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Killer Acquisitions and the Blind Spot of Merger Control: Economic Logic, Contested Evidence, and Implications for Innovation Policy

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Abstract - Acquisitions are usually hailed as growth drivers, but there is a significant minority that are the exact opposite it's a way to kill a future competitor. This article explores the phenomenon of killer acquisitions of smaller innovative firms by established firms, not to develop the acquired firm's projects but to kill them and to prevent the competition. Based on a qualitative synthesis of the peer-reviewed economics and law literature, regulatory reports and documented case evidence, the article elaborates on the reasons for such deals, the blind spots in merger control they exploit and their implications for economies, companies and citizens. The analysis focuses on the key empirical discovery that pharmaceutical projects acquired by firms with overlapping products were approximately 28.6 per cent less likely to be developed, and that an estimated 5.3-7.4 per cent of acquisitions in this sector took the form of a killer, often disguised as an acquisition just below the regulatory notification threshold. The article reviews challenged evidence in the technology industry, the balancing of merger enforcement and start-up financing and global policy responses. It highlights the pitfalls of today's business management, discusses the gaps in existing studies, and offers future directions for students, businesspeople, policymakers, and future business leaders.

Keywords: Killer acquisitions, Potential competition, Merger control, Innovation economics, Market concentration, Startup ecosystem, Antitrust policy, Corporate strategy.

1. INTRODUCTION

Thousands of young companies are sold each year to larger companies and, in most cases, the world applauds. Founders are rewarded for taking years of risks, investors get their money back, and good technologies get the money they need to get to millions of users. Acquisition is so much a part of the current culture of entrepreneurship, that it is an explicit goal of most startups. But behind the regular business activity, there is a more insidious aspect to the acquisition of an innovative company it's to bury the innovation.

These sorts of transactions are now referred to as killer acquisitions by economists. The term refers to a transaction by which a larger, established firm acquires a smaller firm that is an innovator in a product that, if it were permitted to grow, would become a competitor to the incumbent firm, but that is discontinued, shelved or allowed to quietly die out. The acquirer is not paying for what the target will be, he's paying for what the target won't be. It's a logical, and frequently legal, approach, and not easily discernible, which is why it's so important to educate the public about it.

The issue is much more than a matter for boardrooms and courtrooms. If a good drug is purchased and then dropped, patients are deprived of a drug that they never knew existed. As a challenger technology is swallowed up and phased out, consumers have fewer options, workers lose out on jobs that a thriving company would have provided, and regional economies lose the vibrancy of a new company. Meanwhile, it's a very complex picture. Acquisitions are also a key component to startup financing the idea of a potential sale is one of the best motivators for investors to invest in risky young companies. It is therefore fair to say that both of these statements are true, Some acquisitions kill innovation, and the freedom to be acquired helps innovation exist.

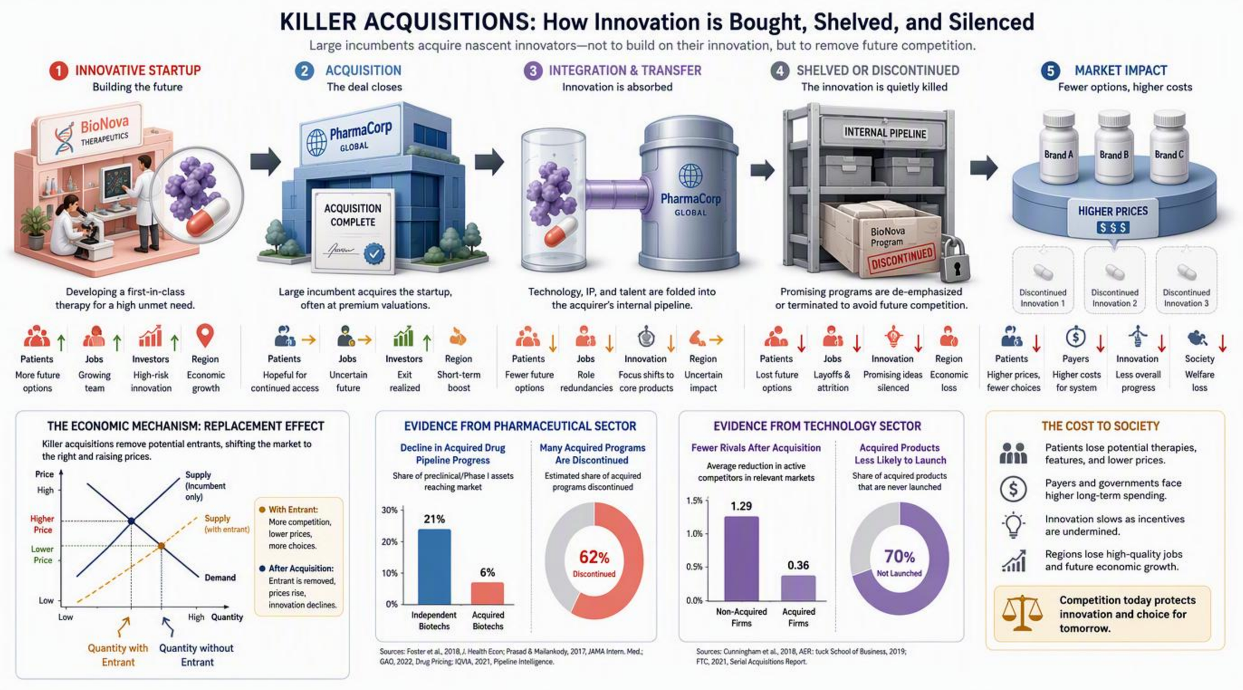

Fig -1: Killer Acquisitions How Innovation is bought Shelved and Silenced

That's because the subject went from theory to evidence in 2021, when a thorough analysis of over 20 years of pharmaceutical data showed that acquisitions of projects by companies with overlapping product lines were significantly less likely to be developed and the deals that were suspicious tended to be just on the cusp of the size thresholds that trigger regulatory review. It's since become a hot topic in tech markets, AI collaborations and legislative bodies around the globe, resulting in new laws, challenged court decisions and an ongoing scholarly debate on the prevalence of the practice.

