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BIG TECH MERGERS AND MODERN ANTITRUST LAW: RETHINKING COMPETITION IN DIGITAL MARKETS

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Abstract

Acquisition has become a defining instrument of strategy for the small group of firms collectively termed as 'Big Tech', raising the question of whether merger control regimes built around 20th century industrial markets remain capable of constraining digital consolidation. This article examines this question through the distinctive economics of platform markets, including network effects, multi-sided pricing and the compounding value of proprietary data, before tracing the doctrinal shift from the structuralist presumptions of Brown Shoe to the consumer welfare standard associated with the Chicago School, and the subsequent challenge to that standard mounted by the New Brandeis movement. It then undertakes a detailed comparative examination of recent litigation involving Meta, Google, Microsoft, and Amazon, including the Federal Trade Commission's unsuccessful retrospective challenge to Meta's acquisitions of Instagram and WhatsApp, decided in November 2025, the remedies judgment concluding the United States' search monopolization case against Google, the Ninth Circuit's 2025 affirmation of Microsoft's acquisition of Activision Blizzard, and the pending structural litigation against Amazon. The article compares the ex-ante gatekeeper model adopted under the European Union's Digital Markets Act with the conduct-based approaches retained in the United States, the United Kingdom's strategic market status regime, and India's newly introduced deal value notification threshold. It concludes that conventional retrospective enforcement is structurally ill-suited to markets capable of transformation within a single product cycle, and proposes calibrated procedural reforms, including deal value thresholds, presumptive burden-shifting for dominant acquirers, and interim behavioral conditions, capable of being adopted without abandoning the existing doctrinal architecture of competition law.

Keywords: *Big Tech; mergers and acquisitions; antitrust regulation; competition law; Digital Markets Act; killer acquisitions; platform dominance.*

I. Introduction

In the space of two decades, a handful of firms headquartered on the western seaboard of the United States have come to occupy a position in the global economy that earlier generations of competition lawyers would have struggled to imagine. Alphabet, Amazon, Apple, Meta and Microsoft, collectively and colloquially termed "Big Tech", intermediate an extraordinary share of the world's search queries, social interactions, retail transactions, mobile software distribution and cloud computing infrastructure.[1908] Their growth has not occurred through organic expansion alone. Acquisition has been a central instrument of strategy: between 2010 and 2019 alone, the five largest American technology companies completed several hundred

[1908] Jason Furman et al., *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* 1–4 (HM Treasury 2019).

acquisitions, the overwhelming majority of which closed without formal challenge.[1909] Instagram, WhatsApp, DoubleClick, Fitbit, LinkedIn, Activision Blizzard, and Whole Foods are only the most visible entries on a much longer list.

This pattern has placed considerable strain on a body of antitrust law that was, for much of the latter half of the 20th century, built around the premise that markets defined by price and output could be assessed using relatively static tools of market share and concentration. Digital markets complicate that premise in several respects. They are frequently characterised by network effects, by the bundling of free and paid services, by multi-sided pricing structures in which the paying customer, typically an advertiser, is distinct from the user whose attention is being sold, and by an abundance of proprietary data that functions as a durable barrier to entry.[1910] A merger that appears, on a conventional horizontal analysis, to involve modest market overlap may nonetheless eliminate a nascent competitive threat long before that threat fully materialises, a phenomenon now widely described in the literature as a 'killer acquisition'.[1911]

The regulatory response to this challenge has varied considerably by jurisdiction and has, on the whole, lagged behind the pace of corporate consolidation. In the United States, decades of jurisprudence shaped by the Chicago School's consumer welfare standard left enforcement agencies reluctant to challenge acquisitions that did not produce an immediate, demonstrable increase in consumer prices, a standard ill-suited to markets where the core product is offered without charge.[1912] The European Union, by contrast, has moved towards an explicitly ex ante regulatory model, exemplified by the Digital Markets Act 2022, which imposes structural obligations on designated 'gatekeepers' independently of any finding of anticompetitive conduct in a specific transaction.[1913] India, the United Kingdom and a growing number of other jurisdictions have followed with their own variants of platform-specific regulation.

This article examines the adequacy of contemporary antitrust regulation in addressing the competitive risks posed by Big Tech acquisitions. It proceeds in six further stages. Section II considers the distinctive economic features of digital platform markets that complicate conventional merger analysis. Section III traces the doctrinal evolution of merger control law, from the structuralist presumptions of the mid-twentieth century to the consumer welfare standard and its contemporary critics. Section IV undertakes a detailed examination of recent litigation and regulatory action involving Meta, Google, Microsoft, and Amazon, drawing on judgments delivered as recently as late 2025. Section V compares the regulatory architectures adopted in the United States, the European Union, the United Kingdom and India. Section VI identifies the principal structural weaknesses that persist notwithstanding these reforms, and Section VII proposes a set of incremental but achievable reforms capable of being adopted without a wholesale rewriting of established competition law principles.

