MASTER THESIS | MASTER'S THESIS

Titel | Title

From Killer Acquisitions to Strategic Partnerships: Big Tech and EU Merger Regime

verfasst von | submitted by

Bianka Sedmáková

angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien | Vienna, 2026

Studienkennzahl lt. Studienblatt | Degree programme code as it appears on the student record sheet:	UA 999 082
Universitätslehrgang lt. Studienblatt | Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht [Vollzeit Englisch]
Betreut von | Supervisor:	ao. Univ.-Prof. Mag. Dr. Siegfried Fina

Abstract (English)

This thesis examines how Big Tech firms consolidate market power in digital markets through killer acquisitions and strategic partnerships, and how these strategies challenge the effectiveness of the European Union (EU) merger control regime. Although differing in legal form, both exploit similar weaknesses of the EU Merger Regulation (EUMR). The thesis argues that EU merger control is poorly adapted to digital markets. Turnover-based jurisdictional thresholds fail to capture killer acquisitions involving low-revenue but strategically important firms, while the Significant Impediment to Effective Competition (SIEC) test is ill-suited to low-probability but high-impact harm. In response, the thesis advocates reform in the form of a strengthened use of Article 22 referrals and a recalibration of the substantive assessment through a balance of harms approach. It further shows that strategic partnerships frequently escape merger control because they do not qualify as concentrations under the EUMR, despite being functionally equivalent to them. The thesis assesses the Digital Markets Act (DMA) as a tool complementing merger control but finds that it primarily enhances transparency and does not close these gaps. Overall, the thesis concludes that the existing EU merger control regime remains limited in addressing competitive risks arising in digital markets.

Abstract (Deutsch)

Diese Arbeit untersucht, wie Big-Tech-Unternehmen ihre Marktmacht in digitalen Märkten durch Killer-Übernahmen und strategische Partnerschaften festigen und wie diese Strategien die Wirksamkeit des EU-Fusionskontrollsystems in Frage stellen. Obwohl sie sich in ihrer Rechtsform unterscheiden, nutzen beide ähnliche Schwächen der EU-Fusionskontrollverordnung (EUMR) aus. Die Arbeit argumentiert, dass die EU-Fusionskontrolle unzureichend an digitale Märkte angepasst ist. Zuständigkeitsschwellen, die sich am Umsatz orientieren, erkennen Killer-Übernahmen oft nicht, wenn das übernommene Unternehmen zwar wenig Umsatz hat, aber von strategischer Bedeutung ist, während der Test der erheblichen Behinderung wirksamen Wettbewerbs (SIEC) ungeeignet ist, um Schäden mit geringer Eintrittswahrscheinlichkeit, jedoch potenziell großer Auswirkung, angemessen zu bewerten. Als Reaktion darauf plädiert die Arbeit für eine Reform, die einerseits eine verstärkte Anwendung von Verweisungen nach Artikel 22 vorsieht und anderseits eine Neukalibrierung der materiellen Prüfung hin zu einem schadensausgleichsorientierten Ansatz empfiehlt. Ferner zeigt sie, dass strategische Partnerschaften häufig der Fusionskontrolle entgehen, da sie trotz ihrer zweckmäßigen Gleichwertigkeit nicht als Zusammenschlüsse im Sinne der EUMR gelten. Die Arbeit bewertet den Digital Markets Act (DMA) als ein Instrument, das die Fusionskontrolle ergänzt, kommt jedoch zu dem Schluss, dass er in erster Linie die Transparenz erhöht und diese Lücken nicht schließt. Insgesamt kommt die Arbeit zu dem Ergebnis, dass die Wirksamkeit des bestehenden EU-Fusionskontrollsystems beim Adressieren von Wettbewerbsrisiken auf digitalen Märkten begrenzt bleibt.

Table of Contents

List of Abbreviations

AGI	Artificial General Intelligence
AI	Artificial Intelligence
AWS	Amazon Web Services
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority
DMA	Digital Markets Act
EU	European Union
EUMR	European Union Merger Regulation
GAFAM	Google, Apple, Facebook (now Meta), Amazon, Microsoft
IP	Intellectual Property
N-IICS	Number-Independent Interpersonal Communication Services
SIEC	Significant Impediment to Effective Competition
SSNIP	Small but Significant and Non-transitory Increase in Price
TFEU	Treaty on the Functioning of the European Union
TPU	Tensor Processing Unit
U.S.	United States of America
UK	United Kingdom

Introduction

This thesis examines how Big Tech consolidates market power through transactional strategies, namely killer acquisitions and strategic partnerships, that increasingly challenge the effectiveness of the EU merger control regime. Although these strategies differ in legal form, they raise comparable competitive concerns and expose common weaknesses in European Union (EU) merger control, as grounded in the EU Merger Regulation (EUMR)[1].

The topic is relevant due to the increasing frequency and strategic importance of these transactions in digital markets. Between 1987 and 2019, the GAFAM[2] companies alone acquired more than 700 start-ups, with over 400 of those deals occurring in the last decade.[3] At the same time, strategic partnerships have emerged as a significant alternative to outright acquisitions. The United Kingdom (UK) Competition and Markets Authority (CMA) has identified over 90 such 'more-than-financing' agreements,[4] while in 2023 investments by the four largest technology firms in the United States of America (U.S.) exceeded total venture capital funding in the artificial intelligence (AI) sector. This signals a structural shift in how digital innovation is financed and controlled.[5]

Yet the EU merger control regime remains largely anchored in traditional notions of control, turnover-based jurisdictional thresholds, and probabilistic assessments of harm that are poorly suited to the realities of digital markets. Taken together, these developments create a systematic risk of under-enforcement and raise serious questions about the ability of EU merger control to fulfil its core objective of protecting consumers and fostering innovation.[6]

The motivation for this thesis lies in the growing gap between the competitive risks identified by competition authorities and the limited capacity of existing merger control tools to address

[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2004] OJ L24/1.
[2] Acronym for Google, Apple, Facebook (now Meta), Amazon, and Microsoft.
[3] Andrew McLean, 'Seminar 17: Merger control III' (*Introduction to Competition Law and Consumer Protection, UCL Lecture Notes*), 23.
[4] Competition & Markets Authority, *AI Foundation Models: Technical update report* (16 April 2024), 30 <https://assets.publishing.service.gov.uk/media/661e5a4c7469198185bd3d62/AI_Foundation_Models_technical_update_report.pdf> accessed 24 January 2026.
[5] Cristina Caffarra, 'The Global AI Conundrum for Antitrust Agencies' (*Tech Policy.Press*, 7 February 2024), 30 <www.techpolicy.press/the-global-ai-conundrum-for-antitrust-agencies/> accessed 8 January 2026.
[6] Gregory Crawford, Tommaso Valletti and Cristina Caffarra, ''How tech rolls': Potential competition and 'reverse' killer acquisitions' (*VOXEU Blog*, 11 May 2020) <https://cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions> accessed 19 June 2025.

them effectively in digital markets. This disconnect between enforcement objectives and doctrinal constraints provides the central impetus.

To examine these issues, the thesis proceeds in four parts.

Part I sets out the foundations for the analysis by introducing the concept of a merger, the main types of mergers, and the rationale of merger control. It then examines the EU merger control framework, focusing on its jurisdictional architecture and substantive assessment under the EUMR.

Part II examines killer acquisitions. It begins by defining start-up acquisitions and outlining the relevant theories of harm, before focusing specifically on killer acquisitions. It then analyses how such transactions are treated under the EU merger regime, identifying both jurisdictional and substantive gaps and assessing the proposed solutions.

Part III examines strategic partnerships. It defines the concept and discusses three illustrative examples before analysing the relevant theories of harm. This part then assesses how strategic partnerships are addressed under the EU merger regime, with particular emphasis on jurisdictional gaps.

Part IV finally assesses the role of the Digital Markets Act (DMA)[7]. It outlines the DMA's framework, scope, obligations, and non-compliance and evaluates its capacity to address the competitive concerns raised by killer acquisitions and strategic partnerships.

Part I: EU Merger Control Regime

Chapter 1: Mergers

1.1. Definition of a Merger

Analysing the notion 'merger' is a useful starting point because it underpins the arguments developed in this thesis. While the traditional concept of a 'true merger' refers to the merging

[7] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1.

of two separate undertakings entirely into a new entity, EU competition law adopts a significantly broader definition.[8] According to Article 3(2) EUMR, the key question is whether one undertaking acquires 'the possibility of exercising decisive influence' over the strategic commercial behaviour of another.[9] This broad definition captures a wide range of transactions, including asset acquisitions, joint ventures, common ownership of competing firms by institutional investors, and so-called 'roll-up' transactions.[10] This definition will be examined in greater detail in Chapter 3, which discusses the application of the EUMR.

1.2 Types of Mergers

While the definition is broad, mergers can be generally divided into three categories based on the relationship between the undertakings involved. Each category raises distinct competitive concerns, which are specifically addressed under the EUMR.

Horizontal mergers occur between actual or potential competitors operating in the same product and geographic markets at the same level of the supply or distribution chain.[11] A classic example is the merger between Exxon and Mobil, both of which were active across key segments of the oil industry.[12]

Vertical mergers involve undertakings active at different but complementary stages of the supply chain, for the same final product, typically where a company merges with a supplier or distributor.[13] A well-known example is the merger between America Online and Time Warner, which integrated Time Warner's content provision through outlets such as Time Magazine and CNN and America Online's internet-based distribution services.[14]

---

[8] Richard Whish and David Bailey, *Competition Law* (11th edn, OUP 2024), 909. See also OECD, 'Series Roundtables on Competition Policy No 144 Roundtable: Definition of Transaction for the Purpose of Merger Control Review' (*OECD*, 24 January 2014) <www.oecd.org/content/dam/oecd/en/publications/reports/2014/01/definition-of-transaction-for-the-purpose-of-merger-control-review_76d09369/36e27703-en.pdf> accessed 20 January 2026.
[9] Whish and Bailey (n 8) 909.
[10] ibid; private equity firms may acquire multiple businesses in the same sector over time, cumulatively changing the structure of the market to a significant degree.
[11] Whish and Bailey (n 8) 910.
[12] Marguerite R Plummer, 'Exxon-Mobil Merger Creates the World's Second-Largest Company' (*EBSCO*, 2023) <www.ebsco.com/research-starters/politics-and-government/exxon-mobil-merger-creates-worlds-second-largest-company> accessed 22 January 2026.
[13] Whish and Bailey (n 8) 910.
[14] CFI Team, 'Types of Mergers' (*Corporate Finance Institute*) <https://corporatefinanceinstitute.com/resources/valuation/types-of-mergers/> accessed 22 January 2026.

Conglomerate mergers bring together undertakings operating in different, often unrelated, markets, a structure, in fact, common among Big Tech companies.[15] A prominent example is the acquisition of Whole Foods Market by Amazon, combining a technology and e-commerce firm with a major supermarket chain.[16]

These distinctions are essential, as each category determines the applicable assessment framework under the EUMR and the relevant Commission guidelines.[17]

Chapter 2: Merger Control

With the notion and classification of mergers established, the next step is to examine the function of merger control. Often described as the 'third branch' of competition law systems, merger control operates an ex-ante mechanism designed to assess whether a proposed merger would significantly harm competition if allowed to proceed.[18] Its primary function is to prevent structural changes in market dynamics before they occur.[19] It complements the prohibition of anticompetitive agreements[20] and abuses of dominance[21], recognising that ex-post control is often insufficient to remedy the harm caused by completed mergers.[22]

While the discussion of broader competition law objectives merits a thesis of its own, there is a consensus across jurisdictions and institutions that effective merger control is essential for protecting consumers and fostering innovation. Former U.S. Federal Trade Commission Chair Lina Khan has warned that unlawful mergers can lead to higher prices, lower wages, and reduced innovation.[23] European Commission President Ursula von der Leyen has likewise underscored the importance of robust merger rules in sustaining competitive markets, lowering

[15] Whish and Bailey (n 8) 910; OECD, 'Series Roundtables on Competition Policy No 144 Roundtable: Definition of Transaction for the Purpose of Merger Control Review' (n 8).
[16] M&A Community, 'Full guide on conglomerate merger: Types, impact, best practices' (*M&A Community*, 22 January 2024) <https://mnacommunity.com/insights/conglomerate-merger/> accessed 22 January 2026.
[17] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2004] OJ C31/3; Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2008] OJ C265/7.
[18] Kyriakos Fountoukakos, 'Introduction to EU merger control' (*Herbert Smith Freehills*, *Introduction to Competition Law and Consumer Protection, UCL Lecture Notes*, 22 February 2023), 4.
[19] ibid.
[20] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 101.
[21] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 102.
[22] Fountoukakos (n 18) 4.
[23] Lina M Khan, 'Statement Regarding the Request for Information on Merger Enforcement' (*Federal Trade Commission*, 18 January 2022) <www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_lina_m_khan_regarding_the_request_for_information_on_merger_enforcement_final.pdf> accessed 8 May 2025.

prices, expanding consumer choice, and driving technological progress.[24] These concerns are particularly acute in the digital markets, where high levels of market concentration can quickly lead to tipping points and the emergence of incontestable ecosystems.[25] As Andreas Mundt, President of the German Bundeskartellamt, has observed, 'stringent merger control is therefore indispensable'[26] to preserve competition in these fast-evolving sectors.[27]

Reflecting this consensus, most jurisdictions impose mandatory pre-approval of mergers exceeding defined thresholds, while a minority, such as the UK, Australia, New Zealand, and Singapore, operate voluntary notification regimes.[28] Today, over 120 jurisdictions maintain merger control systems,[29] many of which are modelled on the EUMR,[30] reflecting a broad international consensus on the importance of ex-ante scrutiny.

Chapter 3: EU Merger Control

3.1 Framework

Having established the function of merger control, the next step is to examine the EU legal framework, which is primarily governed by the EUMR. It is important to note that, while Article 21(1) EUMR removes the European Commission's competence to apply Article 102 Treaty on the Functioning of the European Union (TFEU)[31] to concentrations falling within its scope, the Court of Justice of the European Union (CJEU) clarified in *Towercast v Autorité de la concurrence and Ministère de l'Économie*[32] that national competition authorities may still apply Article 102 where a merger involves abusive conduct by a dominant undertaking. However, such cases remain exceptional, and in practice, the EUMR operates as the principal mechanism for assessing mergers within the internal market.[33]

[24] Ursula von der Leyen, 'Europe's Digital Decade and Autonomy' (Speech, *European Commission*, 16 September 2020), <https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1655> accessed 8 May 2025.
[25] Competition and Markets Authority, Australian Competition and Consumer Commission and Bundeskartellamt, 'Joint Statement on Merger Control Enforcement' (20 April 2021) <www.bundeskartellamt.de/SharedDocs/Publikation/EN/Stellungnahmen_Opinion/Joint_Statement_CMA_ACC_Bundeskartellamt.pdf?__blob=publicationFile&v=1> accessed 8 May 2025.
[26] ibid.
[27] ibid.
[28] Fountoukakos (n 18) 4.
[29] ibid 7.
[30] ibid 4.
[31] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.
[32] Case C-449/21 *Towercast v Autorité de la concurrence and Ministère de l'Économie* ECLI:EU:C:2023:207.
[33] Whish and Bailey (n 8) 930.

Since it entered into force in 2004, the EUMR has been progressively developed through policy initiatives and implementing measures.[34] In July 2014, the European Commission launched a public consultation accompanied by a White Paper, 'Towards More Effective EU Merger Control'[35], which set out proposals for improving the existing framework.[36] In particular, it identified shortcomings in the treatment of non-controlling minority shareholdings and called for referral procedures to be made simpler and more efficient.[37] Procedurally, EUMR has been administered through a number of Commission implementing legislation[38].[39] Taken together, these developments reflect the Commission's ongoing effort to streamline merger control while maintaining effective oversight of concentrations with potential competitive significance.

