Title: 'Below the Radar: Why Killer Acquisitions Still Escape EU Scrutiny'

Abstract:

This blog explores the persistent challenge of killer acquisitions within the EU merger control framework. Killer acquisitions are transactions where dominant firms acquire innovative startups to eliminate future competition. Despite growing awareness of their anti-competitive potential, many such deals escape scrutiny due to outdated turnover-based notification thresholds under the EU Merger Regulation. This blog examines the enforcement gap highlighted by the overturning of the General Court's judgment in *Illumina/Grail*, where the Court of Justice of the European Union overturned the Commission's attempt to review a below-threshold merger under Article 22 of the EU Merger Regulation. It briefly considers emerging national approaches and ongoing policy debates, including proposals for deal-value thresholds and enhanced Article 102 (*ex-post*) enforcement. As the EU seeks to balance innovation and competition, reforming its merger control regime is becoming increasingly urgent to prevent harmful acquisitions from slipping below the regulatory radar.

Keywords: European Union, Competition Law, Killer Acquisitions, *Illumina/Grail*, *Towercast*, Call-In Powers, Transaction-Value Thresholds.

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In recent years, the term 'killer acquisitions' has become a buzzword in European competition policy circles.. These are deals where powerful incumbents acquire innovative startups, typically in the digital or pharmaceutical sectors, to shut down competing products or stifle disruptive innovation.[1] While the risks to competition posed by such acquisitions are widely recognised, a significant enforcement gap persists at the EU level, which allows many of these transactions to slip 'below the radar' of regulators. This blog explores the scope of the problem, the reasons for the enforcement gap, and the policy debates shaping the future of EU merger control.

The Scale of the Problem: Big Tech's Acquisition Spree

The impact of killer acquisitions on European markets is increasingly recognised as a real and growing problem. For example, between 2019 and 2025, Alphabet, Amazon, Apple, Meta and Microsoft acquired at least 191 companies worldwide, with 27 target companies based in the European Union.[2]

The significance of these acquisitions isn't limited to the number of these deals, but rather to what happens afterwards. Almost two-thirds of these acquired companies shut down their websites, and some stopped serving customers after the acquisition.[3] This pattern illustrates the trademark characteristics of killer acquisitions, where the acquired firm's products, services or innovations are discontinued, eliminating potential competition.

The consequences for Europe are significant as many of the target companies were working on cutting-edge technologies such as artificial intelligence, cybersecurity, cloud computing and robotics. By removing emerging rivals from the market, dominant incumbents dampen the incentives for other entrepreneurs and investors to take risks in the European market and also entrench their market positions.

The pharmaceutical market formed the origin point for this theory, and was where the 'killer acquisition' phenomenon was first identified.[4] This sector has been particularly problematic, with large firms acquiring promising biotech startups and shelving their competing drug

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[1] Javier Espinoza, 'Brussels seeks power to block 'killer acquisitions' in Europe and beyond' *Financial Times* (Brussels, October 16th 2024), https://www.ft.com/content/292f0080-3360-4095-9c1c-d383db33d883, accessed 8 May 2025; Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021), 129 (3) Journal of Political Economy..

[2] Çağrı Çavuş, 'Big Tech acquires a new company every 11 days' (SOMO, 15 April 2025) <https://www.somo.nl/big-tech-acquires-a-new-company-every-11-days/>, accessed 8 May 2025.

[3] ibid.

[4] ibid.

candidates.[5] A study by the European Commission analysed 3,193 pharmaceutical transactions between 2014 and 2018. Approximately 89 of the reviewed 240 transactions led to the discontinuation of overlapping projects without any clear technical or safety justification.[6] These were identified as '*prima facie* potential killer acquisitions', implying that the projects were discontinued for strategic reasons.[7]

Nevertheless, the majority of these transactions avoid substantial regulatory oversight. Very few acquisitions undergo EU regulatory scrutiny, and even fewer face intervention. This enforcement gap allows killer acquisitions to continue shaping (and perhaps suppressing) Europe's innovation landscape, raising questions about the adequacy of current competition tools.

Why do Killer Acquisitions Escape Scrutiny?