II. The Strategic Economics of Acquisition in Platform Markets

Digital platforms differ in important respects from the manufacturing and retail firms around which much of twentieth century antitrust doctrine developed. Three structural features deserve particular attention.

The first is the presence of direct and indirect network effects. A social network, a marketplace or an operating system becomes more valuable to each additional user as the total number of

[1909] Fed. Trade Comm'n, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study* 4–6 (Sept. 2021).
[1910] David S. Evans & Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* 25–48 (Harv. Bus. Rev. Press 2016).
[1911] Colleen Cunningham, Florian Ederer & Song Ma, Killer Acquisitions, 129 J. Pol. Econ. 649, 651–53 (2021).
[1912] Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* 50–89 (Free Press 1978).
[1913] Regulation (EU) 2022/1925 of the European Parliament and of the Council of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1, arts. 2–3.

users grows, producing a tendency towards market tipping in which a single platform, once it achieves critical mass, becomes extremely difficult to dislodge.[1914] Where network effects are strong, an incumbent's acquisition of a smaller rival is not merely the purchase of a competing product; it is frequently the elimination of the only credible mechanism by which users might coordinate a mass migration away from the incumbent.

The second feature is the multi-sided character of platform pricing. Many of the services offered by Meta, Google and others are supplied to end users at a zero monetary price, with revenue instead extracted from advertisers on the other side of the platform.[1915] Because the conventional structure-conduct-performance framework for merger analysis was built around the assumption that anticompetitive harm manifests as a price increase to consumers, mergers that affect only the advertiser side, or that affect quality, privacy or innovation rather than price, have proved difficult to capture using traditional tools.

The third feature is the strategic value of data. Acquisitions such as Google's purchase of DoubleClick in 2008 and of Fitbit in 2021, or Facebook's earlier acquisition of WhatsApp, were valuable not principally because of the revenue the acquired firms generated at the time of sale, but because of the behavioural and biometric data those firms had accumulated or were positioned to accumulate. Data of this kind compounds: a platform with more user data can train better recommendation and advertising algorithms, which in turn attracts more users and more data, producing a feedback loop that conventional static market share calculations struggle to capture.[1916]

These features give rise to what is now widely termed the 'kill zone' effect: empirical evidence indicates that venture capital investment in segments adjacent to a dominant platform's core business declines measurably once that platform has demonstrated a pattern of acquiring nascent rivals, because investors anticipate that successful start-ups in the space will either be acquired on terms favourable to the incumbent or be driven out by the incumbent's replication of their product.[1917] The economic harm of a killer acquisition is accordingly diffuse and prospective. It does not manifest in a price increase observable at the moment the transaction closes; it manifests in the competitive trajectory that does not occur, the products that are never launched and the investment that is redirected elsewhere. This makes such mergers exceptionally difficult to challenge under merger control regimes that require an enforcement agency to demonstrate, often within a matter of months and to the satisfaction of a reviewing court, that a transaction is likely substantially to lessen competition by reference to a defined and provable counterfactual.[1918]

A further complication concerns market definition. Antitrust analysis has traditionally required regulators to delineate a relevant product market using tools such as the hypothetical monopolist test, asking whether a small but significant non-transitory increase in price would cause a sufficient number of consumers to switch to alternative products. In a market where the product is free, this test cannot operate in its conventional form, forcing courts and agencies to develop substitute concepts such as quality-adjusted output or attention as the relevant unit of competition.[1919] As the discussion of *FTC v. Meta Platforms Inc.* in Section 4 demonstrates, disputes over market definition have proved decisive in some of the most consequential recent litigation against Big Tech firms, frequently determining the outcome of a

1914 Furman et al., supra note 1, at 34–39.
1915 Org. for Econ. Co-operation & Dev. [OECD], *Quality Considerations in the Zero-Price Economy* 9–15 (2018).
1916 Maurice E. Stucke & Allen P. Grunes, *Big Data and Competition Policy* 81–104 (Oxford Univ. Press 2016).
1917 Sai Krishna Kamepalli, Raghuram G. Rajan & Luigi Zingales, *Kill Zone*, Nat'l Bureau of Econ. Rsch., Working Paper No. 27146, at 2–4 (2020).
1918 Clayton Act § 7, 15 U.S.C. § 18 (2018), amended by Celler-Kefauver Antimerger Act, Pub. L. No. 81-899, 64 Stat. 1125 (1950).
1919 U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* 11–14 (Dec. 18, 2023).

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case independently of the underlying conduct alleged.