A key feature of the EUMR is the establishment of a 'one-stop-shop'[40] system for mergers with a Community dimension.[41] Where the jurisdictional requirements are met, Article 21(2) EUMR grants the European Commission exclusive competence to assess the merger, thereby displacing national merger control laws.[42] Consequently, Member States may not prohibit mergers cleared under the EUMR on competition grounds, nor may the European Commission approve mergers blocked under national law.[43] This centralised framework is designed to ensure procedural efficiency, legal certainty, and consistent enforcement across the internal market.

To retain a degree of flexibility within this framework, the EUMR includes referral mechanisms that allow for the reassignment of jurisdiction between the European Commission

---

[34] Directorate-General for Competition, 'Mergers Regulation' (*Competition Policy*) <https://competition-policy.ec.europa.eu/mergers/legislation/regulation_en> accessed 24 January 2026.
[35] European Commission, 'Towards more effective EU merger control' (White Paper) COM (2014) 449 final.
[36] Directorate-General for Competition, 'Mergers Regulation' (n 34).
[37] ibid. See also European Commission, 'Towards more effective EU merger control' (n 35).
[38] Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Implementing Regulation) [2024] OJ L336/1; Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Implementing Regulation) [2023] OJ L119/22; Commission Implementing Regulation (EU) 2024/2776 of 31 October 2024 correcting Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Implementing Regulation) [2024] OJ L119/2776.
[39] Directorate-General for Competition, 'Mergers Regulation' (n 34).
[40] Fountoukakos (n 18) 17.
[41] Whish and Bailey (n 8) 947.
[42] EUMR (n 1) art 21(3).
[43] Fountoukakos (n 18) 17.

and national competition authorities.[44] Under Articles 4(4) and 9 EUMR, concentrations meeting the Community dimension thresholds may be referred to national competition authorities where they significantly affect a distinct market within a Member State. Conversely, Articles 4(5) and 22 EUMR, the latter explored in greater detail in Part II, permit the Commission to examine concentrations that do not meet the Community dimension thresholds, if one or more Member States request intervention. In addition, Article 21(4) EUMR preserves the ability of Member States to intervene in concentrations to protect legitimate interests beyond competition, such as media plurality or prudential rules. Finally, Article 346 TFEU confirms that Member States retain exclusive competence over mergers raising issues of national security. Taken together, these provisions balance the objective of a centralised framework with the need to safeguard national interests in exceptional cases.[45]

3.2 European Commission Jurisdiction

The European Commission's jurisdiction under the EUMR is determined through a two-step analysis.[46] First, the transaction must qualify as a 'concentration'.[47] Second, it must have a 'Community dimension'.[48] Each step is examined in greater detail below, as understanding of both is essential to the analysis developed in this thesis.

3.2.1 Concentration

The first step in determining the European Commission's jurisdiction is to assess whether the transaction qualifies as a concentration within the meaning of the EUMR. According to Article 3(1) EUMR, a 'concentration' arises where a 'change of control on a lasting basis' results from:

(a) the merger of two or more previously independent undertakings/parts of undertakings, or
(b) the acquisition by one or more undertakings/persons controlling an undertaking of direct or indirect control of the whole/part of one or more other undertakings.[49]

---

[44] Whish and Bailey (n 8) 948.
[45] ibid.
[46] EUMR (n 1) art 1(1).
[47] Fountoukakos (n 18) 10.
[48] ibid.
[49] Further elaborated upon in Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings [2008] OJ C95/1 (CJN).

A concentration may arise not only through a de jure merger but also through de facto transactions in which previously independent entities combine their activities to form a single economic unit under permanent management.[50]

To fully understand what is required under Article 3(1) EUMR to qualify as a concentration, it is necessary to examine its core element, control. Article 3(2) EUMR defines control as 'the possibility of exercising decisive influence' on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;
(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.'

Control is interpreted broadly, encompassing both de jure and de facto forms[51]. It is assessed holistically, based on all relevant facts and circumstances.[52] This functional approach is critical to capturing transactions that confer decisive influence absent formal legal control.

Control may be exercised on either a sole or joint basis.[53] Sole control exists where one undertaking can exercise decisive influence, either through positive control, namely the ability to unilaterally determine strategic commercial decisions,[54] or negative control, meaning the ability to unilaterally veto such decisions.[55] A majority shareholding is not required, as reflected in *CCIE/GTE*[56]*,* a shareholding of below 25% may suffice if it confers decisive influence. Joint control arises where two or more undertakings share such influence.[57] This typically occurs when each party holds veto rights over strategic decisions, requiring cooperation and creating the potential for deadlock.[58] Even where voting rights are unequal, joint control may exist where minority shareholders are granted veto rights through statutes or shareholder agreements.[59] In certain circumstances, joint control may also be inferred where

---

[50] ibid paras 9-10.
[51] ibid para 16.
[52] Whish and Bailey (n 8) 937.
[53] CJN (n 49) para 16.
[54] ibid paras 56–58.
[55] ibid para 54.
[56] *CCIE/GTE* (Case M.258) Commission Decision [1992] OJ C225/8.
[57] CJN (n 49) para 62, para 64.
[58] ibid.
[59] ibid para 65.

parties act jointly because of 'strong common interests'[60], even in the absence of formal veto rights.

As emphasised above, decisive influence must relate to an undertaking's strategic commercial decisions, typically including approval of the budget or business plan, major investments, key contracts, or appointment of senior management.[61]

In addition to control, the EUMR also requires a change in the quality of control compared to the pre-transaction situation.[62] Such a change arises, first, where control shifts between sole and joint control.[63] It may also occur within joint control scenarios where the number or identity of controlling shareholders changes.[64] By contrast, internal restructurings,[65] or shifts from negative to positive control that do not alter the identity of the controlling party, do not constitute a change in the quality of control.[66]

Finally, the change in control must occur on a 'lasting basis'. As Recital 20 EUMR adds, it must result in a change in the structure of the market.[67] While such a change need not be indefinite, temporary changes in the quality of control do not qualify.[68]

Only when all these elements are satisfied can the transaction qualify as a concentration under the EUMR, reflecting a relatively high jurisdictional threshold, as discussed further in Part III.

3.2.2 Community Dimension

Once a transaction qualifies as a concentration, the next step is to determine whether it has a 'Community dimension'. Under Article 1 EUMR, this assessment is based on turnover thresholds.

The primary thresholds, set out in Article 1(2) EUMR, are met where the combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 5 billion, and the aggregate

[60] ibid paras 76-80.
[61] ibid paras 67-73.
[62] ibid para 83.
[63] ibid.
[64] ibid.
[65] ibid para 51.
[66] ibid.
[67] ibid para 28.
[68] ibid.

Union-wide turnover of at least two of the undertakings concerned exceeds EUR 250 million each, unless each undertaking achieves more than two-thirds of its EU turnover within a single Member State.

Alternatively, Article 1(3) EUMR sets out a secondary set of thresholds intended to capture concentrations with a significant EU impact despite a smaller global footprint. These thresholds are satisfied where the combined worldwide turnover of all the undertakings concerned exceeds EUR 2.5 billion, the Union-wide turnover of at least two of the undertakings concerned exceeds EUR 100 million each, the combined turnover exceeds EUR 100 million in at least three Member States, and in each of these three Member States at least two of the undertakings concerned each achieve turnover exceeding EUR 25 million. The two-thirds rule applies here as well.

Central to this assessment is the concept of the 'undertakings concerned'. As defined in Article 5(4) EUMR, this includes all acquirers of control and the object of control, whose aggregate turnover must be considered.

Turnover itself is defined in Article 5(1) EUMR as the amount derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services in the ordinary course of business, after deducting sales rebates, value-added tax, and other taxes directly related to turnover. Transactions concluded within the same group, as defined in Article 5(4), are excluded from the turnover calculation. For geographic allocation, turnover is attributed to the customer's location rather than the seller's, and neither the undertaking's nationality nor its place of establishment is decisive where sales are made into the EU.[69] All figures must be expressed in euros, using appropriate exchange rates where necessary.[70]

The relevant date for determining whether the jurisdictional thresholds are met is the earliest of the following: the date on which the final agreement is concluded, the public bid is announced, or the controlling interest is acquired.[71]

[69] Fountoukakos (n 18) 16.
[70] CJN (n 49) para 204.
[71] ibid paras 55–156.

Only where the requirements of this assessment are satisfied does the concentration have a Community dimension, thereby conferring jurisdiction on the European Commission to proceed to the substantive assessment.

3.3 Substantive Assessment

3.3.1 Significant Impediment to Effective Competition Test

Understanding the basic framework of the substantive assessment is important because it underpins some of the analysis developed in Part II. The starting point is Article 2(1) EUMR, which requires the European Commission to assess whether a concentration is compatible with the internal market, based on a non-hierarchical set of criteria, including:

(a) the need to maintain and develop effective competition, including market structure and actual/potential competition.

(b) the market position of undertakings concerned, economic/financial power, alternatives, access to supplies/markets, barriers to entry, supply/demand trends, interests of intermediate and ultimate customers, development of technical and economic progress.

This framework is operationalised through the Significant Impediment to Effective Competition (SIEC) test set out in Articles 2(2) and 2(3) EUMR. The SIEC test requires the European Commission to determine whether concentration would ‘significantly impede effective competition’ in the internal market or a substantial part of it, ‘in particular as a result of the creation or strengthening of a dominant position’. It replaced the earlier dominance-based test, which failed to capture transactions that reduced competition, for example, from four to three competitors, without establishing dominance.[72] The phrase ‘in particular’ enables intervention where significant harm arises absent dominance, which is especially relevant in Big Tech acquisitions of nascent rivals, where early elimination of competition often does not involve immediate dominance.[73] Dominance still remains a relevant factor, but is no longer decisive.[74]

Importantly, the EUMR does not establish a presumption of compatibility or incompatibility.[75] The burden of proof lies with the European Commission to produce a ‘sufficiently cogent and

[72] Whish and Bailey (n 8) 969. See also *Airtours/First Choice* (Case M 1524) Commission Decision 2000/276/EC [2000] OJ L93/1.
[73] Whish and Bailey (n 8) 971.
[74] ibid.
[75] Case C-376/20 P *European Commission v CK Telecoms UK Investments Ltd* ECLI:EU:C:2023:561, para 87.

consistent body of evidence'[76] that a merger is incompatible with the internal market.[77] As the CJEU in *European Commission v CK Telecoms UK Investments Ltd*[78] clarified, the Commission must show that 'it is more likely than not that the concentration would or would not significantly impede competition'[79].

3.3.2 Causality and Counterfactuals

Building on the SIEC framework, a concentration may only be prohibited if the merger itself gives rise to a significant impediment to competition. According to the CJEU in *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities*[80], prohibition is not justified where market deterioration would occur independently.

This causal link is assessed through counterfactual analysis, which compares the likely state of competition with and without the merger.[81] The counterfactual is not limited to the status quo but may include future changes to the market that can reasonably be predicted, which is especially relevant in fast-moving digital markets.[82]

3.3.3 Market Definition

A definition of the relevant product and geographic market is a precondition for assessing the competitive effects of a concentration under the EUMR.[83] The objective is to delineate the boundaries within which competitive effects are evaluated, with a focus on the market from the customer's perspective.[84]

[76] Case C-12/03 P *Commission of the European Communities v Tetra Laval BVBV* ECLI:EU:C:2005:87., paras 37–51; Case T-712/16 *Deutsche Lufthansa AG v European Commission* ECLI:EU:T:2018:269, paras 32-45.
[77] Whish and Bailey (n 8) 968.
[78] Case C-376/20 P *European Commission v CK Telecoms UK Investments Ltd* ECLI:EU:C:2023:561.
[79] ibid para 87.
[80] Joined Cases C-68/94 and C-30/95 *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities* ECLI:EU:C:1998:148.
[81] Guidelines on the assessment of horizontal mergers (n 17) para 9.
[82] ibid.
[83] *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities* (n 80) para 143.
[84] Hatice Kocaefe, 'Killer Acquisitions Under EU Merger Control: Recent European Commission Decisions' (2024) EU Law Working Papers No. 84, Stanford-Vienna Transatlantic Technology Law Forum, 11 <https://law.stanford.edu/wp-content/uploads/2024/02/EU-Law-WP-84-Kocaefe.pdf> accessed 19 June 2025.

Accordingly, the standard methodology involves the application of the Small but Significant Non-transitory Increase in Price (SSNIP) test. The SSNIP test asks whether a hypothetical monopolist could profitably impose a small (typically 5-10%) but significant non-transitory price increase on one or more products in the candidate market, including at least one offered by the undertaking(s) involved.[85] A profitable price increase indicates a lack of close substitutes, whereas consumer substitution towards alternative products signals that the market definition must be widened.[86] The SSNIP test thus aims to identify the narrowest product and geographic market within which supra-competitive prices could be sustainably maintained.[87]

This analysis is complemented by a range of evidence, including product characteristics, consumer preferences, switching costs, historical substitution patterns, econometric modelling, and information obtained through requests for information, surveys, and internal documents.[88]

Taken together, this enables the Commission to define the relevant market with sufficient precision to assess the competitive effects of a concentration under the SIEC test.

3.3.4 Guidelines on the Assessment of Mergers

It is important to note that, to assist the substantive assessment, the European Commission has published two sets of guidelines: the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings and the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings. However, these will not be discussed in further detail in this thesis.

---

[85] Commission Notice on the definition of the relevant market for the purposes of Union competition law (Communication) [2024] OJ C1645, para 29.
[86] Martyn Taylor, 'Small but significant non-transitory increase in price definition' (*LexisNexis*) <www.lexisnexis.co.uk/legal/glossary/small-but-significant-non-transitory-increase-in-price> accessed 20 January 2026.
[87] ibid.
[88] Fountoukakos (n 18) 30.

3.3.5 Final Decision

Essentially, following the substantive assessment, the Commission may clear the concentration unconditionally, approve it subject to commitments, or prohibit it.[89] Final decisions are always then published in the Official Journal.[90]

Chapter 4: Conclusion

Part I has provided a basic understanding of mergers and merger control, focusing on the EUMR framework, the jurisdictional scope of the European Commission, and its substantive assessment. Together, this understanding forms the analytical basis for evaluating the framework's capacity to address competitive risks in digital markets.

Part II builds on this foundation to assess the EUMR's effectiveness in capturing killer acquisitions. Part III turns to strategic partnerships as alternative transactional forms that may likewise circumvent merger control. Part IV examines the DMA as a complementary ex-ante instrument and evaluates its capacity to address enforcement gaps left by the EUMR in both contexts.

Part II: Killer Acquisitions

Chapter 1: Start-up Acquisitions

1.1 Definition

Having examined mergers in general in Part I, Part II turns to a particular theory of harm within merger control, killer acquisitions. To better understand these transactions, it is first necessary to define the broader transactional category from which they arise, start-up acquisitions. A start-up acquisition refers to the purchase of a company in the early stages of its operations[91] by a larger firm, typically with the aim of gaining access to talent, technology, new markets, supply chains, or intellectual property (IP).[92]

---

89 Directorate-General for Competition, 'Merger procedures' (*Competition Policy*) <https://competition-policy.ec.europa.eu/mergers/procedures_en> accessed 20 January 2026.

90 ibid. See also Commission, 'Guidance on the preparation of public versions of Commission Decisions adopted under the Merger Regulation' <https://competition-policy.ec.europa.eu/document/download/8a56f563-304c-4b6e-8023-a0a2f6c63471_en?filename=guidance_on_preparation_of_public_versions_mergers_26052015.pdf> accessed 24 January 2025.

91 Mitchell Grant, 'Understanding Startups: How to Successfully Launch a New Business' (Investopia, 20 September 2025) <www.investopedia.com/terms/s/startup.asp> accessed 19 June 2025.

