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Conglomerate Mergers in Digital Ecosystems: EU Merger Control Beyond Foreclosure*

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ABSTRACT: Over the past two decades, large technology firms have evolved into complex digital ecosystems operating across multiple, interconnected markets. This transformation has been driven not only by internal innovation, but also by extensive merger and acquisition activity, much of which has taken the form of conglomerate mergers. Traditionally regarded as largely benign, such transactions pose distinctive competitive risks in digital markets characterised by network effects, economies of scale and scope, data advantages, and user lock-in.

This article examines how EU merger control has responded to the expansion of digital ecosystems through conglomerate mergers. It argues that traditional theories of harm—centred on foreclosure and static market power—are often ill-suited to capture the cumulative and dynamic effects of ecosystem expansion. Drawing on social-science conceptions of power, the article shows that digital ecosystems exercise multiple, overlapping forms of economic and political influence that extend beyond price effects.

Against this background, the article analyses the European Commission's enforcement practice, with particular attention to the prohibition of Booking's acquisition of eTraveli. The decision has been widely characterised in the literature as the first EU prohibition grounded in concerns of ecosystem entrenchment in a digital-adjacent conglomerate setting. The article situates this case within broader debates on killer acquisitions, assimilation strategies, and the limits of current jurisdictional and substantive tools.

The article concludes that conglomerate mergers in digital ecosystems should no longer be presumed benign. While such transactions may generate efficiencies, they

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also risk reinforcing structural features that reduce contestability and innovation. EU merger control must therefore continue to evolve towards a more dynamic, ecosystem-aware framework capable of addressing long-run competitive harm.

KEYWORDS: digital ecosystems; conglomerate mergers; EU merger control; ecosystem entrenchment; theories of harm.

1. Introduction

Over the past two decades, the global digital economy has undergone a structural transformation. Large technology firms such as Google, Apple, Facebook (now Meta), Amazon, and Microsoft – traditionally referred to as GAFAM[1] – have progressively evolved from single-product companies into complex digital ecosystems operating across multiple markets. These ecosystems integrate core services with a wide array of complementary products, ranging from cloud computing and digital advertising to payment systems, app distribution, and data analytics. Their expansion is sustained by powerful reinforcing mechanisms, including direct and indirect network effects, significant economies of scale and scope, and unparalleled access to vast and diverse datasets. As a result, digital ecosystems have become central infrastructures of the contemporary economy rather than mere participants in individual markets.

The formation of digital ecosystems has been driven not only by internal innovation but also by extensive merger and acquisition activity.[2] Between

[1] The acronym "GAFAM" is used here as a conventional shorthand in European policy and academic discourse. The article also refers, where appropriate, to "Big Tech". Both expressions are employed in a descriptive sense and carry no normative implication.

[2] Where the growth of an undertaking results from the introduction of new products or services, antitrust law has limited scope for intervention – and deliberately so. Competition law aims to protect the proper functioning of the market where competition promotes not only static efficiency, in the form of lower prices, but also dynamic efficiency, understood as innovation and technological development. This remains true even where innovation is driven by investments made by already dominant undertakings, which may, as a result of successful new products or services, gain additional market shares. *See* Court of Justice of the European Union, judgment of 27 March 2012, *Post Danmark A/S v. Konkurrencerådet*, Case C-209/10, EU:C:2012:172, para. 22; Court of Justice of the European Union, judgment of 17 February 2011, *TeliaSonera Sverige AB v. Konkurrensverket*, Case C-52/09, EU:C:2011:83, para. 43. For a critical perspective cautioning against expanding antitrust intervention beyond these limits, see Jonathan M. Klick, "Is the digital economy too concentrated?", Faculty Scholarship at Penn Law (2020), 2260 ff.

1988 and 2020, GAFAM firms concluded more than 850 acquisitions, the vast majority of which occurred during the last decade.[3]

Many of these transactions involved start-ups or firms with limited turnover, which attracted little attention under merger control rules. Yet these targets frequently possessed strategically significant assets, such as innovative technologies, valuable datasets, or access to emerging user communities. Over time, the cumulative effect of these acquisitions has been the consolidation of highly integrated ecosystems capable of shaping competitive conditions across entire sectors.

The implications of this transformation for competition law have been widely debated. Traditional antitrust enforcement against cartels and abuses of dominance generally tolerates firm growth that results from innovation and efficiency. Merger control, by contrast, is inherently preventive: it seeks to address structural changes before competitive harm materialises. In digital markets, however, competitive harm often does not take the form of immediate price increases or output restrictions. Instead, it emerges gradually through reduced innovation, diminished diversity of services, increased switching costs, and the progressive entrenchment of dominant positions. These dynamics pose significant challenges to merger control frameworks that were originally designed for more static market environments.

This article focuses on conglomerate mergers, namely transactions that are neither purely horizontal nor purely vertical.[4] In analogue markets, conglomerate mergers were traditionally regarded as relatively benign and often efficiency-enhancing, except in limited cases, mainly involving tying or bundling practices. The prevailing assumption was that such mergers rarely posed serious threats to competition because they did not eliminate direct competitors or disrupt supply chains. In digital markets, however, conglomerate mergers perform

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[3] On the acquisition strategies of large digital platforms, see Geoffrey G. Parker, Georgios Petropoulos, and Marshall W. Van Alstyne, "Platform mergers and antitrust", *Industrial and Corporate Change* 30, no. 5 (2021): 1311-1343. See also Zhe Jin, Francesco Leccese, and Alexandre Wagman, "How do top acquirers compare in technology mergers? New evidence from an S&P taxonomy", NBER Working Paper No. 29642 (2020), 3 ff., showing that the number of acquisitions per firm is significantly higher for GAFAM companies than for other so-called "top acquirers", and that GAFAM acquisitions are also markedly more dispersed across sectors.

[4] European Commission, *Guidelines on the assessment of non-horizontal mergers* (OJ C 265, 18 October 2008), paras. 91 ff.

a very different function.[5] They enable ecosystem leaders to expand their reach across multiple interconnected markets, reinforcing network effects, deepening data advantages, and strengthening user lock-in. As a result, conglomerate mergers have become a central mechanism through which digital ecosystems consolidate and entrench their power.[6]

The European Commission's 2023 decision to prohibit Booking's acquisition of eTraveli[7] can be read as a confirmation of this paradigm shift. The transaction would have combined Booking, the dominant online travel agency for hotel accommodation in Europe, with eTraveli, a leading flight booking platform. Rather than focusing on foreclosure effects in the flight booking market, the Commission emphasised the risk that the merger would entrench Booking's dominance in hotel bookings by granting it control over a strategically important customer-acquisition channel. This reasoning reflects an ecosystem-based theory of harm, according to which acquisitions of adjacent services may reinforce dominance in a

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[5] While the paradigm cases are GAFAM, the article uses 'digital ecosystem' to refer more broadly to firms that orchestrate multi-service user journeys through data, network effects, and integration – including 'digital-adjacent' platforms such as OTAs.

[6] Jasper Van den Boom and Peerawat Samranchit, "Digital ecosystem mergers in Big Tech – A theory of long-run harm with applications", *Journal of European Competition Law & Practice* 13, no. 6 (2022): 365-373, at 368-370. From a different perspective, it has been argued that in digital markets concentrations often escape traditional merger categories, since a single transaction may simultaneously display horizontal, vertical, and conglomerate features. An acquisition may be vertical insofar as data generated by the acquired start-up constitutes an additional upstream input; conglomerate where a specific feature of the acquired firm complements the acquirer's platform offering; and horizontal where certain functionalities of the target already compete with services offered by the acquiring platform. A clear illustration of this analytical overlap can be found in the Commission's assessment of *Microsoft/Nuance*. Although Nuance is primarily a software company providing out-of-the-box solutions to end users – particularly in the healthcare sector, where customer involvement is significant – the Commission examined: (i) horizontal overlaps between Nuance's activities and Microsoft's application programming interfaces used by developers to integrate speech recognition technology; (ii) the vertical relationship between Microsoft's cloud computing services and Nuance's downstream healthcare transcription software, as well as Nuance's health-related datasets; and (iii) conglomerate links between Nuance's transcription products and certain Microsoft software products. *See* European Commission, Commission Decision of 21 December 2021 in Case COMP/M.10290 – *Microsoft/Nuance*.

[7] European Commission, Decision of 25 September 2023 in Case M.10615 – *Booking Holdings / eTraveli Group*. An action for annulment is currently pending before the General Court (*Case T-1139/23, Booking Holdings v. Commission*), lodged on 5 December 2023 and published in OJ C, 29 January 2024.

core market even in the absence of traditional foreclosure.[8] The decision marks the first EU prohibition widely characterised as based on ecosystem or entrenchment concerns in a digital-adjacent conglomerate setting and signals a willingness to move beyond the assumptions embedded in existing non-horizontal merger guidelines.

This development is significant for two reasons. First, it suggests that conglomerate mergers – long considered marginal within competition law – may become increasingly important in the digital economy. Second, it demonstrates that EU merger control can evolve *de iure condito*, without legislative reform, through the elaboration of new theories of harm grounded in economic analysis and case practice. The *Booking/eTraveli* decision thus represents not merely an isolated outcome but a potential turning point in the assessment of digital mergers.

The aim of this article is therefore twofold. On the one hand, it seeks to explain how digital ecosystems operate and why their expansion through conglomerate mergers may raise distinctive competitive risks. On the other hand, it examines how EU competition law has responded to these challenges and whether existing tools are sufficient. The analysis proceeds as follows. Section 2 outlines the structure and economic foundations of digital ecosystems. Section 3 examines their broader economic and political power. Section 4 reviews the European Commission's approach to digital platform mergers. Section 5 revisits traditional theories of conglomerate harm, while Section 6 presents emerging theories better suited to the digital context. Section 7 analyses the *Booking/eTraveli* decision in detail, and Section 8 concludes with reflections on the future of EU merger control in the digital economy.

The central argument advanced here is that conglomerate mergers within digital ecosystems should no longer be presumed benign. While such mergers may generate efficiencies, they also risk reinforcing structural features that make digital markets prone to concentration and tipping. To safeguard competition, merger control must adopt a dynamic

[8] It is increasingly observed that undertakings traditionally active in analogue markets are also expanding into the digital environment, seeking to replicate – at least in part – the complex and multi-layered structures characteristic of GAFAM ecosystems. See Viktoria H.S.E. Robertson, *Merger review in digital and technology markets: Insights from national case law*, Final report (2022), para. 27, providing further evidence from national merger cases involving not only online travel agency services, but also digital retail of books and household goods, online real estate advertising, app-based bicycle rental services, as well as betting and online gambling platforms.

perspective that takes seriously potential competition, innovation, and cross-market leveraging.[9] The ecosystem theory of harm articulated by the European Commission represents an important step in this direction, but its contours remain to be clarified through future enforcement and judicial review.

2. Digital ecosystems and market power

Digital ecosystems can be described as networks of interdependent products and services organised around a central platform that performs both economic and governance functions.[10] Unlike traditional firms, which typically operate within clearly delimited product markets, ecosystem leaders coordinate activities across multiple markets simultaneously. They provide core services – such as operating systems, search engines, or marketplaces – while integrating complementary offerings either developed internally or supplied by third parties.[11] Through this structure, ecosystems create value not only by selling products but also by orchestrating interactions among users, developers, advertisers, and business partners.[12]

From a governance perspective, digital ecosystems exercise a form of private regulatory power. Platform leaders establish technical standards, set interoperability conditions, determine access to data, and impose contractual rules that shape the behaviour of third parties. Participation in the ecosystem often requires acceptance of non-negotiable terms of service, algorithmic ranking mechanisms, and data-sharing obligations. In this sense, ecosystems function as rule-makers within their own economic domains, blurring the distinction between market actors and regulators.[13]

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[9] OECD, *Theories of harm for digital mergers*, OECD Competition Policy Roundtable Background Note (2023), 27; Jacques Crémer, Yves-Alexandre de Montjoye, and Heike Schweitzer, *Competition policy for the digital era* (Luxembourg: Publications Office of the European Union, 2019), 110 ff.

[10] The OECD defines digital ecosystems as "lines of products and services linked through shared functionalities, which provide benefits to consumers when used together". OECD, *Some economics of digital ecosystems – Note by Marc Bourreau* (Paris: OECD Publishing, 2020), 2.

[11] Digital ecosystems tend to become increasingly complex over time, progressively integrating new technologies – such as artificial intelligence – that enhance their overall functioning and performance. See IMD, "Everything you need to know about digital ecosystems" (2024), available at https://www.imd.org/reflections/digital-ecosystems.

[12] Michael G. Jacobides, Carmelo Cennamo, and Annabelle Gawer, "Towards a theory of ecosystems", *Strategic Management Journal* 39, no. 8 (2018): 2255-2260.

[13] Mariateresa Maggiolino, "Exclusionary abuses of dominance involving digital ecosystems in the European Union", in Pier Luigi Parcu, Maria Alessandra Rossi, and Marco Botta (eds.), *Research*

Network effects represent a fundamental source of ecosystem market power.[14] Direct network effects occur when the value of a service increases with the number of users, as in social networking platforms. Indirect network effects arise in multi-sided markets, where increased participation on one side – such as sellers – enhances the value of the platform for users on the other side – such as buyers.[15] Once a platform reaches critical mass, these effects may generate tipping dynamics that favour a single ecosystem and marginalise rivals.