The empirical literature lends some support to these concerns, while also illustrating their evidentiary difficulty. Thomas Wollmann's study of an inadvertent change to merger notification thresholds in the United States found that the number of transactions escaping mandatory pre-merger review was several times larger than enforcement agencies had previously assumed, with smaller, frequently digital, acquisitions disproportionately represented among the transactions that evaded scrutiny altogether.[1920] This finding is consistent with the broader pattern observed across the case studies examined in Section 4: the acquisitions that have generated the most sustained regulatory controversy, including Instagram and WhatsApp, were precisely those that fell beneath conventional notification thresholds at the time they were completed, meaning that whatever competitive harm they may have caused was identified, if at all, only through resource-intensive retrospective litigation rather than through the comparatively efficient mechanism of ex ante merger review.

III. Doctrinal Evolution of Antitrust and Merger Control

The statutory architecture of American antitrust law was substantially complete before the advent of digital computing. The Sherman Act 1890 prohibits restraints of trade and monopolisation;[1921] the Clayton Act 1914, as substantially strengthened by the Celler-Kefauver Act of 1950, prohibits acquisitions the effect of which 'may be substantially to lessen competition, or to tend to create a monopoly'.[1922] For much of the period between the 1950s and the 1970s, enforcement under these statutes was guided by a structuralist philosophy, articulated most influentially in *Brown Shoe Co. v. United States*, which treated even moderate increases in market concentration as presumptively suspect and was willing to credit Congress's broader concerns about the preservation of local control and small business alongside narrower economic efficiency.[1923]

This structuralist approach was substantially displaced from the late 1970s onward by the so-called Chicago School, whose proponents, most prominently Robert Bork, argued that the sole legitimate purpose of antitrust law was the maximisation of consumer welfare, generally understood in practice as protection against higher prices and reduced output.[1924] The 'consumer welfare standard' became the operative framework for American merger review and, refracted through decades of judicial and agency practice, produced a system markedly more permissive of consolidation than its structuralist predecessor, particularly where a proposed transaction did not threaten an immediate and quantifiable price effect.

This framework has been the target of sustained academic and political criticism in the past decade, most prominently in Lina Khan's 2017 article 'Amazon's Antitrust Paradox', which argued that the consumer welfare standard was systematically blind to forms of harm characteristic of platform markets, including predatory below-cost pricing sustained by investor capital, the leveraging of dominance across adjacent markets and the suppression of potential competition through acquisition.[1925] Khan's subsequent appointment as Chair of the Federal Trade Commission in 2021 coincided with a marked, if ultimately only partially successful, shift in American enforcement posture, including revised merger guidelines issued jointly by the Federal Trade Commission and Department of Justice in December 2023 that explicitly addressed network effects, the protection of nascent and potential competition, and the

[1920] Thomas G. Wollmann, Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act, 1 Am. Econ. Rev.: Insights 77, 78–85 (2019).
[1921] Sherman Act §§ 1–2, 15 U.S.C. §§ 1–2 (2018).
[1922] Clayton Act, supra note 11.
[1923] Brown Shoe Co. v. United States, 370 U.S. 294, 315–20 (1962).
[1924] Bork, supra note 5, at 90–106.
[1925] Lina M. Khan, Amazon's Antitrust Paradox, 126 Yale L.J. 710, 716–23 (2017).

cumulative effect of a course of smaller acquisitions by a dominant firm.[1926]

The European Union has approached merger control through a structurally different statutory architecture. The EU Merger Regulation requires notification of concentrations meeting specified turnover thresholds and empowers the European Commission to prohibit a transaction found significantly to impede effective competition, in particular through the creation or strengthening of a dominant position.[1927] Historically, the European framework has been somewhat more receptive than its American counterpart to theories of harm extending beyond unilateral price effects, including foreclosure of competitors and the protection of an undistorted competitive structure, a sensibility traceable to the Court of Justice's early jurisprudence in Continental Can.[1928] Notwithstanding this more permissive evidentiary posture, the Commission's merger control regime has nonetheless cleared the large majority of Big Tech acquisitions reviewed before it, including Facebook's 2014 acquisition of WhatsApp, a decision for which the Commission was later separately fined €110 million for having received materially incorrect information from Facebook during the merger review process.[1929]

A persistent structural weakness shared by both jurisdictions concerns notification thresholds calibrated to turnover or revenue rather than transaction value. Because many of the start-ups acquired by Big Tech firms generate little or no revenue at the time of acquisition, despite holding considerable strategic value, a substantial number of consequential transactions, including the WhatsApp and Instagram deals examined below, fell beneath the jurisdictional thresholds that would ordinarily have triggered mandatory notification, and proceeded to closing with limited or no ex-ante regulatory scrutiny.[1930]

