adhered to in the United States, thus, the above-mentioned policy trade-off is less simplistic compared to the trade-off in many cross-jurisdictional systems across the world.

9.5. The EU

The EC has been assessing mergers since 1990 pursuant to its Merger Regulations (EC Regulations) (Levy et al., 2021). These regulations empower the Commission as the sole institution capable of considering mergers that have a "Community aspect" and of prohibiting those which create, or strengthen, a dominant position within the Common Market. Nevertheless, according to the above-mentioned EC Regulations, the said impediment "generally results from the creation or reinforcement of a dominant position"[41].

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[40] Israel, M., Engel, M., Kelliher, K., & Citron, P. (Eds.). (2024, December 16). UK Expands its Merger Control Regime and the CMA's Power with the Digital markets, Competition & Consumers act. Kluwer Competition Law blog. https://clck.ru/3MBxNg

[41] EU. (2004). EU Merger Regulation 139/2004. https://clck.ru/3MCJDZ

In addition to these regulations, a new and extensive set of enforcement guidelines was introduced to help in the assessment of horizontal mergers. In the EC Guidelines, it is described how the Commission assesses concentrations concerning undertakings that are actual or potential competitors on the same relevant product market (Nazzini, 2006).

10. Policy Implications of the Present and Future of Digital M&A Regulation

The state of regulation, thus, has had changes in the past few years. This evolution is in an effort to fit new technologies that also influence mergers and acquisitions across the world but mainly in United States and Europe. Antitrust authorities are intensifying scrutiny of mergers and acquisitions involving major technology firms (Crandall, 2024). The evaluation procedures are increasingly rigorous, demonstrating a dedication to maintaining equitable competition and curbing monopolistic behaviors (Xie & Wu, 2024). Broadcom's acquisition of VMware, valued at $69 billion, underwent a rigorous examination lasting 59 weeks and spanning three fiscal years, underscoring the extensive global approvals necessary for such a transaction[42]. Microsoft's acquisition of Activision has encountered scrutiny from the Federal Trade Commission (FTC) nearly two years following the announcement of the agreement (Norris, 2024). This situation illustrates that regulatory hurdles may continue to arise well beyond the initial stages of a business transaction.

The outlook of the Digital M&A is to the effect that there would be the scaling up of acquisition of startups facilitates access to innovative and exclusive technologies, enabling larger corporations to maintain a leading position within their respective sectors (Xu & Deng, 2024). Accelerated growth is leveraging on the insights and innovations derived from startups that substantially boost expansion efforts, while avoiding the protracted processes typically linked to in-house development. The emergence of market expansion boosting startups that have successfully built a presence and cultivated a customer base that can utilize resources to expedite their growth trajectory.

Artificial intelligence (AI) will significantly transform the technology landscape and is now influencing M&A processes[43]. Tools powered by AI facilitate market analysis, valuation, and due diligence, enabling organizations to make informed decisions based on data with remarkable precision. The influence of emerging technologies on businesses will drive them to adopt cutting-edge solutions utilizing blockchain, artificial intelligence, and edge computing to maintain a competitive advantage (Chatterjee et al., 2023).

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[42] Broadcom completes its $61 billion acquisition of VMware. (2023, November 23). Times of India. https://clck.ru/3MBxjw

[43] Cazzaro, M. (2024). AI and Machine Learning in M&A: A Quantitative Analysis of Their Impact on Deal Outcomes.

As cyber threats become more sophisticated, organizations are recognizing the critical need to protect their digital assets. It is expected that M&As will increasingly prioritize cybersecurity, with companies aiming to acquire specialized cybersecurity firms to improve their data protection measures and strengthen their security infrastructures[44]. This trend will be especially relevant in sectors that manage large volumes of sensitive data, such as finance, healthcare, and e-commerce, where the preservation of digital trust is paramount.

The M&A landscape in healthcare technology is expected to maintain its robustness, particularly in sectors such as telemedicine, digital health solutions, and wearable technology. Additionally, the acquisition of biotechnology firms is likely to increase as organizations aim to capitalize on innovations in genetics, diagnostic tools, and personalized medicine to enhance their health technology portfolios.

Excellent high quality extensive data recourses are likely to lead to high market valuations among businesses. The ability to capitalize on customer data and behavior and to comprehend the trends within the industry make data-intensive businesses especially desirable. M&A strategies will, therefore, focus on entities with excellent data capabilities and capabilities, so that the acquiring companies can discover new opportunities, improve personalization tactics, and create subsidiary products that are value based (Lawton et al., 2024)

PE firms are escalating their involvement in M&As within the technology sector because of the feasible attractive returns within booming technology markets (Nary & Kaul, 2023). These firms will probably seek to acquire tech firms that work in niches like SaaS, cloud and cybersecurity firms. Such acquisitions provide PE firms resilient investment opportunities due to their capabilities to create awareness and brokerage diversified investment opportunities that can also improve their position in the technology market.

