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**STEALTH MERGERS IN THE AGE OF ARTIFICIAL INTELLIGENCE: REVERSE
ACQUIHRES, TALENT MONOPSONY, AND THE LIMITS OF MERGER CONTROL**

THEME: MERGER CONTROL, ACQUISITIONS, AND STRUCTURAL COMPETITION

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I. INTRODUCTION & BACKGROUND

“Well, if droids could think, there’d be none of us here, would there?”

-Obi-Wan Kenobi (Star Wars: Attack of the Clones)¹

Sci-fi literature romanticises a world of Artificial General Intelligence (“AGI”) as the future of human civilisation: *homo deus*² with an all-serving, artificially intelligent entity which will make humankind squirm with its intelligence.³ AGI is widely regarded as the development of machine learning in which artificial intelligence (“AI”) is sufficiently advanced to operate without human intervention.⁴ The promise of AGI has *Big Tech* on a hiring rampage to secure talent for the first-mover advantage. The contemporary AI ecosystem is defined by a paradox: the industry is not constrained by economic input, but rather by the scarcity of qualified human capital. Historically, dominant technology firms have viewed and solved such scarcities through traditional Mergers and Acquisitions (“M&A”).⁵ However, recent regulatory hostility has produced a pressure effect, where firms, owing to pressure from blocked strategies, have engineered a new way to get what they want, altering the M&A Domain.⁶ Researchers are acquired like football players with even better deals.⁷

Such an acquisition often leads to anticompetitive practices like monopsony, wherein the acquiring company bypasses regulatory oversight for efficiency and prevents regulatory scrutiny. The dominant mechanism for bypassing the current merger scheme is termed as ‘Acquihire 2.0’⁸ or ‘Reverse Acquihire.’⁹ A reverse acquihire occurs when a dominant firm doesn’t buy a target company outright but instead hires its leadership and key talent, licenses

¹ *Star Wars: Episode II – Attack of the Clones* (George Lucas, Lucasfilm 2002).

² Yuval Noah Harari, *Homo Deus: A Brief History of Tomorrow* (Harvill Secker 2016) 150.

³ Daniel J. Solove, ‘Artificial Intelligence and Privacy’ (2025) 77 Fla L Rev 1.

⁴ John Linarelli, ‘Artificial General Intelligence and Contract’ (2019) 24 Unif L Rev 330.

⁵ Jean-Michel Benkert, Igor Letina and Shuo Liu, ‘Acquihires: What Economics Tells Regulators’ (2025) CPI Antitrust Chronicle; Brian J Broughman, Matthew T Wansley and Samuel N Weinstein, ‘No Exit’ (2025) 100 NYU L Rev (forthcoming).

⁶ A Balan, D Chen and R Patel, ‘Evolution of Acquihires 2.0: Buying Teams, Not Balance Sheets’ (Arkstons 2025); Steven Cernak and Luis Blaquez, ‘Antitrust Agency Publishes Revised HSR Notification Thresholds and Filing Fees For 2025’ (*The Antitrust Attorney Blog*, 15 January 2025).

⁷ Blake Montgomery and Nick Robins-Early, ‘Silicon Valley trades researchers like football teams poach players’ *The Guardian* (London, 22 July 2025) <https://www.theguardian.com/technology/2025/jul/21/silicon-valley-trades-researchers-like-football-teams-poach-players> accessed 25 March 2026.

⁸ Balan, Chen and Patel (n 6).

⁹ Gyoung-Gyu Choi, ‘Reverse Acquihires in US Big Tech: Balancing Talent Acquisition and Regulatory Compliance’ (2025) 54(5) *Korean Management Review* 1137 <http://kmr.kasba.or.kr/xml/46795/46795.pdf>.

its technology, and leaves the original corporate shell behind.¹⁰ The goal to pursue reverse acquire is two-fold: (i) speedily acquire talent, enjoy the first mover advantage and hoard the talent, and (ii) avoid premerger notification to regulatory bodies, which reduces scrutiny and delays review post consummation of the deal (which mandates regulatory body to stricter standards to prove anticompetitive practices.)

