# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

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www.ijlra.com

**ISSN: 2582-6433**

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

# EXAMINING MERGER CONTROL STANDARDS IN DIGITAL PLATFORM MARKETS: A COMPARATIVE STUDY OF INDIA AND THE UNITED STATES

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## Abstract

The digital platform market has fundamentally changed landscape, posing complex challenges to traditional merger control frameworks. This paper investigates whether the current standards of merger control can work effectively to meet the unique features of digital markets with a specific reference to India and the United States. It stakes a comparative legal approach, where statutory frameworks, enforcement practices and recent policy developments in both jurisdictions are examined.

The article argues that, although there are formal similarities in legal standards in both India and the United States, namely the "appreciable adverse effect on competition" test in India and the "substantial lessening of competition" standard in the United States, both regimes face structural limitations when applied to the digital market platforms. Specifically, the inability of competition authorities to detect harms pertaining to data concentration, innovation, and how elimination of potential competition is limited due to an over-reliance on relatively static indicators such as market share and short-term price effects.

Although, recent developments like the introduction of a deal value in India and evolving enforcement approaches in the United States, indicate a growing recognition of these challenges, the article contents that current reforms may not be adequate. It concludes that a more future-looking and flexible approach to merger control is required to address the dynamic and data driven nature of digital platform markets.

**Keywords:** Merger Control, Digital Platform Markets, Competition law, Antitrust, Innovation, India USA.

ISSN: 2582-6433

# I. Introduction

Digital platform markets are now taking central role in modern economy, as they not only change the patterns of consumption but also reshape competition. Digital platforms are multi sided, unlike traditional markets, and interactions between different groups of users create value, which is commonly facilitated by the collection and analysis of large amounts of data. Such characteristics, especially network effects, economies of scale, and feedback loops that are driven by data, can cement the status of existing companies and introduce high entry barriers.[1]

These structural characteristics have become more apparent in terms of merger control and have implications toward competition law. In the last 10 years, a succession of takeovers by major technology companies has triggered a re-examination of whether the current legal provisions can discover anti-competitive injury early on. Growing recognition of concepts like "killer acquisition," where dominant firms acquire nascent or potential competitors before they can evolve into rivals, shows a need for reassessment of how competition law addresses innovation and future competition.[2] These deals can often be below the conventional notification levels and may not be effectively reviewed, even though they may have longer-term effects on innovation and market contestability.

These developments expose a deeper challenge in merger control doctrine. Traditional antitrust analysis traditionally has made use of price impacts and defined market boundaries as their main measure of competitive harm. However, in digital markets where services are commonly provided at no price, competition is commonly on non-price dimensions including data, quality and innovation. As scholars like Lina Khan have suggested, the problem of focusing on short-term price impacts has a danger of overlooking structural forms of dominance that arise within platform-based models of business.[3] Likewise, economic studies by Jean Tirole and Carl Shapiro have pointed to the ways in which network effects and strategic behavior can harm competition in digital settings.

It is against this backdrop that the competition authorities have started to re-examine the sufficiency of current standards of merger control. The United States historically relied on consumer welfare standard as the guiding principle for enforcement and merger effects on

[1] Jean Tirole, *Economics for the Common Good* (Princeton University Press 2017); Carl Shapiro, 'Antitrust in a Time of Populism' (2018) 61 *International Journal of Industrial Organization* 714.
[2] Organization for Economic Co-operation and Development (OECD), *Theories of Harm for Digital Mergers* (2023) https://www.oecd.org/daf/competition/theories-of-harm-for-digital-mergers-2023.pdf.
[3] Lina Khan, 'Amazon's Antitrust Paradox' (2017) 126 *Yale Law Journal* 710.

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prices and output for assessment. However, it has experienced a shift in recent years not only in scholarly literature but also in the application of enforcement, towards structure and competitive effects. Meanwhile, competition law regime in India established under the Competition Act, 2002 has evolved with the fast-growing digital economy. Competition Commission of India has been dealing with cases of data-driven platforms and the changing market structures. However, there is still debate on whether its current framework is sufficient to tackle harms which are unique to digital space.