92 Ankur Sharma, 'Acquistion' (*wiseAdvizor*) <https://wiseadvizor.com/glossary/acquisition> accessed 19 June 2025.

As start-ups are generally characterised by high growth potential and are commonly associated with innovative or disruptive technologies or business models,[93] such acquisitions have become an increasingly prevalent strategy, particularly in digital markets. As mentioned, between 1987 and 2019, the GAFAM companies alone acquired over 700 start-ups, with more than 400 of those deals occurring in the last decade.[94]

This trend is generally driven by legitimate economic motivations. Start-up acquisitions can create synergies, enable specialisation, increase innovation and welfare, and offer a vital exit strategy for founders.[95] A credible path to acquisition encourages entrepreneurs to take risks and innovate,[96] as supported by an empirical study by Fons-Rosen, Roldan-Blanco, and Schmitz, which finds that higher acquisition activity correlates with increased start-up formation.[97] From this perspective, acquisitions are not inherently anti-competitive, rather, they can help drive innovation, particularly in fast-growing digital markets.

1.2 Theories of Harm

Nevertheless, concerns have emerged regarding the potential anti-competitive effects of certain start-up acquisitions.[98] Several theories of harm have been advanced to explain how these transactions may distort competition.[99]

Most notably, killer acquisitions, the focus of this thesis, refer to transactions where the acquirer deliberately discontinues or sidelines the start-up's innovation to eliminate a future competitive threat.[100]

[93] Who Shimoda, 'Understanding Startups: Key Factors for Success, Growth, and Market Disruption' (*Medium*, 23 July 2023) <https://medium.com/@syantien/understanding-startups-key-factors-for-success-growth-and-market-disruption-80f0cf6f6875> accessed 19 June 2025.
[94] Competition & Markets Authority, *AI Foundation Models: Technical update report* (n 4) 30.
[95] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquistion' (2021) 129(3) Journal of Political Economy 649, 649-650; George Chondrakis, 'The acquisition of tech companies: Balancing innovation and competition' (*Do Better by Esade*, 20 November 2023) <https://dobetter.esade.edu/en/acquisition-tech-companies-balancing-innovation-competition> accessed 19 June 2025.
[96] Chondrakis (n 95).
[97] Christian Fons-Rosen, PauL Roldan-Blanco and Tom Schmitz, 'The Effects of Startup Acquisitions on Innovation and Economic Growth ' (2021) Max Planck Institute for Innovation & Competition Research Paper No. 23-02.
[98] Chondrakis (n 95).
[99] McLean (n 3) 26.
[100] ibid.

Closely related are ecosystem acquisitions, where a start-up is integrated into the acquirer's broader digital ecosystem, reducing independent competition and reinforcing control over users and data.[101]

A further variant, reverse killer acquisitions[102] involve the acquirer halting its own overlapping innovation efforts, removing a potential internal source of competition that could have developed organically.[103]

Although often framed as standard business transactions, these strategies may generate significant anti-competitive effects. The remainder of Part II focuses on killer acquisitions and now turns to examine them in more detail.

Chapter 2: Killer Acquisitions

The concept 'killer acquisition', introduced in a seminal paper by Cunningham, Ederer, and Ma, refers to a merger in which an incumbent firm acquires an innovative target and terminates the development of the target's innovations to preempt future competition.[104] As previously noted, this is not a formal category of mergers but rather a theory of harm.[105] Accordingly, the label 'killer acquisition' is no more subjective or prejudicial than the decision to test any other theory of harm.[106] The theory here is that the incumbent 'kills' the development or production of a product that threatens its established product line.[107] In such cases, acquiring and discontinuing the rival product may be more profitable than facing future revenue losses once that product matures, or continuing development at the risk of cannibalising its own sales.[108]

This pattern of acquisition and discontinuation is not merely hypothetical. A substantial number of such mergers have occurred in recent years, particularly in the technology and pharmaceutical sectors.[109] Meta's acquisition strategy is a striking example. Of the 92 firms

---

[101] ibid.
[102] ibid.
[103] Crawford, Valletti and Caffarra (n 6).
[104] Cunningham, Ederer and Ma (n 95) 650.
[105] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (*OECD*, 2020), 9 <www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf > accessed 30 June 2025.
[106] ibid.
[107] Cunningham, Ederer and Ma (n 95) 649; ibid.
[108] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 9.
[109] ibid.

Meta acquired, 39 were shut down, including Divvyshot and Lightbox, potential rivals to Instagram, which Meta also acquired but chose to retain.[110]

This pattern has triggered growing political and regulatory concern. Lina Khan, former Chair of the U.S. Federal Trade Commission, has warned that dominant firms 'can become too big to care'[111], while President Macron observed that 'those who were once innovators become killers of innovation'[112]. Yet despite these concerns, competition authorities, notably the European Commission, the focus of this thesis, continue to struggle to effectively address such acquisitions. This struggle stems from both jurisdictional and substantive limitations, examined in turn below.

Chapter 3: Killer Acquisitions under the EU Merger Regime

3.1 Jurisdictional Gaps and Proposed Solutions

Jurisdictional limitations are rooted in outdated thresholds under the EUMR. Revenue-based thresholds assume turnover reflects market impact, an assumption that fails in digital markets.[113] Start-ups may generate little or no revenue, prioritising user growth or data accumulation over early monetisation, while still posing serious long-term competitive threats if acquired by an incumbent.[114] This mismatch between jurisdictional rules and market realities has led the Commission to acknowledge a 'possible existence of an enforcement gap'[115].[116]

---

[110] McLean (n 3) 29.

[111] Brian Contreras, 'FTC Chair Lina Khan Says Antitrust Regulations Help Small Businesses Too' (*Inc.,* 20 September 2024) <www.inc.com/brian-contreras/ftc-chair-lina-khan-says-antitrust-regulations-help-small-businesses-too.html> accessed 30 June 2025.

[112] Le Point Magazine, Interview with Emanuel Macron (12 April 2022); Fountoukakos (n 18) 40.

[113] McLean (n 3) 43.

[114] ibid.

[115] The European Commission consulted stakeholders on whether EUMR turnover-based jurisdictional thresholds fail to capture transactions that may significantly affect competition in the internal market. Views were divided. Some respondents, including certain national authorities, identified an enforcement gap and supported reform. However, most private stakeholders and several public bodies saw no major gap and considered existing referral mechanisms sufficient. Nevertheless, respondents agreed that any new thresholds should target only a limited number of transactions with a clear EEA nexus, cross-border relevance, and potential to distort competition. See European Commission, 'Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control' (*European Commission*, 3 August 2016) <https://ec.europa.eu/smart-regulation/roadmaps/docs/2017_comp_003_evaluation.pdf> accessed 30 June 2025. See also Christophe Samuel Hutchinson and others, 'Big tech's acquisition challenge to EU merger control ' (2023) 19(2) European Competition Journal 226, 237.

[116] Hutchinson and others (n 115) 237.

This gap reflects a broader bias toward under-enforcement,[117] driven by regulatory caution against false positives[118] in digital markets[119].[120] However, the law must keep pace, these limitations must be addressed, and reform is needed. The following sections evaluate four leading proposals: lowering turnover thresholds, introducing transaction value thresholds, adopting market share or share of supply tests, and reinforcing the use of Article 22 EUMR, concluding with a proposal on the way forward.

3.1.1 Lower Turnover Thresholds

The most straightforward proposal to address the enforcement gap is to lower the existing turnover thresholds under the EUMR, thereby bringing a broader range of transactions, particularly those involving low- or no-revenue digital start-ups,[121] within the Commission's jurisdiction.[122]

While conceptually appealing, this proposal faces significant legal limitations. Although Article 1(4) and (5) EUMR allow for adjustments to turnover thresholds, their wording suggests they are intended for technical revisions, such as accounting for inflation or gradual economic growth, rather than substantive changes to the scope of jurisdiction.[123] Accordingly, they provide an inadequate legal basis for extending coverage to low- or no-revenue acquisitions.[124]

Beyond the weak legal basis, the proposal presents practical challenges. Lowering the thresholds would significantly increase the number of notifications, including many competitively benign transactions that would now require review.[125] This would impose an

---

[117] Elena Argentesi and others, 'Merger policy in Digital Markets: an ex post assessment ' (2019) 17 (1) Journal of Competition Law & Economics 95.
[118] ibid.
[119] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 13.
[120] Hutchinson and others (n 115) 228.
[121] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 43.
[122] Nicholas Levy, Henry Mostyn and Bianca Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (2020) 19 Competition Law Journal 51, 57.
[123] Václav Šmejkal, 'Concentrations in digital sector - a new EU antitrust standard for ''killer acquistions'' needed?' (2020) 7(2) Journal for International and European Law, Economics and Market Integrations 1, 4.
[124] ibid 4-5.
[125] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 57.

administrative burden,[126] delay proceedings,[127] and divert Commission resources from higher-impact cases.[128] As Regibeau noted, 'if you start fishing with a net with a finer mesh, you are going to catch a lot of small fish that we frankly don't have the resources to deal with'[129].

This concern is compounded by the unresolved question of how low the thresholds would need to be. Many early-stage start-ups, such as Instagram at the time of its acquisition by Facebook in 2012,[130] generate little or no revenue.[131] Any meaningful adjustment would likely need to be so drastic that it captures a large volume of irrelevant transactions.[132]

To address this, some propose sector- or transaction-specific thresholds.[133] The EU Special Advisors 'Report[134], for example, suggests lowering thresholds only for acquisitions by dominant firms in markets with strong network effects.[135] However, similar features, such as customer loyalty, switching costs, or platform dynamics, are also common in offline markets, risking over-capture.[136] Defining such categories would be complex, ambiguous, and administratively burdensome.

Accordingly, while lowering turnover thresholds may seem straightforward, it is legally uncertain, administratively inefficient, and risks over-capturing benign transactions, rendering it an ineffective tool against killer acquisitions.

---

[126] Nicholas Levy, Alexander Waksman and Lanto Sheridan, 'Global merger control - where to now?' (2019) 8(2) Journal of Antitrust Enforcement 319.
[127] European Commission, 'Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control' (n 115).
[128] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 57.
[129] ibid.
[130] Steve Henn, 'Instagram Sells For $1 Billion, Despite No Revenue' (*NPR*, 10 April 2012) <www.npr.org/2012/04/10/150372288/instagram-sells-for-1-billion-despite-no-revenue> accessed 24 January 2026.
[131] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 58.
[132] ibid.
[133] ibid 57-58.
[134] Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, 'Competition Policy for the Digital Era' (*Publications Office of the European Union*, 2019) <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en> accessed 5 August 2025.
[135] ibid 114.
[136] Crémer, de Montjoye and Schweitzer (n 134); Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 58.

3.1.2 Transaction Value Thresholds

The second proposal to address the enforcement gap is the introduction of transaction value thresholds to complement the existing thresholds. Under this approach, notification would be required if the transaction value exceeds a set threshold, regardless of the target's turnover. Transaction value would serve as a proxy for strategic value; a buyer's willingness to pay a high price for a no- or low-revenue target, such as Microsoft's acquisition of GitHub,[137] signals the value placed on the target's technology, data, or market position.[138] This is particularly relevant in digital markets, where start-ups prioritise such assets over immediate monetisation.[139] These acquisitions often escape notification despite posing significant risks to future competition.[140] Since the loss of a potential rival can be as harmful as the loss of an established one, transaction value thresholds could help close this gap.[141]

This approach is already applied in Germany and Austria, with thresholds set at €400 million[142] and €200 million[143] respectively. Facebook's $315 million acquisition of Giphy was reviewed under Austria's regime, demonstrating its ability to capture strategically valuable, low-revenue deals.[144] Proponents, hence, argue that transaction value thresholds enhance case coverage, prevent circumvention, and reduce enforcement gaps where turnover no longer reflects competitive relevance.[145]

However, the impact of introducing such thresholds should not be overstated. In Germany, notification volumes have not increased significantly, with most additional cases arising in the

[137] Microsoft, 'Microsoft to acquire GitHub for $7.5 billion' (*Microsoft*, 4 June 2018) <https://news.microsoft.com/source/2018/06/04/microsoft-to-acquire-github-for-7-5-billion/> accessed 24 January 2026

[138] Šmejkal (n 123) 6.

[139] Crémer, de Montjoye and Schweitzer (n 134) 116.

[140] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 43.

[141] ibid 44.

[142] Gesetz gegen Wettbewerbsbeschränkungen – GWB, Competition Act in the version published on 26 June 2013 (Bundesgesetzblatt (Federal Law Gazette) I, 2013, p. 1750, 3245), as last amended by Article 1 of the Act of 25 October 2023 (Federal Law Gazette I, p. 294), section 35(1a) 3.

[143] Bundesgesetz gegen Kartelle und andere Wettbewerbsbeschränkungen (Kartellgesetz 2005 – KartG 2005), BGBl. I Nr. 61/2005, section 9(4) 3.

[144] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (*Publications Office of the European Union*, 2024), 248 <https://data.europa.eu/doi/10.2763/3714497> accessed 5 August 2025. See also Federal Competition Authority, 'Meta (Facebook)/Giphy merger: Supreme Cartel Court confirms Cartel Court's conditional clearance' (*Federal Competition Authority*, 24 June 2022) <www.bwb.gv.at/en/news/detail/submetering-cartel-decision-relating-to-ista-oesterreich-gmbh-final-1> accessed 24 January 2026.

[145] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 43.

pharmaceutical rather than digital sector.[146] This may be because transaction value often correlates with turnover in practice.[147] Consequently, the additional layer of scrutiny may impose administrative burdens on authorities and businesses that outweigh its limited enforcement benefits.[148]

Indeed, determining transaction value is technically complex. Unlike turnover, which is auditable and stable, transaction value fluctuates with market conditions, creating uncertainty around the timing of assessment.[149] Its global nature adds further complexity, as perceived transaction value can vary across jurisdictions, challenging the feasibility of a consistent standard.[150] Moreover, while turnover is typically tied to specific geographic markets, transaction value, especially in digital mergers, is often not geographically attributable, making it harder to establish a sufficient EU nexus.[151] Poorly designed thresholds thus risk capturing transactions with no material link to the EU, undermining legal certainty and proportionality.[152]

Therefore, while conceptually appealing, transaction value thresholds raise significant legal and practical concerns and are unlikely to offer a proportionate or effective solution to killer acquisitions under the EU merger control.