IV. Big Tech Acquisitions under Judicial and Regulatory Scrutiny: Case Studies

A. Meta Platforms: Instagram, WhatsApp and the Limits of Retrospective Merger Challenge

No recent case better illustrates both the ambition and the evidentiary difficulty of retrospective merger enforcement than the Federal Trade Commission's decade-spanning challenge to Meta Platforms' 2012 acquisition of Instagram and 2014 acquisition of WhatsApp. The Commission's amended complaint alleged that Facebook, as Meta was then known, had identified Instagram as a nascent threat to its dominance in personal social networking and had neutralised that threat through acquisition rather than competition, repeating the pattern two years later with WhatsApp.[1931] After surviving two motions to dismiss, the case proceeded to a six-week bench trial before Chief Judge James Boasberg of the United States District Court for the District of Columbia, commencing in April 2025.[1932]

On 18 November 2025, Judge Boasberg ruled in Meta's favor. The court accepted that Meta might well have possessed monopoly power in the personal social networking market at the time the acquisitions were consummated, but held that Section 13(b) of the Federal Trade Commission Act required the agency to demonstrate that Meta currently possessed monopoly power, a forward-looking standard the Commission could not satisfy.[1933] Central to the court's reasoning was its rejection of the Commission's proposed market definition, which had confined personal social networking to Facebook, Instagram, Snapchat, and a minor player, MeWe. The court found instead that

[1926] Merger Guidelines, supra note 12, §§ 2, 6, 9.
[1927] Council Regulation 139/2004, on the Control of Concentrations Between Undertakings (EC Merger Regulation), art. 2(3), 2004 O.J. (L 24) 1 (EC).
[1928] Case 6/72, Europemballage Corp. & Cont'l Can Co. v. Comm'n, 1973 E.C.R. 215, ¶¶ 23–26.
[1929] Commission Decision of May 17, 2017, imposing a fine on Facebook for supplying incorrect or misleading information in connection with a Commission investigation, Case M.8228—Facebook/WhatsApp, 2017 O.J. (C 286) 6.
[1930] Org. for Econ. Co-operation & Dev. [OECD], *Start-Ups, Killer Acquisitions and Merger Control* 18–22 (OECD Competition Comm. 2020).
[1931] Substitute Amended Complaint for Injunctive and Other Equitable Relief at ¶¶ 4–12, Fed. Trade Comm'n v. Facebook, Inc., No. 20-cv-3590 (D.D.C. Sept. 8, 2021), ECF No. 82.
[1932] Sullivan & Cromwell LLP, *Meta Prevails in FTC's Antitrust Case Challenging Instagram and WhatsApp Acquisitions* (S&C Insights, Dec. 2025).
[1933] Memorandum Opinion at 60–68, Fed. Trade Comm'n v. Meta Platforms, Inc., No. 20-cv-3590 (D.D.C. Nov. 18, 2025), ECF No. 693 [hereinafter Meta Opinion].

Meta's products now compete directly with TikTok and YouTube, platforms that had barely existed, or had not existed in their current form, at the time the underlying acquisitions occurred.[1934] The decision illustrates a recurring difficulty for structural remedies premised on conduct that occurred many years before judgment: by the time litigation concludes, the competitive landscape against which the relevant market must be assessed may have changed so substantially that the historical conduct, however troubling at the time, becomes difficult to remedy through divestiture.

B. Google: Self-Preferencing, Search Distribution and the Limits of Structural Remedy

Google has faced parallel and largely independent lines of antitrust scrutiny on both sides of the Atlantic. In the European Union, the Commission's 2017 decision finding that Google had abused its dominant position by systematically favoring its own comparison-shopping service, Google Shopping, over rival services in its general search results was upheld by the General Court in 2021 and, in a Grand Chamber judgment of 10 September 2024, by the Court of Justice of the European Union, which confirmed the €2.4 billion fine and clarified that self-preferencing by a dominant platform can constitute a standalone abuse under Article 102 TFEU independent of the narrower 'refusal to supply' doctrine established in Bronner.[1935]

In the United States, the Department of Justice's challenge to Google's search distribution agreements proceeded on a monopolization rather than a merger theory, but its remedial phase offers a useful comparator for the limits of structural intervention against an already-dominant platform. Having found in August 2024 that Google had unlawfully maintained its monopoly in general search and search text advertising principally through exclusive distribution agreements with device manufacturers and browser developers,[1936] Judge Amit Mehta issued a remedies judgment, on 2 September 2025, that declined the government's request for the forced divestiture of Google's Chrome browser and Android operating system, reasoning that such relief exceeded the scope of the underlying liability finding.[1937] The court instead prohibited exclusive default agreements, required Google to share certain search index and user interaction data with qualified competitors, and established a Technical Committee to oversee compliance for a period of six years. The judge expressly noted that the rapid emergence of generative artificial intelligence products had altered the competitive calculus underlying the case, observing that AI-based search alternatives were better positioned to challenge Google's dominance than any conventional search engine had been in over a decade.[1938] As of mid-2026, both parties have lodged appeals against different aspects of the judgment, leaving the matter unresolved.

