

Killer Acquisitions: How Big Tech’s Startup Buyouts Threaten Innovation and Market Competition

ABSTRACT

This article examines the phenomenon of the “killer acquisitions” wherein the dominant technology firms acquire the nascent competitors to neutralize threats and consolidate market power. It highlights how such acquisitions can disrupt dynamic competition by eliminating innovative challengers before they mature; which ultimately shapes the market structure and consumer choice. This paper explores the global regulatory responses including the US Federal Trade Commission’s reinvigorated merger guidelines, the EU’s *Ex-Ante* Digital Markets Act and UK’s proactive Competitions and Market Authority. Against this backdrop, this article addresses India’s emerging legal framework, noting the introduction of Deal Value Threshold and the proposed Digital Competition Bill designating Systematically Significant Digital Enterprises (SSDEs). It argues for a balanced approach that combines the qualitative and quantitative tests which strengthens institutional capacity and ensures proportionality to avoid overregulation that could stifle innovation. This paper concludes by emphasizing the need for international cooperation and a tailored, adaptive framework to preserve innovation, consumer welfare and market contestability in the digital economy.

INTRODUCTION

The Classical school of economics envisions a *Laissez-faire* economy where there is no central authority who decides what goods or services would be produced, how much it would be produced, at what prices and to whom it would be sold.¹ There are many competitors to produce and sell the goods and services and many buyers to buy it and due to the market forces of demand and supply the prices are decided. Adam Smith terms it as an ‘Invisible Hand’ which guides the producers as well as purchasers while they interact with each other in the making of their decisions.² As per Smith’s observation the prices adjust to guide the buyers and the sellers to make them reach their desired outcome.³ And hence despite decentralized decision making

¹ V Lokanathan, *A History of Economic Thought* (10th edn, S Chand Publishing 2018)

² N Gregory Mankiw, *Principles of Microeconomics* (6th edn, South-Western Cengage Learning 2012) 10

³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published 1776, RH Campbell and AS Skinner eds, Liberty Fund 1981) 18 <https://www.rrojasdatabank.info/Wealth-Nations.pdf> accessed 16 September 2025

and self-interested decision makers, market economies have proven remarkably successful in organizing economic activity to promote overall economic well-being.⁴ The notable thing here is that in the competitive market neither the buyer nor the seller is able to decide the prices on his own. The seller can determine the quantity of the supply only, at the given price, considering the cost of production, and similarly the buyer can make demand at the given price.⁵ The prices are decided by the market forces of demand and supply and not the individuals.

The question arises here is that if the invisible hand is self sufficient then what is the need of the state? Where does the role of the government come from? The answer to this question lies in the premises upon which this game of the invisible hand is based, that is, ‘Competitive Market’. The government ensures that there emerges no player or group of players who can dominate or affect all the market forces and determine the prices. The Government’s role is of a referee which ensures a free and fair competition. Such a role of the government is unopposed in almost all schools of economic thought. The expression of such role of the government are the competition laws across the jurisdictions which primarily ensure three things, that (1) No cartel or agreement is being made between the parties which is harmful for the competition; (2) No one is misusing its dominance in the market or abusing the market power; and (3) No anti-competitive mergers or acquisitions are being done or anti-competitive combinations or amalgamations are being made so as to create monopoly in the market.⁶ This article focuses on the Killer acquisitions of the startups by the big tech companies which comes mainly under the third component mentioned above.

In a rapidly changing world where innovations in the technology are changing it day by day and are overriding the previously dominant technologies which may have been in relevance from many times, in one hand are very helpful in making the lives of the humankind easy, but there comes those situations also wherein the incumbent players acquire them at the very nascent stage in order not to lose relevance, which eventually affects the consumer’s lives. These acquisitions are called “**killer acquisitions**” in which established firms buy new firms in their

⁴ N Gregory Mankiw, *Principles of Microeconomics* (6th edn, South-Western Cengage Learning 2012) 11

⁵ V Lokanathan, *A History of Economic Thought* (10th edn, S Chand Publishing 2018)