This article aims to make that debate accessible without compromising the rigour. It clarifies the notion precisely and distinguishes it from other strategies that it is sometimes confused with it elucidates the underlying economic mechanism, specifically the replacement effect, it reviews the sometimes disputed evidence from the technology sector, and it draws out the implications for society, the missteps of today's corporate managers, and the lessons for tomorrow's entrepreneurs and policymakers. The goal isn't to discredit acquisition as a strategy, but to shed light on a particular misapplication and to enable all readers, from students to CEOs, to see the distinction.

2. OBJECTIVES OF THE ARTICLE

The goals of the Article are:

This article has six related aims.

1. To begin, it aims to precisely define what a killer acquisition is and differentiate it from other adjacent acquisition strategies talent-driven and scaling acquisitions as there has been a lot of confusion in the public discourse.
2. Second, it seeks to reveal the economic mechanism behind the strategy the replacement effect, the buying of certainties and the information advantage the acquirer has over the regulator to provide readers with the understanding of why the strategy is privately rational, even if it is socially harmful.
3. Third, it assesses the pros and the cons of acquisition activity in the economy, in society and for the corporations involved, without exaggeration.
4. Fourth, it highlights the common pitfalls of today's businesses, marketing experts and business leaders relying on acquisitions as a proxy for internal innovation, being too reactive and not taking legal and reputational risk seriously.
5. Fifth, it reviews the policy responses that are coming to light around the world and that are objectively evaluated for their strengths and weaknesses.
6. Last but not least, it is packed with takeaway tips for future decision makers students, founders, executives and regulators on what to watch for and what to avoid doing, to ensure that the next generation of leaders is developing competitive strategies based on innovation, not threat elimination.

3. METHODOLOGY

A qualitative methodology of an integrative review is used for this article, which covers a subject area that is multi-disciplinary in nature economics, law and corporate strategy. The main methodology employed is literature synthesis, in which peer-reviewed studies from the most prestigious economics and law journals were located via the well-known academic databases and citation tracing, with a preference for empirical studies with clear data and methodology. The key empirical paper is the 2021 paper on pharmaceutical acquisitions in the Journal of Political Economy, with theoretical work on incentives to innovate going back to seminal pieces in the 1960s and 80s and recent modelling work on acquisition policy and start-up behavior.

Comparative case analysis is the second technique. Case studies of documented enforcement action, regulatory retrospective and court decisions from North America, Europe and South America were analysed to gain insights into the manifestation of the phenomenon and the regulatory response. As is consistent with the neutral tone of this article, the cases are presented in a generic way and readers can refer to the regulatory documents cited for cases to get details. The third technique is economic reasoning, whereby the analysis uses existing theory in particular the economics of invention's replacement effect to explain rather than just describe the observed behaviour.

A key source of evidence was regulatory reports, such as a 2021 study by a national competition authority which analysed hundreds of acquisitions by large digital platforms that had not been previously reported, guidance documents from European competition institutions and a review of startup acquisitions and merger control by an intergovernmental organisation in 2020. Where possible, facts and figures have been verified with at least two different sources and results which are still disputed in the literature are marked as such.

This approach provides a valuable connection between the technical scholarship and the general public that they seldom get. The empirical evidence of killer acquisitions is usually contained within a specialised journal and public commentaries tend to overstate or oversimplify the evidence. This article provides readers with new information on three fronts the extent to which the practice has been measured the ways that deals are designed to avoid scrutiny and the real uncertainties, by synthesizing the verified evidence, contested claims and the policy experiments in one place.

4. WHEN BUYING MEANS BURYING DEFINING THE KILLER ACQUISITION

What is the purpose of purchasing a firm to disintegrate it. This seems paradoxical as commerce is about the buyer paying for something that he or she expects to use. But the killer acquisition turns that on its head. In the case, an existing company finds a smaller company whose product in development will compete with the existing company's revenue generation. The incumbent buys the company and, without announcing, the project that is threatening is phased out. The laboratory programme is phased out, the application ceases to be updated, the engineering team is spread out to various tasks. There's no big drama, that's the idea. What the acquirer bought was not the target's future, it was the target's future out of the marketplace.

The definition in the scholarly literature is more formal a killer acquisition is an acquisition of an innovative target firm, where the main purpose of the acquisition is to kill the target's innovation projects and thus forestall future competition. There are two aspects of this definition that need to be highlighted. The first is intent that is, the deal is not about development, it's about elimination. The second is the counterfactual, that is, the project would likely have gone on and the competition would have been had the target not be independent or acquired by a company with no product overlap. They are both hard to observe, and so careful identification of the two elements is only possible with large datasets and careful comparison of overlapping and non-overlapping acquirers, not with any judgement about any particular acquisition.

It's crucial to make it clear what a killer acquisition is not. It's not just a big company acquiring a smaller company, as that's what most acquisitions are in all economies. It's not one of those things that doesn't work out later on a lot of the time, they're not even a good idea. Nor is it the typical post-merger process of cutting down redundant functions. The key is that the acquired innovation is suppressed strategically, and the main reason for the acquisition is that the competition doesn't materialize.

