

## **English abstract**

### **Merger regulation of killer acquisitions under European competition law in European and international comparison**

Collen Cunningham, along with her colleagues, introduced a novel theory of harm known as a "killer acquisition" in her paper titled "Killer Acquisitions." A killer acquisition involves an already well-established market player acquiring a potential competitor with the intent to discontinue the acquired innovation project. The primary objective of such an acquisition is to eliminate potential competition that might arise from the innovative project of the acquired competitor. Typically, the potential targets of such scenarios are innovative start-ups that do not generate sufficient turnover to trigger the notification threshold employed in the EU, which relies solely on the turnover of merging parties.

As a result, the European Commission sought other ways to assert jurisdiction over such transactions, most notably through the utilization of Article 22 of the Merger Regulation. However, it is argued that the current system of merger control at the European level is not bulletproof and a potential enforcement gap necessitating an amendment of the Merger Regulation exists.

Consequently, several alternative criteria have been analysed, namely, the market-share test used in Spain and Portugal, the Swiss obligation for dominant undertakings to notify their mergers, the share of supply test employed in the UK, and the transaction value-based tests used in Germany, Austria, and India. Each threshold has its benefits and drawbacks.

The market share-based test may compromise legal certainty and potentially lead to an increase in gun-jumping procedures, as seen in the Spanish and Portuguese experiences. The Swiss solution may serve as a useful complementary criterion but does not comprehensively solve the problem. The share of supply test seems to be a perfect candidate for asserting control over potential killer acquisitions due to its flexibility. However, implementing this test into the EU legal framework would necessitate a change in the concept of EU merger control, shifting from an obligatory to a hybrid model. Finally, the transaction value test was also analysed. This criterion may be effective in capturing transactions that might otherwise go undetected. However, a limitation lies in the uncertainty associated with the "significant local activities" criterion used to establish the local nexus. This analysis demonstrates that any modification to

the Merger Regulation comes with associated costs, and the benefits must be carefully weighed against the risks inherent in amending the Merger Regulation.

## **Keywords**

*Killer acquisitions / low turnover mergers / amendment of the Merger Regulation / notification threshold / merger control*