This paper states that in spite of differences in institutional maturity and enforcement practices, both the United States and India have structural constraints in applying the traditional merger control standards to digital platform markets. Overreliance on indicators like short-term price impact and market power limits the capability of the authorities to combat the harm associated with innovation, information concentration, and the removal of possible competition. Although the recent trends, particularly in the United States, give reasons to believe that some progress is being made more toward prospective solutions, these changes are still incomplete and uneven.

The article adopts a comparative legal approach to analyzing merger control both India and the United States. It explores statutory provision, enforcement practices and policy developments, placing them in the context of the wider economic literature on digital markets. The aim is not to merely discuss the differences in the doctrines, but to explore whether the present legal standards are adequate to effectively respond to the unique characteristics of the platform-based competition.

With its emphasis on this comparative aspect, this paper aims to contribute to an area that is rather under researched. Whereas the issues of digital merger control have been extensively debated, little research has analyzed the efforts of various jurisdictions to respond analytically. A comparative study between USA and India can provide a helpful prism through which convergence and divergence in modern competition law can be assessed, and the future of merger control in digital markets may be viewed.

## II. Literature Review

The effectiveness of merger control in digital markets has seen rich array of academic discussions, especially in terms of the growing dominance of large technology firms. While conventional competition law frameworks have long relied on price effects and concentration level as the main standard of harm, a large body of recent literature has questioned whether the

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continued reliance on these measures in digital markets is appropriate. The section places the current research on this subject, with focus on four related bodies of literature: (i) the traditional approach to consumer welfare, (ii) the economic nature of digital markets, (iii) the issue of killer acquisitions and harm to innovation, and (iv) recent reform proposals.

A. The Consumer Welfare Standard and Its Limits

The consumer welfare standard, focusing on allocation efficiency and short-term prices, has had a significant impact on modern merger control, especially in the United States. This standard, which draws on the Chicago School of Economics, assumes markets are typically efficient unless market power can be shown to result in higher prices or reduced output.[4]

However, this framework has been scrutinized in the context of digital market. Some critics argue that the emphasis on price effects is misaligned with the markets in which many goods are priced at zero, and competition is determined by a range of factors including data collection, innovation and attention. Lina Khan, for instance, argues that the consumer welfare framework may be systematic.

Other scholars have similarly challenged the adequacy of price centric analysis. Tim Wu for instance, points to the historical tendency of antitrust law to underestimate the risks posed by concentrated market structures, especially in fast moving sectors.[5] Meanwhile, proponents of the traditional approach, including Hebert Hovenkamp, argue against discarding economically informed standard in favor of the alternate approached unless there is evidence that the latter will yield superior results.[6]

This divergence is a reflection of a broader debate in competition law about whether merger control should remain focused on measurable economic effects or take into account broader concerns about market structure and long-term competitive effects.

B. Economic Characteristics of Digital Platform Markets

A second line of literature examines the economic characteristics of digital platform markets and their relevance for competition law; platforms are generally multi-sided markets that create connection between groups of users while leveraging data and network effects.[7]

[4] Robert Bork, *The Antitrust Paradox* (Free Press 1978).
[5] Lina Khan, 'Amazon's Antitrust Paradox' (2017) 126 *Yale Law Journal* 710.
[6] Tim Wu, *The Curse of Bigness* (Columbia Global Reports 2018).
[7] Herbert Hovenkamp, 'Is Antitrust's Consumer Welfare Principle Imperiled?' (2019) 45 *Journal of Corporation Law* 101

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As highlights by Jean Tirole, network effects can lead to self-reinforcing dynamics, where increasing numbers of users increase the value of the platform, thus favoring incumbents and creating barriers to entry.[8] Similarly, Carl Shapiro argues economies of scale and scope, together with strategic behavior, can allow dominant firms to consolidate market power in ways not adequately reflected by conventional measures.

The importance of data has also received recognition. Data advantages enable firms to enhance offerings, personalize marketings, and optimize algorithms, thus exerting a positive influence on their market power. This has also prompted some to view data as a form of market power in itself, which can present challenges to traditional approaches to market definition and dominance.[9]

Collectively, this paper highlights the need to move beyond static approaches to competition, and to develop models of digital markets that takes into account feedback loops, tipping effects and long-term strategic behavior.