This definition is important to all of the audiences we are reaching out to. For students it provides an example of a situation in which there is a conflict between private rationality and public benefit. It makes an acquisition offer more of an item on which to reflect, rather than celebrate, for entrepreneurs. For policy makers, it represents the fine line that enforcement should be able to hit without causing too many collateral effects on the huge number of non-threatening transactions. This is no academic quibble, but the basis of everything that follows in this article.

5. NOT EVERY ACQUISITION KILLS SEPARATING THE CONCEPT FROM ITS COUSINS

A lot of the confusion in the public about killer acquisitions is due to the sloppy use of language, and this confusion has to be removed before any sensible evaluation of killer acquisitions can be made. Some acquisition strategies are superficially similar to the killer pattern, but have a different purpose and impact.

The first cousin is the talent acquisition that is commonly referred to as the acqui-hire. In this case, the acquirer is interested more in the engineers, scientists or designers of the target company than in its product which may be discontinued after the acquisition. While such deals may seem like killings when the product dies, it is a constructive gesture the acquirer's human resources will be used to develop other innovations. An emerging issue for regulators is whether this practice is a separate competitive issue, especially when it is done to move an entire team without a formal acquisition of the company, or an elimination of a competitive threat.

The most common type of scaling is second cousin. The acquirer purchases a startup product because it is a product that has potential for growth and provides capital, distribution and infrastructure that the startup could not muster on its own. Some of the most controversial technology deals of the last 20 years have not been terminated, but products that have been distributed to billions of users. Regardless of the judgment reached on their impact on concentration, they were not killings in the literal sense of the word, and the mixing of the two dilute any serious criticism.

The third cousin is the reverse killer acquisition a more subtle idea from recent competition scholarship. In this case when the acquirer acquires a target that offers a substitute product, the acquirer actually aborts the project of its own. The world loses a potential competitor, the acquirer's stand-alone entry into the market, even though no product is actually killed. This variant is even more difficult to spot for outsiders, since the project itself was not abandoned or seen but it is an example of the damage at stake and how it is not the death of a product but the death of a competitive future.

The lesson to be learned in the practical lesson is discipline. As long as commentators refer to every big tech acquisition as a killer acquisition, it's open for the equally lazy response that killer acquisitions are a myth. The reality is in between these extremes killer acquisitions can and do happen, they have been documented, and they are the minority of all acquisitions. The first step to policies that prevent the bad guys from killing without killing the good guys is distinguishing the kill from the hire, the scale-up and the reverse kill.

6. THE PHARMACEUTICAL LABORATORY WHERE EVIDENCE BEGAN

The notion that companies could acquire their competitors and put them out of business was more of a theory and anecdote for years. Until now, that is, when Colleen Cunningham, Florian Ederer and Song Ma published a study in the Journal of Political Economy in 2021 that was entitled The Post-Truth Era. The authors selected the pharmaceutical industry as their laboratory for a clever reason pharmaceuticals are very visible in the process of being developed. Unlike software or consumer technology, every therapeutic project can be followed through the discovery, clinical trial and regulatory approval phases, which are documented publicly, to see if it survives after the owner is acquired.

The study compared the fate of drug development projects initiated by more than 4,600 companies between 1989 and 2011 when the firm was acquired by another firm with overlapping products versus a firm with no overlap. The response was astounding. Projects acquired by overlapping incumbents had significantly lower continuation rates in development than similar projects acquired by non-overlapping firms or projects that were retained without an acquisition about 28.6 percent lower. The gap was the most pronounced when the competing product of the acquirer still had patents to protect and when there was less competition in general where the incumbent had the most monopoly profit to protect.

Based on these patterns, the authors estimate that 5.3–7.4 percent of the pharmaceutical acquisitions in their sample between forty-five and sixty-three transactions per year are killer acquisitions. Care should be taken in holding the figure. It validates the fact that this is not an isolated or one-off occurrence and it validates that the majority of acquisitions in the sector over 90% were not.