C. Microsoft: Activision Blizzard and the Vertical Merger Frontier

Microsoft's USD 75 billion acquisition of Activision Blizzard, the largest transaction in the history of the video game industry, tested the capacity of merger control regimes to evaluate vertical and conglomerate theories of harm in a content distribution market. The Federal Trade Commission sought a preliminary injunction to halt the acquisition, arguing principally that Microsoft would have both the incentive and the ability to withdraw the Call of Duty franchise from competing consoles and cloud gaming services following closing.[1939] The United States District Court for the Northern District of California

[1934] Meta Opinion, supra note 26, at 71–79; see also Dechert LLP, *FTC v. Meta Platforms—Market Definition in Rapidly Changing Industries* (Dechert OnPoint, Nov. 26, 2025).

[1935] Case C-48/22 P, Google LLC & Alphabet Inc. v. Comm'n, EU:C:2024:726, ¶¶ 95–116, affirming Case T-612/17, Google LLC & Alphabet Inc. v. Comm'n, EU:T:2021:763; see also Commission Decision C(2017) 4444 final, Case AT.39740—Google Search (Shopping) (June 27, 2017).

[1936] Memorandum Opinion at 130–153, United States v. Google LLC, No. 20-cv-3010 (D.D.C. Aug. 5, 2024).

[1937] Memorandum Opinion and Order on Remedies at 4–18, 180–210, United States v. Google LLC, No. 20-cv-3010 (D.D.C. Sept. 2, 2025).

[1938] Id. at 25–31; see also Hughes Hubbard & Reed LLP, *Court Issues Remedies Ruling in United States v. Google Search Case* (Sept. 4, 2025).

[1939] Complaint ¶¶ 6–18, In re Microsoft Corp. & Activision Blizzard, Inc., FTC Docket No. 9412 (Dec. 8, 2022).

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denied the injunction in July 2023, finding that Microsoft's contractual commitments to maintain multi-platform availability, including a ten-year agreement with Sony, undermined the plausibility of the foreclosure theory, and the Ninth Circuit Court of Appeals affirmed that denial on 7 May 2025, prompting the Commission to formally withdraw its administrative challenge later that month.[1940] The United Kingdom's Competition and Markets Authority had initially blocked the transaction on cloud gaming grounds before reversing course and approving a restructured deal following divestiture of cloud streaming rights, a sequence widely regarded as having exposed significant inconsistency in the treatment of comparable vertical theories of harm across allied jurisdictions.[1941]

D. Amazon: Marketplace Conduct and Pending Structural Litigation

The Federal Trade Commission's September 2023 complaint against Amazon, joined by seventeen state attorneys general, departs from the acquisition-centred theories examined above and instead alleges that Amazon has unlawfully maintained monopoly power in online retail and marketplace services through anti-discounting algorithms that penalize third-party sellers offering lower prices on competing platforms, and through coercive conditions tying eligibility for the Prime badge to the use of Amazon's own logistics services.[1942] The case nonetheless bears directly on the acquisition debate, since the Commission's complaint situates this conduct within a broader pattern in which Amazon has used its position as both retailer and marketplace operator, reinforced over time by acquisitions such as its 2017 purchase of Whole Foods Market and 2018 purchase of the online pharmacy PillPack, to entrench its position across adjacent markets.[1943] Following extended scheduling disputes, the matter is presently set for trial before the United States District Court for the Western District of Washington, with proceedings not expected to commence before early 2027.[1944] A separate, privately litigated class action concerning related anti-discounting conduct, *De Coster v. Amazon.com Inc.*, was certified in August 2025 and is scheduled for trial in June 2027.[1945]

E. Comparative Observations

Read together, the four case studies reveal a consistent pattern that bears directly on the doctrinal critique developed in Section 3. Courts and agencies have proved considerably more willing to intervene in cases premised on ongoing exclusionary conduct, such as the Google search and Google Shopping litigation, than in cases premised on the historical act of acquisition itself, as in Meta and Microsoft. Where intervention has succeeded, the remedy has tended to be behavioural and prospective, restraining future conduct, rather than structural and retrospective, unwinding a completed transaction.[1946] The Activision Blizzard matter is partially an exception to this pattern, but even there the operative constraint, a ten-year multi-platform licensing commitment negotiated with Sony and accepted by the Competition and Markets Authority as a condition of clearance, functioned as a forward-looking behavioral undertaking rather than a structural remedy imposed after the fact.[1947] This pattern suggests that, whatever the formal availability of divestiture as a remedy under both American and European law, adjudicators have in practice gravitated towards solutions that regulate conduct going forward rather than attempt to reconstruct a competitive market structure that may no longer correspond to present