Economies of scale and scope further reinforce ecosystem dominance. Digital firms can spread fixed costs – such as software development, data analytics, and infrastructure – across a wide range of services. At the same time, economies of scope allow these firms to reuse assets, including algorithms and datasets, in adjacent markets.[16] This dual advantage reduces marginal costs of expansion for incumbents and raises entry barriers for rivals that lack comparable breadth.

Data accumulation constitutes a third pillar of ecosystem market power. Data collected in one market can be leveraged in others, enabling personalisation, targeted advertising, and predictive analytics. Over time, this creates cumulative advantages: the more data an ecosystem controls, the more effectively it can innovate and refine its services. Competitors without access to similar datasets face significant informational asymmetries, undermining their ability to compete on quality and innovation.[17]

These structural features – network effects, economies of scale and scope, and data advantages – do not operate independently. Instead, they reinforce one another in self-perpetuating feedback loops. Increased user participation generates more data, which improves service quality and attracts additional users, further strengthening scale and scope economies.

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handbook on competition and technology (Cheltenham, UK; Northampton, MA: Edward Elgar, 2025), 196.

[14] See also Antonio Robles Martín-Laborda, "Merger control and online platforms: The relevance of network effects", *Market and Competition Law Review* 1, no. 2 (2017): 69-100.

[15] Andrei Hagiu and David B. Yoffie, "Network effects", in Mie Augier and David J. Teece (eds.), *The Palgrave encyclopaedia of strategic management* (Basingstoke: Palgrave Macmillan, 2014).

[16] Hal R. Varian, Joseph Farrell, and Carl Shapiro, *The economics of information technology: An introduction* (Cambridge: Cambridge University Press, 2004), 25-36; Bertin Martens, "Data access, consumer interests and social welfare: An economic perspective", SSRN Working Paper (2020), available at https://ssrn.com/abstract=3605383.

[17] OECD, *The evolving concept of market power in the digital economy – Background note* (2022), 14-15.

This cumulative dynamic explains why digital ecosystems tend to expand relentlessly and why their market power is particularly durable.[18]

From the perspective of merger control, these dynamics have significant implications.[19] Barriers to entry in digital markets are not merely high; they are cumulative and dynamic. Rivals must overcome entrenched network effects, cost advantages, and data asymmetries simultaneously. Conglomerate mergers that expand ecosystem scope may therefore strengthen market power even in the absence of direct overlaps or foreclosure, by accelerating feedback loops and deepening user lock-in.[20]

Finally, rivalry among ecosystems themselves reinforces incentives for expansion.[21] Leading digital firms compete not only within individual markets but also for the position of becoming the default digital environment for users.[22] Expansion into adjacent markets is therefore both defen-

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[18] On the economic and competitive drivers behind the rise of digital conglomerates, see Parker, Petropoulos, and Van Alstyne, "Platform mergers", 1308-1309; Anne Witt, "Who's afraid of conglomerate mergers?", *Antitrust Bulletin* 67, no. 2 (2022): 208-214; Jasper van den Boom and Peerawat Samranchit, "Assessing the long-run competitive effects of digital ecosystem mergers", TILEC Discussion Paper (Tilburg University, 2020), 3; Marc Bourreau and Alexandre de Streel, *Digital conglomerates and EU competition policy* (Working Paper, 2019), arguing that "two key characteristics of the digital economy may explain the rise of digital conglomerates: on the supply side, the presence of significant economies of scope in the development of digital products and services; on the demand side, consumption synergies derived by consumers when adopting product ecosystems".

[19] OECD, *Theories of harm for digital mergers: Summary of discussion*, DAF/COMP/M(2023)1/ANN9/FINAL (2024).

[20] Konstantinos Stylianou, "Exclusion in digital markets", *Michigan Telecommunications & Technology Law Review* 24, no. 2 (2018): 181-218; Georgios Petropoulos, "Competition economics of digital ecosystems", OECD DAF/COMP/WD(2020)91 (2020); Marc Bourreau, "Some economics of digital ecosystems", OECD DAF/COMP/WD(2020)89 (2020); Amelia Fletcher, "Digital competition policy: Are ecosystems different?", OECD DAF/COMP/WD(2020)96 (2020).

[21] Parker, Petropoulos, and Van Alstyne, "Platform mergers", 1309, observing that "these three forces – economies of scope, economies of scale, and network effects that are born of structural and resource differences – frequently lead to first-mover advantage". From a competition policy perspective, one possible response to such first-mover advantages is to authorise mergers that enable rival ecosystems to enter the market. This reasoning can be found, for example, in the Commission's assessment in *Apple/Shazam*, where the concentration was cleared in part on the ground that, in the relevant market for online advertising, other digital ecosystems – such as Google and Facebook – were already active. *See* European Commission, Decision of 6 September 2018 in Case COMP/M.8788 – *Apple/Shazam*.

[22] See Yong Lim, *Tech wars: Return of the conglomerate – Throwback or dawn of a new series for competition in the digital era? Social Science Research Network* 19 (2017): 47-62, referring to the "fear of displacement" as a key factor explaining why digital ecosystems tend to expand their scope by entering new and increasingly diverse markets through targeted merger transactions.

sive and offensive: defensive, to prevent rivals from gaining strategic footholds, and offensive, to capture new sources of data and user engagement. Conglomerate mergers clearly are a central instrument in this competitive strategy.

3. Beyond market power

Competition law has traditionally relied on the concept of market power, defined as the ability of a firm to raise prices, reduce output, or otherwise worsen conditions for consumers without losing substantial business to competitors.[23] This concept remains central, but it is increasingly insufficient to capture the influence exercised by digital ecosystems. Ecosystems do not merely dominate markets in the economic sense; they shape the structure, governance, and evolution of entire sectors. Their influence extends beyond prices and quantities, encompassing the organisation of economic activity and the mediation of social and political processes.

Social science literature offers a broader understanding of power that is particularly useful in the digital context.[24] Power can be conceptual-

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[23] In the United States, antitrust law has historically been rooted in predominantly political concerns. Its original purpose was to protect farmers and small entrepreneurs from large corporations and industrial coalitions, commonly referred to as trusts. This approach was deeply influenced by Jeffersonian, Jacksonian, and Madisonian political thought, which emphasised the risk that the accumulation of significant economic power could translate into undue influence over government, to the detriment of smaller economic actors. Antitrust law was therefore conceived as an instrument to safeguard fairness in commercial transactions and to ensure equal access to market opportunities. A comparable political rationale underpinned the development of competition law in Europe. In particular, the Freiburg School argued that the emergence of cartels and other forms of private economic concentration had facilitated the rise of the Nazi regime. During the Weimar Republic, in the absence of a strong state capable of steering economic policy, private economic power was perceived as having undermined the foundations of a liberal society. Consequently, both in the United States and in Europe, antitrust law came to be regarded as a public instrument aimed at limiting private economic power in order to preserve political pluralism. Protecting competitive markets was seen as a means to disperse economic power and to prevent its excessive concentration from being converted into political dominance. See, James Q. Wilson, "Small business and the Jeffersonian heritage: Portrait of the entrepreneur", *Antitrust Law & Economics Review* 12 (1979): 48-55; Milton D. Stewart, "The case for 'smallness': Entrepreneurship, conglomerates, and the good economic society", *Antitrust Law & Economics Review* 12 (1979): 77-78; Eleanor M. Fox, "The modernization of antitrust: A new equilibrium", *Cornell Law Review* 66 (1981): 1140-1156; Flavio Felice and Massimiliano Vatiero, "Ordo and European competition law", in Fiorito (ed.), *A research annual (research in the history of economic thought and methodology)* (Bingley: Emerald, 2015), 150.

[24] Thomas Humphrey Marshall, "Reflections on power", *Sociology* 3, no. 2 (1969): 141-150, arguing that power should not be understood as a mere capacity, but rather as an event: the possession of

ised not only as the capacity to coerce, but also as the ability to control resources, shape information, and influence preferences. Applied to digital ecosystems, this framework reveals that platform leaders exercise multiple, overlapping forms of power that reinforce one another and amplify their impact on markets and society.

A first dimension is coercive (or rule-setting) power, which arises from the ability of ecosystem leaders to impose rules on participants.[25] Digital platforms determine the conditions under which third parties may access users, distribute applications, or monetise content. These rules are often embedded in terms of service, algorithmic rankings, and interoperability requirements, leaving little room for negotiation. Firms that depend on ecosystem access must comply or face exclusion, making ecosystem leaders de facto regulators within their domains. A second dimension is resource-based (or dispositional) power, stemming from control over essential inputs[26] such as data, digital infrastructure, and technical interfaces. Access to application programming interfaces (APIs), datasets, or cloud infrastructure may be indispensable for effective competition. By controlling these resources, ecosystem leaders influence which firms can innovate, scale, or even survive. This form of power is particularly relevant in digital markets, where control over data and interoperability often determines competitive success. A third dimension is technical (or informational) power, which derives from superior information-processing

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a position of power is in itself meaningless unless power is actually exercised. Power is thus conceptualised as a causal factor, namely as the production of intentionally pursued effects. *See also* Bertrand Russell, *Power: A new social analysis* (London: Allen & Unwin, 1938); Robert Morrison MacIver, *Power transformed: The age-long deliverance of the folk and now the potential deliverance of the nations from the rule of force* (New York: Harper & Row, 1964); Anthony de Crespigny, *Power and its forms* (Oxford: Basil Blackwell, 1968).

[25] The distinction between *dispositional power* and *coercive power* represents the most traditional forms of power, already identified in classical political thought, notably in Machiavelli and Marx. More recent scholarship has highlighted additional forms of power characteristic of contemporary societies, including *technical power* – rooted in superior knowledge and expertise – and *manipulative power*, which operates through the shaping of perceptions and preferences. See Peter Bachrach and Morton S. Baratz, "Two faces of power", *American Political Science Review* 56, no. 4 (1962): 947-952; Peter M. Blau, *Exchange and power in social life* (New York: Wiley, 1964); Michel Foucault, *Power/knowledge: Selected interviews and other writings, 1972-1977* (New York: Pantheon Books, 1980).

[26] Charles E. Lindblom, *Politics and markets: The world's political-economic systems* (New York: Basic Books, 1977).

capabilities.[27] Digital ecosystems collect and analyse vast quantities of data, enabling them to predict consumer behaviour, optimise pricing, and guide innovation trajectories. This informational asymmetry allows ecosystem leaders to anticipate competitive threats and adjust strategies accordingly, often before rivals can react. Smaller firms, lacking comparable analytical capacity, are forced into reactive positions. A fourth dimension is manipulative (or preference-shaping) power, understood as the ability to shape preferences and choices through design.[28] Ecosystem leaders structure user interfaces, defaults, and recommendation systems in ways that subtly steer behaviour. Even when consumers formally retain choice, design features can favour the ecosystem's own services or business partners. This form of power is particularly difficult to detect and remedy, as it operates through architecture rather than explicit exclusion.

Beyond these individual dimensions, digital ecosystems also exercise economic power in a broader sense.[29] They mobilise vast financial resources, employ large workforces, and shape investment patterns across entire industries. Through acquisition strategies, ecosystems influence which innovations reach the market and which are absorbed or abandoned. This gatekeeping role has implications for innovation diversity and long-term competition that extend beyond any single market.

Digital ecosystems also wield political power, both directly and indirectly. Directly, major platforms invest heavily in lobbying and regulatory engagement, seeking to shape legislative and enforcement agendas. Indirectly, they influence public discourse by controlling channels of communication and information dissemination. Search engines, social networks, and app stores act as gatekeepers of visibility, affecting which voices

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[27] *See* Andrei Hagiu, "Ecosystems", in *The Palgrave encyclopaedia of strategic management* (London: Palgrave Macmillan, 2018), 1104-1108; Hal R. Varian, Joseph Farrell, and Carl Shapiro, *The economics of information technology: An introduction* (Cambridge: Cambridge University Press, 2004), 25-36; Bertin Martens, "Data access, consumer interests and social welfare: An economic perspective", SSRN Working Paper (2020), available at https://ssrn.com/abstract=3605383.

[28] Margherita Colangelo and Mariateresa Maggiolino, "Manipulation of information as an antitrust Infringement", *Columbia Journal of European Law* 26, no. 2 (2020): 159-189.

[29] Adolf A. Berle, *Power: Epilogue in America* (New York: Harcourt, Brace & World, 1968), 199-216. See also Ioannis Lianos and Bruno Carballa-Smichowski, "A Coat of Many Colours – New Concepts and Metrics of Economic Power", *Journal of Competition Law & Economics* 18, no. 4 (2022): 795-847, providing a comprehensive conceptual framework and extensive bibliographical references on the evolving notions and measurement of economic power beyond traditional market share analysis.

and ideas gain prominence. This influence over democratic processes raises concerns that go beyond traditional competition law objectives.