⁶Richard Whish QC (Hon), ‘Killer Acquisitions and Competition Law: Is There a Gap and How Should It Be Filled?’ (2022) 34(1) *National Law School of India Review* 1, 6 <https://repository.nls.ac.in/nlsir/vol34/iss1/1> accessed 16 September 2025

nascent stage before they mature into a possible challenger of the future, and to dominate the market power and eliminate competition⁷; and due to the small size of the new firms they escape the threshold set by the competition insuring institutions also.⁸ There are numerous examples of big Tech firms like Apple, Meta (formerly Facebook), Amazon and Microsoft who have made acquisitions worldwide⁹ of the new tech firms so small in the size in terms of the revenue that these acquisitions did not require notifications also to the competition authorities as per the conventional turnover threshold.¹⁰ The classic examples of this are Facebook's acquisitions of Instagram in 2012 and Whatsapp in 2014¹¹ where both the cases were reviewed *ex-post* but they escaped scrutiny in key jurisdictions including the European Union where the turnover did not reach the threshold as set by the EU Merger Regulations.¹² This case illustrates how the future and shape of the market can change by a single incident where the legal window of intervention is closed.

The concern that is raised by such acquisitions is that they disrupt the heart of the dynamic competition where new innovations in products and technologies replace the older ones¹³; and such practices eventually make an impact on the consumer's interest. According to Joseph Schumpeter, a temporary market can be tolerated only in such a case where it is earned by innovations and also challenged by the innovations of the new entrants of the markets, and

⁷Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition Policy for the Digital Era* (European Commission Report 2019) 24 <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en> accessed 16 september 2025

⁸Lear, *Ex Post Assessment of Merger Control Decisions in Digital Markets* (Competition and Markets Authority 2020) 12–14 https://assets.publishing.service.gov.uk/media/5ce54e9aed915d2475aca875/CMA_past_digital_mergers_GOV.UK_version.pdf accessed 16 September 2025

⁹ US Federal Trade Commission, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019* (2021) 2 <https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf> accessed 16 September 2025

¹⁰ OECD, 'Start-up Killer Acquisitions' (DAF/COMP(2020)5, 2020) 10 [https://one.oecd.org/document/DAF/COMP\(2020\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf) accessed 16 September 2025

¹¹ European Commission, *Case M.7217 Facebook/WhatsApp* (2014)

¹² Richard Whish, 'Killer Acquisitions and Competition Law: Is There a Gap and How Should It Be Filled?' (2022) 34(1) *National Law School of India Review* 7 <https://repository.nls.ac.in/nlsir/vol34/iss1/1/> accessed 16 September 2025

¹³ Ben Thompson, 'A Framework for Regulating Competition on the Internet' *Stratechery* (9 December 2019) <https://stratechery.com/2019/a-framework-for-regulating-competition-on-the-internet/> accessed 20 September 2025

this is how ‘creative destruction’ functions.¹⁴ This wave is disturbed when the incumbent firm destroys the competing line of research and innovation by simply using its deep pocket and buying the rival firm to escape future rivalry instead of competing on merits.¹⁵ The instances from the Pharmaceutical industries are attention-worthy where, studies show that a large firm purchases the smaller firm with promising drug pipeline and after purchasing it discontinues all the overlapping research that was previously continuing and hence it deprived the customers from potential therapeutic advantages.¹⁶ In digital spheres where the winner takes all share of the market is even more concerning because once a firm locks in the user data, even if its competitor is the smallest or smaller in size, it can continue a dominance for years by eliminating such a rival.¹⁷

GLOBAL REGULATORY RESPONSES AND TAKEAWAYS

The Competition authorities across the jurisdictions have taken the tasks to confront this issue with different tools and approaches. Such as in the United States, the Federal Trade Commission (“FTC”) and Department of Justice enforce the Sherman Act and the Clayton Act.¹⁸ Section 7 of the Clayton states that no person engaged in any commercial activity shall acquire the assets of another person who is also engaged in commercial activity where in any line of commerce, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. It is Broad enough to capture potential competition but provision as to protect a small start-up that should have grown into a significant rival in future is demanding.¹⁹ Recognising this demand the FTC has come up with an approach in which it pursues the suits based on merger challenges and serial acquisitions and punishes those who monopolise the market. For example, in an ongoing suit against Meta, it seeks the divestiture of the Instagram

¹⁴ Joseph A Schumpeter, *Capitalism, Socialism and Democracy* (Harper 1942) 82-84 <https://periferiaactiva.wordpress.com/wp-content/uploads/2015/08/joseph-schumpeter-capitalism-socialism-and-democracy-2006.pdf> accessed 15 September 2025