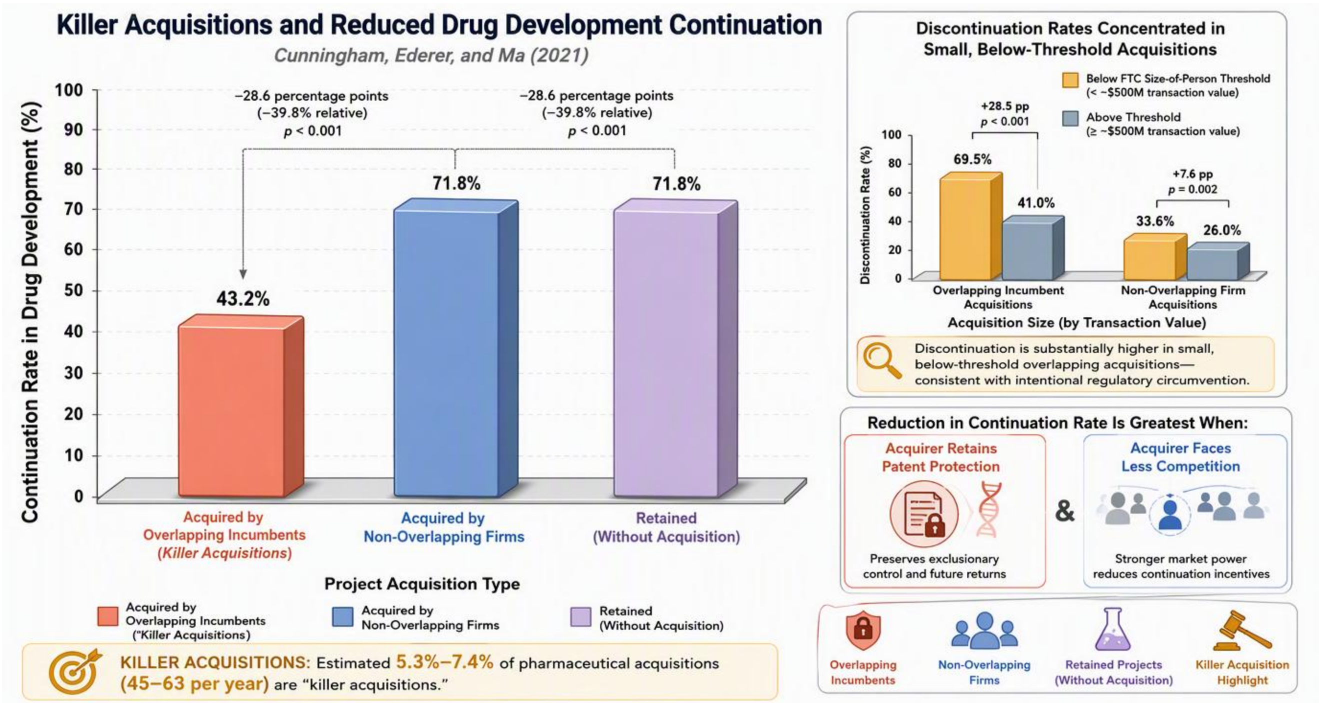

Fig -2: Killer Acquisitions and reduced Drug Development Continuation

One more discovery turned the research into a policy alert. The suspect acquisitions tended to be concentrated in the bottom range of acquisition size where there is a sharp increase in the number of acquisitions which were discontinued, and the below-threshold acquisitions exhibited significantly greater discontinuation rates. In other words, firms seemed to be aware of which deals would raise the red flag and they designed the most competitive deals accordingly. Complementary research on an earlier change to notification thresholds revealed a similar trend of stealth consolidation with exempted mergers virtually never being enforced. The evidence indicated not only that killer acquisitions take place but that the machinery was being intentionally and lawfully circumvented to prevent them from being caught.

7. THE REPLACEMENT EFFECT THE QUIET ENGINE BEHIND THE STRATEGY

Why is it that a good, successful, and profitable company would spend hundreds of millions of dollars acquiring a technology and not use it. The solution is in one of the most ancient wisdom of the economics of innovation, first formulated by Kenneth Arrow in 1962 and henceforth dubbed the replacement effect. There's no real secret to the killer acquisition other than understanding it, and that's because it's the same innovation that can make all the difference to a startup and none at all to an incumbent. Let us take a small company introducing a product in a new market which is likely to provide it with 100 units of profit. For the start-up, it's all profit they are not making any money at the moment. Then put the same product in an incumbent which has ninety units of satisfaction from an older product on the same customers. Those customers will just switch from what the incumbent is offering to what it is offering as an innovation if the incumbent launches the innovation. The launch doesn't result in an extra 100 units of profit, it results in maybe 10 units of profit, because the innovation is not doing something that the incumbent wasn't already doing. The entrant is contesting the entire market and the incumbent, as Arrow puts it, can only replace itself.

The corrosive corollary of this asymmetry is. If the incumbent acquires the innovator, the incumbent has a weak incentive to develop the project that it acquired the project cannibalises its own sales but has a strong incentive to shelve the project shelving protects 90 units of existing profit. There is no such thing as elimination in spite, it is arithmetic. The final piece of the puzzle comes from another insight of Richard Gilbert and David Newbery's 1982 paper on preemptive patenting. A monopolist will rationally pay more to prevent competition than an entrant can rationally earn from creating it because the entrant can only expect the smaller profits of a shared market while the monopolist is defending monopoly profits. The incumbent will thus typically outbid all of the other bidders for the threat and then retire it.

The pharmaceutical evidence is a discomfirmingly close fit to this theory. Discontinuations focused on the acquirer's overlapping product which had a long patent remaining and few competitors where the existing profits were greatest and the replacement effect was most compelling. Once observed, the mechanism can never be unobserved killer acquisitions are not a violation of corporate ethics, but a logical consequence of the incentives. This is significant for policy as behaviour is dependent upon structure and will not be cured by appeals to better behaviour. It will return either where the arithmetic will allow it or until the rules change the arithmetic.

8. BUYING CERTAINTY WHY ELIMINATION CAN COST LESS THAN COMPETITION

If the replacement effect is the reason why an incumbent won't develop an acquired threat, there is a second reason why he or she will acquire the threat an acquisition makes the threat's future a sure thing, and certainty is worth a premium. Competition comes with a cost and is unpredictable. A new competitor can make the incumbent cut prices, make more R&D investments, wage marketing battles and experience years of margin erosion, or it can fail on its own. If an incumbent is subject to this lottery, he or she may pay once, today, and the lottery will be eliminated. Where the acquisition price is less than the expected cost of competing, elimination is the less expensive approach, and expected cost is where dominant firms excel.