The idea of the metaverse has stirred much interest as the next level of virtual communication. Those industries, which invested in virtual reality (VR), augmented reality (AR), and immersive technologies can occupy lists of probable M&A contenders. Some of the uses of these technologies are in virtual work environments, client interaction solutions by acquiring metaaverse-related technologies an organization can increase their product portfolio and tap into the growing space in this market.

More and more, consideration of environmental, social, and governance (ESG) issues is emerging as a key element of M&A plans. With increased focus on sustainable development by the regulatory authorities and increased consciousness among the consumer organizations, green technologies, more and more are likely to feature in the M&A transactions. It is assumed that key Silicon Valley technology companies

[44] Raunio, P. (2024). Cyber Due Diligence Process Prototype. Jamk. https://clck.ru/3MBy7o

will target organizations that can show efficiency in energy management and carbon neutralization together with technological innovation with an emphasis on sustainability. Measures and initiatives that will be implemented as part of strategic management will not only advance corporate sustainability initiatives but also fit the investors' ESG approach.

Businesses would be in good shape in order to attain a better position as opposed to counterparts by coming up with more innovative solutions. A constant innovation within the specifications of software development has been attributed to the rise of the trend in consolidation and thus the mergers and acquisitions trajectories.

An increase in the regulation of M&As will occur, and organizations will be required to navigate the regulatory environment at the instigation of industry regulators that require companies to professionally manage M&As through policymaking and compliance with the modern legal disclosure and requirements of antitrust laws.

On the factor of cultural compatibility and innovation to pursue better transactions to ensure cultural compatibility as well as promote the aspect of innovation in future transactions it will be important for the next upcoming deals.

11. Recommendations

EU and US antitrust laws need to be modified for digital technology M&A separately because digital markets create new issues that were not present before. Recently, the appearance of rather large digital ecosystems has led to debates about the need for changes in antitrust laws. However, there are those people who argue that the current market trends correspond to improvements in total wellbeing. More assertiveness should be considered whilst implementing the antitrust enforcement to avoid increasing concentration with the industries addressing the unique challenges posed by digital markets.

1. Antitrust enforcement should consider adopting more assertive approaches to address the growing concentration within industries. On the other hand, the difficulties experienced in proving the negative impacts originating from the dominance of the dominant multiplatform are said to show that the assessment of consumer welfare implications of antitrust should not heavily depend on price theory.

2. The DMA requires that gatekeepers inform the EC of any M&A involving core platform services or other digital services. Additionally, the EC has the authority to temporarily suspend further M&A activities by a gatekeeper in cases of ongoing non-compliance with the DMA.

3. The EC should consider imposing levies of some of the most substantial penalties globally for violations of competition regulations. Nevertheless, the effectiveness of these significant fines is influenced by various factors, including the scale of the companies implicated, the likelihood of identifying such violations, and additional considerations.

4. The landscape of ESG regulations, legislation, and voluntary frameworks is expanding, with recent advancements particularly significant in the areas of supply chain due diligence and social considerations, including human rights. Organizations that operate with intricate supply chains, as well as those within highly regulated industries like finance, are especially susceptible to challenges and regulatory oversight related to ESG matters. From the M&As point of view, this means understanding the most efficient approaches to the process of fitting a target firm into the buyer's due diligence structure. It also covers assessment of governance and preparedness for current and future topics, including sustainability reporting, supply change management, and transition.

5. The regulation proposed in this paper involves formulation and enforcement of a "code of conduct" among the firms that have been identified as having "strategic market status." Third, it would promote better value and improved portability of personal data as well as encourage systems that are based on open standards. The unit would also aim at enhancing data openness; especially in cases where exclusive access to data constitutes exclusion in the market. Moreover, it would be designed to promote competition, evaluate mergers which may generate digital barriers to competition and collect information on trends and evolutions of digital markets.

6. Studying the consequences of digital mergers, over the long term, implies studying their effects on potential future innovation and competition besides the need to protect oneself against threats from peripheral competitors.