¹⁵ OECD, ‘Start-up Killer Acquisitions’ (DAF/COMP(2020)5, 2020) 7 [https://one.oecd.org/document/DAF/COMP\(2020\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf) accessed 16 September 2025

¹⁶ Colleen Cunningham, Florian Ederer and Song Ma, ‘Killer Acquisitions’ (2021) 129 *Journal of Political Economy* 649, 652 <https://www.antitrustinstitute.org/wp-content/uploads/2022/05/0265-Killer-Acquisitions-129-J.-Pol.-Econ.-649-2021.pdf> accessed 15 September 2025

¹⁷ Richard Whish QC (Hon), ‘Killer Acquisitions and Competition Law: Is There a Gap and How Should It Be Filled?’ (2022) 34(1) *National Law School of India Review* 1, 6 <https://repository.nls.ac.in/nlsir/vol34/iss1/1> accessed 16 September 2025

¹⁸ Sherman Antitrust Act 1890, ss 1–2; Clayton Act 1914, s 7

¹⁹ *United States v Marine Bancorporation* 418 US 602 (1974).

and Whatsapp alleging that it acquired them in order to eliminate the market competition and to create monopoly in personal social networking.²⁰ Its draft guidelines on mergers also show a willingness to focus on the future threat of elimination of potential competitions and not just the existing ones.²¹

The European Union (“EU”) has strong ex-post antitrust powers under Articles 101 and 102 of the treaty on the functioning of the European Union along with reforms to its merger control regime.²² After the Facebook- Whatsapp experience, the commission encouraged the member states to refer the mergers to Brussels using article 22 even after they don't meet the EU threshold.²³ This approach of the EU was tested when a referral from the national authorities was made in the case of Illumina-Grail where the target’s turnover despite being low, the jurisdiction was asserted on the basis that it would harm the potential competition in the Cancer-diagnosis.²⁴ Apart from this the EU adopted an Ex-ante framework in the form of Digital Markets Act (“DMA”)²⁵ which imposes obligations on the bigger companies such as Google, Apple and Meta terming them as ‘gatekeepers’. It doesn’t replace the merger control; rather it reduces the after-the-fact enforceability by prohibiting self preferencing, and mandates the data access rules in order to keep the digital markets contestable.

Free from the European Union, the United Kingdom has adopted an especially assertive role. The Competition and Markets Authority (“CMA”) applied a “share of supply” test which captures the small but strategically important deals;²⁶ For example, it ordered Meta to wind down its acquisition of Giphy, a GIF making platform observing that this deal would harm competition in display advertisement and eliminate a nascent challenger.²⁷ Also, it challenged the merger of Sabre-Farelogix in the airline ticketing technology²⁸. These cases show CMA’s willingness to

²⁰ FTC v Facebook Inc, No 1:20-cv-03590 (D DC filed 9 December 2020).

²¹ US DOJ and FTC, *2023 Draft Merger Guidelines* (2023) guideline 2.

²² Treaty on the Functioning of the European Union (TFEU) arts 101–102.

²³ European Commission, ‘Guidance on the Application of the Referral Mechanism set out in Article 22 of the Merger Regulation’ (2021) para 7

²⁴ Commission Decision C(2021) 2847 final, *Illumina/Grail* (2021)

²⁵ Regulation (EU) 2022/1925 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act) [2022] OJ L265/1 art 3

²⁶ Enterprise Act 2002 s 23

²⁷ Competition and Markets Authority, *Facebook (Meta)/Giphy Final Report* (30 November 2021) para 4.1

²⁸ CMA, *Sabre/Farelogix* (2020) para 6.4

intervene in the market deals, even if the market's share metrics suggest it not to, for protecting the nascent competitors and ensuring free competition in the market.

The policy experts across the jurisdictions converge on the various suggestions. The OECD, The UK's Lear Report, and the European Commission's own expert group chaired by Cremer, Montjoye, and Schweitzer - all have suggested adopting both jurisdictional threshold and substantive standards. They suggest adopting "threshold-value" and "strategic-significance" parameters to ensure that the acquisitions of the startups with low revenue and high value could be reviewed.²⁹ They also suggest imaginative or counterfactual analysis by using internal documents and deal valuation so that it could be assets that the target could have grown into a strong competitor.³⁰ Some suggest shifting the burden of proof towards the dominant players once there are certain indicators of risk.³¹ More or less these recommendations are seen in the EU's referral policy using Article 22, DMA's gatekeeper obligations, the UK's proposed Digital markets, Competitions and Consumer Bill and the US's draft merger guidelines.