[1940] Fed. Trade Comm'n v. Microsoft Corp., No. 23-15992 (9th Cir. May 7, 2025); Fed. Trade Comm'n, *In the Matter of Microsoft/ Activision Blizzard* (Notice of Withdrawal, May 22, 2025).
[1941] Competition & Mkts. Auth., *Anticipated Acquisition by Microsoft Corporation of Activision Blizzard, Inc.: Final Report* ¶¶ 1–14 (Sept. 22, 2023).
[1942] Complaint ¶¶ 2–11, Fed. Trade Comm'n v. Amazon.com, Inc., No. 2:23-cv-01495 (W.D. Wash. Sept. 26, 2023).
[1943] Id. ¶¶ 45–52.
[1944] Order Granting Class Certification, De Coster v. Amazon.com, Inc., No. 2:21-cv-00693-JHC, at 1–50 (W.D. Wash. Aug. 6, 2025), ECF No. 420
[1945] De Coster v. Amazon.com, Inc., No. 2:21-cv-00693 (W.D. Wash. Aug. 6, 2025) (order granting class certification).
[1946] Compare Google Remedies Opinion, supra note 29, at 180–210 (imposing ongoing behavioral remedies overseen by a technical compliance mechanism), with CMA Final Report, supra note 33, ¶¶ 1–14 (approving a restructured transaction following the divestiture of cloud-streaming rights to Ubisoft).
[1947] See supra Section IV.C; see also CMA Final Report, supra note 34.

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technological and consumer realities, a tendency that itself underscores the case for earlier, ex-ante intervention developed in Section 7 below.

V. Comparative Regulatory Responses

The principal jurisdictional response to the perceived inadequacy of conventional merger control has been a shift towards ex-ante, platform-specific regulation operating independently of case-by-case litigation. The European Union's Digital Markets Act, which entered into force in November 2022 and became fully applicable in March 2024, designates as 'gatekeepers' those undertakings that provide a core platform service in at least three member states, generate annual turnover of at least €7.5 billion or a market capitalization of at least €75 billion, and serve at least forty-five million monthly active end users together with ten thousand annual active business users within the Union.[1948] The Commission has to date designated Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft, and Booking.com as 'gatekeepers' in respect of more than twenty core platform services, subjecting them to a defined list of obligations and prohibitions, including a duty to permit business users to communicate and conclude contracts with their customers outside the gatekeeper's platform, a prohibition on self-preferencing in rankings, and a duty to facilitate interoperability and data portability.[1949] Critically, the Digital Markets Act does not require a finding of anticompetitive effect in any individual case; obligations attach automatically upon designation, reversing the evidentiary burden that has historically constrained conduct-based enforcement under Article 102 TFEU.

The United States has not adopted equivalent legislation. The Platform Competition and Opportunity Act, introduced in Congress in 2021, would have required a covered platform proposing to acquire a competitor or potential competitor to demonstrate by clear and convincing evidence that the acquired firm did not constitute nascent or potential competition, effectively reversing the burden of proof for the largest platforms.[1950] The bill did not progress beyond committee, and subsequent Congresses have not revived comparable proposals, leaving the 2023 Merger Guidelines and case-by-case litigation, illustrated in Section 4 above, as the principal instruments of American enforcement. The United Kingdom has proceeded by a different route, establishing a Digital Markets Unit within the Competition and Markets Authority and, through the Digital Markets, Competition and Consumers Act 2024, empowering that unit to designate firms with 'strategic market status' and impose conduct requirements tailored to the specific competitive dynamics of each designated firm's business, an approach the UK government has characterised as more flexible than the EU's largely uniform obligations regime.[1951]

India presents a particularly instructive comparative case given the scale of its digital consumer market and the relative youth of its merger control framework. The Competition (Amendment) Act 2023 introduced a deal value threshold, requiring notification to the Competition Commission of India of any transaction valued above ₹2,000 crore, approximately USD 240 million, where the target has substantial business operations in India, irrespective of the target's turnover or asset value.[1952] This reform was directly responsive to concerns, voiced prominently in the Commission's own market studies, that conventional asset and turnover thresholds had permitted high-value acquisitions of data-rich but revenue-light start-ups to escape merger review entirely, mirroring the gap identified in the European and American contexts in Section 3

[1948] Digital Markets Act, supra note 6, art. 3.
[1949] Press Release, Eur. Comm'n, DMA: Commission Designates Six Gatekeepers (Sept. 6, 2023); Eur. Comm'n, DMA Gatekeepers Portal, https://digital-markets-act.ec.europa.eu (last visited 25 June 2026).
[1950] Platform Competition and Opportunity Act of 2021, H.R. 3826, 117th Cong. § 2 (2021).
[1951] DMCCA 2024, pt. 1, §§ 2–20.
[1952] Competition (Amendment) Act, No. 9 of 2023, § 5 (India) (amending Competition Act, No. 12 of 2003, § 5); Competition Comm'n of India (Combinations) Regulations, 2024, reg. 9A (India).