There are three factors that render this acquisition of certainty particularly appealing. The first is market power the greater the amount of profit that the incumbent is currently protecting, the greater the value of each threat that is removed. The second is timing threats are cheapest when young. When the product of a startup has been proven, a startup in early development can be purchased for a small fraction of the cost monetary or lost profits. Rational incumbents thus look out and buy early, just when regulators are least likely to have a good idea of what has been lost. The third is the asymmetric information. The incumbent has scientists, product managers and strategists that know exactly how lethal a new technology can be to their franchise. It's often not as well known by regulators, courts or even the startup's investors. This imbalance has been made clear in internal documents produced in enforcement proceedings on occasion, where executives have said that the deals they had made were to neutralise threats, not acquire capabilities a reminder that in some instances, acquirers may be more forthright in their public statements about the defensive purpose of the acquisition. The final, more subtle, part the auction which the incumbent always wins. Since the entrant values the target as a business and the incumbent values it as a removed threat and preserved monopoly profits, there is a systematic difference between the two, with the incumbent being willing to pay more. It's a perfectly rational thing for start-up founders and their investors to take the highest bid. No one is acting irrationally in the transaction, and no one has to act evil, the deal that doesn't have innovation just outbids the deal that would have grown it. The real secret of the killer acquisition is that it is not a conspiracy it is an equilibrium. Sometimes markets alone will price the death of an innovation above its life and only rules written to anticipate the possibility of such an eventuality can change that.

9. SLIPPING BENEATH THE RADAR HOW DEALS ESCAPE REGULATORY REVIEW

How can a transaction which is intended to eliminate competition fly under the radar of systems designed to protect competition. The answer is as much an insight into the design of merger control as it is an insight into the ingenuity of acquirers and it is based on three structural weaknesses.

The first one is size trap. Almost all merger regimes around the world have financial thresholds that require the compulsory review of mergers. The reasoning is administrative, that is, the authorities cannot look at all transactions, but they look at the large transactions. However, the most vulnerable targets in innovation driven markets are often the companies that have little or no revenue but huge potential a biotechnology company with a drug that's still many years away, an application that has millions of users, but no revenue. Targets like these fly under the turn over ceiling, as dangerous as they are. Indeed, the pharmaceutical evidence revealed acquirers bunching deals just under the notification line, and a 2021 retrospective analysis by a national competition authority revealed that large digital platforms had made hundreds of acquisitions in the past decade, 616 of which were not notified, but which were just above a small size threshold.

The second is the problem of prediction. Even if a deal is analysed, the authorities have to show that it poses a harm to competition and in the case of nascent targets, the harm is a hypothetical harm in the future. Would the start-up have been able to survive Scaled. Challenged the incumbent, Evidence is good and necessary, but evidence of future what if scenarios is very limited, and the burden of proof is normally on the enforcer. This evidentiary imbalance has been claimed to be a systemic bias in favour of acquirers in the very situations where the most is at stake, such as Kevin Bryan and Erik Hovenkamp. The later and the more expensive the elimination, the easier it is to ban.

The third is newer and increasing deal structures that aren't mergers. Control of a competitive trajectory can be transferred without transferring shares, through exclusive licensing, deep strategic partnerships, minority investments and commercial dependence, and a takeover of a start-up's entire leadership team and technical team. It is precisely such set-ups in the AI space that have been subject to competition authority attention on several continents, for failing to comply with acquisition law. As in all other regulated areas, when a rule is established, the more advanced players find a way to operate just one step outside the rule. A serious reform should thus not only question the level of the thresholds, but also the ease with which the behaviour to be targeted can be re-packaged.

10. THE TECHNOLOGY SECTOR DEBATE COMPELLING SUSPICIONS, CONTESTED PROOF

Perhaps, no topic in this subject is as hot as its use in digital markets, or as cold as the light shed on it. It's easy to say the suspicion. In the past 20 years, a few key platforms have bought up hundreds of firms most of which have not been subject to regulation. These included deals that became iconic a top social network acquiring a rapidly expanding photo sharing app, and then a widely used messaging service in both cases internal emails to and from legislators and court showed a plan to buy out competitors before they become a threat. Other deals in contention include a genomics company buying a cancer-screening developer, which was challenged both in Europe and the United States, a robotics firm that tried to acquire a home-device developer, but was stymied by regulators, a virtual reality platform that acquired a fitness app developer, as the move was deemed to be an acquisition in disguise, and thus subject to a retrospective review by a South American competition authority and an AI firm that hired a well-known startup's team and technology, but the move was still challenged by a competition authority as an acquisition.

But, if he is honest, he must show the other side the same consideration, since the sceptics' arguments are substantive. First, the famous quantitative estimates the 28.6 percent development decline, the 5.3 to 7.4 percent incidence are only of pharmaceuticals, the patented regulated pipeline industry with observable project stages. Software markets, where products are constantly changing, and network effects are a dominant factor, might not be the same, and there is no similarly careful measurement for such markets. Second, the most maligned tech buys didn't kill the acquired products, they took them to new heights heights they may not have been able to attain on their own without the buy. Such deals can be said to be dominance, but that's a different theory of harm from a killing, and combining the two makes both theories of harm muddy. Third, others, such as Jonathan Barnett, have suggested that the killer acquisition story in tech is more of an economic hyperbole that the vast majority of platform acquisitions are complementary, that acquisition markets are the exit infrastructure for VC and that policy based on a pharmaceutical statistic could hurt an ecosystem that it barely measured. So the intellectually defensible stance is that the mechanism is established, the number of pharmaceutical killings is known, the number of tech-sector killings is assumed but not quantified, and the lauded cases are more accurately called disputed acquisitions of potential competitors. The reader should be skeptical of any description alarmist or otherwise that is more definitive than this.

11. THE INNOVATION TRADE-OFF EXIT ROUTES, KILL ZONES, AND ENTREPRENEURIAL INCENTIVES

If there were a way for regulators to spot and prevent all deadly mergers tomorrow. Would innovation flourish. The disturbing response from economic research is that it's not always and sometimes it's just the reverse. This compromise is the very essence of the policy discussion and it is a discussion that anyone who will ever start, finance, or legislate a company should understand.