The outcome of the global landscape is not that all acquisitions are harmful only³²; rather many of those provide capital for the infrastructure, and distribution that helps in the innovation.³³ It is up to the competition authorities to distinguish between those which are enhancing innovation and those which are strategically eliminating the potential rival of the future³⁴. The task is a difficult one, but it is essential if there is a promise of open and fair competition in the market in this digital age. The reforms like FTC's revitalised merger guidelines, EU's DMA and CMA's jurisdictions show that the economies are ready to tackle this

²⁹ OECD, 'Start-up Killer Acquisitions' (DAF/COMP(2020)5, 2020) 25 [https://one.oecd.org/document/DAF/COMP\(2020\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf) accessed 17 September 2025

³⁰ Lear, *Ex Post Assessment of Merger Control Decisions in Digital Markets* (Competition and Markets Authority 2020) 41

³¹ Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition Policy for the Digital Era* (European Commission Report 2019) 41 <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en> accessed 16 september 2025

³² OECD, 'Start-up Killer Acquisitions' (DAF/COMP(2020)5, 2020) 25 [https://one.oecd.org/document/DAF/COMP\(2020\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf) accessed 17 September 2025

³³ Lear, *Ex Post Assessment of Merger Control Decisions in Digital Markets* (Competition and Markets Authority 2020) 60

³⁴ Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition Policy for the Digital Era* (European Commission Report 2019) 52 <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en> accessed 16 september 2025

challenge though it is a fact of debate as to how far and how fast the referee should step into the field.³⁵

INDIA'S EXPERIENCES AND EMERGING LEGAL FRAMEWORK

The plague of killer acquisition has spread in India as well. Examples include Zomato's acquisition of Uber Eats, Ola Cabs acquisition of TaxiForSure, Flipkart's acquisition of Myntra and several acquisition of nascent companies by Byju's³⁶.

Zomato had acquired Uber Eats and gave Uber 9.99% ownership in Zomato. The acquisition resulted in Uber Eats discontinuing its operations and this directed restaurants, users and delivery partners of the Uber Eats apps to the Zomato platform. Deepinder Goyal, Founder and CEO, Zomato commented: "*This acquisition significantly strengthens our position in the category.*" Sources have confirmed that after this acquisition, Zomato will now collectively have a 55% share of the food delivery market and will compete largely with Swiggy now³⁷. One of the reasons for this acquisition was Uber Eats struggle to survive in the competitive food delivery market.

"It is a 100% acquisition and going forward, we have big plans in this segment. Flipkart and Myntra are getting together to create one of the largest e-commerce stories and together we will dominate the market", Flipkart co-founder and CEO Sachin Bansal told reporters when asked to comment on Flipkart's 100% acquisition of Myntra in 2014.³⁸ In this case Myntra was doing well and its growth trajectory was showing potential.

³⁵ US 2023 Draft Merger Guidelines (n 23); Digital Markets Act (n 27); CMA Facebook/Giphy (n 30)

³⁶ Richard Whish QC (Hon), 'Killer Acquisitions and Competition Law: Is There a Gap and How Should It Be Filled?' (2022) 34(1) *National Law School of India Review* 1, 6 <https://repository.nls.ac.in/nlsir/vol34/iss1/1> accessed 16 September 2025

³⁷ Suneera Tandon, 'Zomato acquires Uber Eats business in India to consolidate position' *Mint* (21 January 2020) <https://www.livemint.com/companies/start-ups/zomato-acquires-uber-eats-business-in-india-to-consolidate-position-11579578326776.html> accessed 20 September 2025

³⁸ PTI, 'Flipkart acquires Myntra' *The Times of India* (22 May 2014) <https://timesofindia.indiatimes.com/tech-news/flipkart-acquires-myntra/articleshow/35472797.cms> accessed 20 September 2025

Byju's acquired almost 17 companies in a span of five years, many critics calling this a "shopping spree".³⁹ The companies that were acquired included the test-prep giant Akash Educational Services, the coding platform WhiteHat Jr., and online learning platform Toppr. Many of these companies were performing well, but it seems Byju's hunger for dominance in the ed-tech market overshadowed everything.