Recognising these broader forms of power does not imply that competition law should transform into a general instrument of social regulation.[30] It does, however, underscore why conglomerate mergers in digital ecosystems merit heightened scrutiny. Such mergers may not eliminate competitors directly, but they can reinforce multiple dimensions of power simultaneously – coercive, resource-based, technical, manipulative, economic, and political – thereby entrenching ecosystem dominance in ways that are difficult to reverse.[31]

From a merger control perspective, these dimensions of power are not extraneous to the legal assessment under the EU Merger Regulation ("EUMR").[32] Rather, they translate into legally cognisable parameters such as the existence of competitive constraints, the contestability of adjacent markets, the incentives and ability of the merged entity to leverage its position across markets, and the likely effects of the transaction on innovation and potential competition. In this sense, ecosystem power provides the structural background against which conglomerate mergers may produce anticompetitive effects even in the absence of explicit exclusionary conduct.

4. The European Commission's approach to digital platform mergers

For a long period, the European Commission's approach to mergers involving large digital platforms was characterised by caution and restraint. Despite the rapid expansion of GAFAM firms through acquisitions, the Commission reviewed only a limited number of such transactions and did not prohibit any of them before 2023. More broadly, up to December

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[30] Court of Justice of the European Union, judgment of 13 February 1979, *Hoffmann-La Roche v. Commission*, Case C-85/76, EU:C:1979:36, paras. 38-39. Accordingly, these dimensions matter here only insofar as they translate into competition-relevant mechanisms (contestability, cross-market leveraging, innovation incentives, and entry barriers) assessable under Article 2 EUMR.

[31] Court of Justice of the European Union, judgment of 27 March 2012, *Post Danmark A/S v. Konkurrencerådet*, Case C-209/10, EU:C:2012:172, para. 22; judgment of 17 February 2011, *TeliaSonera Sverige AB v. Konkurrensverket*, Case C-52/09, EU:C:2011:83, para. 43. For a critical perspective on concentration trends in the digital economy and the limits of antitrust intervention, see Jonathan M. Klick, "Is the digital economy too concentrated?", Faculty Scholarship at Penn Law (2020), 2260 ff.

[32] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("EUMR"), *OJ* L 24, 29 January 2004, 1-22.

2025,[33] the Commission had examined twenty-one merger transactions involving GAFAM firms: six involving Google/Alphabet, two Apple, three Facebook/Meta, one Amazon, and nine Microsoft. None of these transactions was prohibited. Sixteen were cleared pursuant to Article 6(1)(b) EUMR,[34] on the basis that they raised no serious doubts as to their compatibility with the internal market,[35] and only one of these clearances was

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[33] In addition to what will be said in the text and in the subsequent notes, consider Viktoria H. S. E. Robertson, "Antitrust law and digital markets", in *The Routledge handbook of smart technologies: An economic and social perspective*, ed. Heinz D. Kurz, Marlies Schütz, Rita Strohmaier, and Stella S. Zilian (London/New York: Routledge, 2022), 432.

[34] In accordance with Article 2(2) and (3) of the Regulation, the Commission may and must prohibit concentrations which are likely to impede competition significantly, where appropriate by creating or strengthening a dominant position in the common market or in a substantial part of it. And this is because the market power thus obtained by the company that arises from the merger will allow the latter to negatively affect the parameters that tell of the state of health of competitive gaming (i.e. prices, quantity, variety, quality and innovation) both through unilateral acts that will produce an increase in prices or a decrease in the quality of products and through behaviours that presuppose and require a form of coordination between this company and the competitors in a market that has now become oligopolistic. For a complete survey of economic theory on unilateral effects, see Marc Ivaldi, Bruno Jullien, Patrick Rey, Paul Seabright and Jean Tirole, *The economics of unilateral effects* (Toulouse: IDEI, 2003). Final Report to DG Competition, European Commission. With regard to the unilateral effects implied by dominance, see Judgment of 14 February 1978, *United Brands Company and United Brands Continentaal BV v. Commission*, C-27/76, ECR 1978 207, para. 65; Judgment of 13 February 1979, *Hoffmann-La Roche & Co. v. Commission*, C-85/76, ECR 1979 461. With respect to particular cases of oligopoly that also have unilateral effects, see, Teresa Vecchi, "Unilateral conduct in an oligopoly according to the Discussion Paper on Art. 82: Conscious parallelism or abuse of collective dominance", *World Competition* 3 (2008): 385; Jonathan B. Baker and Joseph Farrell, "Oligopoly coordination, economic analysis, and the prophylactic role of horizontal merger enforcement", Washington College of Law Research Paper No. 2020-23 (2020), 4. The reconfirmation of the Commission's power to assess mergers with the potential to create or strengthen oligopolies harmful to competition was the result of a long and complex process, necessitated by the lack of a specific provision in Regulation 4064/89. It was only with the judgment of the Court of Justice of 31 March 1998 that the Community competition rules were interpreted in such a way as to allow the Commission to consider the effects of mergers also in terms of the consolidation of a collective dominant position.

[35] European Commission, Decision of 25 September 2025 in Case COMP/M.12070 – *Meta/Reliance/JV*. European Commission, Decision of 5 August 2025 in Case COMP/M.12060 – *Alphabet/Foxconn/JV*; European Commission, Decision of 28 March 2023 in Case COMP/M.10796 – *Google/Photomath*; European Commission, Decision of 23 February 2016 in Case COMP/M.7813 – *Sanofi/Google/DMI JV*; European Commission, Decision of 13 February 2012 in Case COMP/M.6381 – *Google/Motorola Mobility*; European Commission, Decision of 25 July 2014 in Case COMP/M.7290 – *Apple/Beats*; European Commission, Decision of 3 October 2014 in Case COMP/M.7217 – *Facebook/WhatsApp*; European Commission, Decision of 15 March 2022 in Case COMP/M.10349 – *Amazon/MGM*; European Commission, Decision of 21 December 2021 in Case COMP/M.10290 – *Microsoft/Nuance*; European Commission, Decision of 5 March 2021 in Case COMP/M.10001 –

subject to commitments.[36] The remaining five transactions were examined following an in-depth investigation (Phase II), two of which were authorised under Article 8(1),[37] while three were cleared subject to commitments.[38] These figures have often been criticised as excessively low when compared with the overall number of acquisitions carried out by digital ecosystems since 2010.[39]

However, the limited number of cases reviewed by the Commission is largely explained by jurisdictional constraints. Most GAFAM acquisitions did not fall within the Commission's competence, as they lacked a Community dimension and did not exceed the turnover thresholds triggering mandatory notification at EU level. Moreover, not all of the twenty-one transactions examined by the Commission had a Community dimension. Four were reviewed following a reasoned request under Article 4(5) EUMR,[40] while two were examined pursuant to Article 22(1), following referrals by Member States.[41] In addition, one notified transaction resulted

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Microsoft/Zenimax; European Commission, Decision of 19 October 2018 in Case COMP/M.8994 – *Microsoft/GitHub*; European Commission, Decision of 4 December 2012 in Case COMP/M.7047 – *Microsoft/Nokia*; European Commission, Decision of 10 February 2012 in Case COMP/M.6474 – *GE/Microsoft/JV*; European Commission, Decision of 7 October 2011 in Case COMP/M.6281 – Microsoft/Skype; European Commission, Decision of 18 February 2010 in Case COMP/M.5727 – *Microsoft/Yahoo! Search Business*; European Commission, Decision of 6 December 2016 in Case COMP/M.8124 – *Microsoft/LinkedIn*.

[36] European Commission, *Microsoft/LinkedIn*, COMP/M.8124.

[37] European Commission, Decision of 11 March 2008 in Case COMP/M.4731 – *Google/DoubleClick*; European Commission, Decision of 6 September 2018 in Case COMP/M.8788 – *Apple/Shazam*.

[38] European Commission, Decision of 27 January 2022 in Case COMP/M.10262 – *Meta/Kustomer*; European Commission, Decision of 17 December 2020 in Case COMP/M.9660 – *Google/Fitbit*; European Commission, Decision of 15 May 2023 in Case COMP/M.10646 – *Microsoft/Activision Blizzard*.

[39] Massimo Motta and Martin Peitz, "Removal of potential competitors – A blind spot of merger policy?", CRC TR 224 Discussion Paper Series (2020), observing that "in dynamic industries, firms often face new competitive threats. If firms are able to identify those threats early on, they may simply acquire potential competitors *under the radar* of competition authorities" (emphasis added).

[40] European Commission, *Google/Photomath*, COMP/M.10796; European Commission, *Facebook/WhatsApp*, COMP/M.7217; European Commission, *Microsoft/Zenimax*, COMP/M.10001; European Commission, *Microsoft/GitHub*, COMP/M.8994.

[41] European Commission, *Meta/Kustomer*, COMP/M.10262; European Commission, *Apple/Shazam*, COMP/M.8788. The application of Article 22 has expanded, notably in cases such as *Illumina/Grail*, where the Commission's substantive assessment was triggered by an Article 22 referral raising concerns related to innovation and potential competition. See European Commission, Decision of 6 September 2022 in Case COMP/M.7272 – *Illumina/Grail*, following a referral pursuant to Article 22(1) of Regulation (EC) No. 139/2004, notwithstanding the absence of EU turnover

in a swift compatibility decision because the merged entity would not carry out any activity within the European Union.[42] These jurisdictional features significantly reduce the explanatory value of raw enforcement statistics when assessing the Commission's approach to digital ecosystem mergers.

That said, several commentators have argued that, even after accounting for jurisdictional limits, the Commission has adopted an overly lenient approach towards digital ecosystems.[43] While it is true that no GAFAM merger had been prohibited prior to Booking/eTraveli, it is also true that, particularly in recent years, the Commission's scrutiny has become more stringent, with four of the twenty-one transactions cleared subject to conditions.[44] Nevertheless, the Commission has consistently authorised

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thresholds. See Vicente Bagnoli and Nicola M. Faraone, "*Illumina/Grail*: The 'new normal' of killer acquisitions and below-threshold acquisitions in search of a reconsideration", *Market and Competition Law Review* 9, no. 2 (2025): 105-148.

[42] European Commission, *GE/Microsoft/ JV*, COMP/M.6474.

[43] Indeed, this observation cut out here on the events of digital ecosystems could concern the more general way in which the European Commission has exercised control over concentrations – cf. Pauline Affeldt et al., *Market concentration in Europe: Evidence from antitrust markets*, DIW Berlin Discussion Paper No. 1930 (2021). Consider, for example, that mergers in the semiconductor markets have also all been cleared, only sometimes with the adoption of commitments. Cf. European Commission, Decision of 30 June 2021 in Case COMP/M.10097 – *Advanced Micro Devices/ Xilinx*; European Commission, Decision of 23 November 2015 in Case COMP/M.7686 – *Avago/ Broadcom*; European Commission, Decision of 12 May 2017 in Case COMP/M.8314 – *Broadcom/ Brocade*; European Commission, Decision of 12 October 2018 in Case COMP/M.9054 – *Broadcom/CA*; European Commission, Decision of 30 October 2019 in Case COMP/M.9538 – *Broadcom/Symantec Enterprise Security Business*; European Commission, Decision of 20 May 2021 in Case COMP/M.10059 – *SK Hynix/Intel's NAND and SSD Business*; European Commission, Decision of 14 October 2015 in Case COMP/M.7688 – *Intel/Altera*; European Commission, Decision of 18 January 2018 in Case COMP/M.8300 – *Qualcomm/NXP Semiconductors*.

[44] European Commission, Decision of 27 January 2022 in Case COMP/M.10262 – *Meta/Kustomer*, paras. 631–634 and Annex, the European Commission expressed concern about the possibility that Meta would engage in anti-competitive behaviour vis-à-vis Kustomer's competitors, i.e. developers of CRM software, by preventing them from accessing Meta, if necessary, by reducing the quality of the APIs shared with them in order to integrate their CRMs with the various messaging functionalities offered by Meta. As a result, it gave the green light to the acquisition by imposing two key conditions: (*i*) Meta had to ensure fair and non-discriminatory access to its public APIs for messaging channels, allowing both Kustomer's competing CRM software vendors and new players in the market to take advantage of the same resources; (*ii*) Meta has undertaken to provide any specific improvements to the messaging functions used by Kustomer's customers in the future as well, thereby ensuring an optimal experience for Kustomer's existing users in the future (§§ 631 to 634 as well as the annex to the decision). Also, for European Commission, *Microsoft/ LinkedIn*, COMP/M.8124; European Commission, *Google/Fitbit*, COMP/M.9660; European Commission, *Microsoft/Activision Blizzard*, COMP/M.10646.

vertical integrations[45] through which digital ecosystems acquired complementary technologies, such as in *Google/DoubleClick*,[46] *Apple/Beats*[47] and *Microsoft/Nuance*,[48] as well as acquisitions of data pools intended to

[45] And, indeed, given the way digital ecosystems are composed, it is not surprising that in as many as fourteen of the twenty-one cases it examined, the European Commission assessed the possible vertical effects produced by the merger. Vertical mergers affect companies operating at different levels of the supply chain. For example, a producer of a given product ('the upstream undertaking') merges with one of its distributors ('the downstream undertaking'); cf. European Commission, *Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*, OJ C 265, 18 October 2008, 6-25, para. 4.