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above.[1953] The Commission has since opened conduct investigations against several major platforms, including proceedings concerning Google's Play Store billing practices, though India has thus far declined to adopt an EU-style ex-ante 'gatekeeper' regime, preferring incremental adaptation of its existing competition statute.[1954]

VI. Persistent Challenges in Regulating Big Tech Acquisitions

Notwithstanding more than half a decade of intensified scrutiny across multiple jurisdictions, several structural difficulties continue to limit the effectiveness of antitrust regulation as applied to Big Tech acquisitions.

The first is the temporal mismatch between the pace of litigation and the pace of technological change. The *FTC v. Meta* litigation required almost exactly five years to proceed from the filing of the original complaint to final judgment, during which the competitive landscape against which the relevant market had to be assessed altered so substantially, with the rise of TikTok and the reorientation of Instagram and Facebook themselves towards algorithmically recommended video content, that the underlying historical conduct became extraordinarily difficult to characterize, let alone remedy.[1955] A comparable dynamic is evident in the Google search remedies judgment, where Judge Mehta's explicit reliance on the emergence of generative artificial intelligence as a disruptive force counselling against structural divestiture demonstrates how quickly an evidentiary record compiled over a multi-year trial can be overtaken by market developments occurring even during the pendency of the remedies phase itself.[1956]

The second difficulty concerns the burden and standard of proof applicable to monopolization and merger claims, particularly under Section 13(b) of the Federal Trade Commission Act in the United States, which the Meta court construed as demanding proof of present, rather than historical, monopoly power.[1957] This construction creates a structural advantage for any defendant capable of pointing to subsequent market entry, however imperfect a substitute the new entrant may represent for the competition eliminated at the time of acquisition, and arguably incentivises defendants to delay resolution of litigation in the expectation that intervening market change will erode the government's evidentiary position.

The third difficulty is the persistence of notification gaps for acquisitions of nascent, revenue-light targets. Although India's deal-value threshold and the European Commission's increasing use of Article 22 referrals to capture sub-threshold acquisitions represent partial responses, the underlying problem, that the strategic value of a data-rich start-up is frequently uncorrelated with its current revenue, remains only partially addressed in most jurisdictions, including the United States, where no federal deal value threshold presently exists.[1958]

The fourth difficulty concerns jurisdictional fragmentation and the risk of inconsistent outcomes across allied regulators reviewing the same transaction, illustrated starkly by the divergent initial positions taken by the United Kingdom's Competition and Markets Authority and the Federal Trade Commission with respect to the Activision Blizzard acquisition, and by the broader diplomatic friction the Digital Markets Act has generated between the European Union and the United States, including the imposition of visa restrictions by the US State Department in December 2025 on European officials it associated with the Act's enforcement against American platforms.[1959] Such friction risks transforming what ought to be a technocratic exercise in competition analysis into an

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1953 Competition Comm'n of India, *Market Study on E-Commerce in India: Key Findings and Observations* 38–45 (Jan. 2020).
1954 Google Play Store Case, Case No. 7 of 2020.
1955 See supra notes 23–26 and accompanying text (noting that the original complaint was filed on Dec. 9, 2020, and final judgment was entered on Nov. 18, 2025).
1956 Google Remedies Opinion, supra note 29, at 27–30.
1957 Meta Opinion, supra note 26.
1958 Org. for Econ. Co-operation & Dev. [OECD], supra note 22, at 25–28.
1959 German Marshall Fund of the U.S., *The EU's Digital Markets Act and Digital Services Act* (2026).

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instrument of broader geopolitical and trade contestation, with consequences for the predictability and perceived legitimacy of merger review on both sides of the Atlantic.

Finally, the rapid integration of generative artificial intelligence into existing platform businesses introduces a fifth and still unresolved difficulty: regulators must now determine whether AI capabilities developed in-house by already-dominant firms, or acquired through structured talent transfers designed to avoid conventional merger notification, such as Microsoft's 2024 transaction with Inflection AI, themselves warrant treatment as acquisitions for the purposes of merger control, notwithstanding the absence of a conventional change of corporate control.[1960] The Federal Trade Commission's own 2024 inquiry into partnerships between Microsoft, Google, Amazon, and leading AI developers signalled growing regulatory unease on precisely this point, though no jurisdiction has yet adopted a settled doctrinal framework for assessing such transactions.[1961]

VII. Towards a Reformed Framework

Three reforms, each consistent with the existing architecture of competition law and achievable without wholesale legislative reconstruction, would meaningfully improve the capacity of antitrust regulation to address the risks examined above.