3.1.3 Market Share Thresholds

The third proposal to address the enforcement gap is the introduction of market share thresholds to complement the existing thresholds. Under this approach, notification would be required if the combined entity's market share exceeds a set threshold, thereby capturing acquisitions

---

[146] Martin Sauermann, 'The Transaction Value Threshold in Germany – Experiences with the New Size of Transaction Test in Merger Control' (*Competition Policy International*, 8 October 2019) <www.pymnts.com/cpi-posts/the-transaction-value-threshold-in-germany-experiences-with-the-new-size-of-transaction-test-in-merger-control/> accessed 24 January 2026; ibid 44.
[147] Marc Bourreau and Alexandre de Streel, 'Big Tech Acquisitions – Competition and Innovation Effects and EU Merger Control' (*Centre on Regulation in Europe*, February 2020) <https://cerre.eu/wp-content/uploads/2020/03/cerre_big_tech_acquisitions_merger_control_EU_2020.pdf> accessed 5 August 2025, 15.
[148] European Commission, 'Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control' (n 115); OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 43.
[149] Peter Alexiadis and Zuzanna Bobowiec, 'EU Merger Review of 'Killer Acquisitions' in Digital Markets - Threshold Issues Governing Jurisdictional and Substantive Standards of Review' (2020) 16(2) Indian Journal of Law and Technology 65, 76; European Commission (115).
[150] Alexiadis and Bobowiec (n 149) 76.
[151] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 44; Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 59.
[152] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 44.

where a dominant firm acquires a smaller competitor that would otherwise fall below turnover-based thresholds.[153]

This approach is already applied in Member States such as Portugal, Slovenia, and Spain, and operates in a manner comparable to the UK's 'share of supply' test.[154] Under Section 23 of the Enterprise Act 2002, notification is required if the merging firms hold over 25% of the supply and the transaction increases that share.[155] In applying this test, the CMA has considered metrics extending beyond shares of supply or purchase, including employee numbers linked to specific project activities, patent portfolios, and the aggregation of intra-group activities with market-facing sales.[156] While the Furman Report[157] endorsed such flexibility as an effective means of capturing acquisitions of nascent competitors,[158] this very flexibility also constitutes a weakness. In practice, the UK test is framed so broadly that it often fails to operate as a clear jurisdictional filter.[159]

Another challenge lies in defining the market in which shares are measured. An EU-wide scope may be simple but risks over-capture, while narrower definitions may miss acquisitions of emerging rivals, particularly where a foreign firm enters via a local start-up.[160] A sector-specific criterion based on sales of certain goods or services within the EU could offer a solution, but requires careful calibration, as such boundaries in digital sectors are difficult to define.[161] More fundamentally, this approach raises a broader concern. By relying on detailed

---

[153] Hutchinson and others (n 115) 244. See also Massimo Motta and Martin Peitz,'Big Tech Mergers ' (2020) Barcelona GSE Working Paper Working Paper No 1198, 3 <https://bw.bse.eu/wp-content/uploads/2020/07/1198-file.pdf> accessed 24 January 2026.
[154] Hutchinson and others (n 115) 244.
[155] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 9.
[156] Dentons, 'The ''pro-growth'' CMA changes tack on merger control' (*Dentons*, 18 February 2025) <www.dentons.com/en/insights/articles/2025/february/18/the-pro-growth-cma-changes-tack-on-merger-control> accessed 20 January 2026.
[157] Jason Furman and others, 'Unlocking Digital Competition: Report of the Digital Competition Expert Panel' (*UK Government*, 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf> accessed 5 August 2025.
[158] ibid 94.
[159] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 253.
[160] Šmejkal (n 123) 7.
[161] ibid.

market data typically available only post-filing, it blurs the line between jurisdictional and substantive assessment, thereby undermining legal certainty and complicating compliance.[162]

Accordingly, market share thresholds, while conceptually appealing, do not offer a reliable or workable solution to the problem of killer acquisitions.

3.1.4 Article 22 EUMR

The final proposal to address the enforcement gap relies on Article 22, the so-called 'Dutch clause'. Originally designed for Member States without national merger control, it allows one or more Member States to request Commission review of transactions falling below EU thresholds if they may affect trade and significantly impede competition. According to Article 22(5), while only Member States can initiate a referral, the Commission may invite them to do so.

Against this background, the adoption of the 2021 Article 22 Guidance[163] marked a decisive policy shift in the Commission's approach. Article 22 was recast from a corrective exception into an active jurisdictional mechanism for innovation-driven acquisitions in which turnover does not reflect competitive significance. Although avoiding the term 'killer acquisitions', the Guidance explicitly encouraged referrals involving start-ups, recent entrants, important innovators, or holders of strategic assets such as data or IP,[164] directly targeting the enforcement gap where low-turnover but market-shaping firms escape review.

This policy shift quickly moved from principle to practice. The first real test of this expanded approach came in *Illumina/Grail*[165]. Acting on a referral from six Member States, none of

---

[162] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 252-253.

[163] Commission, 'Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases' (Communication) C(2021) 1959 final 19.

[164] Claire Turgot, 'Killer Acquisitions in Digital Markets: Evaluating the Effectiveness of the EU Merger Control Regime' (2021) 5 European Competition and Regulatory Law Review 112, 119. See also ibid paras 9, 15, 19.

[165] *Illumina/GRAIL* (Case M.10188) Commission Decision [2021] OJ L248/5; *Illumina/GRAIL* (Case M.10483) Commission Decision reported in EC Press Release (12 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3773> accessed 26 January 2026; *Illumina/GRAIL* (Case M.10493) Commission Decision reported in EC Press Release (29 October 2021) <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5661> accessed 26 January 2026; *Illumina/GRAIL* (Case M.10938) Commission Decision reported in EC Press Release (28 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/MEX_22_6467> accessed 26 January 2026;

which had jurisdiction to review the transaction nationally, primarily because Grail's products were non-operational and generated no revenue at the time,[166] the European Commission accepted jurisdiction under Article 22.[167] The $7.1 billion transaction involved Grail, a U.S.-based developer of early-stage cancer screening tests with no EU turnover, and Illumina, the dominant supplier of genomic sequencing platforms.[168]

Following its review, the European Commission blocked the merger on vertical foreclosure grounds,[169] finding that Illumina was the only credible supplier of the sequencing technology required to process blood-based cancer tests, protected by infrastructure and IP rights that created high barriers to entry.[170] Post-merger, Illumina would have both the ability and the incentive to disadvantage Grail's rivals through refusal to supply, selective pricing, and service degradation, concerns not resolved by its proposed remedies.[171] The transaction was prohibited, and Illumina was also fined 10% of its annual turnover[172] for breaching the standstill obligation under Article 22(4) EUMR[173].[174]

The General Court upheld the Commission's assumption of jurisdiction, signalling judicial support for a broad interpretation of Article 22.[175] In doing so, it characterised the provision as an effective corrective mechanism capable of capturing transactions that risk significantly

Illumina/GRAIL (Case M.10939) Commission Decision reported in EC Press Release (12 October 2023) <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4872> accessed 26 January 2026.

[166] Renaud Foucart, 'Tech Firms Face More Regulation After Moves to Stop 'Killer' Acquisitions – but Innovation Could Also Be Under Threat.' (*The Conversation*, 25 July 2022) <https://theconversation.com/tech-firms-face-more-regulation-after-moves-to-stop-killer-acquisitions-but-innovation-could-also-be-under-threat-187278> accessed 22 January 2026.

[167] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 257.

[168] ibid.

[169] *Illumina/GRAIL* (Case M.10188) (n 165); Case M.10939 *Illumina/GRAIL* (n 165).

[170] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 257.

[171] ibid.

[172] Case M.10483 *Illumina/GRAIL* (n 165).

[173] Cases M.10493 *Illumina/GRAIL* (n 165); Case M.10.938 *Illumina/GRAIL* (n 165).

[174] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 257.

[175] T-227/21 *Illumina v Commission* ECLI:EU:T:2022:447 (Illumina/Grail).

impeding competition in the internal market. It clarified that Article 22 referrals were not contingent on transactions meeting national notification thresholds.[176]

That position, however, proved short-lived. In 2024, in a landmark judgment[177], the CJEU overturned the General Court's ruling. It held that Article 22 referrals are valid only where the referring Member State has legal competence to review the transaction under its national law, that is, where the applicable notification thresholds are met.[178] This interpretation essentially nullified the Commission's jurisdiction in *Illumina/Grail* and consequently required the withdrawal of all related decisions[179].[180] More importantly, the Court found the 2021 Guidance incompatible with EUMR,[181] emphasising Article 22's original role as a mechanism for Member States lacking merger control and thereby signalling a narrower reading that limits its application.[182]

Yet to view *Illumina/Grail* as the end of Article 22 is to underestimate its continuing relevance. Referrals remain available from both Member States with merger control regimes as well as from those without, shifting the focus away from EU-level reform towards the strengthening of national frameworks. Article 22's particular strength lies in its capacity to coordinate Europe's patchwork of national rules through an upward referral mechanism.[183] It has allowed Member States to experiment with alternative jurisdictional triggers, such as transaction value

[176] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 258.
[177] Joined Cases C-611/22 P and C-625/22 P *Illumina Inc. and Grail LLC v European Commission* ECLI:EU:C:2024:677 (Illumina/Grail).
[178] ibid para 146.
[179] Summary of Commission Decision of 6 September 2024 withdrawing decisions in cases M.10188 – *Illumina/GRAIL* (Art. 6(1)(c) decision and prohibition decision under Article 8(3)); M.10483 – *Illumina/GRAIL* (Art. 14 procedure); M. 10493 – *Illumina/GRAIL* (interim measures under Art. 8(5)(a)); M.10938 – *Illumina/GRAIL* (interim measures under Article 8(5)(c)); M.10939 – *Illumina/GRAIL* (restorative measures under Article 8(4)(a)) [2024] OJ C6049/1.
[180] European Commission, 'Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects' (n 144) 258.
[181] *Illumina Inc. and Grail LLC v European Commission mina* (n 177) para 216.
[182] ibid para 164.
[183] Alexiadis (n 149) 81; Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 57. See also Margrethe Vestager, 'Keeping the EU Competitive in a Green and Digital World' (Speech, *European Commission*, 2 March 2020) <https://ec.europa.eu/newsroom/comp/items/670949/en> accessed 24 January 2026.

thresholds (Germany, Austria) and market share tests (Spain, Portugal), and call-in powers (Italy),[184] without incurring the political and legal costs of amending the EUMR.[185]

As these tools proliferate, the referral network becomes increasingly effective. Once a deal is notifiable nationally, it can be referred to the Commission. This has already enabled the review of digital transactions that would otherwise have evaded scrutiny, including *Google/DoubleClick*[186] *Facebook/WhatsApp*[187], and *Apple/Shazam*[188].[189] By leveraging national innovation in jurisdictional design, this incremental, bottom-up approach,[190] endorsed by the EU Special Advisors 'Report[191],[192] offers the most practical and adaptable path to closing the enforcement gap in EU merger control. Strengthening the use and legal framework of Article 22 referrals would therefore be particularly effective in enhancing the Commission's ability to capture killer acquisitions.

3.2 Substantive Gaps and Proposed Solutions

Nevertheless, even assuming jurisdictional gaps were resolved, the existing substantive framework remains structurally inadequate to address the competitive risks associated with killer acquisitions. Under Articles 2(2) and 2(3) EUMR, the SIEC test applies a balance of probabilities standard, requiring proof that anti-competitive effects are more likely than not. While effective in traditional contexts, this threshold is poorly suited to digital markets, where harm from acquiring nascent or strategically positioned start-ups is inherently speculative, probabilistic and forward-looking.[193] Consequently, transactions that remove emerging rivals or suppress innovation often evade intervention, enabling Big Tech to entrench market power through strategic consolidation.

---

[184] Fatima Jamal, 'Global merger control trends and outlook 2024/2025' (*White & Case*, 2025) <www.whitecase.com/insight-our-thinking/global-merger-control-trends-outlook-2024-2025> accessed 11 August 2025.
[185] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122), 57.
[186] *Google/ DoubleClick* (Case COMP/M.4731) Commission Decision [2008] OJ C230/8.
[187] *Facebook/WhatsApp* (Case COMP/M.7217) Commission Decision [2014] OJ C417/4.
[188] *Apple/Shazam* (Case M.8788) Commission Decision [2018] OJ C417/4.
[189] Alexiadis and Bobowiec (n 149) 81.
[190] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 57; Hutchinson and others (n 115) 236.
[191] Crémer, de Montjoye and Schweitzer (n 134) 115.
[192] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 57.
[193] Alexiadis and Bobowiec (n 149) 87-88.

Two proposed solutions are considered: first, replacing the SIEC test with a 'balance of harms' test; second, shifting the burden of proof. The following sections examine each in turn.

3.2.1 Balance of Harms Test

The substantive hurdle arises from the SIEC test's balance of probabilities standard, which requires authorities to show that harm to competition is more likely than not. This evidentiary threshold is ill-suited to digital acquisitions, where rapidly evolving markets and uncertain competitive threats make the likelihood of harm difficult to prove, even when its potential scale is substantial.[194]

A balance of harms test would address this by assessing both the likelihood of harm and the scale of anti-competitive effects and efficiencies if it materialises. It would permit intervention where potential damage is significant enough to warrant scrutiny, even at lower probabilities, capturing low-probability, high-impact events such as Facebook's acquisition of Instagram.[195] Clearly, a single harmful acquisition of a disruptive rival can generate lasting losses in innovation and consumer welfare that outweigh any efficiency gains.[196] Recognising this, the test requires authorities to assess multiple counterfactuals and weigh both their likelihood and potential impact, thereby reducing the conservative bias of current enforcement and better reflecting the dynamics of digital markets.[197]

Two main objections arise, to which this thesis responds. First, the test would require authorities to evaluate difficult-to-quantify outcomes and to estimate the magnitude of both efficiencies and anti-competitive effects for each counterfactual,[198] a particularly challenging task in digital markets, where predicting future competition is, as already observed, inherently uncertain.[199] Critics argue that such an approach would prolong merger reviews, reduce procedural predictability, and expand the counterfactual analysis beyond what is feasible in

---

[194] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 42.
[195] Crémer, de Montjoye and Schweitzer (n 134) para 9.89; ibid; Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 62.
[196] Alexiadis and Bobowiec (n 149) 89.
[197] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 42.
[198] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 62. See also RBB Economics, 'A question of balance: Comments on a proposed new test for U.K. merger control' (*RBB Brief,* 1 May April 2019) <www.rbbecon.com/downloads/2019/05/RBB_B59_Briefl.pdf> accessed 24 January 2026.
[199] ibid.

routine enforcement.[200] These concerns, however, overstate the practical shift involved. Merger control already relies on forward-looking and probabilistic assessments and, in light of persistent under-enforcement in digital markets and the prevalence of killer acquisitions, a recalibration of analytical focus is both proportionate and necessary. Rather than imposing an unmanageable burden, such an approach would better align substantive assessment with the economic realities of digital markets and the scale of harm at stake.

Second, critics contend that lowering the threshold for establishing competitive harm while leaving the evidentiary standard for efficiencies unchanged would create an asymmetry in assessment.[201] The solution, however, appears straightforward: where merger control takes account of speculative but potentially significant harms, the evidentiary burden for efficiencies should be correspondingly adjusted to ensure symmetry in the treatment of risks and benefits.[202]

Accordingly, while some argue this reform would constitute a fundamental and unnecessary departure from existing merger policy,[203] particularly in sectors where current tools suffice,[204] its adoption is, on balance, justified. In a rapidly digitalising economy with an increasing volume of digital transactions, the cost of inaction, allowing killer acquisitions to evade scrutiny and entrench Big Tech's market power, outweighs the risks of change.

3.2.2 Shifting the Burden of Proof

Another proposed reform to address the substantive enforcement gap is to shift the burden of proof. While Article 2 EUMR provides that mergers are assessed without any presumption of legality or illegality,[205] in practice, review operates under a conservative default. Absent clear evidence of harm, mergers are typically cleared.[206]

[200] Alexiadis and Bobowiec (n 149) 93; Turgot (n 164) 117.
[201] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 62; Turgot (n 164) 117. See also RBB Economics (n 198).
[202] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 62. However, the author is not necessarily endorsing doing that solution.
[203] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 43.
[204] Alexiadis and Bobowiec (n 149) 93.
[205] ibid.
[206] ibid 94.

Introducing a rebuttable presumption of anti-competitive harm in defined cases, such as acquisitions by Big Tech platforms of nascent rivals, would reverse this bias.[207] Under such a framework, the onus would fall on the merging parties to prove either the absence of harm or that merger-specific efficiencies outweigh any anti-competitive effects.[208] This would not prohibit such transactions but would more accurately reflect the information asymmetries in digital markets, while correcting the current marginalisation of efficiency analysis by placing it at the core of assessment.[209] Proponents argue that the approach is both economically sound and procedurally simpler than the balance of harms test,[210] directly addressing the cost of false negatives and missed chances to block mergers that entrench market power.[211]

However, the proposal faces several serious objections. First, in the absence of clear criteria for when the presumption would apply,[212] the Commission would enjoy broad discretion,[213] creating legal uncertainty.[214] This uncertainty would be exacerbated by the significant and unpredictable burden placed on merging firms, particularly in fast-moving digital markets where competitive harm is speculative, and theories of harm cannot be fully articulated in advance.[215]

Secondly, the empirical case for the proposal is also weak. Many digital transactions have been benign or pro-competitive, with the prospect of being acquired often serving as a key incentive for start-up innovation.[216] Introducing a presumption risk chilling investment and deterring efficient transactions.[217]

---

[207] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 3.
[208] Hutchinson and others (n 115) 241-242.
[209] Bourreau and de Streel (n 147); Alexiadis and Bobowiec (n 149), 97.
[210] Turgot (n 164) 117.
[211] OECD, 'Start-ups, Killer Acquisitions and Merger Control' (n 105) 46.
[212] Motta and Peitz (n 153) 3.
[213] Martin Schallbruch, Heike Schweitzer and Achim Wambach, 'A New Competition Framework for the Digital Economy: Report by the Commission 'Competition Law 4.0' (*Competition Policy International,* December 2019) <www.competitionpolicyinternational.com/wp-content/uploads/2019/12/CPI-Schallbruch-Schweitzer-Wambach.pdf> accessed 24 January 2026.
[214] Turgot (n 164) 117.
[215] Šmejkal (n 123) 9.
[216] Levy Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 63.
[217] ibid.