C. Killer Acquisitions and Innovation Harm

The most important recent discussion is that of "killer acquisition." The term has emerged in the economic literature to describe acquisitions by incumbents of innovative start-ups with the goal of eliminating or stunting the developments of competing products.[10]

Empirical analysis by Colleen Cunningham and others show that killer acquisition can hamper innovation by removing potential competitors early on.[11] While much of the research has initially centered on the pharmaceutical industry, it has been recognized as relevant for digital markets.

In digital markets, the potential for killer acquisitions is further compounded by the fact that start-ups often have low revenues but high potential. This means that they may not meet the conventional "size of transaction" test for mergers, meaning that strategically important acquisitions may go unscrutinized. This has led to suggestions for alternative threshold tests, such as transaction value tests, in countries like India.[12]

However, other scholars warn against overestimating the occurrence of killer

[8] David S Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* (Harvard Business Review Press 2016).
[9] Jean Tirole, *Economics for the Common Good* (Princeton University Press 2017).
[10] Carl Shapiro, 'Antitrust in a Time of Populism' (2018) 61 *IJIO* 714.
[11] OECD, *Data-Driven Innovation for Growth and Well-Being* (2015).
[12] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129 *Journal of Political Economy* 649.

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acquisitions, given that acquisitions can also create efficiencies, promote innovation and offer exit strategies for entrepreneurs.[13] This raises questions about the challenge of distinguishing between pro-competitive and anti-competitive mergers in dynamic markets.

D. New Developments and Reform Suggestions

In the light of these issues, an emerging body of researchers calls for reform of merger standards. A key strand, sometimes referred to as the "Neo-Brandeisian" movement, argues for a move away from narrow economic measures and towards more consideration of market structure and market power.[14]

Recent US policy developments reflect aspects of this trend, with updated merger guidelines placing greater weight on market concentration, potential competition and structural concerns.[15] At the same time, international bodies like the OCED have emphasized the need for more flexible approaches to tackle digital-specific harms, such as data concentration and ecosystem effects.

In India, research has examined the difficulties of the Competition Commission of India (CCI) in responding to digital markets. While reforms such as deal value thresholds have been suggested, concerns remain about capacity and the incorporation of forward-looking analysis.

E. Research Gap

Although there is a wealth of literature on the topic, there is a need for greater comparative study of merger control regimes across jurisdictions, particularly in the context of advanced and developing economies. Although the issues surrounding digital mergers have been extensively discussed in isolation, there has been less comparative assessment of the effectiveness of different legal frameworks in dealing with these challenges.

This article aims to bridge this gap by providing a comparative analysis of India and the US. It seeks to examine not just the legal standards applied in merger control, but their suitability to the challenges of digital platforms.

[13] ibid
[14] Competition Law Review Committee Report (India, 2019).
[15] Daniel Sokol, 'Acquisition of Nascent Competitors' (2020).

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## III. Digital Platform Markets and the Limits of Traditional Merger Control

To understand the problems associated with digital platform mergers, it is necessary to consider the economic features of platform markets. Traditional competition law has been able to rely on relative stable assumptions about the market structure, pricing and behavior of firms, but these assumptions are being tested in digital ecosystems. This section provides an overview of the characteristics of digital platform markets and why these give rise to difficulties in applying traditional merger control principles.[16]

A. Multi-Sided Markets and Network Effects

Digital platforms tend to be multi-sided markets, where different groups of users interact with each other, for example, consumers, advertisers and app developers. The value of the platform to one group is contingent on the presence of other groups, resulting in interdependent demand patterns characteristics of such markets.[17]

One characteristic of these markets is network effects. The increase in the user base of a platform increases the value of the platform, which in turn leads to more users. As Jean Trirole and Jean-Charles Rochet show, this can result in market tipping, where a single firm dominates the market because of the benefits of cumulative advantage rather than because of exclusionary behavior.[18]

For merger control, network effects pose challenges in determining the potential effects on competition. Conventional methods, like market share analysis, may underestimate the place and extent to which dominance can arise or be cemented after a merger. In addition, even the removal of a small or nascent competitor can have significant consequences if it eliminates a potential future competitor in a market with tipping effects.[19]

B. The Role of Data in Generating Market Power

Another key characteristic of digital markets is the use of data. Digital platforms gather large amounts of data, which they can use to fine-tune algorithms, personalize services, and inform decision making. Over- time, this gives rise to virtuous circles of increased access to data gating improved services, which attract more users and more data and so

[16] OECD, *Theories of Harm for Digital Mergers* (2023).
[17] David S Evans and Richard Schmalensee, *Matchmakers* (2016).
[18] US DOJ & FTC, *Merger Guidelines* (2023).
[19] OECD (n 1).