Killer acquisitions often evade regulatory oversight in the EU due to the structure of existing merger control frameworks. The EU and most national merger regimes require notification when the merging undertakings trigger specific turnover thresholds.[8] The EU thresholds are detailed in Article 1 of the EU Merger Regulation. Many startups and innovative firms targeted in killer acquisitions generate little or no revenue at the time of purchase, meaning these deals do not meet the required thresholds and therefore fall outside the mandatory review process. This loophole is particularly acute in sectors where innovation, rather than immediate revenue, is the primary driver of value, such as tech and life sciences.[9]

National approaches to this enforcement gap vary. Germany and Austria have introduced transaction value thresholds that allow them to capture high-value deals irrespective of turnover.[10] Others, including Denmark, Hungary, the Netherlands and Italy, have adopted or

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[5] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021), 129 (3) Journal of Political Economy.

[6] European Commission, *Ex-Post evaluation, EU competition enforcement and acquisitions of innovative competitors in the pharma sector leading to the discontinuation of overlapping drug research and development projects* (Publications Office of the European Union 2025) <https://op.europa.eu/en/publication-detail/-/publication/6eacab93-b129-11ef-acb1-01aa75ed71a1/language-en> accessed 8 May 2025.

[7] Anita Magraner Oliver and others, '"Killer Acquisitions" Study in Pharma Calls For Stricter Scrutiny' (Cleary Antitrust Watch, 28 November 2024) https://www.clearyantitrustwatch.com/2024/11/killer-acquisitions-study-in-pharma-calls-for-stricter-scrutiny/ accessed 29 May 2025.

[8] Council Regulation (EC) 139/2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1, art 1.

[9] DLA Piper, 'Navigating EU and national regulatory scrutiny in so-called "killer acquisitions"' (DLA Piper, 4 September 2024) <https://www.dlapiper.com/en/insights/publications/2024/09/navigating-eu-and-national-regulatory-scrutiny-in-so-called-killer-acquisitions> accessed 9 May 2025.

[10] ibid.

are considering adopting ‘call-in’ powers which enable competition authorities to review deals that do not meet standard notification criteria but may still threaten competition.[11] However, diverging national policies risk European regulatory fragmentation and legal uncertainty, as the likelihood of scrutiny depends on where the target company operates and the national competition rules.

Should the Commission fail to act, many killer acquisitions may yet fall ‘below the radar’, due to the inconsistencies and limitations of current EU and national merger control frameworks. This ongoing enforcement gap is at the center of many policy debates, with calls for new EU-wide measures such as transaction value thresholds or expanded call-in powers to ensure that potentially harmful deals do not escape review simply due to their size or structure.

The Illumina/Grail Case: A Turning Point?

The 2024 Court of Justice of the European Union (CJEU) judgment in the *Illumina/Grail* case stumped an attempt by the Commission to address this enforcement gap.[12] The Commission tried to use Article 22 of the EU Merger Regulation to assess the acquisition(which allows national competition authorities to refer cases to the Commission that may affect trade between member states or significantly affect trade in the territory of the referring state), although it fell below all relevant notification thresholds. The CJEU rejected this expansive interpretation, emphasising the importance of predictability and legal certainty for merging parties.[13]

This ruling essentially closed the door on the Commission’s short-lived ability to ‘call in’ below-threshold mergers via referrals from national authorities, exemplifying a significant setback for the Commission and exposing the limitations of the current merger control framework.

The Road Ahead

Addressing killer acquisitions is certainly on the EU policy agenda. Commissioner Teresa Ribera’s mission letter from December 2024 explicitly mentions tackling the risks posed by

[11] Dr Michael Engel and others, 'Think you are below the radar? EU competition authorities expand scrutiny of below-threshold M&A deals' (White & Case LLP, 17 April 2025) <https://www.whitecase.com/insight-alert/think-you-are-below-radar-eu-competition-authorities-expand-scrutiny-below-threshold> accessed 9 May 2025.
[12] Case C-611/22 P *Illumina Inc. v European Commission* and Case C-625/22 P *Grail LLC v European Commission* [2024] ECLI:EU:C:2024:677.
[13] DLA Piper, (n 8).

such deals,[14] and there appears to be a growing consensus that the current system is insufficient.[15] Any reforms must balance the need for effective enforcement with the principle of legal certainty for businesses.