At a deeper level, requiring firms to justify presumptively lawful transactions may infringe rights protected under Articles 16 and 17 of the Charter of Fundamental Rights[218] and Article 1 of Protocol No. 1 European Convention of Human Rights (ECHR)[219], notably the freedom to conduct a business and the right to property.[220] In the absence of a clear evidentiary and legal foundation, such a presumption risks being disproportionate and legally unsustainable.[221]

Therefore, while shifting the burden of proof could strengthen enforcement in some digital cases, its significant drawbacks make it less viable than recalibrating the substantive standard through a balance of harms test.

Chapter 4: Conclusion

Part II outlined start-up acquisitions and the main theories of harm, focusing on killer acquisitions under the EU merger regime. Evidently, the EUMR is ill-equipped to address these deals, jurisdictionally, because outdated turnover thresholds miss strategically important, low-turnover targets, and substantively, because the SIEC test's probability standard fails to capture low-probability but high-impact harm. Of the proposed solutions assessed, strengthening Article 22 referrals is the most workable jurisdictional fix, while a balance of harms test is the most effective substantive tool. Absent these reforms, EU merger control will remain prone to under-enforcing against killer acquisitions.

Part III builds on this analysis by examining strategic partnerships as another way Big Tech can threaten competition in digital markets.

---

[218] Charter of Fundamental Rights of the European Union [2012] OJ C326/1. See also Case C-29/69 *Erich Stauder v City of Ulm - Sozialamt* ECLI:EU:C:1969:57; Case 36-75 *Roland Rutili v Ministre de l'intérieur* ECLI:EU:C:1975:137.

[219] European Convention on Human Rights <www.echr.coe.int/documents/d/echr/convention_ENG> accessed 30 January 2026.

[220] Levy, Mostyn and Buzatu, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (n 122) 64.

[221] ibid. See also David Bailey, 'Standard of Proof in EC Merger Proceedings: A Common Law Perspective' (2004) 40 Common Market Law Review 845-888.

Part III: Strategic Partnerships

Chapter 1: Strategic Partnerships

1.1 Definition

Beyond mergers, 'strategic partnerships'[222] are another type of commercial arrangement through which Big Tech can influence competition in digital markets. Typically concluded between an incumbent firm and an innovative rival, these arrangements take multiple forms, often in combination. They include compute partnerships granting preferential access to computing infrastructure; distribution partnerships integrating AI models into cloud platforms or digital services; and data partnerships enabling access to proprietary datasets controlled by one party.[223]

These partnerships are commonly framed as collaborative innovation arrangements, particularly within the AI sector. They enable start-ups to scale by granting access to critical inputs, cloud infrastructure, compute capacity, and data, while allowing incumbent firms to integrate emerging technologies at an early stage, reduce research and development uncertainty, and secure privileged access to IP and talent.[224] This dynamic has intensified with the rise of foundation models, whose development depends on vast computational resources and specialised datasets, increasing start-ups' dependence on infrastructure providers and strengthening the position of firms controlling scarce compute capacity[225].[226]

In practice, such arrangements often operate as quasi-integrative transactions. Incumbents supply capital or compute in exchange for product integration rights and exclusive or semi-

---

[222] In the literature, these arrangements in the AI sector, the focus of this thesis, are also referred to as 'partnerships' or 'AI partnerships'. For the purposes of this thesis, however, the term 'strategic partnerships' is used to describe such transactions.

[223] Herbert Smith Freehills Kramer, 'Key themes emerging from the UK CMA's review of AI partnerships under its merger control rules' (*Herbert Smith Freehills Kramer*, 21 November 2024) <https://marketing.hsfkramer.com/20/31244/landing-pages/cma-ai-partnership-s-review---21-november-2024.pdf> accessed 8 January 2026.

[224] Caffarra (n 5).

[225] Mark Haranas, 'Microsoft's CoreWeave Deal "Adds AI Pressure" To AWS, Google ' (*CRN*, 2 June 2023) <www.crn.com/news/cloud/microsoft-s-coreweave-deal-adds-ai-pressure-to-aws-google> accessed 25 January 2026.

[226] Friso Bostoen and Anouk van der Veer, 'Regulating Competition in Generative AI/ A Matter of Trajectory, Timing and Tools' (2024) Concurrences N° 2-2024 – AI & Antitrust, 27–33, TILEC Discussion Paper No. 2024-02, 2-4 <http://dx.doi.org/10.2139/ssrn.4756641> accessed 8 January 2026. See also Guido Appenzeller, Matt Bornstein and Martin Casado, 'Navigating the High Cost of AI Compute ' (*Andreessen Horowitz*, 27 April 2023) <https://a16z.com/navigating-the-high-cost-of-ai-compute/> accessed 25 January 2026.

exclusive commitments, thereby gaining early visibility into, and influence over, potential future competitors without triggering merger control.[227]

The scale of this practice is significant. As mentioned, the CMA has identified over 90 such 'more-than-financing' agreements,[228] and in 2023 investments by the four largest U.S. technology firms exceeded total venture capital funding in the AI sector, signalling a structural shift in how digital innovation is financed and controlled.[229]

This thesis, therefore, focuses on strategic partnerships in the AI sector, where the most prominent and well-documented examples of such arrangements have emerged, illustrated through three case studies.

The first example is the *Microsoft–OpenAI* partnership, initiated in 2019. Microsoft now holds an investment in OpenAI Group PBC valued at approximately $135 billion, representing around 27% on an as-converted diluted basis.[230] OpenAI remains Microsoft's designated frontier model partner, with Microsoft retaining exclusive Azure API provision and extensive IP rights until the declaration of Artificial General Intelligence (AGI).[231] The October 2025 agreement introduced several refinements, including independent verification of any AGI declaration, an extension of Microsoft's IP rights over OpenAI models and products through 2032, and adjustments to the allocation of other IP.[232] It also permits limited third-party product development, allows Microsoft to pursue AGI independently or with other partners, maintains revenue-sharing arrangements until AGI verification, and includes OpenAI's commitment to approximately $250 billion in future Azure compute purchases.[233] Taken together, these features place the *Microsoft–OpenAI* partnership among the most significant strategic alliances in the digital sector.[234]

---

227 John B Kirkwood, 'How Big Tech's AI Startup Alliances Could Harm Competition?' (*Promarket,* 29 August 2024) <www.promarket.org/2024/08/29/how-big-techs-ai-startup-alliances-could-harm-competition/> accessed 8 January 2026.
228 Competition & Markets Authority, *AI Foundation Models: Technical update report* (n 4) 3.
229 Caffarra (n 5).
230 Microsoft, 'The next chapter of the Microsoft-OpenAI partnership' (*Microsoft Corporate Blogs*, 28 October 2025) <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/> accessed 8 January 2026.
231 ibid.
232 ibid.
233 ibid.
234 ibid.

A comparable structure characterises the *Amazon–Anthropic* partnership. Amazon Web Services (AWS) acts as Anthropic's primary cloud and training provider, with Anthropic's Claude models integrated into Amazon Bedrock.[235] Future model development and deployment are closely tied to AWS infrastructure, including reliance on Amazon's proprietary Trainium and Inferentia chips, effectively embedding Anthropic within Amazon's cloud ecosystem.[236]

Anthropic has also entered into a strategic partnership with Google. Google Cloud supplies the infrastructure required to train, scale, and deploy Anthropic's AI systems using Google's Tensor Processing Unit (TPU) architecture.[237] As of October 2025, Anthropic announced plans to expand its use of Google Cloud to up to one million TPUs, a commitment reportedly worth tens of billions of dollars and expected to add more than one gigawatt of compute capacity by 2026.[238]

These developments have prompted intensified regulatory scrutiny. In the U.S., the Federal Trade Commission has launched an inquiry into strategic partnerships involving Microsoft, OpenAI, Amazon, Google, and Anthropic.[239] In parallel, EU and UK competition authorities are examining these arrangements under merger control and abuse of dominance frameworks,[240] highlighting their increasing relevance for competition policy.[241]

---

[235] Anthropic, 'Powering the next generation of AI development with AWS' (*Anthropic*, 22 November 2024) <www.anthropic.com/news/anthropic-amazon-trainium> accessed 8 January 2026.
[236] ibid.
[237] Anthropic, 'Expanding our use of Google Cloud TPUs and Services' (*Anthropic*, 23 October 2025) <www.anthropic.com/news/expanding-our-use-of-google-cloud-tpus-and-services> accessed 8 January 2026.
[238] ibid.
[239] Blake Montgomery, Kari Paul and agencies, 'US launched inquiry into AI deals by Microsoft, OpenAI, Google and Amazon' (*The Guardian*, 25 January 2024) <www.theguardian.com/technology/2024/jan/25/ftc-ai-inquiry-microsoft-alphabet-amazon> accessed 8 January 2026.
[240] Competition and Markets Authority, 'Microsoft/OpenAI Partnership Merger Inquiry' (*UK Government*, 8 December 2023) <www.gov.uk/cma-cases/microsoft-slash-openai-partnership-merger-inquiry> accessed 25 January 2026; Bundeskartellamt, 'Cooperation between Microsoft and OpenAI currently not subject to merger control' (*Bundeskartellamt*, 15 November 2023) <www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/15_11_2023_Microsoft_OpenAI.html> accessed 25 January 2026.
[241] Teodora Groza and Aleksandra Wierzbicka, 'Merger by Other Means? AI Partnerships and the Frontiers of (Post-Industrial Organization '(2024) Artificial Intelligence and Competition Policy, Concurrences 9781954750425, 4 <https://sciencespo.hal.science/hal-04932627/file/Groza & Wierzbicka_Edited.pdf> accessed 8 January 2026. See also John Bethan, 'Microsoft Prepares for Formal CMA Probe into OpenAI Partnership' (*Global Competition* Review, 23 May 2024) <https://globalcompetitionreview.com/article/microsoft-prepares-formal-cma-probe-openai-partnership> accessed 25 January 2026; Javier Espinoza and Tim Bradshaw, 'Brussels Explores Antitrust Probe into Microsoft's Partnership with OpenAI' (*Financial Times*, 28 June 2024) <www.ft.com/content/cdb1ab92-9148-47c4-add1-a079a7652ddb> accessed 25 January 2026.

1.2 Theories of Harm

Beyond their regulatory salience, the competitive implications of strategic partnerships are conceptually underdeveloped, owing to their novelty and heterogeneity. [242] Nevertheless, despite their varied forms, such arrangements may give rise to significant competition concerns, and several theories of harm have emerged.

First, strategic partnerships may give rise to input foreclosure, where incumbent firms with preferential access to key AI inputs, such as compute infrastructure, proprietary models, or datasets, restrict access to rivals or grant it selectively to partners.[243] In markets characterised by scarce high-performance compute, such practices can materially constrain competitors' ability to develop or deploy AI systems.[244]

Second, leveraging and downstream foreclosure may occur where incumbents use control over foundational models, cloud infrastructure, or distribution channels to self-prefer partner applications, impose lock-in or non-compete conditions, or exclude rivals altogether.[245]
Third, partnerships between actual or potential competitors raise coordination and information-exchange risks by weakening competitive constraints and facilitating the sharing of commercially sensitive information.[246]

Finally, strategic partnerships may entrench structural barriers to entry by enabling incumbent firms to consolidate control over foundational AI assets, creating dependencies that limit smaller firms 'ability to compete or innovate independently.[247]

Chapter 2: Strategic Partnerships under the EU Merger Regime

2.1 Jurisdictional Gaps

Notwithstanding the clear competitive risks and theories of harm outlined above, strategic partnerships remain difficult to capture under EU competition law, particularly within the merger control regime. As argued below, although these arrangements may be functionally

[242] Groza and Wierzbicka (n 241) 15.
[243] Klaus Kowalski, Cristina Volpin and Zsolt Zombori, 'Competition in Generative AI and Virtual Worlds' (Competition Policy Brief No 3/2024, European Union, 2024), 7 <https://competition-policy.ec.europa.eu/document/download/c86d461f-062e-4dde-a662-15228d6ca385_en> accessed 8 January 2026.
[244] ibid.
[245] ibid.
[246] ibid.
[247] ibid.

analogous to mergers, they generally do not qualify as such in legal terms and thus often fall outside EUMR review. The European Commission's jurisdiction under the EUMR is determined through a two-step analysis: first, the transaction must constitute a 'concentration'; second, it must meet the turnover thresholds establishing a 'Community dimension'. Strategic partnerships encounter obstacles at both stages of this assessment, as examined below.

2.1.1 Concentration

The first jurisdictional hurdle is whether a strategic partnership qualifies as a 'concentration'. This requires, as a preliminary matter, the existence of an 'undertaking'. Under settled EU competition law, an undertaking encompasses 'every entity engaged in an economic activity, regardless of its legal status and the way in which it is financed'.[248]

This raises questions in the AI sector, where actors often operate under hybrid or non-profit models.[249] Such classifications may be jurisdictionally relevant in other systems.[250] For example, in the U.S., the *Microsoft–OpenAI* strategic partnership was not subject to pre-merger notification under the Hart-Scott-Rodino Antitrust Improvements Act[251] because OpenAI was classified as a non-profit entity.[252] However, this is largely immaterial under EU law.[253] The CJEU in *Firma Ambulanz Glöckner v. Landkreis Südwestpfalz*[254] held that non-profit status does not preclude classification as an undertaking where market-based activity is present, allowing the European Commission to assess such entities notwithstanding their legal form.

Once the preliminary requirement is met, the decisive issue is whether a strategic partnership constitutes a 'concentration' within the meaning of Article 3 EUMR. Under Article 3(1), a 'concentration' arises where a 'change of control on a lasting basis' results from:

(a) the merger of two or more previously independent undertakings/parts of undertakings, or
(b) the acquisition by one or more undertakings/persons controlling an undertaking of direct or indirect control of the whole/part of one or more other undertakings.

Article 3(2) defines control as the 'possibility of exercising decisive influence'.

[248] Case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH* ECLI:EU:C:1991:161, para 21.
[249] Groza and Wierzbicka (n 241) 12.
[250] ibid.
[251] Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a (1976).
[252] ibid.
[253] ibid.
[254] Case C-475/99 *Firma Ambulanz Glöckner v. Landkreis Südwestpfalz* ECLI:EU:C:2001:577.

EU competition law adopts a broad concept of control, encompassing both de jure and de facto forms,[255] which may arise through shareholdings, asset acquisitions, contractual arrangements, or structural dependencies. However, in the context of AI strategic partnerships, traditional indicators of control, particularly equity ownership and voting rights, are often absent.[256] While control may arise contractually where agreements confer decisive influence over key resources or management,[257] including through long-term supply arrangements combined with structural links,[258] the evidentiary threshold still remains high.[259]

The *Microsoft–OpenAI* partnership illustrates this difficulty. Despite Microsoft holding extensive economic and strategic rights, including exclusive Azure Application Programming Interface provision, IP rights, and revenue-sharing arrangements, both the European Commission and the CMA concluded that the control threshold was not met.[260] Taking into account Microsoft's investment and governance involvement, compute supply, and IP rights, the CMA found that Microsoft exerts a high level of material influence over OpenAI.[261] This influence enables Microsoft to align OpenAI's plans and its own commercial interests and to exert pressure capable of affecting OpenAI's incentives. However, evidence of OpenAI acting independently, including securing alternative sources of compute, attracting new investors, and pursuing commercial relationships with third parties, supported the conclusion that Microsoft does not control OpenAI's commercial policy.[262] No change of control was therefore established.[263] Strategic partnerships of this kind thus face a high evidentiary threshold at the control stage and will typically fall outside the scope of merger control.