[46] European Commission, *Google/DoubleClick*, COMP/M.4731, para. 278. While it is true that the merged entity would have controlled both a large intermediation platform (*AdSense*) and a leading provider of *ad serving* tools for *display* ads, however, the evidence examined by the Commission did not suggest that the merged entity would have had the ability and incentives to foreclose competitors in intermediation markets by leveraging its leverage on its leading position in the *ad serving industry.* There would then remain credible alternatives for customers to turn to, and the network effects present were not strong enough to induce *tipping.* Consequently, the Commission considered that any strategy aimed at attracting operators to AdSense through input foreclosure or a series of *bundling/tweaking* strategies was unlikely to foreclose competitors in intermediation markets (see paras. 325-329). Moreover, Google would not have had the ability or at least the incentives to foreclose competitors in the *ad serving* market, at least on the advertiser side, where the bundled products are not sold simultaneously, and the pricing mechanism is peculiar (paras. 330-332).

[47] European Commission, *Apple/Beats*, COMP/M.7290. Apple did not have the ability and incentive to preclude competing *streaming* services from accessing music content or using the iOS operating platform. In particular, the Commission considered that it was unlikely that the vertical relationship between Apple and Beats Electronics would lead to foreclosure on customers or inputs, given the limited market share of Beats Electronics and Apple in the supply of headphones. In addition, the Commission did not consider it plausible that Apple had the ability and incentive to use its bargaining power to convince major record labels not to offer music to streaming services competing with Beats Music and iTunes. In addition, although iOS was already on the market, it was never used to produce such, and Apple's competitors can still access the streaming music offering using devices with different operating systems (paras. 41-45).

[48] European Commission, *Microsoft/Nuance*, COMP/M.10290. While the Commission had identified a vertical link between Microsoft's *cloud computing* (Azure) and Nuance's downstream transcription software for healthcare, it nevertheless also noted that competing transcription service providers in healthcare did not depend on Microsoft for cloud computing services and transcription service providers in healthcare did not constitute a particularly important of the *cloud computing service* (paras. 131-139 and 144-149). That is also the case *in* European Commission, *Google/Photomath*, COMP/M.10796, where the Commission found that the merged undertaking had no incentive to reduce access to Google Search or Google Play in such a way as to foreclose access to rivals, because competing mathematical tools did not depend on access to Google Search and Google Play to acquire new users – in fact ,acquiring them through other channels (paras. 97-116 and 139-167).

be integrated with the acquirer's own datasets, as in *Facebook/WhatsApp*[49] and *Microsoft/GitHub.*[50]

Indeed, those transactions could not be regarded as capable of producing exclusionary effects to the detriment of GAFAMs' horizontal rivals or of the undertakings acquired by them. In the Commission's view, they did not deprive rivals of access to essential inputs or distribution channels – such as Google Search, Google Play, or Azure – and therefore lacked the minimum "pathogenic content" required for the prohibition of vertical mergers.[51] In other words, the cumulative conditions necessary to establish anticompetitive foreclosure were not simultaneously met.[52] From this perspective, these transactions could not be said to meet the traditional criteria under which vertical concentrations are considered anticompetitive.

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[49] European Commission, *Facebook/WhatsApp*, COMP/M.7217. The Commission observed, first, that regardless of whether or not the merged entity decided to introduce advertising on WhatsApp, there would continue to be sufficient other actual and potential competitors that were equally favourable to Facebook to offer targeted advertising; and, secondly, that, irrespective of the fact that the merged entity had started to use WhatsApp user data to improve targeted advertising on Facebook's social network, there would continue to be a large amount of internet user data that is valuable for advertising purposes and that is not under Facebook's sole control (paras. 173-179 and 184-189). For privacy aspects and its interactions with the protection of competition, see Giuseppe Colangelo and Mariateresa Maggiolino, "Data protection in attention markets: Protecting privacy through competition?", *Journal of European Competition Law & Practice* 8, no. 6 (2017): 363; Dzhuliia Lypalo, "Can competition protect privacy? An analysis based on the German Facebook case", *World Competition* 44, no. 2 (2021): 169; Giuseppe Colangelo, "Antitrust über Alles. Whither competition law after Facebook?", *World Competition* 42, no. 3 (2019): 355.

[50] European Commission, *Microsoft/GitHub*, COMP/M.8994. Indeed, the Commission noted that Microsoft had neither the ability nor the incentive to refuse or reduce access to GitHub data, its downstream DevOps tools and/or IaaS (infrastructure as a service)/PaaS (platform as a service) competitors, in a way that would foreclose competition in those potential markets (paras. 114-119).

[51] In general, in assessing the likelihood of a foreclosure scenario at the input level, the Commission assesses: (i) whether the merged entity would, after the transaction, have the ability to significantly foreclose access to inputs; (ii) whether it would have an incentive to do so, and (iii) whether such a foreclosure strategy would have a significant negative effect on downstream competition. Cf. Non-Horizontal Merger Guidelines, paras. 31-32.

[52] See, for example, the following cases European Commission, Decision of 7 November 2006 in Case COMP/M.4300 – *Philips/Intermagnetics*; European Commission, Decision of 11 December 2006 in Case COMP/M.4314 – *Johnson & Johnson/Pfizer Consumer Healthcare*; European Commission, Decision of 5 December 2006 in Case COMP/M.4389 – *WLR/BST*; European Commission, Decision of 4 April 2007 in Case COMP/M.4403 – *Thales/Finmeccanica/Alcatel Alenia Space & Telespazio*; European Commission, Decision of 22 December 2006 in Case COMP/M.4494 – Evraz/Highveld; European Commission, Decision of 23 April 2007 in Case COMP/M.4561 – GE/Smiths Aerospace.

Nevertheless, beyond the confines of traditional foreclosure theory – which typically governs the assessment of vertical effects – these transactions contributed to strengthening the technological infrastructures of digital ecosystems and expanding the scope, completeness, and accuracy of their data pools. This dynamic progressively widened the competitive gap between GAFAMs and their rivals.[53] A more dynamic assessment, particularly in cases such as *Facebook/WhatsApp*, might have shifted the focus from the static differences between the parties' communication services to the ability of digital technologies to rapidly redeploy capabilities across markets, recognising the possibility that the two firms could become horizontal competitors in the short term.[54]

Similarly, the European Commission has never prevented GAFAM firms from acquiring their horizontal competitors, whether current or potential.[55] In the cases examined involving existing competitors, this outcome can be explained by the application of conventional parameters of horizontal merger assessment.[56] In particular, it has variously occurred that: (i) the combined market shares of the parties remained below 20 per cent;[57] (ii) the transaction did not eliminate a competitor that could be

[53] The European Commission assessed the *data advantage* that an acquisition can generate on the basis of a horizontal damage theory in European Commission, *Google/Fitbit*, COMP/M.9660; and in European Commission, *Meta/Kustomer*, COMP/M.10262.

[54] European Commission, *Facebook/WhatsApp*, COMP/M.7217, paras. 101 and 118.

[55] As will be explained, in fact, by *tradition* (see the next paragraph also to define the meaning to be attributed to this term) non-horizontal mergers, i.e. vertical and conglomerate, are considered less harmful than horizontal ones, since they do not entail the disappearance of direct competition between the merging companies – Non-Horizontal Merger Guidelines, paras. 11-12. And this unless, as the Commission itself acknowledges to nt. 9 in the document just cited (!), the acquired competitor that *at the present time* operates in a market different from that in which the acquiring competitor operates cannot *enter* this second market in the future. In short, in carrying out its analysis, the Commission should take due account of the possibility that a vertical competitor or conglomerate of the buyer could potentially become its horizontal competitor – a circumstance that perhaps the digital economy has made more likely.

[56] In addition to market shares, horizontal mergers are examined by looking at the following parameters: the ability of customers to switch suppliers and the associated replacement costs; the ability and likelihood of expansion by the merger's competitors; the ability of the merged company to hinder the expansion of competitors; and the possibility that the merger would eliminate an important competitive force (i.e., a so-called *Maverick*); Horizontal Merger Guidelines, paras. 26-38.

[57] See European Commission, *Google/Photomath*, COMP/M.10796; European Commission, *Sanofi/Google/DMI JV*, COMP/M.7813; European Commission, *Apple/Shazam*, COMP/M.8788; European Commission, *Apple/Beats*, COMP/M.7290; European Commission, *Amazon/MGM*, COMP/M.10349; European Commission, *Microsoft/Zenimax*, COMP/M.10001; European Commis-

regarded as a close substitute for the digital ecosystem;[58] and (iii) effective competitors capable of exerting competitive pressure on the merged entity remained active in the relevant markets.[59] On this basis, the Commission concluded that such transactions would neither create nor strengthen a dominant position in the relevant market,[60] nor lead to a substantial reduction in competition.[61]

In cases where the Commission explicitly examined the elimination of a potential competitor, it likewise found that the conditions required to establish anticompetitive harm were not satisfied. The acquired undertakings were not considered sufficiently "mature" to exert a significant

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sion, *Microsoft/GitHub*, COMP/M.8994; European Commission, *Microsoft/Nokia*, COMP/M.7047; European Commission, *Microsoft/Yahoo! Search Business*, COMP/M.5727.

[58] European Commission, *Facebook/WhatsApp*, COMP/M.7217, paras. 104–110. The concentration in question also satisfies both points (*ii*) and *(iii*). Indeed, the Commission noted that, although it was not unclear what the combined market share would be, the parties' offerings in the consumer communications apps sector are different in several respects, so that they cannot be classified as close competitors. In addition, users will be able to switch between communication apps, with no concerns arising regarding the impact of the concentration on the consumer communication app market. The Commission also excluded any potential competition for the provision of *social network* services. This was also the case in European Commission, *Google/DoubleClick*, COMP/M.4731, paras. 278 and 285, where the Commission found that the parties were not direct competitors, since DoubleClick was one of the main providers of *ad serving* technology to third parties, while Google provided ad *serving* technology only as an ancillary service to its online advertising space offering (and not as a stand-alone service). In addition, it was likely that a sufficient number of other competitors would remain on the market and exert competitive pressure on the acquiring entity and, as will be recalled below, the transaction did not entail any exclusion of a potential competitor.

[59] European Commission, *Microsoft/Nuance*, COMP/M.10290, paras. 107-110. The Commission noted that, while Nuance and Microsoft's activities in the transcription software markets overlapped horizontally, Microsoft and Nuance offered very different products (Nuance mainly offered *out-of-the-box solutions to end users, Microsoft* offered APIs) and the combined entity would continue to face strong competition from other players. The same was true in European Commission, *Microsoft/Skype*, COMP/M.6281, paras. 120-131, where the Commission observed that only in relation to the *video calling* communication service, the merger did not have a small market share but, on the contrary, led to the formation of a market leader. However, among the many aspects also partly commented on below, the Commission also noted that Microsoft would continue to face strong competitive pressure from a number of existing operators and that, since video calls were used for small groups, this made it easy to switch to other competing services.

[60] Horizontal Merger Guidelines, paras. 58-60.

[61] Ironically, it is true that in European Commission, *Microsoft/Skype*, COMP/M.6281, paras. 70-72 and 78, the Commission acknowledged that market shares are not actually indicative of the possible dominant position of the parties, precisely because of the dynamism that characterises digital markets. However, the Commission invoked this circumstance to authorise and not to prohibit the concentration.

competitive constraint on the acquiring ecosystem, and, in any event, other firms were deemed capable of exercising such constraint despite the merger, as illustrated by *Google/DoubleClick*[62] and *Apple/Beats*.[63] As a result, the Commission remained anchored to a static conception of actual and potential competition.

However, recent economic literature has suggested that the competitive risks associated with ecosystem mergers cannot be adequately captured by focusing solely on these parameters.[64] Economists and competition authorities[65] have increasingly emphasised that one of the most significant

[62] European Commission, *Google/DoubleClick*, COMP/M.4731, para. 278, where the Commission observes that, although it cannot be ruled out that DoubleClick could have become an effective competitive force in online advertising intermediation services, it is quite likely that there would have been a sufficient number of other competitors left on the market capable of maintaining sufficient and, in some cases, more advanced competitive pressure after the transaction.

[63] European Commission, Decision of 25 July 2014 in Case COMP/M.7290 – Apple/Beats, paras. 35-40, where the Commission found that the music *streaming service* Beats, although a potential competitor of iTunes, would not in any event exercise a significant competitive constraint to the detriment of the service offered by Apple in the future.