Start with the start-up exit conundrum. Acquisition is much more common than public listing as a means of exit for young companies, which are funded by investors seeking an exit. An active acquisition market, in itself, has been found by Gordon Phillips and Alexei Zhdanov to stimulate research and development, as small firms innovate in part with the prospect of being acquired. Acquisition is part and parcel of the financial structure that makes startups possible, even by the very companies that people doubt. This duality was recognized even by the authors of the original killer acquisition study the promise of a fat payoff, including a killer buyout, makes the payoff for starting a company that much greater. Go too far blocking exits, and capital runs from the frontier, the innovations that are lost would be as undetectable as those lost to killings, but no less real. Legal experts Mark Lemley and Andrew McCreary have taken the argument one step further, arguing that an ecosystem geared for selling to incumbents skews the initial choices entrepreneurs make about what to build.

But the other way around is a trade-off as well, as Sai Krishna Kamepalli, Raghuram Rajan and Luigi Zingales have termed it the kill zone. Their study indicates that venture investment decreases in market segments that are close to the core business of a dominant platform following large acquisitions by the platform in the market segment. The intuition is chilling when investors feel that a startup company in the giant's turf is not able to beat it, it is not able to get a fair price to acquire, it simply stops investing in such startups. Even before any deal is made, whether it be buying or reviewing, there is no competition, just an absence where there should be a challenger. A final caution from theoretical research by Igli Letina, Armin Schmutzler and Regina Seibel is that a blanket ban on acquisitions can have a negative impact on innovation, but intermediate policies which selectively review acquisitions where there is overlap and market power do better. The moral of the lesson for policies is humility and precision. It's not about less acquisitions, it's about less terminations without sucking the money dry from which new companies drink.

12. WHAT SOCIETY STANDS TO LOSE CONSUMERS, WORKERS, AND REGIONS

Many merger policy debates remain at an abstract level, and so it's time to get down to earth and ask the simple question. When a killer acquisition works, who pays. The answer is almost everyone, but in a way that is rarely seen, which is why it's important to raise public awareness.

The initial, and most serious, expense is to consumers who are the users of products which do not materialize. The consequences in pharmaceuticals are a matter of life and death a dropped therapeutic program could have been a less expensive option, a more tolerable treatment or a true game changer. No one will ever complain about it and no patient will ever know what they missed, if it harms patients without being heard. It is this invisibility that is the most damaging of the practice the damage is done without witnesses. The technology counterparts are tools, services and alternatives that would have held incumbents' prices, quality and behavior in check.

The second expense is achieved by reducing the competition on current products. Once the challenger is eliminated, the incumbent will have less reason to enhance its own offering. Prices remain higher than the competition would allow, quality is not improved as quickly, the impetus of competition to even the largest organisation trickles away. Economists have also reported on the broader macroeconomic environment in advanced economies, increases in market concentration have gone hand in hand with decreases in the rate of new business formation, and the systematic absorption of challengers is a likely contributor to this dynamism deficit.

The third cost falls on the workers and areas. A startup that's given the freedom to grow becomes an employer, a talent trainer, an anchor for suppliers and sometimes the seed of an entire regional cluster. A Startup that acquired and dissolved, is none of these. The proceeds of the sale go to the founders and the investors usually heavily concentrated in a few prosperous places and the diffuse benefits of a new independent company disappear. In the long term, economies that are continually seeing their potential businesses and companies being acquired by foreign giants could be losing their future, one acquisition at a time.

The other side of the ledger is fairness most acquisitions are truly social, and they introduce new technologies more quickly than startups can, and re-invest capital into new businesses. The issue with society is not the acquisition, it's a subset in which the purchase price buys silence. The difference between the two, in law, in journalism and in public understanding, is the core civic competence that this article seeks to foster.

13. THE MISTAKES OF MODERN CORPORATIONS AND THEIR LEADERS

It's easy to make this story into a villain's tale, but a more enlightening read would be to see it as a book of marketing and strategic blunders ones that today's corporations, marketing gurus, and business executives make, and ones that tomorrow's business executives should learn. They are shown here diplomatically, without identifying any firm, as the personalities aren't the important element the patterns are.

The first is when acquisition is used as an alternative to innovation and not as an augmentation of it. Organisations that end up buying threats instead of out innovating them suffer a slow death research departments become moribund, ambitious talent leaves for places where innovation is more important than defense, and the institutional muscle of innovation and invention goes slack for lack of use. The books call each acquisition strength, the culture calls it surrender. Companies that have been the pioneers of their markets have learned the hard way that a protected market position does not necessarily translate into a protectable position.

The second error is that of short-term thinking in defense that is passed off as strategy. When you eliminate a competitor, you're only solving a symptom this challenger, this quarter not the disease, as the market conditions that led to one challenger will bring another challenger. A leader who invests his her strategic effort in threat elimination is in slow motion to decline and buying time for the same is a safety illusion.

The third error is the failure to give credit to legal memory. Executives have made open assessments of acquisitions words of neutralization and buying time in internal correspondence, apparently on the assumption that these words would not be made public. Those documents were unearthed years later in legislative hearings and in courtrooms, and ordinary seeming deals became life and death litigation. Competition agencies are more likely than ever to take a fresh look at completed deals a decade after the fact, and a deal that passed the competition signoff process could be unwound a decade later. The days of consummation equating to safety are over and boards that are pricing acquisitions without pricing this contingent liability are underpricing risk.