2.1.3 Community Dimension

Even where a strategic partnership could be characterised as a 'concentration', a further obstacle may arise at the level of the EUMR's revenue-based thresholds. These thresholds

[255] CJN (n 49) para 16.
[256] Groza and Wierzbicka (n 241) 14. See also Alexandre Rouhette and Pierre Garenne, 'De Facto Control in EU Merger Control Law' (2020) 4 Concurrences Competition Law Review 1.
[257] CJN (n 49) para 18.
[258] ibid para 19.
[259] Groza and Wierzbicka (n 241) 14.
[260] Margrethe Vestager, 'Speech by EVP Margrethe Vestager at the European Commission workshop on ''Competition in Virtual Worlds and Generative AI''' (Speech, Brussels, 28 June 2024) <https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550> accessed 11 January 2026; ME/7084/23 *Microsoft Corporation's partnership with OpenAI, Inc.* CMA Decision of 5 March 2025.
[261] *Microsoft Corporation's partnership with OpenAI, Inc.* (n 260) 5.
[262] ibid 22.
[263] ibid 5.

assume that turnover is a reliable proxy for market impact, an assumption that, as with killer acquisitions, appears poorly suited to AI markets.[264] Innovative firms often prioritise scale, data accumulation, or model development over immediate monetisation, yet may nonetheless pose significant long-term competitive threats.[265]

Although some firms involved in such partnerships have achieved substantial revenues, most notably OpenAI and Anthropic, with OpenAI's annualised revenue exceeding $20 billion in 2025[266] and Anthropic reaching approximately $3 billion by mid-2025[267], these cases do not reflect the position of all AI firms. Rather, they illustrate a group of highly successful 'unicorns', privately held startup or technology firms with valuations exceeding $1 billion.[268] Estimates suggest that between 10,000 and 58,000 AI start-ups operate worldwide, depending on definitional criteria, with nearly 7,000 located in the United States alone.[269] Many operate at a smaller scale and are therefore unlikely to meet the turnover thresholds for merger control. As strategic partnerships continue to proliferate, those involving low-revenue firms may be falling outside the EUMR's jurisdictional reach, despite their potential to generate significant competitive risks.

Chapter 3: Conclusion

Part III examined strategic partnerships through three illustrative examples and the main theories of harm. It showed that the EUMR is, once again, ill-suited to address such arrangements, which frequently fail to meet the Commission's jurisdictional requirements. Although often functionally equivalent to concentrations, these partnerships rarely take the form of traditional mergers and are commonly structured to fall outside merger review.[270]

---

[264] McLean (n 3) 43.
[265] ibid.
[266] Reuters, 'OpenAI CFO says annualized revenue crosses $20 billion in 2025' (*Reuters*, 19 January 2026) <www.reuters.com/business/openai-cfo-says-annualized-revenue-crosses-20-billion-2025-2026-01-19/> accessed 21 January 2026.
[267] CNBC, 'Anthropic hits $2 billion in annualized revenue on business demand for AI' (*CNBC,* 30 May 2025) <www.cnbc.com/2025/05/30/anthropic-hits-3-billion-in-annualized-revenue-on-business-demand-for-ai.html#:~:text=Anthropic hits $3 billion in annualized revenue,generation a major driver for Anthropic's business.> accessed 11 January 2026.
[268] Rebecca Strehlow, 'What is Unicorn Company? Examples and Insights' (*Crunchbase*, 12 November 2025) <https://about.crunchbase.com/blog/what-is-a-unicorn-company> accessed 21 January 2026.
[269] ibid.
[270] Strati Sakellariou-Witt and others, 'Global merger control trends and outlook 2024/2025' (*White & Case*, 20 January 2025) <www.whitecase.com/insight-our-thinking/global-merger-control-trends-outlook-2024-2025> accessed 11 January 2026.

Unlike killer acquisitions, the novelty and heterogeneity of AI strategic partnerships make definitive legal conclusions and tailored solutions more difficult.[271] Nevertheless, their competitive significance can no longer be overlooked. Competition authorities are increasingly scrutinising these arrangements, recognising that they may produce merger-like effects despite remaining formally outside the law.[272] Notably, the CMA has deployed merger investigations not merely as an enforcement tool, but also as a means of informing future regulatory approaches.[273] This reliance on regulatory experimentation underscores a growing disconnect between regulatory ambition and the capacity of existing competition law tools to address new forms of economic integration in digital markets.

Part IV builds on this analysis by examining the DMA as a potential tool for addressing both killer acquisitions and strategic partnerships.

Part IV: DMA

Chapter 1: DMA

1.1 Framework

The introduction of DMA raises the question of whether it can operate as an effective tool addressing both killer acquisitions and strategic partnerships. First proposed by the European Commission in December 2020, the Regulation was formally adopted by the European Parliament and the Council in September 2022 and became applicable in May 2023.[274] Widely regarded as a paradigm shift in the EU's approach to regulating Big Tech,[275] the DMA is among the first regulatory tools to comprehensively address the 'gatekeeper' power of the largest technological companies.[276] Operating as an ex-ante regulatory framework operating alongside EU competition law, the DMA pursues complementary objectives[277] by imposing harmonised obligations on designated 'gatekeepers', defined below, with the aim of preventing competitive harm before it materialises.[278]

[271] Groza and Wierzbicka (n 241) 15.
[272] Vestager, 'Speech by EVP Margrethe Vestager at the European Commission workshop on ''Competition in Virtual Worlds and Generative AI''' (n 260).
[273] ibid.
[274] European Commission, 'About the Digital Markets Act' (*European Commission*) <https://digital-markets-act.ec.europa.eu/about-dma_en> accessed 21 January 2026.
[275] Anna Witt, 'The Digital Markets Act – Regulating the Wild West' [2023] 60(3) Common Market Law Review, 1.
[276] ibid; European Commission, 'About the Digital Markets Act' (n 274).
[277] DMA (n 7) recital 11.
[278] European Commission, 'About the Digital Markets Act' (n 274).

Gatekeepers are subject to obligations targeting entrenched practices such as self-preferencing, bundling, and data-related restrictions. Article 1 defines the DMA's objective as ensuring fair and contestable digital markets and contributing to the proper functioning of the internal market. As Thierry Breton, Commissioner for Internal Market, declared, '[m]ore choice for consumers, fewer obstacles for smaller competitors: the DMA will open the gates to the Internet. With today's designation we are finally reining in the economic power of 6 gatekeepers, giving more choice to consumers and creating new opportunities for smaller innovative tech companies, thanks for instance to interoperability, sideloading, real-time data portability and fairness. It was high time that Europe sets the rules of the game upfront, to ensure digital markets are fair and open.'[279]

At the same time, as Commissioner Vestager has observed, the DMA represents 'a radical change to how large digital platforms are allowed to operate in the EU'[280]. This ambition gives rise to a central question for this Part: whether the DMA's obligation-based framework can operate as a meaningful complement to EU merger control in addressing killer acquisitions and strategic partnerships.

1.2 Scope

Understanding the scope of the DMA is essential in assessing its capacity to address killer acquisitions and strategic partnerships. The DMA applies only to a narrowly defined category of firms designated as 'gatekeepers', large digital platforms providing core platform services.

Under Article 3(1) DMA, an undertaking is designated as a gatekeeper where three cumulative conditions are met.

First, the undertaking must have 'a significant impact on the internal market'[281]. This is presumed where it has annual European Economic Area turnover of at least €7.5 billion in each

---

[279] European Commission, 'Digital Markets Act: Commission designates six gatekeepers' (*European Commission Press Corner*, 6 September 2023) <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_4328/IP_23_4328_EN.pdf> accessed 25 January 2026.

[280] Margrethe Vestager, 'Making Artificial Intelligence Available to All – How to Avoid Big Tech's Monopoly on AI' (Speech, Brussels, 19 February 2024) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_24_931> accessed 25 January 2026.

[281] DMA (n 7) art 3(1)(a).

of the past three financial years, or a market capitalisation exceeding €75 billion, and operates in at least three Member States.[282]

Second, pursuant also to Article 2(1), it must provide at least one core platform service, which Article 2(2) defines to include, inter alia, online intermediation services, search engines, social networking services, video-sharing platforms, number-independent interpersonal communications services, operating systems, web browsers, virtual assistants, cloud computing services, and online advertising services, where the latter are offered alongside at least one other listed service.[283] The core platform service must also serve as an important gateway between the business and end users.[284] This is presumed where the relevant service has more than 45 million monthly active end users and over 10,000 yearly active business users[285]

Finally, the undertaking must enjoy, or be expected to enjoy in the near future, an entrenched and durable position, [286] presumed when the Article 3(2)(b) thresholds have been met over the last three financial years.[287]

As of August 2024, seven undertakings have been designated as gatekeepers:

- Alphabet;
- Amazon;
- Apple;
- Booking.com;
- ByteDance;
- Meta;
- Microsoft.[288]

[282] ibid 3(2)(a).
[283] ibid art 3(1)(b).
[284] ibid art 3(1)(b).
[285] ibid art 3(2)(b).
[286] ibid art 3(1)(c).
[287] ibid art 3(2)(c).
[288] European Commission, 'Gatekeepers' (*European Commission*) <https://digital-markets-act.ec.europa.eu/gatekeepers_en> accessed 22 January 2026.

Collectively, they provide 23 core platform services falling within the scope of the DMA, including:

- Social Network: TikTok, Facebook, Instagram, LinkedIn;
- Intermediation: Google Maps, Google Play, Google Shopping, Amazon Marketplace, App Store, Booking.com;
- Ads: Google, Amazon, Meta;
- Number-Independent Interpersonal Communication Services (N-IICS): WhatsApp, Messenger;
- Video Sharing: YouTube;
- Search: Google Search;
- Browser: Chrome, Safari;
- Operating System: Google Android, iOS, iPadOS, Windows PC OS.[289]

1.3 Obligations

With the scope established, the thesis turns to the obligations imposed on designated gatekeepers under the DMA, which must be implemented in their daily operations.

Key obligations include:

- allowing the removal of pre-installed applications, modification of default settings on operating systems, virtual assistants, and web browsers that favour the gatekeeper's own products or services, and provide choice screens for key services;[290]
- allowing the installation and use of third-party applications and app stores that operate on, or interoperate with, the gatekeeper's operating system;[291]
- ensuring that subscriptions to core platform services can be terminated under conditions no more burdensome than those applicable to subscription;[292]
- enabling interoperability between third-party services and the gatekeeper's own services;

[289] ibid.
[290] DMA (n 7) art 5-8.
[291] ibid art 6.
[292] ibid recital 63.

- granting advertisers and publishers access to relevant performance measurement tools and data necessary to independently assess the effectiveness of advertising hosted on the platform;
- allowing business users to promote their offerings and conclude contracts with customers outside the gatekeeper's platform;
- granting business users access to data generated through their activities on the gatekeeper's platform.[293]

Alongside these positive obligations, the DMA establishes a set of prohibitions aimed at curbing anti-competitive conduct by the designated gatekeepers.

Key prohibitions include:

- prohibiting the use of business users' data where the gatekeeper competes with those users on its own platform;
- preventing the gatekeeper from favouring its own products or services in rankings relative to those of third parties;
- banning the requirement that app developers use specific gatekeeper services as a condition for access to its app stores;
- restricting the tracking of end users outside of its core platform service for targeted advertising purposes unless valid and effective consent has been obtained.[294]

These obligations and prohibitions reflect the DMA's emphasis on structural, ex-ante regulation, raising the question, examined in the following chapters, of whether this framework can effectively address the competitive risks posed by killer acquisitions and strategic partnerships. The enforcement of these obligations is underpinned by a robust sanctions regime.

---

[293] ibid art 5. See also Nikolaos I Theodorakis and Dimitra Tzeferakou, 'New Rules for Digital Platforms in the EU and the US: Opening Pandora's Box, Stanford-Vienna European Union Law' Working Paper No. 73, 42-43 <https://law.stanford.edu/wp-content/uploads/2023/01/EU-Law-WP-73-Theodorakis-Tzeferakou.pdf> accessed 22 January 2026.

[294] DMA (n 7) art 6-7. See also Theodorakis and Tzeferakou (n 293) 43.

1.4 Non-Compliance

Failure to comply with the obligations imposed by the DMA exposes gatekeepers to significant sanctions.

Under Article 30 DMA, the Commission may impose fines of up to 10% of the undertaking's total worldwide annual turnover, rising to 20% in cases of repeated infringements.[295]

In addition to fines, the DMA provides for remedial measures in cases of systematic infringement.[296] Following a market investigation, the Commission may impose remedies that are proportionate to the infringement committed.[297] Where necessary, and as a measure of last resort, these may include non-financial remedies, encompassing both behavioural and structural measures, such as the divestiture of parts of a business.[298]

Article 31 DMA further empowers the Commission to impose periodic penalty payments of up to 5% of the gatekeeper's average daily worldwide turnover to compel compliance with its obligations.[299]

Accordingly, addressing killer acquisitions and strategic partnerships necessitates identifying the relevant DMA obligations and the corresponding non-compliance sanctions.

Chapter 2: DMA and Killer Acquisitions and Strategic Partnerships

2.1 Killer Acquisitions

Among the DMA's wide-ranging obligations, the provision most relevant to addressing killer acquisitions is Article 14, introducing an obligation to inform about concentrations.

Article 14(1) DMA requires designated gatekeepers to notify the European Commission of any intended concentration, irrespective of whether the transaction is notifiable under the EUMR or national merger control regimes. The obligation applies where the acquiring or target undertaking provides core platform services, other digital services, or services enabling data

[295] European Commission, 'About the Digital Markets Act' (n 274).
[296] ibid.
[297] ibid.
[298] ibid.
[299] ibid.

collection, and must be fulfilled prior to implementation.[300] In doing so, Article 14 partially overcomes the jurisdictional hurdles created by turnover-based thresholds and reflects a clear regulatory ambition to extend merger oversight beyond traditional jurisdictional limits.[301] As Robertson observes, it equips the European Commission with an early-warning mechanism particularly suited to identifying killer acquisitions involving low-turnover targets.[302]

That said, the significance of Article 14 should not be overstated. While it overcomes the jurisdictional hurdle of turnover-based thresholds, the obligation is not suspensory and allows transactions to proceed unless blocked under existing merger control regimes, nor does it confer any new substantive assessment powers on the Commission under the DMA.[303] Article 14, therefore, functions solely as an early-warning and transparency mechanism[304] rather than an enforcement tool, and has been criticised for lacking the 'teeth' necessary to effectively address killer acquisitions.[305]

It has been argued that such enforcement deficiencies are remedied by Article 18(2) DMA, which introduces the so-called 'temporary merger ban'.[306] This provision allows the Commission, for a limited period, to prohibit a gatekeeper from entering into concentrations relating to affected core platform services or other digital or data-enabling services. However, this power is triggered only in cases of systematic non-compliance, defined under Article 29 as at least three infringements of core DMA obligations within eight years. Given this exceptionally high threshold, Article 18(2) is unlikely to influence gatekeepers' immediate strategic behaviour and is ill-suited to addressing killer acquisitions, which are typically discrete, one-off transactions completed well before any pattern of systematic non-compliance can be established.[307]

---

[300] DMA (n 7) art 14(1).
[301] Viktoria HSE Robertson, 'The Future of Digital Mergers in a Post-DMA World' (2023) 44(10) European Competition Law Review 447, 3; Anna Tzanaki, 'Dynamism and politics in EU merger control: The perils and promise of a killer acquisitions solution through a law & economics lens ' (2025) New Working Paper Series, No. 353, University of Chicago Booth School of Business, Stigler Center for the Study of the Economy and the State, 16.
[302] Robertson (n 301) 3; Tzanaki (n 301) 16.
[303] Magali Eben and David Reader, 'Taking Aim at Innovation-Crushing Mergers: A Killer Instinct Unleashed?' 42 Yearbook of European Law 286, 314-315; Robertson (n 301) 1; Tzanaki (n 301) 43.
[304] Eben and Reader (n 303) 313.
[305] Natalia Moreno Belloso and Nicolas Petit, 'The EU Digital Markets Act (DMA): A Competition Hand in a Regulatory Glove' (2023) 48 European Law Review 391, 409.
[306] Robertson (n 301) 6; CS Ruse and JW va de Gronden, 'The Interaction between the Digital Markets Act and Merger Control Instruments' (2024) 3 Mp. Tijdschrift Mededingingsrecht in de Praktijk 20, 20.; Tzanaki (n 301) 43.
[307] Robertson (n 301) 6.