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on.[20]

Academics like Hal Varian have highlighted the economic value of data in the digital economy, pointing out that data advantages can compound existing market power even in the absence of barriers to entry.[21] This has implications for merger analysis, especially when the proposed acquisition enables the acquirer to integrate data sets or remove a source of potential data competition.

But the significance of data is subject to debate. While some scholars suggest that data is not inherently scarce and its competitive importance can be over emphasized, others argue that certain types of data, particularly those that are unique, large, or hard to replicate, can deliver sustainable advantages.[22]

C. Zero-Price Markets and Non-Price Competition

Another compliance is the presence of zero-price services in online markets. A large number of services are provided to consumers at zero monetary price, with revenue derived from other means, such as advertising. This complicates a key tenet of traditional merger analysis, that competition impacts are largely reflected in prices.[23]

In these markets, competition occurs along other dimensions such as quality, innovation, privacy and services experience. A merger that does not result in immediate price rises may therefore still have an anti-competitive effect by diminishing incentives to innovate, or by lowering quality and other non-price attributes.

D. Dynamic Competition and the Problem of Potential Entrants

Dynamic competition is common in digital markets, in which firms compete not only in the existing market structure and framework, but also through innovation and the creation of new products and services. In such markets, the market power of a firm may rest less in its existing market presence and more in its ability to challenge dominant firms.[24]

For the purposes of merger control, this raises questions about the significance of acquisitions of start-ups and fledging firms. Acquiring firms may not be particularly profitable or significant in the market at the time of acquisition, but they are potentially highly competition. The elimination of such firms through acquisitions may therefore

[20] OECD, *Data-Driven Innovation* (2015).
[21] Hal Varian (2019).
[22] Stucke and Grunes (2016).
[23] OECD (n 1).
[24] Dina Srinivasan (2019).

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have long-term implications that are challenging to identify with traditional methods. Economic theory on innovation markets recognizes the role of competition from potential entrants. But ex ante identification of such firms is uncertain and therefore - may lead to both under and over enforcement (i.e. failing to stop anti-competitive mergers and blocking pro-competitive mergers.)[25]

E. implications for Merger Control

These characteristics highlight the challenge of applying conventional merger control tools to digital platforms. Concepts like market definition, market share thresholds and price-based measures of harm are frequently inappropriate in a world of network effects, data-driven competitiveness and dynamic competition.[26]

These tools are not irrelevant but need to be adapted. Especially, merger control in the digital economy may need to be more prospective, focusing on how transactions could affect innovation, data, and market dynamics in the future.[27]

## IV. Merger Control Framework in India

The merger control framework in India is primarily outlined in the Competition Act, 2002, which sets up an ex-ante review regime for combinations subject to jurisdictional thresholds. The Competition Commission of India (CCI) is responsible for enforcing these regulations by determining the likelihood of a proposed combination having an "appreciable adverse effect on Competition" (AAEC) in the relevant market.[28]

Structurally, the Indian approach follows an effects-based framework, under which the CCI must consider a variety of factors such as market concentration, barriers to entry, countervailing buying power, and the risk of foreclosure.[29] While these factors are broad enough to capture a variety of competitive issues, they present challenges in digital market.[30]

One issue is the use of asset and turnover based thresholds for notification. Digital enterprises tend to have low turnover, despite their high strategic significance (e.g. start-ups, platform businesses). This posed the risk that the acquisition of emerging competitors might fall through the cracks, despite potentially reshaping the competition landscape in the longer run.[31]

[25] Carl Shapiro (2012).
[26] ibid
[27] OECD (n 1).
[28] Competition Act, 2002, ss 5–6.
[29] Competition Act, 2002, s 20(4).
[30] OECD, *Theories of Harm for Digital Mergers* (2023).
[31] Competition Law Review Committee, *Report* (2019).