The fourth error is partly that of marketing and communications strategists, as they try to sell defensive consolidation to the people in terms of innovation and consumer benefit. Where there is a mismatch between narrative and motive, the reputational impact goes beyond just one deal to the credibility of all the organisation's claims, when disclosure processes are likely to make it more likely. Once public trust is lost, it must be regained at a very high price. There is a mix-up between control and progress. Those that survive are organisations whose leaders understand the difference and take action before regulators, markets, or history, do it for them.

14. WHEN THE WATCHDOGS ARE YOUNGER KILLER ACQUISITIONS IN EMERGING ECONOMIES

The debate among scholars on preemptive acquisitions has been largely in the language of the American European institutions, but it may be of most significance where it is least discussed. Emerging economies offer a unique mix of conditions fast-expanding digital and pharmaceutical markets, young and under resourced competition agencies, notification thresholds that are based on local revenues, which are easily avoided by global acquirers, and startup ecosystems that are reliant on foreign acquirers for exits. These all increase the incentive to make preemptive deals without detection and to make enforcement errors.

Before thinking about the structural problem, consider the problem first. Most developing countries have domestic turnover thresholds in their merger-control laws. If a foreign incumbent acquires a promising local start-up, one that has the potential to be a global success but is generating little or no revenue, he she will be unlikely to be subject to review anywhere. The transaction could go unnoticed by the start-up's home regulator and be of no concern to regulators in other countries. When a new rival to a world-wide established incumbent is eliminated, the world has lost an innovation, and no one has been in a position to pose the question.

There has been some reaction from some jurisdictions. In 2023, India's competition law was amended to add a deal value threshold which would help to capture high value acquisitions of low revenue targets. Brazil's competition authority has also claimed the authority to call-in transactions that are below the notification thresholds, and in 2026 initiated the ex post review of an artificial-intelligence arrangement, which was not a traditional merger but rather a licensing and hiring agreement a move that has caught the attention of other developing country regulators. The experiments are important because they will determine if younger authorities can police potential competition without decades of case law to rely on, which their European and American counterparts have.

But the compromise discussed in this article is particularly apt here. The start-up ecosystems in emerging markets are younger and less established, and the only exit that is usually feasible is acquisition by a global incumbent, that's why there's limited VC investment to begin with. A regime with an aggressive stance of blocking or unwinding deals could scare off foreign investment on which these ecosystems rely, bringing the enforcement costs of a theory that has been developed from evidence collected elsewhere. The honest answer is that the developing economies are more exposed to the harm of the killer acquisition and more vulnerable to the cure than the advanced ones and that there is virtually no empirical study on the outcomes of acquisitions in non-advanced economies. That lack is a discovery itself, and should be part of any serious consideration of the global importance of this phenomenon.

15. HOW THE WORLD IS RESPONDING TO POLICY EXPERIMENTS AND THEIR LIMITS

After the proof of below-threshold elimination was irrefutable, jurisdictions worldwide started to try out remedies. The experiments are interesting both for the problem they set themselves, and for the light they throw on the complexity of the problem.

The most direct one is aimed at the size trap. In 2017, Germany and Austria introduced transaction value thresholds to their merger regimes to make sure that deals with high purchase prices and low revenues of the target the typical characteristics of a high potential startup are also caught. The reasoning is right a high valuation for a small company indicates that someone thinks there's great potential in the company, and that's what a review should focus on. Initial evaluations, however, indicate that these thresholds are able to identify a relatively small number of extra cases and are not easily set without also negatively impacting on innocuous transactions.

The second response enables authorities to consider going below their own thresholds. Competition institutions in Europe advised national authorities to refer transactions, which are below their thresholds, upwards for review, as has been done in a well-known genomics case. In September 2024, the European Court of Justice (ECJ) limited the use of the referral mechanism, ruling in Joined Cases C-611/22 P and C-625/22 P that it could not be applied to transactions that did not meet the thresholds set by the European Union and the national authorities. This judgment created legal clarity for companies, but also re-opened the very loophole that the mechanism had sought to plug, as several member states have introduced their own call-in rights and as in so many other areas of reform, there is a lawfulness at the end of the transom.

The third answer is a post hoc one. North and South American authorities have been increasingly looking at consummated mergers a study from 2021 compiled hundreds of consummated platform acquisitions that had not been reported in order to gain a better sense of the size of the blind spot, litigation has aimed to unwind consummated mergers, and a South American authority has initiated a review of an artificial intelligence arrangement that was structured as hiring and licensing, but not as a merger. Ex post review is a way to restore deterrence at the expense of certainty, as remedies years after integration are messy for all.

Last but not least, the structural regulation has come. The Digital Markets Act introduced by the European Union will mandate that the designated gatekeepers platforms report all acquisitions, irrespective of size, in the digital sector to the regulator. But information is not jurisdiction notification does not equate to prohibition, and the evidentiary issue the issue of proving harm to a future that will never be is not addressed. The frontier of the debate and not settled law are proposals to shift the burden of proof to dominant acquirers, or to consider low-probability, high-magnitude harms by a balance of harms standard as recommended in a seminal 2019 United Kingdom review.

16. LESSONS FOR FUTURE ENTREPRENEURS, STUDENTS, AND LEADERS

What are the lessons to be learned for the next generation. But not cynicism, and not slogans a set of hardy lessons about the interaction of innovation, power, and law, for founders, executives, investors, regulators, or just informed citizens.

The first lesson to learn as a future entrepreneur is to know the auction you're going to. When a dominant incumbent makes a bid for your company, it may be based on the value of your product when it's alive, and not the value of your company when it's gone. Founders who understand the replacement effect negotiate differently they ask the acquirer what he she is going to do with the product, they ask for contractual commitments to continue developing it where he she cares about the product's survival, and he she knows that the highest offer and best outcome for his her life's work are not always the same envelope. The second lesson has to do with positioning if you play in the middle of a Giant's kill zone, you'll be eaten up and you'll lack investor interest, and if you play where your innovation fits in and fills a void where incumbent products are there, all the incentives change.