A further question is whether Article 14 can nonetheless strengthen merger control indirectly by facilitating the use of Article 22 EUMR.[308] Under Article 14(4)–(5), gatekeepers must notify the European Commission of intended concentrations, which are then transmitted to national competition authorities that may refer the transaction under Article 22 even where turnover-based thresholds are not met, with the European Commission able to invite such referrals under Article 22(5). In this way, Article 14 seeks to address jurisdictional gaps not through direct enforcement, but by reinforcing the EUMR's referral mechanism to enable scrutiny of below-threshold acquisitions.[309]

Unfortunately, the effectiveness of this mechanism has been undermined by the *Illumina/Grail* judgment.[310] By narrowing the scope of Article 22 referrals, the ruling casts doubt on the viability of using Article 14 to expand merger scrutiny.[311] As a result, while Article 14 may enhance transparency around gatekeeper acquisitions, it confers no independent enforcement powers and, following *Illumina/Grail*, even its limited complementary role within merger control is uncertain, unless Article 22 use is strengthened, leaving the competition risks posed by killer acquisitions largely unresolved.

2.2 Strategic Partnerships

The DMA is even less equipped to address strategic partnerships. As discussed above, such arrangements typically fall outside the scope of merger control because they do not constitute concentrations, rendering Article 14 largely inapplicable. In the absence of a concentration, these partnerships escape systematic ex-ante assessment, despite their ability to replicate the competitive effects of mergers. Even where a partnership does qualify as a concentration, Article 14 provides only limited procedural support, and its effectiveness remains constrained by the post-*Illumina/Grail* limitations on the use of Article 22.

More fundamentally, while the DMA imposes behavioural obligations aimed at mitigating downstream risks such as self-preferencing or discriminatory access, it does not provide a

[308] ibid 5; Eva Oliveira, 'Preventing killer acquisitions in the digital sector: The combination between Article 22 of the EU Merger Regulation and the Digital Markets Act' (*Autoridade da Concorrencia*, 21 March 2023), 55 <www.concorrencia.pt/sites/default/files/documentos/CR50_EvaOliveira_v2.pdf> accessed 25 January 2026.
[309] Robertson (n 301) 5; Tzanaki (n 301) 44.
[310] Niels Beaten and others, 'European Commission Blocked From Reviewing Below-Threshold Mergers' (*Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates*, 9 September 2024) <www.skadden.com/insights/publications/2024/09/european-commission-blocked> accessed 25 January 2026.
[311] ibid.

framework for assessing strategic partnerships as transactions. The DMA regulates the conduct of gatekeepers, not the competitive risks arising from their collaborative arrangements with potential rivals. As a result, it offers only a partial and indirect response to strategic partnerships.

Chapter 3: Conclusion

Part IV examined the DMA, its scope, obligations, and its capacity to address killer acquisitions and strategic partnerships. While the DMA does not operate as a direct regulatory tool for tackling either transactional practice, it introduces procedural innovations, most notably Article 14, that are primarily relevant to killer acquisitions. In the aftermath of *Illumina/Grail*, however, even this mechanism might have a limited practical effect, given the constraints placed on the Commission's ability to rely on Article 22 referrals. Indeed, strengthening the use and legal framework of Article 22 referrals is necessary. Accordingly, the DMA falls short of closing the gaps in the existing EU merger control regime with respect to killer acquisitions and strategic partnerships.

Conclusion

This thesis has shown that EU merger control is increasingly inadequate in addressing competitive risks in digital markets. Big Tech has been consolidating market power not only through killer acquisitions, but more recently also through transactional strategies designed to fall outside the formal scope of the EUMR. Although killer acquisitions and strategic partnerships differ in form, both exploit similar weaknesses of the current regime.

In relation to killer acquisitions, the first obstacle arises at the jurisdictional stage due to the continued reliance on turnover-based thresholds. In digital markets, turnover is a poor proxy for competitive significance, as start-ups often exert competitive pressure through innovation, data, or user growth rather than revenues. As a result, many strategically important transactions escape review altogether. Even where jurisdiction is established, the SIEC test is ill-suited to capture the low-probability but high-impact harm characteristic of these transactions. This results in a systematic risk of under-enforcement. Among the solutions considered, a strengthened use of Article 22 referrals offers the most workable jurisdictional response, while a balance of harms test provides the most effective substantive framework.

Strategic partnerships expose a further set of shortcomings, again most acutely at the jurisdictional stage. These arrangements are frequently structured to avoid qualification as concentrations, despite producing effects functionally equivalent to mergers. Even where they qualify as concentrations, they may remain outside review due to failure to meet notification thresholds. Their novelty and heterogeneity, particularly in the context of AI, complicate clear legal solutions, but their competitive significance is no longer treated as peripheral by competition authorities.

While the DMA represents an important shift in ex-ante regulation of gatekeepers, it does not resolve these merger control gaps. Its transaction notification obligation is procedural in nature and, following *Illumina/Grail*, offers limited capacity to capture problematic transactions. Moreover, as it applies only to concentrations, many strategic partnerships remain beyond its reach.

Looking ahead, EU competition law remains anchored to traditional notions of control, turnover, and probabilistic harm that are poorly suited to digital markets. Without targeted reform of both jurisdictional triggers and substantive assessment, EU merger control will continue to struggle to address the mechanisms, namely killer acquisitions and strategic partnerships, through which Big Tech consolidates its market power.

Bibliography

Table of Legislation

A. European Legislation

1. Charter of Fundamental Rights of the European Union [2012] OJ C326/1.
2. Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Implementing Regulation) [2023] OJ L119/22.
3. Commission Implementing Regulation (EU) 2024/2776 of 31 October 2024 correcting Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Implementing Regulation) [2024] OJ L119/2776.
4. Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Implementing Regulation) [2024] OJ L336/1.
5. Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.
6. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2004] OJ L24/1.
7. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1.

B. Foreign Legislation

1. Bundesgesetz gegen Kartelle und andere Wettbewerbsbeschränkungen (Kartellgesetz 2005 – KartG 2005), BGBl. I Nr. 61/2005.
2. Enterprise Act 2002.
3. Gesetz gegen Wettbewerbsbeschränkungen – GWB, Competition Act in the version published on 26 June 2013 (Bundesgesetzblatt (Federal Law Gazette) I, 2013, p. 1750, 3245), as last amended by Article 1 of the Act of 25 October 2023 (Federal Law Gazette I, p. 294).
4. Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a (1976).

Table of Cases

A. European Case Law

1. Commission of the European Communities v Tetra Laval BVBV (Case C-12/03 P) ECLI:EU:C:2005:87.
2. Deutsche Lufthansa AG v European Commission (Case T-712/16) ECLI:EU:T:2018:269.
3. Erich Stauder v City of Ulm - Sozialamt (Case C-29/69) ECLI:EU:C:1969:57.
4. European Commission v CK Telecoms UK Investments Ltd (Case C-376/20 P) ECLI:EU:C:2023:561.
5. Firma Ambulanz Glöckner v. Landkreis Südwestpfalz (Case C-475/99) ECLI:EU:C:2001:577.
6. French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities (Joined Cases C-68/94 and C-30/95) ECLI:EU:C:1998:148.
7. Illumina v Commission (T-227/21) ECLI:EU:T:2022:447.
8. Illumina Inc. and Grail LLC v European Commission (Joined Cases C-611/22 P and C-625/22 P) ECLI:EU:C:2024:677.
9. Klaus Höfner and Fritz Elser v Macrotron GmbH (Case C-41/90) ECLI:EU:C:1991:161.
10. Roland Rutili v Ministre de l'intérieur (Case 36-75) ECLI:EU:C:1975:137.
11. Towercast v Autorité de la concurrence and Ministère de l'Économie (Case C-449/21) ECLI:EU:C:2023:207.

B. European Commission Decisions

1. Airtours/First Choice (Case M 1524) Commission Decision 2000/276/EC [2000] OJ L93/1.
2. Apple/Shazam (Case M.8788) Commission Decision [2018] OJ C417/4.
3. CCIE/GTE (Case M.258) Commission Decision [1992] OJ C225/8.
4. Facebook/WhatsApp (Case COMP/M.7217) Commission Decision [2014] OJ C417/4.
5. Google/ DoubleClick (Case COMP/M.4731) Commission Decision [2008] OJ C230/8.
6. Illumina/GRAIL (Case M.10188) Commission Decision [2021] OJ L248/5.
7. Illumina/GRAIL (Case M.10493) Commission Decision reported in EC Press Release (29 October 2021) <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5661> accessed 26 January 2026.
8. Illumina/GRAIL (Case M.10938) Commission Decision reported in EC Press Release (28 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/MEX_22_6467> accessed 26 January 2026.

9. Illumina/GRAIL (Case M.10483) Commission Decision reported in EC Press Release (12 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3773> accessed 26 January 2026.
10. Illumina/GRAIL (Case M.10939) Commission Decision reported in EC Press Release (12 October 2023) <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4872> accessed 26 January 2026.
11. Summary of Commission Decision of 6 September 2024 withdrawing decisions in cases M.10188 – Illumina/GRAIL (Art. 6(1)(c) decision and prohibition decision under Article 8(3)); M.10483 – Illumina/GRAIL (Art. 14 procedure); M. 10493 – Illumina/GRAIL (interim measures under Art. 8(5)(a)); M.10938 – Illumina/GRAIL (interim measures under Article 8(5)(c)); M.10939 – Illumina/GRAIL (restorative measures under Article 8(4)(a)) [2024] OJ C6049/1.

C. CMA Decisions

1. ME/7084/23 Microsoft Corporation's partnership with OpenAI, Inc. CMA Decision of 5 March 2025.

Treaties

1. European Convention on Human Rights <www.echr.coe.int/documents/d/echr/convention_ENG> accessed 30 January 2026.

EU Guidelines, Guidance and Notices

1. Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings [2008] OJ C95/1 (CJN).
2. Commission Notice on the definition of the relevant market for the purposes of Union competition law (Communication) [2024] OJ C1645.
3. Commission, 'Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases' (Communication) C(2021) 1959 final 19.
4. Commission, 'Guidance on the preparation of public versions of Commission Decisions adopted under the Merger Regulation' < https://competition-policy.ec.europa.eu/document/download/8a56f563-304c-4b6e-8023-a0a2f6c63471_en?filename=guidance_on_preparation_of_public_versions_mergers_26052015.pdf> accessed 24 January 2025.

5. Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2004] OJ C31/3.
6. Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2008] OJ C265/7.

Secondary Sources

1. Alexiadis P and Bobowiec Z, 'EU Merger Review of 'Killer Acquisitions' in Digital Markets - Threshold Issues Governing Jurisdictional and Substantive Standards of Review' (2020) 16(2) Indian Journal of Law and Technology 65.
1. Anthropic, 'Powering the next generation of AI development with AWS' (*Anthropic*, 22 November 2024) <www.anthropic.com/news/anthropic-amazon-trainium> accessed 8 January 2026.
2. Anthropic, 'Expanding our use of Google Cloud TPUs and Services' (*Anthropic*, 23 October 2025) <www.anthropic.com/news/expanding-our-use-of-google-cloud-tpus-and-services> accessed 8 January 2026.
3. Appenzeller G, Bornstein M and Casado M, 'Navigating the High Cost of AI Compute' (*Andreessen Horowitz*, 27 April 2023) <https://a16z.com/navigating-the-high-cost-of-ai-compute/> accessed 25 January 2026.
4. Argentesi E and others, 'Merger policy in Digital Markets: an ex post assessment' (2019) 17 (1) Journal of Competition Law & Economics 95.
5. Bailey D, 'Standard of Proof in EC Merger Proceedings: A Common Law Perspective' (2004) 40 Common Market Law Review 845-888.
6. Beaten N and others, 'European Commission Blocked From Reviewing Below-Threshold Mergers' (*Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates*, 9 September 2024) <www.skadden.com/insights/publications/2024/09/european-commission-blocked> accessed 25 January 2026.
7. Bethan J, 'Microsoft Prepares for Formal CMA Probe into OpenAI Partnership' (*Global Competition* Review, 23 May 2024) <https://globalcompetitionreview.com/article/microsoft-prepares-formal-cma-probe-openai-partnership> accessed 25 January 2026.
8. Bostoen F and van der Veer A, 'Regulating Competition in Generative AI/ A Matter of Trajectory, Timing and Tools ' (2024) Concurrences N° 2-2024 – AI & Antitrust, 27–33, TILEC Discussion Paper No. 2024-02 <http://dx.doi.org/10.2139/ssrn.4756641> accessed 8 January 2026.

9. Bourreau M and de Streel A, 'Big Tech Acquisitions – Competition and Innovation Effects and EU Merger Control' (*Centre on Regulation in Europe*, February 2020) <https://cerre.eu/wp-content/uploads/2020/03/cerre_big_tech_acquisitions_merger_control_EU_2020.pdf> accessed 5 August 2025.
10. Bundeskartellamt, 'Cooperation between Microsoft and OpenAI currently not subject to merger control' (*Bundeskartellamt*, 15 November 2023) <www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/15_11_2023_Microsoft_OpenAI.html> accessed 25 January 2026.
11. Caffarra C, 'The Global AI Conundrum for Antitrust Agencies' (*Tech Policy.Press*, 7 February 2024) <www.techpolicy.press/the-global-ai-conundrum-for-antitrust-agencies/> accessed 8 January 2026.
12. CFI Team, 'Types of Mergers' (*Corporate Finance Institute*) <https://corporatefinanceinstitute.com/resources/valuation/types-of-mergers/> accessed 22 January 2026.
13. Chondrakis G, 'The acquisition of tech companies: Balancing innovation and competition' (*Do Better by Esade*, 20 November 2023) <https://dobetter.esade.edu/en/acquisition-tech-companies-balancing-innovation-competition> accessed 19 June 2025.
14. CNBC, 'Anthropic hits $2 billion in annualized revenue on business demand for AI' (*CNBC,* 30 May 2025) <www.cnbc.com/2025/05/30/anthropic-hits-3-billion-in-annualized-revenue-on-business-demand-for-ai.html#:~:text=Anthropic hits $3 billion in annualized revenue,generation a major driver for Anthropic's business.> accessed 11 January 2026.
15. Competition and Markets Authority, Australian Competition and Consumer Commission and Bundeskartellamt, 'Joint Statement on Merger Control Enforcement' (*Bundeskartellamt*, 20 April 2021), <www.bundeskartellamt.de/SharedDocs/Publikation/EN/Stellungnahmen_Opinion/Joint_Statement_CMA_ACC_Bundeskartellamt.pdf?__blob=publicationFile&v=1> accessed 8 May 2025.
16. Competition & Markets Authority, 'Microsoft/OpenAI Partnership Merger Inquiry' (*UK Government*, 8 December 2023) <www.gov.uk/cma-cases/microsoft-slash-openai-partnership-merger-inquiry> accessed 25 January 2026.
17. Competition & Markets Authority, *AI Foundation Models: Technical update report* (16 April 2024)

<https://assets.publishing.service.gov.uk/media/661e5a4c7469198185bd3d62/AI_Foundation_Models_technical_update_report.pdf> accessed 24 January 2026.