[64] The error alleged against the Commission is indeed common to other antitrust authorities. Consider, for example, that in the United States the *Facebook/Instagram* merger was authorized due to the difficulties in applying the US doctrine of the acquisition of the potential competitor which is not dissimilar to the European one. On this point, Mark Glick and Catherine Ruetschlin, *Big Tech acquisitions and the potential competition doctrine: The case of Facebook*, Institute for New Economic Thinking Working Paper No. 104 (2019). In addition, cf. Jonathan B. Baker, *The antitrust paradigm: Restoring a competitive economy* (Cambridge, MA: Harvard University Press, 2019), 160-163, stating that "Instagram was one of a few significant potential rivals to Facebook with the capability of someday offering attractive advertising services on a social network. If social networks were, or were likely to become, particularly good vehicles for some types of advertisers, and more attractive to those advertisers than advertising in response to user searches, then Facebook and Instagram would have been close rivals in an innovation market and a future product market for advertising on social media platforms". Similarly, in the United Kingdom, the merger was cleared because, as observed in legal literature on the basis of an *ex post* analysis, the authority had not considered that: (i) Instagram could propose itself as a rival to Facebook in the offer of *social networking* services; (ii) Instagram had incentives to implement exclusionary strategies, limiting interoperability with its platform; and (iii) the consumer base on which Instagram and Facebook affected was very similar, to the point that Instagram was considered a substitute and not a complement to Facebook. In this regard, see Elena Argentesi, Paolo Buccirossi, Emilio Calvano, Tomaso Duso, Alessia Marrazzo, and Salvatore Nava, *Merger policy in digital markets: An ex-post assessment*, CESifo Working Paper No. 7985 (2019), 26-28.

[65] Consider that the CMA, i.e. the United Kingdom's antitrust authority, has taken the harm theory at issue here to heart so much that it has stated that it could be established that a 'substantial decrease in competition' may result from an acquisition that eliminates 'a dynamic competitor that is making efforts towards entry or expansion', 'even if the entry of such a participant is unlikely and may ultimately be unsuccessful'. In this sense, see Competition and Markets Authority, *Merger Assessment Guidelines* (18 March 2021), para. 5.23, stating that "The likelihood of successful entry

dangers posed by digital ecosystem concentrations lies in the acquisition of start-ups or small firms with the aim of interrupting their activity and suppressing their products, services, or technologies.[66] Such transactions – commonly described as *killer acquisitions*[67] – are understood as defensive strategies designed to eliminate emerging competitive threats to the ecosystem's market position or to an important component of its technological infrastructure.[68]

Closely related concerns arise even where the acquired firm's offering is not discontinued but merely assimilated into the acquiring ecosystem. In this scenario, the competitive threat is neutralised without outright suppression, as the acquired products, services, or technologies are preserved and integrated in a manner that forecloses independent competitive

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by a dynamic competitor and the expected closeness of competition between a dynamic competitor and other firms are both relevant to the constraint exerted by a dynamic competitor on other firms and the CMA will take this into account. The elimination of a dynamic competitor that is making efforts towards entry or expansion may lead to an SLC even where entry by that entrant is unlikely and may ultimately be unsuccessful".

[66] Baker, *The Antitrust Paradigm*, 160-161, stating that "Future competition may be threatened when a dominant information technology platform (or another large firm) acquires a potential rival. When the potential rival would be expected to innovate were it to enter, possibly leading the dominant incumbent to upgrade its products or services in response, the competitive harms from merger may involve reduced innovation incentives, not just lessened future price competition"; see also Steven Berry, Martin Gaynor, and Fiona Scott Morton, "Do increasing markups matter? Lessons from empirical industrial organization", *Journal of Economic Perspectives* 33, no. 3 (2019): 44-68.

[67] Massimo Motta and Martin Peitz, *Removal of potential competitors – A blind spot of merger policy*; OECD, *Start-ups, killer acquisitions and merger control – Background note*, materials for the Meeting of the Competition Committee (2020); Colleen Cunningham, Florian Ederer, and Song Ma, "Killer acquisitions", *Journal of Political Economy* 129, no. 3 (2021): 649-702, who identify as a distinctive element of a killer acquisition the fact that the company's strategy is "solely to discontinue the target's innovation projects and pre-empt future competition". See also Nicholas Levy, Henry Mostyn, and Andrei Bianca, "Reforming EU merger control to capture 'killer acquisitions' – The case for caution", *Competition Law Journal* (2020).

[68] In particular, this attitude corresponds to one of the two profiles in which the so-called "incumbent advantage" manifests itself in digital ecosystems. First, incumbents benefit from a consumer base that may be sufficiently inert or "locked-in" not to switch to horizontal competitors, even where the latter offer higher-quality goods or services. Hanna Halaburda, Bruno Jullien, and Yaron Yehezkel, "Dynamic competition with network externalities: How history matters", *The RAND Journal of Economics* 51, no. 1 (2020): 3-31; Gary Biglaiser and Jacques Crémer, "The value of incumbency when platforms face heterogeneous customers", *American Economic Journal: Microeconomics* 12, no. 4 (2020): 229-269. Secondly, and as noted in the main text, digital ecosystems may have strong incentives to engage in pre-emptive buyouts, namely the acquisition of emerging operators with the purpose of neutralising potential future competition. On this mechanism, see Eric Rasmusen, "Entry for buyout", *Journal of Industrial Economics* 36, no. 3 (1988): 281-299.

development.[69] To be sure, these hypotheses have been met with scepticism. Critics have argued that empirical evidence on killer acquisitions is ambiguous and largely confined to the biotechnology sector;[70] that acquisition by a large firm often represents a successful exit strategy for start-ups and their investors;[71] and that the absorption of innovative firms by incumbents reflects a broader division of labour in highly innovative markets.[72]

Nonetheless, irrespective of which narrative ultimately proves most persuasive in a given case,[73] it remains the case that, until very recently, the European Commission has remained largely tied to theories of harm developed prior to the advent of digital technologies. This persistence helps explain the difficulties the Commission has encountered in prohibiting conglomerate mergers involving digital ecosystems. In the analogue economy, such mergers were traditionally regarded as relatively benign,[74] as they were anticompetitive only under a set of cumulative and demanding

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[69] A distinction can be made between a "killer" acquisition damage theory and a potential competition damage theory. The difference is that, in a "killer" acquisition, the merger creates an incentive not only to remove future competitive pressure from the product (what can be achieved by acquiring the product), but also to remove the product itself from the market; Cunningham, Ederer, and Ma, "Killer acquisitions", 670.

[70] More precisely, to the pharmaceutical and, at most, biotechnology sector. Cunningham, Ederer, and Ma, "Killer acquisitions", 649; OECD, *Start-ups, killer acquisitions and merger control – Background note*, DAF/COMP(2020)5 (2020): 12. In this regard, see also Robertson, "Merger review in digital and technology markets", para. 127.

[71] Carl Shapiro, "Antitrust in a time of populism", *International Journal of Industrial Organization* 61 (2018): 714.

[72] Jonathan M. Barnett, "'Killer acquisitions' reexamined: Economic hyperbole in the age of populist antitrust", Center for Law and Social Science Research Paper Series No. CLASS23-1 (2023): 24-27. With regard to the relationship between innovation and acquired firms, see Bo Carlsson et al., "Knowledge creation, entrepreneurship and economic growth: A historical review", *Industrial and Corporate Change* 18, no. 6 (2009): 1222-1223; Todd R. Zenger and Sergio G. Lazzarini, "Compensating for innovation: Do small firms offer high-powered incentives that lure talent and motivate effort?", *Managerial and Decision Economics* 25, no. 6-7 (2004): 329, noting that "[e]mpirical research on innovation and firm size confirms that despite large firms' apparent advantages in scale and access to complementary assets and capabilities (. . .) small firms are more efficient at innovation, particularly radical forms of innovation".

[73] Massimo Motta, *Competition policy: Theory and practice* (Cambridge: Cambridge University Press, 2004), 320; Michael L. Katz, "Big Tech mergers: Innovation, competition for the market, and the acquisition of emerging competitors", *Information Economics and Policy* 54 (2021): 100883.

[74] In this regard, reference should be made to the analysis of the different phases that have characterized the approach of the European and US authorities with respect to conglomerate mergers conducted in Witt, *Who's afraid of conglomerate mergers?*, 218. For an overview of the differentiation profiles between the European and US systems, see also William J. Kolasky, "Conglomerate

conditions that were often difficult to establish.[75] It is therefore unsurprising that recent scholarship and enforcement practice have begun to explore the possibility of reversing the burden of proof in acquisitions of start-ups by dominant digital ecosystems, requiring the acquirer to demonstrate the absence of competitive harm.[76]

5. Traditional theories of harm in conglomerate mergers

Conglomerate mergers have traditionally occupied a marginal position within competition law. They are defined negatively, as transactions that are neither horizontal – between direct competitors – nor vertical, involving firms operating at different levels of the same supply chain.[77] In analogue markets, conglomerate mergers typically brought together firms active in related but non-competing markets, often producing complementary products.[78] Because such mergers did not eliminate existing rivalry, they were long regarded as unlikely to give rise to serious competitive concerns.

The classical theory of harm associated with conglomerate mergers focused on the risk of leveraging market power through tying and bundling. A firm with a strong position in one market could, following a merger, use that position to promote a complementary product, thereby disadvantaging competitors in the related market. This concern was particularly relevant where products were consumed jointly and where

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mergers and range effects: It's a long way from Chicago to Brussels", *George Mason Law Review* 10, no. 3 (2002).

[75] The following cases are exceptions, for example: European Commission, Decision of 3 July 2001 in Case COMP/M.2220 *General Electric/Honeywell*. European Commission, Decision of 13 January 2003 in Case COMP/M.2416 – *Tetra Laval/Sidel*. In comment, see Witt, "Who's afraid of conglomerate mergers?", 220. Eleanor M. Fox, "Competition law, global markets and the *General Electric/Honeywell* case", *Mercato Concorrenza Regole* (2002): 347. Giuseppe Colangelo, "Ricomincio da tre: il merger enforcement comunitario dopo Tetra Laval", *Il diritto industriale* (2003): 342.

[76] In comment, see OECD, *Theories of Harm for Digital Mergers* (Paris: OECD Publishing, 2023), 34. Similarly, in the United States, the House Antitrust Subcommittee recommended that all mergers involving the acquisition of a start-up be presumed to be anti-competitive; cf. US House of Representatives, Majority Staff Report and Recommendations, House Judiciary Subcommittee on Antitrust, *Investigation of Competition in Digital Markets* (6 October 2020), 394. Of course, there are those who have spoken out against these proposals, as they would entail an excessive cost for innovation and efficiency gains; cf. Luís Cabral, "Merger policy in digital industries", *Information Economics and Policy*, special issue on the digital economy (2021): 100866.

[77] Non-Horizontal Merger Guidelines, para. 5.

[78] Non-Horizontal Merger Guidelines, para. 13.

customers faced switching costs.[79] However, even in such cases, competition authorities considered anticompetitive effects to be exceptional rather than typical.

For foreclosure to occur in a conglomerate context, economic theory required the simultaneous fulfilment of several demanding conditions. The merged firm had to possess significant market power in the tying product, the tied product had to be important for competition, entry barriers in the tied market had to be high, and rivals had to lack effective counterstrategies. Because these conditions rarely coexisted in analogue markets, conglomerate mergers were presumed to be largely harmless. This presumption was reflected in enforcement practice, which rarely resulted in prohibition.

Efficiencies played a central role in the benign assessment of conglomerate mergers. Such transactions were thought to reduce transaction costs, improve coordination between complementary products, and enhance consumer convenience through one-stop shopping.[80] [81] They could also eliminate double marginalisation, resulting in lower combined prices. These potential efficiencies were frequently invoked to justify clearance, reinforcing the view that conglomerate mergers were more likely to benefit consumers than to harm competition.

Historical enforcement practice confirms this cautious approach. One of the few prominent exceptions was the Commission's prohibition of

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[79] In the economic literature, many authors have pointed out that such mergers may also be justified on grounds unrelated to their competitive effects. For instance, Mueller argues that conglomerate mergers may help firms reduce tax burdens, obtain public subsidies, and diversify risk, although the empirical evidence regarding the latter in terms of firm value creation is limited (Dennis C. Mueller, "The effects of conglomerate mergers: A survey of the empirical evidence", *Journal of Banking & Finance* 1, no. 4 (1977): 315). Cheng suggests that conglomerate mergers may be particularly attractive in small or developing economies due to the challenges of achieving scale and overcoming institutional risks, including uncertainty in contractual negotiations (Thomas K. Cheng, "Sherman vs. Goliath?: Tackling the conglomerate dominance problem in emerging and small economies – Hong Kong as a case study", *Northwestern Journal of International Law & Business* 37, no. 1 (2017): 35). King and Fuse Brown, finally, emphasize the usefulness of conglomerate mergers in linking firms operating in different geographic markets (Jaime S. King and Erin C. Fuse Brown, "The anti-competitive potential of cross-market mergers in health care", *Saint Louis University Journal of Health Law & Policy* 11, no. 1 (2018): 43).

[80] European Commission, Decision of 15 July 2005 in Case COMP/M.3732 – *Procter & Gamble/Gillette*, para. 131.

[81] Indeed, the mere fact that the merged entity will have a broad product range or portfolio does not, as such, raise competition concerns. See, for example, European Commission, Decision of 18 October 2001 in Case COMP/M.2608 – *INA/FAG*, para. 34.

the *GE/Honeywell* merger in 2001.[82] In that case, the Commission found that GE's financial strength and dominance in aircraft engines, combined with Honeywell's position in avionics, would enable the merged entity to engage in aggressive bundling strategies that could foreclose rivals. Even then, the decision was controversial and remains an outlier in the history of conglomerate merger control.