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The competition (Amendment) Act, 2023 has partly remedied this by introducing a deal value threshold for notification of transactions above a certain value where the target business has "substantial business operations in India". This change is widely recognized as an effort to capture valuable acquisitions in digital markets, such as those involving innovate or data-intense firms that might not trigger financial thresholds.[32]

Despite this, there are significant questions. The term "substantial business operations" is not fully defined and may therefore be open to interpretation. Furthermore, the impact of the transaction value threshold will be determined by how the CCI continues to interpret and apply it in a holistic, consistent and adaptive manner in the rapidly changing digital landscape.[33]

In reality, the CCI has shown heightened interest in digital sector matters, especially with regards to e-commerce and digital platforms. But, its merger control decisions have, by and large, continued to rely on conventional concepts, such as market definition and market shares. Although these approaches offer a measure of certainty, they may not adequately reflect competitive concerns in the context of fast-moving innovation and network effects.[34]

The question of data as a source of market power also poses difficulties. While the CCI has recognized the significance of data advantages in merger analysis. This poses challenges in assessing mergers where the key concern relates to the consideration of data assets, or the enhancement of the ecosystem of a platform, rather than horizontal overlap with competitors.[35]

The use of the AAEC standard also poses challenges in the context of dynamic competition. Although the legislation allows for the consideration of factors like innovation and potential competition, these factors can be hard to assess. This could potentially lead to a failure to scrutinize mergers involving firms in the early stages of development, where the competition concerns relate to future potential.[36]

In sum, India's merger framework is both doctrinally innovative and conservative practice. The addition of the deal value threshold is welcome advancement in the regime. Yet, the insistence on relying on conventional metrics, along with the lack of a fully mature approach to the characteristics of digital markets, means that the problems of dealing with mergers involving platform businesses are likely to remain.[37]

[32] Competition (Amendment) Act, 2023.
[33] ibid.
[34] CCI, *Market Study on E-commerce in India* (2020).
[35] OECD, *Data-Driven Innovation* (2015).
[36] Carl Shapiro, 'Competition and Innovation' (2012).
[37] OECD (n 3).

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## V. Merger Control Framework in the United States

U.S merger control is governed by s.7 of the Clayton Act, which bars mergers that have the effect "may be substantially to lessen competition, or to tend to create a monopoly." The Federal Trade Commission (FTC) and the Antitrust Division of the Département of Justice (DOJ) share enforcement responsibilities and apply an effects-based approach to merger analysis, making use of economic analysis.[38]

Traditionally, U.S. merger control has been guided by the consumer welfare standard, focused on quantifiable effects, including price rises, reduction in output and efficiency gains. This framework, which draws on Chicago School economic thought, has tended to be conservative in its approach, especially in markets involving innovation and technological advances.[39]

Yet the use of this paradigm for the analysis of digital platforms has been growingly contentious. Several, recent acquisitions by tech giants have sparked concerns that conventional merger analysis may not be able to detect anti-competitive effects when they occur not through immediate price impacts, but through the destruction of potential competition. For instance, deals like fakebook's purchase of Instagram and WhatsApp, although approved at the time, are often said to represent under-enforcement in digital markets.[40]

A key weakness of the U.S approach is its analysis of nascent and potential competitors. Although current doctrine acknowledges the importance of potential entrants, the burden of proof to establish harm is substantial. This poses challenges in outlined markets, where potential threats may come from small, innovative firms with uncertain prospects. Consequently, mergers involving these firms may go through, despite long-term implications.[41]

Recent trends suggest a change in approach. The updated merger guidelines of the U.S. authorities give more weight to structural considerations, such as market concentration, entry barrier and entrenchment. These also show a greater openness to taking into account non-price factors, including innovation and quality, especially in the digital economy.[42]

Meanwhile, enforcement has increasingly focused on big tech firms, suggesting a more muscular approach. However, the extent to which these developments signal a significant shift from the consumer welfare standard is contentious. Among other things, some observers

[38] Clayton Act 1914, §7.
[39] Robert Bork, *The Antitrust Paradox* (1978).
[40] FTC, *Statement on Instagram Acquisition* (2012); subsequent commentary.
[41] Colleen Cunningham et al, 'Killer Acquisitions' (2021).
[42] US DOJ & FTC, *Merger Guidelines* (2023).