The discussion regarding next steps continues: should the EU overhaul its merger control regime, or rely on Member States to fill the gaps with national call-in powers? Interestingly, , the European Commission reiterated that it would continue to accept referrals via Article 22 following the *Illumina/Grail* judgment, provided the referring competition authority has jurisdiction.[16] Italy has already made use of this, asserting jurisdiction using its call-in powers before referring the Nvidia acquisition of Run:ai to the Commission, which approved the concentration in December 2024.[17] This suggests the Article 22 avenue remains open to below-threshold concentrations, provided the referring authority has jurisdiction under its merger control framework.[18]

Could Article 102 TFEU play a larger role in tackling anti-competitive conduct beyond traditional merger control? This latter question was addressed in the *Towercast* case, which held that the acquisition in question exemplified an abuse of a dominant market position under Article 102.[19] Employing this *ex-post* approach to all below-threshold mergers would garner legal uncertainty, in addition to raising procedural and practical challenges, such as necessitating remedies like divestiture. These could contribute to a chilling effect on pro-

[14] Ursula von der Leyen, 'Mission Letter to Teresa Ribera Rodríguez' (European Commission, 1 December 2024) <https://commission.europa.eu/document/download/33d74e86-3a17-472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf> accessed 9 May 2025.

[15] Darach Connolly and others, 'Predictably Uncertain: Managing merger control call-in risk at local level in the EU' (Kluwer Competition Law Blog, 1 April 2025) <https://competitionlawblog.kluwercompetitionlaw.com/2025/04/01/predictably-uncertain-managing-merger-control-call-in-risk-at-local-level-in-the-eu/> accessed 9 May 2025.

[16] European Commission, 'Statement by Executive Vice-President Vestager on today's Court of Justice judgment on the Illumina/GRAIL merger jurisdiction decisions' (Statement 24/4525, 13 September 2024) https://ec.europa.eu/commission/presscorner/detail/en/statement_24_4525 accessed 27 May 2025.

[17] European Commission, 'Commission approves acquisition of Run:ai by NVIDIA' (Press release IP/24/6548, 20 December 2024) https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_6548/IP_24_6548_EN.pdf accessed 27 May 2025.

[18] Jan Truijens Martinez and Florentine Snoeker, 'The Gift That Keeps on Giving: Article 22 Is Here to Stay' (Stibbe, 4 December 2024) https://www.stibbe.com/publications-and-insights/the-gift-that-keeps-on-giving-article-22-is-here-to-stay accessed 28 May 2025.

[19] Case C-449/21 *Towercast v Autorité de la concurrence and Ministère de l'Économie* [2023] ECLI:EU:C:2023:207.

competitive mergers due to fears of retroactive challenges, which could even stifle innovation.[20]

These questions remain open, but it is clear that national and European competition authorities are seeking viable solutions to the issue of killer acquisitions 'flying below the radar'.

Conclusion

Killer acquisitions continue to challenge EU competition policy. The enforcement gap, rooted in outdated notification thresholds and legal uncertainty, has permitted some potentially harmful deals to escape regulatory review. While recent court rulings have constrained the Commission's powers, they have galvanised calls for reform.[21] As the EU seeks to protect its innovation ecosystem and ensure fair competition, closing the enforcement gap on killer acquisitions will test both regulators and policymakers.

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[20] Elske Raedts, 'ECJ in Towercast: plan C for tackling concentrations?' (Stibbe, 4 April 2023) https://www.stibbe.com/publications-and-insights/ecj-in-towercast-plan-c-for-tackling-concentrations accessed 9 May 2025.

[21] Margrethe Vestager, 'Statement by Executive Vice-President Margrethe Vestager on today's Court of Justice judgment on the Illumina/GRAIL merger jurisdiction decisions' (European Commission, 3 September 2024) https://ec.europa.eu/commission/presscorner/api/files/document/print/ip/statement_24_4525/STATEMENT_24_4525_EN.pdf accessed 10 May 2025; 'Mission Letter to Teresa Ribera Rodríguez', (n 14).