Outside exceptional cases such as *GE/Honeywell*, conglomerate mergers were rarely challenged. Competition authorities generally assumed that rivals could respond through competitive strategies such as price reductions, product differentiation, or technological innovation. The absence of immediate foreclosure and the speculative nature of long-term harm further contributed to the reluctance to intervene. As a result, conglomerate mergers came to be associated with legal certainty and predictability, in contrast to the more interventionist approach applied to horizontal mergers.

This traditional framework, however, was developed in an economic environment characterised by relatively stable markets and incremental innovation. Complementarities between products were limited in scope, and firms rarely operated across a wide range of interconnected markets. As a consequence, the potential for conglomerate mergers to generate systemic competitive harm was underestimated. The assumptions underpinning the benign view of conglomerate mergers thus reflected the conditions of the analogue economy rather than those of the digital age.

The inadequacy of traditional conglomerate theories of harm becomes particularly evident when applied to digital ecosystems. In these markets, complementarities are pervasive rather than incidental, and expansion across adjacent markets is not accidental but a deliberate strategy aimed at reinforcing ecosystem power. Nevertheless, the European Commission has historically regarded conglomerate mergers as only weakly threatening to competition, subordinating intervention to the cumulative verification of a number of demanding factual conditions. When applying this paradigm to conglomerate mergers involving digital ecosystems, the Commission has therefore consistently found that one or more of these conditions were not satisfied.

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[82] Case T-210/01, *General Electric v. Commission*, ECLI:EU:T:2005:456, paras. 327, 362-63, and 405; European Commission, Decision of 21 January 2004 in Case COMP/M.3304 – *GE/Amersham*, para. 37; European Commission, Decision of 23 April 2007 in Case COMP/M.4561 – *GE/Smiths Aerospace*, paras. 116-126.

This approach is reflected in several decisions. In *Sanofi/Google/DMI JV* and *Amazon/MGM*, the Commission excluded the parties' ability and incentive to engage in exclusionary bundling strategies, on the ground that the ecosystems involved continued to derive significant value from remaining interoperable and compatible with rival services.[83] Similarly, in *Google/Motorola Mobility* and *Microsoft/Skype*, the Commission considered that even hypothetical bundling strategies – between Motorola's standard-essential patents and Android mobile services, or between Microsoft's operating system and Skype – would not foreclose rivals, as consumers would still find competing products available on the market and could therefore continue to use them.[84] In *Microsoft/ZeniMax*, the parties were found not to possess sufficient market power to implement exclusionary strategies,[85] while in *Google/DoubleClick* the merged entity was deemed to continue facing substantial competitive pressure from rivals.[86]

At the same time, it must be acknowledged that three of the four GAFAM mergers cleared subject to commitments[87] – albeit exclusively behavioural – were considered problematic by the Commission also because of their conglomerate effects. In *Microsoft/LinkedIn*, in order to mitigate the risk that Microsoft might leverage its dominant position in operating systems

[83] In the former case, the platform created by Google, being required to scale, could hardly afford to foreclose itself from access to other providers of healthcare data. In the latter case, similarly, Amazon had no incentive to sacrifice content other than that supplied by MGM. The same reasoning applies to European Commission, *Microsoft/Nuance*, COMP/M.10290 and European Commission, *Microsoft/GitHub*, COMP/M.8994.

[84] It is noteworthy that, at the time of these cases – namely in 2012 – the Commission portrayed consumers as rational actors who would not be constrained by the mere pre-installation of certain solutions on their mobile devices. Six years later, however, in the abuse of dominance case *Google Android*, the Commission reversed its position, recognising that digital consumers are affected by a status quo bias, which leads them to remain attached to default solutions offered by digital ecosystems. This, in turn, results in foreclosure effects that the Commission had previously excluded in European Commission, *Google/Motorola Mobility*, COMP/M.6381; Cf. European Commission, *Google/Android*, AT.40099, para. 781; *Google and Alphabet v. Commission (Google Android)*, T-604/18, EU:T:2021:763, confirming the Commission's analysis.

[85] European Commission, *Microsoft/ZeniMax*, COMP/M.10001, para. 103.

[86] European Commission, *Google/DoubleClick*, COMP/M.4731, para. 358.

[87] OECD, *Conglomerate Effects of Mergers – Summaries of Contributions* (2020), 9, noting that "even though the Commission has a clear preference for structural remedies, it considered that behavioural remedies were able to address the competition concerns in some conglomerate mergers. For example, in *Microsoft/LinkedIn* and *Broadcom/Brocade*, the Commission accepted interoperability remedies to address conglomerate competition concerns". See also Roberto Augusto Castellanos Pfeiffer, "Digital economy, big data and competition law", *Market and Competition Law Review* 3, no. 1 (2019): 53-89.

and productivity software to extend it into adjacent markets – particularly professional social networking – the Commission accepted commitments requiring Microsoft not to pre-install LinkedIn on Windows and to preserve interoperability between competing professional social networks and Microsoft Office through continued access to application programming interfaces.[88] In *Google/Fitbit*, where similar concerns arose in relation to the data acquired by Google and the privileged access Fitbit would obtain to channels such as Google Search and Google Play, the Commission required Google to refrain from using Fitbit health and fitness data for advertising purposes, to grant competitors free access to certain web APIs, and to license specific Android APIs to ensure interoperability.[89] Likewise, in *Microsoft/Activision Blizzard*, to address concerns in the emerging market for cloud gaming distribution, Microsoft committed to offering ten-year free licences enabling European consumers and cloud-gaming service providers to stream Activision Blizzard's current and future PC and console games.[90]

Notwithstanding these interventions, economic scholarship – prompted also by the expressed dissatisfaction of several competition authorities, including the European Commission[91] – has moved beyond this complex

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[88] European Commission, *Microsoft/LinkedIn*, COMP/M.8124, paras. 246-277 and 370-381.

[89] European Commission, *Google/Fitbit*, COMP/M.9660, paras. 570-610, 611-648, 649-679, and 680-709.

[90] European Commission, *Microsoft/Activision Blizzard*, COMP/M.10646, paras. 799-806 and 875-899.

[91] A similar concern emerges from a number of major policy reports. See, *inter alia*, Jason Furman *et al*., *Unlocking digital competition: Report of the digital competition expert panel* (2019), 12; Jacques Crémer, Yves-Alexandre de Montjoye, and Heike Schweitzer, *Competition policy for the digital era* (2019), 11; Australian Competition and Consumer Commission (ACCC), *Digital platforms inquiry: Final report* (2019), 10; and Elena Argentesi *et al*., *Ex-post assessment of merger control decisions in digital markets* (2019), iv. From a conglomerate perspective in particular, the European Commission, the UK competition authority, and the Australian authority appear to converge on the view that acquisitions by dominant platforms of innovative start-ups operating in adjacent markets may be harmful to competition in the long run. Accordingly, these authorities caution against presuming such transactions to be pro-competitive, instead emphasising the need for close scrutiny and, where appropriate, for a reassessment of existing standards and burdens of proof. A similar interpretation may be drawn from the draft Merger Guidelines published by the FTC in 2023. In addressing conglomerate transactions undertaken by digital platforms, the draft Guidelines highlight concerns relating to the strengthening or extension of dominant positions through such mergers, as well as to the acquisition of data that may weaken rivals. In this respect, the FTC appears to revive an *entrenchment* theory of competitive harm, which had long been abandoned in the context of conglomerate mergers. Notably, the Vertical Merger Guidelines adopted in June 2020 had already shown greater openness towards "exclusionary theories of

and fact-intensive framework, developing alternative theories of harm that are both less demanding in evidentiary terms and better suited to the structural characteristics of digital ecosystems. This evolution has paved the way for the emergence of new approaches to conglomerate mergers in the digital context.

6. Emerging theories of harm in the digital economy

The digital economy has fundamentally challenged the assumptions underlying traditional theories of conglomerate harm.[92] While conglomerate mergers in analogue markets were generally presumed to be benign, the structure and dynamics of digital ecosystems have altered this assessment. In digital markets, mergers that combine non-competing but complementary services may nonetheless have significant anticompetitive effects by reinforcing network effects, increasing data advantages, and entrenching dominant positions.[93] As a result, competition authorities and scholars have begun to develop new theories of harm that move beyond classical tying and bundling scenarios.

One of the most prominent emerging theories concerns so-called *killer acquisitions*. These refer to transactions in which an incumbent acquires a nascent or potential competitor not in order to develop its technology, but to prevent it from evolving into a competitive threat.[94] Originally identified in the pharmaceutical sector, this phenomenon has increasingly been observed in digital markets, where start-ups may pose disruptive threats despite limited turnover. In such contexts, merger control

harm". While those Guidelines explicitly refer only to vertical mergers, the concept appears sufficiently broad to encompass situations that would be classified as conglomerate under EU law. See Witt, *Who's afraid of conglomerate mergers?*, 236. See also Steven C. Salop, "Some comments for improving the 2023 draft Merger Guidelines", SSRN (2023).

[92] Witt, *Who's afraid of conglomerate mergers?*, 219-220.

[93] Matteo Condorelli and Jorge Padilla, "Harnessing platform envelopment through privacy policy tying" (2019): 28-29; Marc Bourreau and Alexandre de Streel, *Digital conglomerates and EU competition policy* (2019): 17; and Thomas K. Cheng, "Sherman vs. Goliath?: Tackling the conglomerate dominance problem in emerging and small economies", *Northwestern Journal of International Law & Business* 37, no. 1 (2017): 44.

[94] Anne C. Witt, "Big Tech acquisitions: The return of conglomerate merger control", *Concurrences* (2020), that reads "(…) while these reports use slightly different terminology – some express the danger in terms of loss of potential competition, others use the term "conglomerate effects" – all seem to be in agreement that a dominant platform's acquisition of innovative upstarts in adjacent markets can be detrimental to competition in the long term, and that enforcement agencies should not presume that such transactions are benign. On the contrary, they recommend scrutinising such acquisitions closely, and revising the existing standards and burdens of proof".

focused on current market shares fails to capture the elimination of future competition.[95]

The relevance of killer acquisitions in digital markets lies in the strategic role played by innovation and data. Digital incumbents are often well placed to identify potential threats early, given their superior access to market information and user data. Acquiring a start-up at an early stage may therefore serve to neutralise a competitive constraint before it materialises. Even where the acquired product is not discontinued, its integration into the ecosystem may redirect innovation in ways that protect the incumbent's core business rather than challenge it.

Beyond the elimination of potential competitors, digital conglomerate mergers may generate harm through *structural entrenchment*.[96] Ecosystems are characterised by self-reinforcing feedback loops linking user scale, data accumulation, and service quality. Acquiring complementary services may strengthen these loops, making it increasingly difficult for rivals to enter or expand.[97] Unlike traditional foreclosure, which requires active exclusionary conduct, entrenchment operates passively through cumulative advantages that reduce contestability over time.

Data plays a central role in this process. Digital ecosystems collect vast quantities of user data across multiple services, which can be combined and analysed to improve targeting, personalisation, and predictive capabilities. Mergers that expand the scope of data collection may therefore reinforce informational asymmetries between incumbents and rivals. This

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[95] The study by Cunningham, Ederer, and Ma (Colleen Cunningham, Florian Ederer, and Song Ma, "Killer acquisitions", *Journal of Political Economy* 129, no. 3 (2021)) provides empirical evidence of so-called *killer acquisitions* in the pharmaceutical sector. While that sector differs significantly from digital markets – most notably due to the presence of strong network effects in the latter – it nonetheless offers important insights into acquisition strategies aimed at neutralising future competition. A more sector-specific analysis is provided by Gautier and Lamesch, who examine 175 acquisitions carried out by major technology firms (Google, Amazon, Facebook, and Microsoft) between 2015 and 2017 (Axel Gautier and Joe Lamesch, *Mergers in the digital economy*, Working Paper (2020)). Their findings suggest that most acquisitions do not qualify as killer acquisitions; although many acquired products are discontinued, the underlying technologies are frequently integrated into the acquirers' ecosystems. See also Bourreau and de Streel, *Digital conglomerates and EU competition policy*, 21-23; and Luís Cabral, "Merger policy in digital industries", *Information Economics and Policy* (2021), 100866.

[96] Richard Schmalensee, "Entry deterrence in the ready-to-eat breakfast cereal industry", *Bell Journal of Economics* 9, no. 2 (1978): 305.

[97] Marc Bourreau and Alexandre de Streel, *Digital conglomerates and EU competition policy*.

cumulative effect challenges the traditional view of data as a non-rival input and highlights its role as a barrier to entry and expansion.

Consumer behaviour further amplifies entrenchment risks. Digital ecosystems often benefit from strong user inertia, driven by switching costs, default settings, and the convenience of integrated services.[98] As ecosystems expand through conglomerate mergers, users may become increasingly dependent on a single provider for multiple services. This reduces incentives to multi-home and limits the ability of rivals to attract users, even where they offer superior standalone products.