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content that despite changes in rhetoric, courts remain wedded to conventional economic evidence, with consequent constraints on the impact of new policy initiatives.[43]

A further source of complexity relates to data and ecosystem effects. Although data has been recognized as a relevant source of market in some cases by U.S. authorities, there is no well-established framework for analyzing data-based market power in the context of mergers. This poses difficulties in assessing transactions where the primary competitive concerns relate to the integration of data assets or enhancement of ecosystem effects, rather than horizontal overlaps.[44]

In all, the U.S. approach to merger control is a mixture of the old and new. On the one hand, it continues to embrace economic analysis and judicially enforceable standards. On the other, it is increasing faced with arguments to apply these standards in the context of digital platform markets. Although recent policy moves have indicated a shift towards a more exuberant and forward-looking approach, the success of this change will depend on how it will be enforced and interpreted in court.[45]

## VI. Comparative Analysis: India and the United States

The merger control regime of India and the United States exhibit a remarkable degree of convergence in terms of the formal legal standards adopted, but more nuanced differences in terms of their application in the context of digital platform markets. Both countries follow effects-based approach and acknowledge the roles of factors like market power and barriers to entry into merger assessment, but their capacity to deal with the unique complexities of digital mergers is limited by common structural issues.[46]

A. Similarities in Legal Standards and Fraameworks

Both jurisdictions adopt comparable tests for mergers. The "appreciable adverse feet on competition" (AAEC) test of the Competition Act, 2002 and the "substantial lessening of competition" (SLCP) test of the Clayton Act are conceptually equivalent, both involving a determination whether a transaction is likely to have a negative impact on competition in the affected market.[47]

This involves economic analysis, with regulators taking into account market

[43] Herbert Hovenkamp, 'Antitrust and Platform Monopoly' (2020).
[44] Maurice Stucke and Allen Grunes, *Big Data and Competition Policy* (2016).
[45] Carl Shapiro (n 9).
[46] OECD, *Theories of Harm for Digital Mergers* (2023).
[47] Competition Act, 2002; Clayton Act 1914, §7.

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concentration, barriers to entry and other countervailing factors. This similarity is part of the broader trend towards globalization of competition policy and the use of economic analysis in merger control.[48]

But this convergence belies deeper flaws. They continue to rely heavily on tools designed for traditional markets, such as market definition, market share thresholds, and price as evidence of harm. Although these tools remain relevant, their utility in digital markets, which feature multi-sided markets, "free" services and rapid innovation, is limited.[49]

B. Different Enforcement Paths

Despite these commonalities, the two jurisdictions are currently on different paths in enforcement of digital mergers. In recent years, the US has exhibited a more explicit reassessment of its merger control regime. Policy changes, such as the issuance of new merger guidelines and heightened enforcement by the Federal Trade Commission and Antitrust Division of the Department of Justice, suggest an increasing openness to consider structural issues like market concentration and the removal of potential competition.[50]

In contrast, the Competition Commission of India (CCI) has taken a more incremental approach. The CCI has shown in issues relating to digital markets, but its merger decisions have been largely confined to traditional analysis. This is party a function of institutional factors, such as the importance of certainty, and the relatively short history of India's competition law regime.[51]

This leads to differences in enforcement and focus, rather than legal approach. While the US appears to have moved (unevenly) towards a broader concept of competitive harm, India has followed a more conventional approach.[52]

C. Common issues: data, innovation and potential competition

Despite these distinctions, both systems share challenges in applying merger standards in the context of digital platforms. This includes the role of data as a source of market power. Although data is recognized in both systems, neither has a fully articulated approach to valuing data in assessing mergers. This makes it difficult to assess

[48] Jean Tirole, *Economics for the Common Good* (2017).
[49] OECD (n 1).
[50] US Department of Justice & Federal Trade Commission, *Merger Guidelines* (2023).
[51] Competition Commission of India, *Market Study on E-commerce in India* (2020).
[52] Herbert Hovenkamp, 'Antitrust and Platform Monopoly' (2020).