The key takeaway for future corporate leaders is that for a company, elimination is a temporary measure. All the market conditions that you just bought to create the threat will create more market conditions and all the internal capabilities that you didn't build while you were doing that won't come back on-demand. Consider acquisitions to be accelerants, not substitutes, for your own innovation know that all internal documents will someday be read out loud at a hearing, and factor in regulatory and reputational risk honestly, as the days of after the fact review have made closed a provisional word.

The message to future policy and students of regulation is precision under uncertainty. The evidence indicates that killer acquisitions are a reality, and that there are ways to respond to them that can be even more harmful to the startup economy than the acquisitions themselves. A good policy thus discriminates it is intense in places where there is overlap, dominance, and evidence from within the companies that they are defensive, it is light across the benign majority and it is always on the lookout for repackaged acquisitions as partnerships, licenses and hires. The most important lesson for all is that of harm that cannot be seen. No one knows the names of the victims of suppressed innovation no patient is deprived of a medicine, no consumer of a product. Societies can only guard themselves against invisible harms through understanding and understanding is cultivated in classrooms, journals and articles long before it is found in court rooms. Well that, after all, is what this article implores its readers to do.

17. RESEARCH GAP

In the midst of all the killer acquisitions that are being touted, the scholarly honesty is that we don't know much, and it's as important to identify what we don't know as it is to identify what we do. There are four gaps that are identified.

The first is in the form of sectors. The only systematic and large sample study of killer acquisitions is in the pharmaceutical sector, where projects go through publicly visible phases in the development of a drug project. There is no similar measurement for software, digital platforms, financial technology or artificial intelligence because product development is continually, privately and undocumented. Policymakers who are making laws for digital markets are thus taking a leap of faith from a pharmaceutical statistic, which the original authors never intended to support. In the case of digital industries, it is probably the most pressing empirical task to develop observable proxies for project discontinuation.

The other one is the counterfactual issue. All claims of killer acquisitions are based on an unobserved alternative history, what the startup would have been if it were not acquired. This is implied in previous research by comparing overlapping and non-overlapping acquirers, a plausible but less than ideal research design. The inferences could be made much more precise through research designs that make use of natural experiments blocked deals, abandoned transactions, threshold changes, but such research is rare.

The third gap is with regard to deal structures other than the merger. The movement of competitively relevant transactions to licensing, strategic partnerships, minority stakes and team hiring constructions especially in the realm of AI has virtually completely surpassed scholarship. Even the most basic descriptive evidence to date on the prevalence of these quasi acquisitions is lacking, much less causal evidence on their competitive effects. A literature around share purchases can result in the study of the instrument of yesterday.

The fourth is related to time and society. There are no long-term studies which follow the downstream effects of suppressed innovations for consumers, workers, prices or regional development over decades, and the kill zone literature on investor behaviour is based on a few studies, the results of which are still disputed. Also poorly studied are the effects of the policy experiments themselves whether transaction value thresholds, ex post reviews and gatekeeper notification obligations have discouraged problematic transactions, discouraged beneficial transactions or simply changed the way transactions are structured. Until these gaps are filled, humility is a must. The prevalence of the phenomenon, its disguises in the modern world and its social cost are not proven. It is not a field which has been finished but is an open frontier for future researchers.

18. CONCLUSION

Assembled from its parts, the secret to the killer acquisition is not a conspiracy, but rather a blind spot and blind spots can be even more dangerous, as the harm can be done without anyone acting in bad faith. Competition law in almost all jurisdictions was designed to assess current competition market shares, products, prices. But, in an economy of innovation, the most valuable competition is potential the challenger that hasn't grown, the product that hasn't yet hit the market, the future that hasn't yet happened. A legal system that only considers what is will invariably undervalue what might have been, and advanced companies have been schooled in the quiet arithmetic of the replacement effect, and learned to transact just in that undervalued space. They purchase futures and pay them off at a discount to the review thresholds and consumers, workers and societies never even know what they are missing.

But the facts presented in this article suggest against complacency or crusade. The phenomenon is real the pharmaceutical research which named it is methodologically sound and the evidence shows that projects acquired by overlapping incumbents were some 28.6 percent less likely to be developed and that perhaps one in fifteen to one in twenty acquisitions in the sector were the killer and the suspect deals were bunched strategically below the notification thresholds. However, at this time, the phenomenon is also a minority practice, and one that has been rigorously measured in only one industry. The great tech cases are still up for grabs, the products acquired in some of those cases were not killed, but scaled, and serious scholars are warning that a story that is spun out of shape by the evidence could lead to over enforcement, which would hurt the startup ecosystem the exit strategies, the investor incentives, the entrepreneurial motivation more than the killings themselves. It's no longer a question of whether or not there are killer acquisitions. How common they are beyond pharmaceuticals, how they are morphing into partnerships and hires that are invisible to merger law and how enforcement can target the harmful few while not stifling the beneficial many.

The message to the future generations for whom this article is written the students who will be researching these questions, the founders who will be receiving these offers, the executives who will be making these offers, and the policymakers who will be the referees is simple to state and difficult to live. Develop strategies based on real innovation not threat removal purchased silence is only short term, capability is not. Examine the deal that is priced for you not the future. Design rules that are based on potential, not just presence. But don't forget that the highest price of this practice is not paid societies that want to save their futures need to learn to see what has not yet come. Knowledge is the first step to all solutions.

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