Innovation effects represent a further dimension of emerging theories of harm. Traditional merger analysis has focused primarily on static outcomes such as price and output. In digital markets, however, dynamic competition and innovation are often more relevant. Conglomerate mergers may reduce innovation incentives by eliminating independent innovation paths or by integrating innovative firms into an ecosystem in ways that constrain disruptive development. The result may be a reduction in the diversity of business models and technological trajectories.[99]

These concerns have been widely recognised in recent policy and academic debates.[100] Both the OECD and the International Competition Network have called for merger control frameworks that incorporate dynamic and forward-looking assessments of harm, including potential competition and innovation effects.[101] At EU level, the Digital Markets Act reflects similar concerns by imposing ex ante obligations on gatekeepers to prevent leveraging across markets, although it does not replace merger control.[102]

Taken together, these developments suggest that the traditional presumption of benignity for conglomerate mergers is no longer tenable in the digital economy. While such mergers may generate efficiencies, they

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[98] Matteo Condorelli and Jorge Padilla, "Harnessing platform envelopment in the digital world", *Journal of Competition Law & Economics* 16, no. 2 (2020): 143.

[99] Lim, *Tech wars: Return of the conglomerate – Throwback or dawn of a new series for competition in the digital Era?*, 55.

[100] Viktoria H.S.E. Robertson, "Digital merger control: Adapting theories of harm", *European Competition Journal* 20, no. 2 (2024): 437-459.

[101] OECD, *Theories of harm for digital mergers* (Background note, Competition Committee, 2023); ICN Merger Working Group, *ICN recommended practices for merger analysis* (amended May 2025).

[102] 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 (Digital Markets Act), *OJ* L 265, 12 October 2022, 1-66.

also pose significant risks of entrenchment, innovation suppression, and reduced contestability. Emerging theories of harm thus call for a more cautious and context-specific approach, attentive to the cumulative and cross-market effects of digital conglomerate mergers.

7. The Booking/eTraveli case

The European Commission's decision of September 2023 to prohibit Booking's proposed acquisition of eTraveli represents a landmark in EU merger control. It is the first EU prohibition widely characterised as based on ecosystem or entrenchment concerns in a digital-adjacent conglomerate setting and marks a decisive departure from the traditional treatment of non-horizontal concentrations.[103] The decision is significant not only for its outcome, but also for the analytical framework adopted, which explicitly addresses the risks posed by ecosystem expansion and structural entrenchment.

Booking.com is the leading online travel agency (OTA)[104] for hotel accommodation in the European Economic Area.[105] In several Member States, its market share exceeds 60 per cent, and it benefits from strong network effects linking hotels and consumers. The more hotels list on Booking's platform, the more attractive it becomes for consumers; the greater the consumer traffic, the more indispensable the platform becomes for hotels. This feedback loop has enabled Booking to charge commission rates higher than those of its competitors, while maintaining a stable and entrenched market position.

eTraveli, by contrast, operated primarily as an OTA for flight bookings and was the second-largest provider of such services in the EEA. Although eTraveli did not compete directly with Booking in hotel accommodation, its services occupied a strategically important position in the travel value

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[103] See also Manu Batra, Paul de Bijl, and Timo Klein, "Ecosystem theories of harm in EU merger control: Analysing competitive constraints and entrenchment", *Journal of European Competition Law & Practice* 15, no. 6 (2024): 357-367.

[104] The Commission adopts a rather broad understanding of online travel agencies (OTAs). In particular, it notes that "OTAs provide an important intermediation service, matching demand and supply for travel services, which include accommodation, flights, car rentals, and attractions. European Commission, *Mergers: Commission prohibits proposed acquisition of eTraveli by Booking – Press release* (2023).

[105] Booking is also active in the market for metasearch services – understood as platforms that aggregate, compare, collect, and organise information such as prices, offers, and reviews relating to accommodation facilities – primarily through its price comparison platform KAYAK.

chain. Flight bookings typically represent the first step in consumers' travel planning process, preceding the booking of accommodation, car rental, or ancillary services. Control over flight bookings therefore confers a significant advantage in customer acquisition.

The Commission's assessment did not focus on foreclosure effects in the flight booking market.[106] Instead, it examined whether the acquisition of eTraveli would further entrench Booking's dominance in hotel accommodation. The Commission found that the transaction would enable Booking to channel flight customers directly into its accommodation services, reinforcing its core market position through increased traffic, enhanced network effects, and greater customer inertia.

A central element of the Commission's reasoning concerned consumer behaviour. Evidence showed that consumers who book flights on a platform are more likely to continue using the same platform for subsequent travel-related services, even where alternatives exist. This behavioural inertia significantly amplifies the competitive advantage derived from control over an early customer-acquisition channel. By integrating eTraveli's flight booking services, Booking would strengthen its ability to retain consumers within its ecosystem throughout the travel journey. The relevant mechanism can be described as demand-side diversion combined with consumer inertia at an early stage of the customer journey, which increases the likelihood of downstream capture and raises rivals' minimum efficient scale in the core market.

The Commission further emphasised the impact of the transaction on competition between OTAs. Rivals lacking access to comparable flight-booking traffic would find it increasingly difficult to achieve scale in hotel accommodation.[107] This asymmetry would raise barriers to entry and expansion, reduce competitive pressure on Booking, and ultimately diminish contestability in the accommodation market. Importantly, these effects would arise without the need for explicit exclusionary conduct.

Booking proposed behavioural remedies aimed at addressing these concerns, most notably the introduction of a "choice screen" following flight

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[106] Simon Vande Walle, "The European Commission prohibits a dominant hotel booking platform from acquiring a flight booking platform based on an 'ecosystem theory of harm'", *Concurrences*, no. 1-2024 (March 2024).

[107] More specifically, the Commission focused on potential rather than actual competitors, noting that "OTAs currently on a path to become full-fledged competitors may not be able to do so if the transaction goes ahead". Ibid.

bookings on eTraveli's platform. The Commission considered the proposed remedy insufficiently effective, difficult to monitor, and vulnerable to circumvention through design choices and alternative steering mechanisms. In particular, it noted that Booking would retain control over the design and implementation of the choice screen, that alternative channels of steering remained available, and that consumer inertia would likely persist despite formal choice.

The prohibition of the transaction thus rested on an ecosystem-based theory of harm.[108] The Commission did not allege traditional conglomerate foreclosure through tying or bundling. Rather, it focused on the cumulative effect of integrating complementary services within a dominant ecosystem. By strengthening Booking's control over multiple stages of the consumer journey, the merger would entrench its dominance in a core market and reduce long-term competitive pressure.

The Booking/eTraveli decision also highlights divergences in international enforcement. The UK Competition and Markets Authority cleared the same transaction at Phase I, concluding that the evidence was insufficient to establish a substantial lessening of competition. In the United States, the Federal Trade Commission's challenge to Meta's acquisition of Within similarly relied on potential competition theories, though it was ultimately unsuccessful. These cases illustrate both convergence in analytical concerns and divergence in enforcement outcomes.[109]

The implications of Booking/eTraveli extend beyond the travel sector. The decision signals that the Commission is prepared to intervene against conglomerate mergers in digital markets where the risk lies in structural entrenchment rather than immediate foreclosure. It raises important questions about the scope of merger control, the assessment of efficiencies, and the evidentiary standards required to demonstrate ecosystem harm. Future cases will determine whether this approach becomes a stable feature of EU merger control.

8. Concluding remarks

This article has shown that conglomerate mergers, long considered peripheral to competition law, have become central to understanding competitive

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[108] Nicholas Levy, Anita Magraner Oliver, Conor Opdebeeck-Wilson, "Survey – EU merger control developments", *Journal of European Competition Law & Practice* (2024): 57.

[109] Competition and Markets Authority, *Booking Holdings Inc/eTraveli Group AB Merger Inquiry: Decision on relevant merger situation and substantial lessening of competition* (4 November 2022).

dynamics in the digital economy. In analogue markets, such mergers were generally treated as benign, on the assumption that they did not eliminate direct competitors and often generated efficiencies. In digital markets, by contrast, the expansion of ecosystems through conglomerate acquisitions can fundamentally alter market structures by reinforcing network effects, expanding data advantages, and increasing user lock-in. As a result, the traditional presumption of benignity no longer holds.

From a doctrinal perspective, the evolution of EU merger control in digital markets demonstrates the adaptability of existing legal frameworks. Without legislative reform, the European Commission has relied on economic reasoning and case practice to develop new theories of harm capable of addressing ecosystem dynamics. The prohibition of Booking/eTraveli exemplifies this evolution *de iure condito*: the Commission applied Article 2 EUMR to capture risks of structural entrenchment that fall outside traditional foreclosure analysis.

At the same time, the Booking/eTraveli decision illustrates the tension inherent in merger control between preventing anticompetitive outcomes and preserving efficiencies. Conglomerate mergers may deliver benefits, such as improved interoperability, reduced transaction costs, and enhanced consumer convenience. Overly aggressive intervention could risk chilling innovation and discouraging pro-competitive integration. The challenge for competition authorities is therefore not to condemn conglomerate mergers as such, but to identify those transactions that significantly reinforce structural advantages and undermine contestability.

From a policy perspective, the EU's evolving approach positions the European Commission as a prominent actor in global debates on digital merger control. In the United States, the Federal Trade Commission has advanced novel theories of harm based on potential competition, as in *FTC v. Meta/Within*, albeit with mixed success before the courts. In the United Kingdom, the Competition and Markets Authority has increasingly emphasised ecosystem effects, particularly in the *Microsoft/Activision* review. These developments suggest a degree of international convergence in analytical concerns, even where enforcement outcomes diverge.

International organisations have further reinforced this shift. The OECD and the International Competition Network have repeatedly highlighted the need for merger control to incorporate dynamic and forward-looking theories of harm, including the suppression of potential competition, innovation effects, and the cumulative impact of ecosystem expansion.

These policy discussions reflect growing awareness that static price-based analysis is insufficient to safeguard competition in digital markets.

The interaction between merger control and ex ante regulation also raises important questions. Instruments such as the Digital Markets Act seek to address some of the structural risks associated with ecosystem power by imposing obligations on gatekeepers. However, regulatory intervention cannot substitute for merger control, which remains the primary tool for preventing irreversible structural changes. Effective competition policy in digital markets therefore requires coordination between merger enforcement and regulatory oversight.

Looking ahead, several issues remain unresolved. Should acquisitions by dominant ecosystem leaders be subject to a rebuttable presumption of harm? How should authorities assess efficiencies in markets characterised by strong network effects and data advantages? What evidentiary standards should apply to demonstrate long-term entrenchment and innovation harm? And how should courts review decisions based on complex and forward-looking economic assessments? The answers to these questions will shape the future of digital merger control.

In conclusion, conglomerate mergers in digital ecosystems can no longer be treated as marginal or presumptively benign. They are central to the strategies through which digital ecosystems expand and consolidate their power. The Booking/eTraveli decision marks a turning point in EU merger control by explicitly recognising the risks of ecosystem entrenchment. Whether this ecosystem-based theory of harm becomes a stable feature of EU enforcement will depend on future cases and judicial review. What is clear, however, is that merger control must continue to evolve if it is to remain effective in preserving competition in the digital economy.

Bibliography

Literature

Affeldt, Pauline, et al. *Market concentration in Europe: Evidence from antitrust markets*. DIW Berlin Discussion Paper No. 1930 (2021).

Argentesi, Elena, Paolo Buccirossi, Emilio Calvano, Tomaso Duso, Alessia Marrazzo, and Salvatore Nava. *Merger policy in digital markets: An ex-post assessment*. CESifo Working Paper No. 7985 (2019).

Bachrach, Peter, and Morton S. Baratz. "Two faces of power". *American Political Science Review* 56, no. 4 (1962): 947-952.

Bagnoli, Vicente, and Nicola M. Faraone. "Illumina/Grail: The 'new normal' of killer acquisitions and below-threshold acquisitions in search of a reconsideration". *Market and Competition Law Review* 9, no. 2 (2025): 105-148.

Baker, Jonathan B. *The antitrust paradigm: Restoring a competitive economy*. Cambridge, MA: Harvard University Press, 2019.

Baker, Jonathan B., and Joseph Farrell. "Oligopoly coordination, economic analysis, and the prophylactic role of horizontal merger enforcement". Washington College of Law Research Paper No. 2020-23 (2020).

Barnett, Jonathan M. "'Killer acquisitions' reexamined: Economic hyperbole in the age of populist antitrust". Center for Law and Social Science Research Paper Series No. CLASS23-1 (2023): 24-27.

Batra, Manu, Paul de Bijl, and Timo Klein. "Ecosystem theories of harm in EU merger control: Analysing competitive constraints and entrenchment". *Journal of European Competition Law & Practice* 15, no. 6 (2024): 357-367.

Berle, Adolf A. *Power: Epilogue in America*. New York: Harcourt, Brace & World, 1968.

Berry, Steven, Martin Gaynor, and Fiona Scott Morton. "Do increasing markups matter? Lessons from empirical industrial organization". *Journal of Economic Perspectives* 33, no. 3 (2019): 44-68.