7. Considering the lowering or shifting the burden of proof as to infringement, or lowering what is acceptable judicial scrutiny applied on the decisions of competition authorities has been an issue in the past. Applying the direct legal prohibition of certain unilateral conducts occurred in the digital markets and shifted the burden of proof of the pro-competitive effects of the practices onto incumbent players. As such, the set recommendations should be backed by intensive, organized, and scientific research of the relevant markets, as well as assessment of the effects of the suggested changes before the application of all change processes grounded on evidence.

8. Formulate guidelines that clearly outline the potential ways in which mergers within the technology sector could hinder innovation. This should encompass qualitative evaluations of the merger's effects on competition and progress in technological development.

Conclusion

M&As have historically served as a fundamental element of the corporate sector. As the business and technological environments continue to evolve, the future of M&A is characterized by emerging trends and forecasts that are poised to influence the methods by which companies engage in business combinations activities in the forthcoming years.

The trajectory of M&As within the technology sector is characterized by dynamism and abundant opportunities, propelled by innovations in technology, shifts in regulatory frameworks, and evolving market needs. It is imperative for companies to remain vigilant and flexible to effectively maneuver through the intricate landscape of M&A activities. Through the strategic utilization of emerging technologies, a comprehensive understanding of regulatory frameworks, and an emphasis on innovation alongside cultural alignment, organizations can effectively position themselves for growth and success within the dynamic landscape of M&As. The future of M&As is poised to be both dynamic and transformative for companies globally, whether through international transactions or the acquisition of technological innovations.

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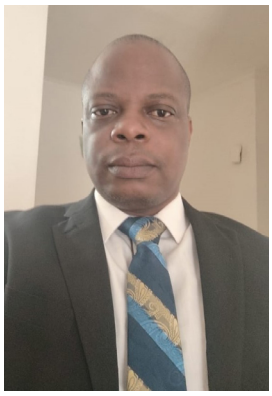

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Правовые барьеры цифровых слияний и поглощений: антимонопольное регулирование технологического сектора

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Ключевые слова

антимонопольное законодательство,
доминирующее положение,
законодательство,
конкуренция,
право,
слияние и поглощение,
технологический гигант,
технологический сектор,
цифровая экономика,
цифровые технологии

Аннотация

Цель: определить характер и степень влияния антимонопольного законодательства Европейского союза и Соединенных Штатов Америки на процессы слияний и поглощений в технологическом секторе.

Методы: в работе использован сравнительный и междисциплинарный подход, сочетающий правовой анализ и экономическое моделирование. Проведен сравнительный анализ законодательства Европейского союза и Соединенных Штатов Америки, обобщение практик антимонопольного регулирования, рассмотрены доктринальные источники и современные эмпирические данные. Использованы методы контент-анализа нормативных актов, кейс-стади крупнейших цифровых компаний, а также элементы прогнозирования влияния регуляторных изменений на инновационную активность и динамику рынка.

Результаты: рассмотрены различные подходы к регулированию слияний и поглощений в цифровой экономике, проанализированы особенности правоприменения в Европейском союзе и Соединенных Штатах Америки. Обосновано, что строгие антимонопольные меры могут как сдерживать рыночную концентрацию, так и создавать барьеры для внедрения инноваций. Установлено, что практика применения Закона о цифровых рынках в Европейском союзе и соответствующих актов Соединенных Штатов Америки существенно влияет на структурные изменения в технологическом секторе, формируя новые модели конкурентной борьбы. Приведены рекомендации по совершенствованию международного сотрудничества и выработке единых справедливых регуляторных стандартов для цифровых рынков. Особое внимание уделяется проблемам определения доминирующего положения, регулятивного контроля и специфическим особенностям цифровых рынков.

Научная новизна: статья системно сопоставляет регулятивные режимы ведущих мировых юрисдикций сквозь призму цифровых слияний и поглощений, расширяя категориальный аппарат за счет современных подходов к анализу сетевых эффектов, конкуренции за данные и новых форм рыночной власти. Применен авторский критерий анализа комплексной экспертизы сделок с точки зрения устойчивости и инновационного потенциала.

Практическая значимость: выводы и рекомендации работы способствуют формированию более гибкой и адаптивной политики регулирования в отношении технологических гигантов, что важно для законотворцев, регуляторов, корпоративных стратегов и исследователей цифровой экономики.

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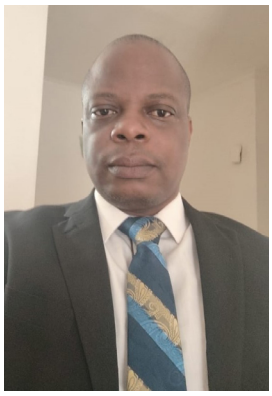

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