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transactions where the key concern is data integration, rather than market overlap.[53]

Another issue is innovation and dynamic competition. The digital economy is market by technological innovation, where the value for competition of firms may be tied to their future potential rather than current market share. Existing rules for merger analysis, which are generally focused on the present structure of the market, are not well suited to address such concerns.[54]

This is especially true in the case of acquisitions of potential competitors. In both the US and India, the standard of proof for demonstrating harm to potential competition is stringent, and thus the likelihood of strategically important mergers being cleared despite their future impact is greater. This is at the heart of current discussion about "killer acquisition" and the sufficiency of the merger filing thresholds.[55]

D. Structural Under- Enforcement in Digital Markets

In combination, these considerations suggest that there is some degree of structural under-enforcement of competition law in digital markets in both jurisdictions. This is not just a question of institutional resources or enforcement priorities but also limits inherent to the frameworks themselves.[56]

The focus on static measures, such as current market share and short-term price impacts, constraints the capacity of competition authorities to identify long-term harms. In digital markets, where advantages are often compounded and path dependent, the lack of early intervention may lead to situations and path dependent, the lack of early intervention may lead to situations in which dominant players become entrenched in a way that is difficult to undo.[57]

Although the US has started to acknowledge these concerns more explicitly, and India has started to discuss reform, both systems are still struggling to translate the theoretical understanding into practice. This leads to a disconnect between the recognized challenges of digital markets and the regulatory response.[58]

E. Lessons for Comparative Competition Law

The India and US case studies reveal a larger point: the problem of digital merger control is not unique to any one jurisdiction but reflect a broader trend in the evolution

[53] Maurice Stucke and Allen Grunes, *Big Data and Competition Policy* (OUP 2016).
[54] Carl Shapiro, 'Competition and Innovation' (2012).
[55] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021).
[56] OECD (n 1).
[57] Jean Tirole (n 3).
[58] OECD (n 1).

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of competition law. In the changing digital marketplace, the suitability of existing merger control standards is being challenged, especially when they are based on assumptions that no longer apply in a networked economy.[59]

In this sense, differences between jurisdictions may be less relevant than their similarities. Although enforcement differences continue to matter, the more pressing problem is the need to refine analytical frameworks that are applicable to digital markets. This implies that reform will need to include not only country specific reforms, but also a broader re-evaluation of the principles of merger control in digital markets.[60]

## VII. Reform and Policy Recommendations.

The comparative analysis in this paper indicates that although both India and the United States have already started to acknowledge limitations of conventional merger control in digital markets, their existing frameworks still only fully reflect the realities of platform-based competition. Filing these gaps does not entail a complete denunciation of the current principles, but rather a specific re-tuning of analysis instruments and enforcement priorities.[61]

A. Enhancing Competition Evaluation

One of the main issues in digital markets is the acquisition of nascent competitors. Potential competition is one of the areas which both jurisdictions need to focus more on specifically in situations where target companies have innovative potential or access to valuable data.[62]

It demands change towards more long-term analysis even in areas of low current market shares. Competition authorities must be prepared to draw inferences of competitive relevance based on signs like user growth, technological capacities, and strategic placement, as opposed to considering the current market measures.[63]

B. Operationalizing deal value thresholds and extending jurisdiction.

The establishment of a deal value in India is a good step towards sealing enforcement loopholes. Its success will however be determined by the interpretation of concepts like substantial business operations by Competition Commission of India. Certain guidance is needed in order to guarantee that the transactions of strategic importance are always

[59] Tim Wu, *The Curse of Bigness* (2018).
[60] Carl Shapiro, 'Antitrust in a Time of Populism' (2018).
[61] Carl Shapiro, 'Antitrust in a Time of Populism' (2018) 61 *IJIO* 714.
[62] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129 *Journal of Political Economy* 649.
[63] OECD, *Theories of Harm for Digital Mergers* (2023).