Biglaiser, Gary, and Jacques Crémer. "The value of incumbency when platforms face heterogeneous customers". *American Economic Journal: Microeconomics* 12, no. 4 (2020): 229-269.

Blau, Peter M. *Exchange and power in social life*. New York: Wiley, 1964.

Bourreau, Marc. "Some economics of digital ecosystems". OECD DAF/COMP/WD(2020)89 (2020).

Bourreau, Marc, and Alexandre de Streel. *Digital conglomerates and EU competition policy*. Working Paper (2019).

Cabral, Luís. "Merger policy in digital industries". *Information Economics and Policy* (2021): 100866.

Carlsson, Bo, et al. "Knowledge creation, entrepreneurship and economic growth: A historical review". *Industrial and Corporate Change* 18, no. 6 (2009): 1222-1223.

Castellanos Pfeiffer, Roberto Augusto. "Digital economy, big data and competition law". *Market and Competition Law Review* 3, no. 1 (2019): 53-89.

Cheng, Thomas K. "Sherman vs. Goliath?: Tackling the conglomerate dominance problem in emerging and small economies – Hong Kong as a case study". *Northwestern Journal of International Law & Business* 37, no. 1 (2017): 35.

Colangelo, Giuseppe. "Antitrust über Alles. Whither competition law after Facebook?" *World Competition* 42, no. 3 (2019): 355-376.

Colangelo, Margherita, and Mariateresa Maggiolino. "Manipulation of information as an antitrust infringement". *Columbia Journal of European Law* 26, no. 2 (2020): 159-189.

Colangelo, Giuseppe, and Mariateresa Maggiolino. "Data protection in attention markets: Protecting privacy through competition?". *Journal of European Competition Law & Practice* 8, no. 6 (2017): 363-369.

Condorelli, Matteo, and Jorge Padilla. "Harnessing platform envelopment in the digital world". *Journal of Competition Law & Economics* 16, no. 2 (2020): 143-187.

Condorelli, Matteo, and Jorge Padilla. "Harnessing platform envelopment through privacy policy tying" (2019): 1-52.

Crémer, Jacques, Yves-Alexandre de Montjoye, and Heike Schweitzer. *Competition policy for the digital era*. Luxembourg: Publications Office of the European Union, 2019.

Cunningham, Colleen, Florian Ederer, and Song Ma. "Killer acquisitions". *Journal of Political Economy* 129, no. 3 (2021): 649-702.

de Crespigny, Anthony. *Power and its forms*. Oxford: Basil Blackwell, 1968.

Felice, Flavio, and Massimiliano Vatiero. "Ordo and European competition law". In Fiorito (ed.). *A research annual (research in the history of economic thought and methodology)*. Bingley: Emerald, 2015.

Fletcher, Amelia. "Digital competition policy: Are ecosystems different?". OECD DAF/COMP/WD(2020)96 (2020).

Foucault, Michel. *Power/knowledge: Selected interviews and other writings, 1972-1977*. New York: Pantheon Books, 1980.

Fox, Eleanor M. "The modernization of antitrust: A new equilibrium". *Cornell Law Review* 66 (1981): 1140-1156.

Fox, Eleanor M. "Competition law, global markets and the General Electric/Honeywell case". *Mercato Concorrenza Regole* (2002): 347-358.

Gautier, Axel, and Joe Lamesch. *Mergers in the digital economy*. Working Paper (2020).

Glick, Mark, and Catherine Ruetschlin. *Big Tech acquisitions and the potential competition doctrine: The case of Facebook*. Institute for New Economic Thinking Working Paper No. 104 (2019).

Hagiu, Andrei. "Ecosystems". In *The Palgrave encyclopaedia of strategic management*. London: Palgrave Macmillan, 2018, 1104-1108.

Hagiu, Andrei, and David B. Yoffie. "Network effects". In Mie Augier and David J. Teece (eds.), *The Palgrave encyclopaedia of strategic management*. Basingstoke: Palgrave Macmillan, 2014.

Halaburda, Hanna, Bruno Jullien, and Yaron Yehezkel. "Dynamic competition with network externalities: How history matters". *RAND Journal of Economics* 51, no. 1 (2020): 3-31.

IMD. "Everything you need to know about digital ecosystems". (2024). https://www.imd.org/reflections/digital-ecosystems.

Ivaldi, Marc, Bruno Jullien, Patrick Rey, Paul Seabright, and Jean Tirole. *The economics of unilateral effects*. Toulouse: IDEI, 2003. Final Report to DG Competition, European Commission.

Jacobides, Michael G., Carmelo Cennamo, and Annabelle Gawer. "Towards a theory of ecosystems". *Strategic Management Journal* 39, no. 8 (2018): 2255-2260.

Jin, Zhe, Francesco Leccese, and Alexandre Wagman. "How do top acquirers compare in technology mergers? New evidence from an S&P taxonomy". NBER Working Paper No. 29642 (2020).

Katz, Michael L. "Big Tech mergers: Innovation, Competition for the market, and the acquisition of emerging competitors". *Information Economics and Policy* 54 (2021): 100883.

King, Jaime S., and Erin C. Fuse Brown. "The anti-competitive potential of cross-market mergers in health care". *Saint Louis University Journal of Health Law & Policy* 11, no. 1 (2018): 43-68.

Klick, Jonathan M. "Is the digital economy too concentrated?" *Faculty Scholarship at Penn Law* (2020): 2260 ff.

Kolasky, William J. "conglomerate mergers and range effects: It's a long way from Chicago to Brussels". *George Mason Law Review* 10, no. 3 (2002).

Levy, Nicholas, Henry Mostyn, and Bianca Buzatu. "Reforming EU merger control to capture 'killer acquisitions' – The case for caution". *Competition Law Journal* (2020).

Levy, Nicholas, Anita Magraner Oliver, and Conor Opdebeeck-Wilson. "Survey – EU merger control developments". *Journal of European Competition Law & Practice* (2024): 57.

Lianos, Ioannis, and Bruno Carballa-Smichowski. "A coat of many colours – New concepts and metrics of economic power". *Journal of Competition Law & Economics* 18, no. 4 (2022): 795-847.

Lim, Yong. "Tech wars: Return of the conglomerate – throwback or dawn of a new series for competition in the digital era?" *Social Science Research Network* 19 (2017): 47-62.

Lindblom, Charles E. *Politics and markets: The world's political-economic systems*. New York: Basic Books, 1977.

Lypalo, Dzhuliia. "Can competition protect privacy? An analysis based on the German Facebook Case". *World Competition* 44, no. 2 (2021): 169-198.

MacIver, Robert Morrison. *Power Transformed: The age-long deliverance of the folk and now the potential deliverance of the nations from the rule of force*. New York: Harper & Row, 1964.

Maggiolino, Mariateresa. "Exclusionary abuses of dominance involving digital ecosystems in the European Union". In Pier Luigi Parcu, Maria Alessandra Rossi, and

Marco Botta (eds.), *Research handbook on competition and technology*. Cheltenham, UK; Northampton, MA: Edward Elgar, 2025.

Marshall, Thomas Humphrey. "Reflections on power". *Sociology* 3, no. 2 (1969): 141-150.

Martens, Bertin. "Data access, consumer interests and social welfare: An economic perspective". SSRN Working Paper (2020). https://ssrn.com/abstract=3605383.

Motta, Massimo. *Competition policy: Theory and practice*. Cambridge: Cambridge University Press, 2004.

Motta, Massimo, and Martin Peitz. "Removal of potential competitors – A blind spot of merger policy?" CRC TR 224 Discussion Paper Series (2020).

Mueller, Dennis C. "The Effects of Conglomerate Mergers: A Survey of the Empirical Evidence". *Journal of Banking & Finance* 1, no. 4 (1977): 315-347.

Parker, Geoffrey G., Georgios Petropoulos, and Marshall W. Van Alstyne. "Platform mergers and antitrust". *Industrial and Corporate Change* 30, no. 5 (2021): 1311-1343.

Petropoulos, Georgios. "Competition economics of digital ecosystems". OECD DAF/COMP/WD(2020)91 (2020).

Rasmusen, Eric. "Entry for buyout". *Journal of Industrial Economics* 36, no. 3 (1988): 281-299.

Robertson, Viktoria H.S.E. *Merger review in digital and technology markets: Insights from national case law*. Final Report (2022).

Robertson, Viktoria H.S.E. "Antitrust law and digital markets". In *The routledge handbook of smart technologies: An economic and social perspective*, edited by Heinz D. Kurz, Marlies Schütz, Rita Strohmaier, and Stella S. Zilian. London/New York: Routledge, 2022.

Robertson, Viktoria H.S.E. "Digital merger control: Adapting theories of harm". *European Competition Journal* 20, no. 2 (2024): 437-459.

Robles Martín-Laborda, Antonio. "Merger control and online platforms: The relevance of network effects". *Market and Competition Law Review* 1, no. 2 (2017): 69-100.

Russell, Bertrand. *Power: A new social analysis*. London: Allen & Unwin, 1938.

Salop, Steven C. "Some comments for improving the 2023 draft Merger Guidelines". SSRN (2023).

Schmalensee, Richard. "Entry deterrence in the ready-to-eat breakfast cereal industry". *Bell Journal of Economics* 9, no. 2 (1978): 305-327.

Shapiro, Carl. "Antitrust in a time of populism". *International Journal of Industrial Organization* 61 (2018): 714-748.

Stewart, Milton D. "The case for 'smallness': Entrepreneurship, conglomerates, and the good economic society". *Antitrust Law & Economics Review* 12 (1979): 71-78.

Stylianou, Konstantinos. "Exclusion in digital markets". *Michigan Telecommunications & Technology Law Review* 24, no. 2 (2018): 181-218.

Van den Boom, Jasper, and Peerawat Samranchit. "digital ecosystem mergers in Big Tech – A theory of long-run harm with applications". *Journal of European Competition Law & Practice* 13, no. 6 (2022): 365-373.

van den Boom, Jasper, and Peerawat Samranchit. "Assessing the long-run competitive effects of digital ecosystem mergers". TILEC Discussion Paper. Tilburg University (2020).

Vande Walle, Simon. "The European Commission prohibits a dominant hotel booking platform from acquiring a flight booking platform based on an 'ecosystem theory of harm'". *Concurrences*, no. 1-2024 (March 2024).

Varian, Hal R., Joseph Farrell, and Carl Shapiro. *The economics of information technology: An introduction*. Cambridge: Cambridge University Press, 2004.

Vecchi, Teresa. "Unilateral conduct in an oligopoly according to the Discussion Paper on Art. 82: Conscious parallelism or abuse of collective dominance". *World Competition* 3 (2008): 385-400.

Witt, Anne C. "Who's afraid of conglomerate mergers?" *Antitrust Bulletin* 67, no. 2 (2022): 208-214.

Witt, Anne C. "Big Tech acquisitions: The return of conglomerate merger control". *Concurrences* (2020).

Wilson, James Q. "Small business and the Jeffersonian heritage: Portrait of the entrepreneur". *Antitrust Law & Economics Review* 12 (1979): 48-55.

Zenger, Todd R., and Sergio G. Lazzarini. "Compensating for innovation: Do small firms offer high-powered incentives that lure talent and motivate effort?" *Managerial and Decision Economics* 25, no. 6-7 (2004): 329-345.

Official documents

Australian Competition and Consumer Commission (ACCC). *Digital Platforms Inquiry: Final Report* (2019).

Competition and Markets Authority. *Merger Assessment Guidelines* (18 March 2021).

Competition and Markets Authority. *Booking Holdings Inc/eTraveli Group AB Merger Inquiry: Decision on Relevant Merger Situation and Substantial Lessening of Competition* (4 November 2022).

European Commission. *Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*. OJ C 31, 5 February 2004, 5-18.

European Commission. *Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*. OJ C 265, 18 October 2008, 6-25.

European Commission. *Mergers: Commission Prohibits Proposed Acquisition of eTraveli by Booking – Press Release* (2023).

European Union. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("EUMR"). OJ L 24, 29 January 2004, 1-22.

European Union. 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 (Digital Markets Act). OJ L 265, 12 October 2022, 1-66.

House Judiciary Subcommittee on Antitrust (US House of Representatives). Majority Staff Report and Recommendations. *Investigation of Competition in Digital Markets* (6 October 2020).

ICN Merger Working Group. *ICN Recommended Practices for Merger Analysis* (Amended May 2025).

OECD. *Some Economics of Digital Ecosystems – Note by Marc Bourreau*. Paris: OECD Publishing, 2020.

OECD. *Start-ups, Killer Acquisitions and Merger Control – Background Note*. DAF/COMP(2020)5 (2020).

OECD. *The Evolving Concept of Market Power in the Digital Economy – Background Note* (2022).

OECD. *Theories of Harm for Digital Mergers*. OECD Competition Policy Roundtable Background Note. Paris: OECD Publishing, 2023.

OECD. *Theories of Harm for Digital Mergers: Summary of Discussion*. DAF/COMP/M(2023)1/ANN9/FINAL (2024).

OECD. *Conglomerate Effects of Mergers – Summaries of Contributions* (2020)