First, jurisdictions that have not already done so should adopt deal value notification thresholds modelled on the Indian reform, supplementing rather than replacing existing turnover-based thresholds, so that high-value acquisitions of data-rich but revenue-light targets receive ex-ante review rather than escaping scrutiny entirely until conduct-based litigation becomes necessary years later.[1962]

Second, where a firm already designated as dominant or as a gatekeeper proposes to acquire an actual or potential competitor, the burden of demonstrating the absence of competitive harm should presumptively shift to the acquiring firm, an approach broadly consistent with that proposed in the unenacted Platform Competition and Opportunity Act and partially reflected in the European Commission's revised guidance permitting referral of sub-threshold transactions under Article 22 of the Merger Regulation.[1963] Such a presumption would not foreclose clearance of genuinely procompetitive transactions but would correct the asymmetry, evident in the Meta litigation, whereby an enforcement agency bears the full evidentiary burden of reconstructing a counterfactual competitive trajectory that may, by the time of judgment, be a decade or more removed from the transaction under review.

Third, enforcement agencies should be empowered, and adequately resourced, to impose interim behavioural conditions, such as data separation or hold-separate orders, pending the outcome of merger review, reducing the practical asymmetry between a well-resourced acquirer capable of integrating a target's data and personnel within months of closing and an under-resourced regulator unable to complete review, let alone litigation, within a comparable timeframe.[1964] None of these reforms requires the wholesale abandonment of the consumer welfare standard; each is better understood as a procedural and evidentiary correction designed to ensure that the standard, whatever its ultimate substantive content, can be applied to platform markets with the same practical effectiveness it historically achieved in markets defined by tangible goods and observable prices.

[1960] Competition & Mkts. Auth., *Anticipated Acquisition by Microsoft Corporation of Certain Employees and Other Assets of Inflection AI, Inc.: Phase 1 Decision* ¶¶ 3–9 (Sept. 6, 2024).
[1961] Press Release, Fed. Trade Comm'n, FTC Issues Orders to Five Companies Regarding AI Investments and Partnerships (Jan. 25, 2024).
[1962] Competition (Amendment) Act, supra note 42; see supra Part V.
[1963] Platform Competition and Opportunity Act, supra note 40, § 3; Communication from the Commission, Guidelines on the Application of the Referral Mechanism Set Out in Article 22 of the Merger Regulation to Certain Categories of Cases, 2021 O.J. (C 113) 1.
[1964] Furman et al., supra note 1, at 91–97 (recommending interim measures and a strengthened merger-control toolkit for digital markets).

Fourth, and more modestly, regulators should formalise the mechanisms of international cooperation and information-sharing that have to date operated largely on an informal basis between the United States agencies, the European Commission, the United Kingdom's Competition and Markets Authority and the Competition Commission of India. The divergent initial positions taken by the Competition and Markets Authority and the Federal Trade Commission with respect to the Activision Blizzard acquisition illustrate the risk that, absent closer coordination, multinational platform transactions will continue to be assessed under materially inconsistent theories of harm across allied jurisdictions, inviting forum-shopping by acquiring firms and undermining public confidence in the coherence of merger control as a global discipline.

VIII. Conclusion

The acquisitions examined in this article, Instagram, and WhatsApp by Meta, the search distribution architecture sustained by Google, Activision Blizzard by Microsoft, and the marketplace conduct presently under challenge at Amazon, illustrate both the scale of consolidation that has occurred in digital markets over the past fifteen years and the considerable difficulty regulators and courts have encountered in addressing that consolidation through the doctrinal tools available to them. The outcome in *FTC v. Meta Platforms Inc.*, in which a decade-old course of conduct could not be remedied because the competitive landscape had moved on by the time judgment was delivered, stands as the clearest illustration of a broader structural problem: antitrust enforcement calibrated to the pace of conventional litigation is poorly suited to markets that can be transformed within a single product cycle.

The European Union's turn towards ex-ante gatekeeper regulation, India's adoption of a deal-value notification threshold, and the United Kingdom's strategic market status regime each represent partial responses to this structural mismatch, but none has yet been tested over a sufficiently long period to permit confident assessment of its effectiveness. What can be said with greater confidence is that the conventional, conduct-based, retrospective model of antitrust enforcement, however successful it proved against the industrial monopolies of the 20th century, requires meaningful procedural adaptation, rather than abandonment, if it is to perform a comparable function in the platform economy of the twenty-first century. The coming years, in which the appeals in *United States v. Google LLC* and the trial of *Federal Trade Commission v. Amazon.com Inc.* are expected to be resolved, are likely to determine whether that adaptation occurs within the existing framework of competition law or whether more fundamental legislative intervention becomes unavoidable.

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