All these acquisitions are killer acquisitions. All the companies that were acquired were either struggling, or were still in their nascent stages which is the reason why these acquisitions did not come under the radar of Competition Commission of India (CCI). The Competition Act, 2002 lays down certain thresholds in case of a merger or acquisition of a company. These thresholds included the value of assets and turnover of the company as specified under Section 5 of the act. The reason why the companies included in the examples above did not come in the radar of CCI was because of this: none of these companies crossed the thresholds of value of assets or turnover. This was a big loophole used by the Big Tech companies to dominate the market.

A point to note here is that this was also the time when digital companies were on the rise. Digital companies are different from offline traditional companies in the sense that these enterprises have their working business through an online interface, whereas the traditional offline companies conduct their enterprises through physical and offline means⁴⁰.

The CCI was aware of the loophole being used by Big Tech companies. In light of this, a review committee was formed in 2019 called the Competition Law Review Committee. One of the most important recommendations made by the Committee which is encapsulated in its report is the introduction of "deal value thresholds (DVT)". The Committee noted that certain combinations which were part of the transactions forming part of the digital markets, do not meet traditional asset value thresholds but they do affect the competition in the market and therefore it

³⁹Suprita Anupam, 'BYJU's Acquisition Spree: A Costly, Deadly Gamble' *Inc42* (23 February 2024) <https://inc42.com/features/byjus-acquisition-spre-a-costly-deadly-gamble/#:~:text=23%20Feb'24%20%7C%20By%20Suprita,in%20the%20Indian%20startup%20ecosystem> accessed 25 September 2025

⁴⁰Anand Pawar, 'Digital market, data analysis and the subsequent: Competition law challenges in cyberspace in India' (2021) 4 *Shimla Law Review* 97 <https://hpnlu.ac.in/journal-article.aspx?ref-id=18&article-id=257> accessed 20 September 2025

recommended introducing deal value thresholds for such combinations in addition to the existing thresholds.⁴¹

On 22nd December, 2022, the Parliamentary Standing Committee on Finance presented the 53rd Report on “Anti-Competitive Practices by Big Tech Companies” before the Lok Sabha. The Standing Committee Report identified ten anti-competitive practices (ACPs) by large digital enterprises and gave recommendations on the need to strengthen the competitive framework so as to address such practices. One of the recommendations was the introduction of a ‘Digital Competition Act’ to create a fair, transparent and contestable digital ecosystem.⁴² Meanwhile following the 2019 Report, the CCI, in 2023 amended the Competition Act, 2002 and included DVT in Section 5 and 6 of the Act⁴³. As a result of the Standing Committee Report in 2022, the Ministry of Corporate Affairs constituted the Committee on Digital Competition Law to review the existing provisions of the act and whether they are enough to address the challenges in the digital economy. The Report of this Committee was released in 2024. This report said that there is a need for an ex-ante regulation of digital competition. The report laid down many observations and recommendations related to this. Following this report major change took place. In 2024 itself, the Digital Competition Bill⁴⁴ was introduced which has been tabled for discussion in late 2025 in the Parliament.

The report released by the Committee on Digital Competition Law had some of the key recommendations. *Firstly*, the Committee recommended designating entities offering core digital services as Systematically Significant Digital Enterprises (“SSDEs”) for the purpose of ex-ante regulation, which are susceptible to market concentration. These services include search engines, social networking services, operating systems and web browsers. *Secondly*, the Committee recommended using both qualitative as well as quantitative thresholds in order to designate

⁴¹Report of the Competition Law Review Committee (New Delhi, 26 July 2019) <https://prsindia.org/policy/report-summaries/report-competition-law-review-committee> accessed 20 September 2025

⁴²Report of the Committee on Digital Competition Law – 2024 (New Delhi, 27 February 2024) <https://prsindia.org/files/parliamentary-announcement/2024-04-15/CDCL-Report-20240312.pdf> accessed 20 September 2025

⁴³The Competition (Amendment) Act 2023 (No 9 of 2023, 11 April 2023) <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-amendment-act-20231681363446.pdf> accessed 21 September 2025