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recorded without causing businesses too much uncertainty.[64]

In the United States, where there is no similar threshold, alternative acquisition capture mechanisms could be taken into account. This can be in the form of the increased reporting requirements or increased use of investigatory powers to probe transactions below the traditional thresholds.[65]

C. Data and Ecosystem Effects: Integrating Data and Ecosystem Effects into Merger Analysis.

Both jurisdictions ought to come up with clearer guidelines on how to evaluate as a market force. This involves considering not just the amount for data as a market force. This involves considering not just the amount of data possessed by merging entities, but also its originality, ability to be reused, and its strategic value in a wider platform ecosystem.[66]

Ecosystems effects should be also considered in merger analysis where the value of a platform is based on the combination of various services. Even when there is no direct horizontal overlap, acquisitions that enhance such ecosystems can entrench market power.[67]

D. Growing the impact of Non-Price Factors

Since zero-price services are more common in digital markets, more emphasis needs to be placed on non-price aspects of competition, such as innovation, quality, privacy and consumer choice. Although the factors are already identified in principle, they are not used in practice extensively.[68]

Greater attention to more systematic methods of assessing non-price harm would help competition authorities to better identify sensitive yet important competitive impacts not reflected by price-based analysis.[69]

E. Strengthening Institutional Capacity and tools of analysis.

Lastly, to inform digital markets effectively, institutional capacity, such as technical expertise and data analytics, must be invested in. this especially applies to the Competition Commission of India, which has to work in fast paced digital economy.[70]

[64] Competition (Amendment) Act, 2023; Competition Law Review Committee Report (2019).
[65] US DOJ & FTC, *Merger Guidelines* (2023).
[66] Maurice Stucke and Allen Grunes, *Big Data and Competition Policy* (OUP 2016).
[67] OECD, *Competition in Digital Ecosystems* (2020).
[68] Lina Khan, 'Amazon's Antitrust Paradox' (2017) 126 *Yale LJ* 710.
[69] Dina Srinivasan, 'The Antitrust Case Against Facebook' (2019).
[70] CCI, *Market Study on E-commerce in India* (2020).

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Creating more resilient and versatile frameworks of merger control, interdisciplinary research law, economics, and data science will be crucial in both jurisdictions.[71]

## VII. Conclusion

The markets of digital platforms pose a challenge to old rules of merger control. These features that define these markets, which include network effects, data-driven benefits, and dynamic competition, do not easily fit within the frameworks of traditional analytics developed to analyze markets in the industrial age.[72]

This paper has discussed the efforts made by two leading jurisdictions, India and the United States, when it comes to dealing with these challenges. Although both systems have similar legal grounds and are based on effects-based analysis, their use in the digital realm demonstrates considerable drawbacks. Specifically, the excessive dependence on fixed measures of market strength and price impacts in the short run limits the capacity of regulators and price impacts in the short run limits the capacity of regulators to detect and the harms associated with innovation, data monopoly, and possible competition.[73]

Increasingly, with the introduction of a deal value threshold in India and the changing enforcement strategies in the United States, there has been an appreciation of the problems. These, however, are only incremental changes which in a way are not enough to deal with structural issues of digital platform mergers.[74]

Comparative analysis implies that the central challenge is not lack of legal tools but adapting them. Current frameworks have the potential to deal with the dynamics of digital markets, but to do so successfully, they need to be more prospective, adaptable, and situation specific.[75]

The future of merger control in digital markets will ultimately depend on whether competition authorities are prepared to outgrow their conventional assumptions and closer to the reality of platform-based competition. This does not imply the rejection of the principles which have been set, but the reevaluation of these principles in the face of merging economic realities.[76]

With the digital markets constantly developing, competition law will find it difficult to find the balance between the need to preserve innovation and the need to avoid the entrancement of market power. The Indian and the American experience demonstrates the progress achieved

[71] Jean Tirole, *Economics for the Common Good* (2017).
[72] Jean Tirole (n 11).
[73] Herbert Hovenkamp, 'Antitrust and Platform Monopoly' (2020).
[74] US DOJ & FTC (n 5); Competition (Amendment) Act, 2023.
[75] OECD (n 3).
[76] Tim Wu, *The Curse of Bigness* (2018).

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and the effort that still needs to be made, and so the necessity of doctrinal and institutional evolution in this vital field.[77]

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