18. Contreras B, 'FTC Chair Lina Khan Says Antitrust Regulations Help Small Businesses Too' (*Inc.,* 20 September 2024) <www.inc.com/brian-contreras/ftc-chair-lina-khan-says-antitrust-regulations-help-small-businesses-too.html> accessed 30 June 2025.
19. Crawford G, Valletti T and Caffarra C, ''How tech rolls': Potential competition and 'reverse 'killer acquisitions' (*VOXEU Blog*, 11 May 2020) <https://cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions> accessed 19 June 2025.
20. Crémer J, de Montjoye Y-A and Schweitzer H, 'Competition Policy for the Digital Era' (*Publications Office of the European Union*, 2019) <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en> accessed 5 August 2025.
21. Cunningham C, Ederer F and Ma S, 'Killer Acquistions' (2021) 129(3) Journal of Political Economy 649.
22. Dentons, 'The ''pro-growth'' CMA changes tack on merger control' (*Dentons*, 18 February 2025) <www.dentons.com/en/insights/articles/2025/february/18/the-pro-growth-cma-changes-tack-on-merger-control> accessed 20 January 2026.
23. Directorate-General for Competition, 'Merger procedures' (*Competition Policy*) <https://competition-policy.ec.europa.eu/mergers/procedures_en> accessed 20 January 2026.
24. Directorate-General for Competition, 'Mergers Regulation' (*Competition Policy*) <https://competition-policy.ec.europa.eu/mergers/legislation/regulation_en> accessed 24 January 2026.
25. Eben M and Reader M, 'Taking Aim at Innovation-Crushing Mergers: A Killer Instinct Unleashed?' 42 Yearbook of European Law 286.
26. Espinoza J and Bradshaw T, 'Brussels Explores Antitrust Probe into Microsoft's Partnership with OpenAI' (*Financial Times*, 28 June 2024) <www.ft.com/content/cdb1ab92-9148-47c4-add1-a079a7652ddb> accessed 25 January 2026.
27. European Commission, 'Towards more effective EU merger control' (White Paper) COM (2014) 449 final.
28. European Commission, 'Digital Markets Act: Commission designates six gatekeepers' (*European Commission Press Corner*, 6 September 2023)

<https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_4328/IP_23_4328_EN.pdf> accessed 25 January 2026.

29. European Commission, ‘Ex-post Evaluation: EU Competition Enforcement and Acquisitions of Innovative Competitors in the Pharma Sector Leading to the Discontinuation of Overlapping Drug Research and Development Projects’ (*Publications Office of the European Union*, 2024) <https://data.europa.eu/doi/10.2763/3714497> accessed 5 August 2025.
30. European Commission, ‘About the Digital Markets Act’ (*European Commission*) <https://digital-markets-act.ec.europa.eu/about-dma_en> accessed 21 January 2026.
31. European Commission, ‘Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control’ (*European Commission*, 3 August 2016) <https://ec.europa.eu/smart-regulation/roadmaps/docs/2017_comp_003_evaluation.pdf> accessed 30 June 2025.
32. European Commission, ‘Gatekeepers’ (*European Commission*) <https://digital-markets-act.ec.europa.eu/gatekeepers_en> accessed 22 January 2026.
33. Federal Competition Authority, ‘Meta (Facebook)/Giphy merger: Supreme Cartel Court confirms Cartel Court’s conditional clearance’ (*Federal Competition Authority*, 24 June 2022) <www.bwb.gv.at/en/news/detail/submetering-cartel-decision-relating-to-ista-oesterreich-gmbh-final-1> accessed 24 January 2026.
34. Fons-Rosen C, Roldan-Blanco P and Schmitz T, ‘The Effects of Startup Acquisitions on Innovation and Economic Growth ’(2021) Max Planck Institute for Innovation & Competition Research Paper No. 23-02.
35. Foucart R, ‘Tech Firms Face More Regulation After Moves to Stop ‘Killer’ Acquisitions – but Innovation Could Also Be Under Threat’ (*The Conversation*, 25 July 2022) <https://theconversation.com/tech-firms-face-more-regulation-after-moves-to-stop-killer-acquisitions-but-innovation-could-also-be-under-threat-187278> accessed 22 January 2026.
36. Fountoukakos K, ‘Introduction to EU merger control’ (*Herbert Smith Freehills, Introduction to Competition Law and Consumer Protection, UCL Lecture Notes*, 22 February 2023).
37. Furman J and others, ‘Unlocking Digital Competition: Report of the Digital Competition Expert Panel’ (*UK Government,* 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment

_data/file/785547/unlocking_digital_competition_furman_review_web.pdf> accessed 5 August 2025.

38. Grant M, 'Understanding Startups: How to Successfully Launch a New Business' (*Investopia*, 20 September 2025) <www.investopedia.com/terms/s/startup.asp> accessed 19 June 2025.
39. Groza T and Wierzbicka A, 'Merger by Other Means? AI Partnerships and the Frontiers of (Post-Industrial Organisation' (2024) Artificial Intelligence and Competition Policy, Concurrences 9781954750425 <https://sciencespo.hal.science/hal-04932627/file/Groza & Wierzbicka_Edited.pdf> accessed 8 January 2026.
40. Haranas M, 'Microsoft's CoreWeave Deal "Adds AI Pressure" To AWS, Google' (*CRN*, 2 June 2023) <www.crn.com/news/cloud/microsoft-s-coreweave-deal-adds-ai-pressure-to-aws-google> accessed 25 January 2026.
41. Henn S, 'Instagram Sells For $1 Billion, Despite No Revenue' (*NPR*, 10 April 2012) <www.npr.org/2012/04/10/150372288/instagram-sells-for-1-billion-despite-no-revenue> accessed 24 January 2026.
42. Herbert Smith Freehills Kramer, 'Key themes emerging from the UK CMA's review of AI partnerships under its merger control rules' (*Herbert Smith Freehills Kramer*, 21 November 2024) <https://marketing.hsfkramer.com/20/31244/landing-pages/cma-ai-partnership-s-review---21-november-2024.pdf> accessed 8 January 2026.
43. Hutchinson CS and others, 'Big tech's acquisition challenge to EU merger control' (2023) 19(2) European Competition Journal 226.
44. Jamal F, 'Global merger control trends and outlook 2024/2025' (*White & Case*, 2025) <www.whitecase.com/insight-our-thinking/global-merger-control-trends-outlook-2024-2025> accessed 11 August 2025.
45. Khan LM, 'Statement Regarding the Request for Information on Merger Enforcement' (*Federal Trade Commission*, 18 January 2022), <www.ftc.gov/system/files/documents/public_statements/1599783/statement_of_chair_lina_m_khan_regarding_the_request_for_information_on_merger_enforcement_final.pdf> accessed 8 May 2025.
46. Kirkwood JB, 'How Big Tech's AI Startup Alliances Could Harm Competition?' (*Promarket,* 29 August 2024) <www.promarket.org/2024/08/29/how-big-techs-ai-startup-alliances-could-harm-competition/> accessed 8 January 2026.
47. Kocaefe H, 'Killer Acquisitions Under EU Merger Control: Recent European Commission Decisions' (2024) EU Law Working Papers No. 84, Stanford-Vienna Transatlantic

Technology Law Forum <https://law.stanford.edu/wp-content/uploads/2024/02/EU-Law-WP-84-Kocaefe.pdf> accessed 19 June 2025.

48. Kowalski K, Volpin C and Zombori Z, 'Competition in Generative AI and Virtual Worlds' (Competition Policy Brief No 3/2024, European Union, 2024) <https://competition-policy.ec.europa.eu/document/download/c86d461f-062e-4dde-a662-15228d6ca385_en> accessed 8 January 2026.
49. Le Point Magazine, Interview with Emanuel Macron (12 April 2022).
50. Levy N, Mostyn H and Buzatu B, 'Reforming EU Merger Control to Capture 'Killer Acquisitions' - The Case for Caution' (2020) 19 Competition Law Journal 51.
51. Levy N, Waksman A and Sheridan L, 'Global merger control - where to now?' (2019) 8(2) Journal of Antitrust Enforcement 319.
52. Mamchych K, 'How Many AI Companies Are There in the World? [2026]' (*Ascendix*, 7 January 2026) <https://ascendixtech.com/how-many-ai-companies-are-there/> accessed 21 January 2026.
53. McLean A, 'Seminar 17. Merger control III' (*Introduction to Competition Law and Consumer Protection, UCL Lecture Notes*).
54. Microsoft, 'Microsoft to acquire GitHub for $7.5 billion' (*Microsoft*, 4 June 2018) <https://news.microsoft.com/source/2018/06/04/microsoft-to-acquire-github-for-7-5-billion/> accessed 24 January 2026.
55. Microsoft, 'The next chapter of the Microsoft-OpenAI partnership' (*Microsoft Corporate Blogs*, 28 October 2025) <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/> accessed 8 January 2026.
56. Montgomery B, Paul K and agencies, 'US launched inquiry into AI deals by Microsoft, OpenAI, Google and Amazon' (*The Guardian*, 25 January 2024) <www.theguardian.com/technology/2024/jan/25/ftc-ai-inquiry-microsoft-alphabet-amazon> accessed 8 January 2026.
57. Moreno Belloso N and Petit N, 'The EU Digital Markets Act (DMA): A Competition Hand in a Regulatory Glove' (2023) 48 European Law Review 391.
58. Motta M and Peitz M,'Big Tech Mergers' (2020) Barcelona GSE Working Paper Working Paper No1198 <https://bw.bse.eu/wp-content/uploads/2020/07/1198-file.pdf> accessed 24 January 2026.
59. M&A Community, 'Full guide on conglomerate merger: Types, impact, best practices' (*M&A Community*, 22 January 2024) <https://mnacommunity.com/insights/conglomerate-merger/> accessed 22 January 2026.

60. OECD, ‘Series Roundtables on Competition Policy N° 144 Roundtable: Definition of Transaction for the Purpose of Merger Control Review’ (*OECD*, 24 January 2014), <www.oecd.org/content/dam/oecd/en/publications/reports/2014/01/definition-of-transaction-for-the-purpose-of-merger-control-review_76d09369/36e27703-en.pdf> accessed 20 January 2026.
61. OECD, ‘Start-ups, Killer Acquisitions and Merger Control’ (*OECD*, 2020) <www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf> accessed 30 June 2025.
62. Oliveira E, ‘Preventing killer acquisitions in the digital sector: The combination between Article 22 of the EU Merger Regulation and the Digital Markets Act’ (*Autoridade da Concorrencia*, 21 March 2023) <www.concorrencia.pt/sites/default/files/documentos/CR50_EvaOliveira_v2.pdf> accessed 25 January 2026.
63. Plummer MR, ‘Exxon-Mobil Merger Creates the World’s Second-Largest Company’ (*EBSCO*, 2023) <www.ebsco.com/research-starters/politics-and-government/exxon-mobil-merger-creates-worlds-second-largest-company> accessed 22 January 2026.
64. RBB Economics, ‘A question of balance: Comments on a proposed new test for U.K. merger control’ (*RBB Brief,* 1 May April 2019) <www.datocms-assets.com/79198/1667223651-rbb_b59_brief1.pdf> accessed 24 January 2026.
65. Reuters, ‘OpenAI CFO says annualized revenue crosses $20 billion in 2025’ (*Reuters*, 19 January 2026) <www.reuters.com/business/openai-cfo-says-annualized-revenue-crosses-20-billion-2025-2026-01-19/> accessed 21 January 2026.
66. Robertson VHSE, ‘The Future of Digital Mergers in a Post-DMA World’ (2023) 44(10) European Competition Law Review 447.
67. Rouhette A and Garenne P, ‘De Facto Control in EU Merger Control Law’ (2020) 4 Concurrences Competition Law Review 1.
68. Ruse CS and va de Gronden JW, ‘The Interaction between the Digital Markets Act and Merger Control Instruments’ (2024) 3 Mp. Tijdschrift Mededingingsrecht in de Praktijk 20.
69. Sakellariou-Witt S and others, ‘Global merger control trends and outlook 2024/2025’ (*White & Case*, 20 January 2025) <www.whitecase.com/insight-our-thinking/global-merger-control-trends-outlook-2024-2025> accessed 11 January 2026.
70. Sauermann M, ‘The Transaction Value Threshold in Germany – Experiences with the New Size of Transaction Test in Merger Control’ (*Competition Policy International*, 8 October

2019) <www.pymnts.com/cpi-posts/the-transaction-value-threshold-in-germany-experiences-with-the-new-size-of-transaction-test-in-merger-control/> accessed 24 January 2026.

71. Schallbruch M, Schweitzer H and Wambach A, ‘A New Competition Framework for the Digital Economy: Report by the Commission ‘Competition Law 4.0’ (*Competition Policy International,* December 2019) <www.competitionpolicyinternational.com/wp-content/uploads/2019/12/CPI-Schallbruch-Schweitzer-Wambach.pdf> accessed 24 January 2026.
72. Sharma A, ‘Acquistion’ (*wiseAdvizor*) < https://wiseadvizor.com/glossary/acquisition> accessed 19 June 2025.
73. Shimoda W, ‘Understanding Startups: Key Factors for Success, Growth, and Market Disruption’ (*Medium*, 23 July 2023) <https://medium.com/@syantien/understanding-startups-key-factors-for-success-growth-and-market-disruption-80f0cf6f6875> accessed 19 June 2025.
74. Šmejkal V, ‘Concentrations in digital sector - a new EU antitrust standard for ‘'killer acquistions'' needed?’ (2020) 7(2) Journal for International and European Law, Economics and Market Integrations 1.
75. Strehlow R, ‘What is Unicorn Company? Examples and Insights’ (*Crunchbase*, 12 November 2025) <https://about.crunchbase.com/blog/what-is-a-unicorn-company> accessed 21 January 2026.
76. Taylor M, ‘Small but significant non-transitory increase in price definition’ (LexisNexis) <www.lexisnexis.co.uk/legal/glossary/small-but-significant-non-transitory-increase-in-price> accessed 20 January 2026.
77. Theodorakis NI and Tzeferakou D, ‘New Rules for Digital Platforms in the EU and the US: Opening Pandora’s Box, Stanford-Vienna European Union Law’ Working Paper No. 73 <https://law.stanford.edu/wp-content/uploads/2023/01/EU-Law-WP-73-Theodorakis-Tzeferakou.pdf> accessed 22 January 2026.
78. Turgot C, ‘Killer Acquisitions in Digital Markets: Evaluating the Effectiveness of the EU Merger Control Regime’ (2021) 5 European Competition and Regulatory Law Review 112.
79. Tzanaki A, ‘Dynamism and politics in EU merger control: The perils and promise of a killer acquisitions solution through a law & economics lens’ (2025) New Working Paper Series, No. 353, University of Chicago Booth School of Business, Stigler Center for the Study of the Economy and the State.

80. Vestager M, ‘Keeping the EU Competitive in a Green and Digital World’ (Speech, *European Commission*, 2 March 2020) <https://ec.europa.eu/newsroom/comp/items/670949/en> accessed 24 January 2026.
81. Vestager M, ‘Making Artificial Intelligence Available to All – How to Avoid Big Tech’s Monopoly on AI’ (Speech, Brussels, 19 February 2024) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_24_931> accessed 25 January 2026.
82. Vestager M, ‘Speech by EVP Margrethe Vestager at the European Commission workshop on ‘'Competition in Virtual Worlds and Generative AI’’’ (Speech, Brussels, 28 June 2024) <https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550> accessed 11 January 2026.
83. von der Leyen U, ‘Europe’s Digital Decade and Autonomy’ (Speech, *European Commission*, 16 September 2020), <https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1655> accessed 8 May 2025.
84. Whish R and Bailey D, *Competition Law* (11th edn, OUP 2024).
85. Witt A, ‘The Digital Markets Act – Regulating the Wild West’ [2023] 60(3) Common Market Law Review.