⁴⁴Draft Digital Competition Bill, 2024 (March 2024) <https://www.medianama.com/wp-content/uploads/2024/03/DRAFT-DIGITAL-COMPETITION-BILL-2024.pdf> accessed 21 September 2025

enterprises as SSDEs. *Thirdly*, the draft Bill as recommended by the Committee prohibits SSDEs from doing certain unfair practices such as (a) promoting their own or related products over others, (b) using private data of business owners to compete with them, (c) blocking users from using third party apps and (d) forcing users of one service to use their other services. *Fourthly*, the draft Bill allows the Director General (under the 2002 Act) to investigate violations on the CCI's orders. The Committee suggested strengthening CCI's technical capacity including the DG's office for faster detection and resolution of cases. It also suggested constituting a separate National Company Law Appellate Tribunal ("NCLAT") for timely disposal of appeals.⁴⁵

The steps taken by the CCI are laudable, but there seems to be a long way to go in implementing these plans and recommendations by various Committees which are merely on paper and a draft bill which has not yet been discussed in the Parliament; let alone be passed.

RECOMMENDATIONS AND CONCLUSION

The Indian legal framework has reached a crucial turning point where it must incorporate the lessons from international jurisdictions and from the realities of its own digital ecosystem. The introduction of DVT is a welcome move as it identifies the fact that several digital transactions do not cross the asset and turnover thresholds that were set by the Competition Act, 2002 and as a result escape scrutiny by CCI. Yet unlike Germany and Austria, which have provided detailed guidance on how to calculate transaction value which explicitly includes contingent payments, non-compete fees, earn-outs and other forms of consideration, India's version remains undefined.⁴⁶ Similarly, while the United States uses internal documents to obtain deal value evidence in order to capture acquisitions of nascent competitors, the Indian framework has not yet formulated any such mechanisms.⁴⁷ A guidance note issued by CCI which would

⁴⁵ *Report of the Committee on Digital Competition Law – 2024* (New Delhi, 27 February 2024) <https://prsindia.org/files/parliamentary-announcement/2024-04-15/CDCL-Report-20240312.pdf> accessed 20 September 2025

⁴⁶ *Bundeskartellamt, Guidance on Transaction Value Thresholds for Mandatory Pre-Merger Notification* (2018) https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/2018-07_Guidance_Transaction_Value_Thresholds.pdf accessed 21 September 2025

⁴⁷ U.S. Department of Justice and Federal Trade Commission, *Merger Guidelines (2023)* https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf accessed 21 September 2025

draw experiences from Germany and Austria would help ensure that only transactions with real competitive significance are caught in India.⁴⁸

The approach of designating gatekeepers, the SSDEs are equally significant in India's draft Digital Competition Bill. The European Union's Digital Markets Act (DMA) uses a hybrid model which combines objective quantitative thresholds such as revenue and user base with qualitative considerations such as entrenched market position and dependency of business users.⁴⁹ The United Kingdom's Competition and Markets Authority (CMA) also relies on a "Strategic Market Status" test, which again blends qualitative and quantitative indicators.⁵⁰ On the other hand, India's current proposals rely heavily on quantitative or numerical thresholds, which risks both false positives for rapidly growing start-ups and false negatives for entrenched players who exploit dependencies on the market. A more balanced test that combines qualitative factors like leveraging power and cross-market influence is hence necessary.

Another area where India needs to work is building institutional capacity. The Competition Commission of the European Commission has a dedicated task force and the UK also has a dedicated Digital Market Units within the CMA.⁵¹ The FTC of the US also has invested in developing a technical expertise for analysing and tackling the algorithmic and data-driven competition issues.⁵² In contrast, in India the investigating arm in the director general's office in the CCI remains under-resourced in terms of technical and algorithmic expertise. In order to make India's *Ex-Ante* regime credible, it must establish a Digital Markets Unit within the CCI equipped by economists, data scientists and legal experts to strengthen DG's forensic

⁴⁸ Ayush Raj, 'MERGER CONTROL & COMPETITION (AMENDMENT) ACT, 2023: Analysing the Amendment & Advancing Post-Amendment Considerations for the Commission for an Immaculate Combination Regime' (2024) *NLIU Law Review* https://nliulawreview.nliu.ac.in/wp-content/uploads/2024/06/NLIU-Law-Review_Volume-XIII-Issue-2-16-44.pdf accessed 21 September 2025

⁴⁹ European Commission, *Digital Markets Act Regulation (EU) 2022/1925*, Arts 3–7

⁵⁰ UK Competition and Markets Authority, *A New Pro-Competition Regime for Digital Markets* (2021) https://assets.publishing.service.gov.uk/media/60f59c938fa8f50c76838784/Digital_Competition_Consultation_v2.pdf accessed 25 September 2025

⁵¹ European Commission, Directorate-General for Competition, *Competition policy for the digital era* (2019) <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1> accessed 21 September 2025

⁵² *FTC Alters Final Consent Order in Response to Public Comments, Preventing Coordination in Global Advertising Merger* (Press release, 26 September 2025) <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-alters-final-consent-order-response-public-comments-preventing-coordination-global-advertising> accessed 25 September 2025

and economic capacity. Also a fast track dispute resolution system is needed so that in the digitally evolving world the disputes do not suffer due to the bureaucratic hurdles and are resolved in due course of time.

At the same time India's competition authorities must remain mindful of innovation, so that the markets do not ossify due to overregulation, unlike DMA where the DMA imposes broad and permanent obligations on the gatekeepers.⁵³ In contrast to this, the UK model relies on giving proportional remedies. Its SMS model allows flexibility to adapt to different platforms and models.⁵⁴ India, in its emerging startup ecosystem can not afford to be rigid in its rules that may discourage investments and acquisition exits. Thus, safeguards such as Mandatory Impact Assessments, a preference for behavioural over- structural remedies and sunset clauses for the *ex-ante* are essential for keeping the right balance.⁵⁵

Since the digital markets are globally connected, cross-border co-operation and regulatory coordination is necessary. The EU allows referrals for supernatural scrutiny through article 22 even if the transactions are below the national thresholds.⁵⁶ The US and UK maintain joint channels for information sharing and conducting investigation within the OECD frameworks.⁵⁷ India has remained internally focused and has no such framework for international coordination in the case of digital mergers or any other anti-competitive conduct. The CCI can more effectively deal with acquisitions and cross-border competition harms by creating bilateral and multilateral mechanisms for digital cooperation. Apart from this an intra-national coordination between the CCI, the Data Protection Board and sectoral regulators in the telecom

⁵³ Regulation (EU) 2022/1925 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act) [2022] OJ L265/1 art 3

⁵⁴ UK Competition and Markets Authority, *Digital Markets Taskforce Advice* (2020) https://assets.publishing.service.gov.uk/media/5fce7567e90e07562f98286c/Digital_Taskforce_-_Advice.pdf accessed 21 September 2025

⁵⁵ Ayush Raj, 'MERGER CONTROL & COMPETITION (AMENDMENT) ACT, 2023: Analysing the Amendment & Advancing Post-Amendment Considerations for the Commission for an Immaculate Combination Regime' (2024) *NLIU Law Review* https://nliulawreview.nliu.ac.in/wp-content/uploads/2024/06/NLIU-Law-Review_Volume-XIII-Issue-2-16-44.pdf accessed 21 September 2025

⁵⁶ European Commission, *Guidance on the Application of the Referral Mechanism Set out in Article 22 of the Merger Regulation* (2021) https://competition-policy.ec.europa.eu/system/files/2021-10/guidance_article_22_referrals.pdf accessed 21 September 2025

⁵⁷ OECD Secretariat, *Start-ups, Killer Acquisitions and Merger Control: Background Note* (2020) https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf accessed 21 September 2025

and finance would help in avoiding the duplicative and overlapping regulations and even investigations.⁵⁸

To summarise, India's trajectory must be of adaptation and must not be one of transplantation. India must take lessons from the UK's proportionate and flexible approach, the EU's comprehensive ex-ante prohibitions and the US's aggressive ex-post enforcement, in order to craft a digital competition regime that is both effective and is suited to its unique economic context. Clearer DVT rules, strengthened institutional capacity, proportionality safeguards, a hybrid SSDE designation framework and international cooperation are all critical. By bridging these comparative gaps, India can ensure contestability, fairness and innovation in its digital economy.

⁵⁸ Digital Personal Data Protection Act, 2023 (Act 22 of 2023)