The current antitrust law focuses on formal structural combinations, i.e., equity deals, traditionally avoiding looking at functional control like licensing and personnel movement.¹¹ This has started to open up regulatory arbitrage where substantive consolidation occurs outside the merger law's ambit.¹² This could lead to de facto concentration without review, diminishing competitive rivalry and innovation incentives.¹³ Large firms absorb scarce specialised engineers, creating a monopsony in labour markets.¹⁴ As a result, startups may get their legs cut out early, owing to lack of qualified personnel and departing leadership.¹⁵

The primary research problem we have addressed in this paper is the emergence of the “reverse acquire” as a mechanism of regulatory arbitrage and suggest a framework to deal with this crafty legal loophole. The objective of this research is to deconstruct the legal and economic architecture of these transactions.¹⁶ We will also evaluate the extent to which they undermine current merger control regimes, and propose doctrinal reforms to capture “stealth mergers” or “killer acquisitions” that rely on human capital rather than asset transfer.

This paper proceeds in the following manner. **Part II** explains our methodology where we relied primarily on doctrinal and comparative analysis, forming U.S., EU, and Indian as base frameworks, and evaluated the major tech deals of 2024–2025 as an empirical foundation. **Part III** then dissects the anatomy of a reverse acquire, explaining what and why of the deal. **Part**

¹⁰ *ibid.*

¹¹ Acqui-hire: The Microsoft/Inflection case and its implications for legal practice and legislation (Noerr, 4 December 2024) <https://www.noerr.com/en/insights/aqui-hire-the-microsoft-inflection-case-and-its-implications>

¹² Broughman, Wansley and Weinstein (n 5).

¹³ Portuguese Competition Authority (AdC), ‘Competition and Generative AI: Labour Markets’ (Short Paper Series, 2025) <https://www.concorrenca.pt/sites/default/files/documentos/Competition%20and%20Generative%20AI%20-%20Labour%20Markets.pdf>.

¹⁴ Heski Bar-Isaac, Justin P Johnson and Volker Nocke, ‘Acquihiring for Monopsony Power’ (2025) 71 *Management Science* 2751 <https://arxiv.org/pdf/2308.10046>.

¹⁵ ‘AI Startup Collapses Due to “Reverse Takeover”’ (36Kr, 10 October 2025) <https://eu.36kr.com/en/p/3459613651932801>.

¹⁶ MarketMinute, ‘The Great Talent Heist: How 2024’s AI ‘Acqui-hires’ Rewrote the Rules of Big Tech M&A’ (Chronicle Journal, 23 January 2026).

IV, deals with the case studies as a live stress-test of the statutory gaps. **Part V** presents the existing legal landscape across India, the United States, and the European Union and how equipped they are. **Part VI** presents economic consequences, including talent monopsony, killer acquisition, and how it quietly hollows out the startup ecosystem. **Part VII** then proposes concrete doctrinal reforms, i.e., a substance-over-form standard, the Indian Deal Value Threshold (“**DVT**”), and an expanded definition of “control” that reaches human capital. **Part VIII** concludes and presents the way forward.

II. METHODOLOGY & SOURCES

We adopted a doctrinal and comparative legal methodology to analyse a few of the publicly available market transactions. We examined the fundamental ethos of merger control regimes followed analysing the high value case studies of 2024 and 2025 involving major tech firms, such as Microsoft/Inflection, Amazon/Adept, Google/Character.AI, and Windsurf as empirical illustrations on how federal trade commission and department of justice dealt with them.¹⁷ We relied on United States and the European Union because of their relative stringency and maturity of regulatory frameworks. Interestingly, a significant portion of the existing literature that emerges from Asian scholarship analysing U.S. market behaviour has primarily been descriptive and diagnostic in nature.

The existing literature on acquihire titles often refers to reverse acquisitions as “Acquihire 2.0.”¹⁸ *Cunningham* discussed the consolidation of corporations in the AI ecosystem, terming it as the “killer acquisition” framework.¹⁹ We contrasted it with recent empirical evidence from *Ederer*, which suggested that these acquisitions often lead to innovation through complementarity instead of suppression.²⁰ We further evaluated impact on labour economics regarding “talent hoarding”²¹ and monopsony power,²² which highlights that dominant firms excessively pay for exceptional talent and restrict competitive access. Furthermore, the review of the concept of “Acquihires 2.0”,²³ which distinguishes modern, proactive team acquisitions from traditional distressed exits. Ultimately, legal scholarship on “regulatory arbitrage” and the “hydraulic effect”,²⁴ argues that antitrust enforcement has transitioned into novel channels like the “Hire-and-License-Out” (“HALO”) model. Despite all of this, there remains a distinct dearth of literature analysing these structures to mitigate the risks. We evaluate the framework under India’s newly introduced DVT as well as antitrust regulations.²⁵ We address a research

¹⁷ Ibid.

¹⁸ Balan, Chen and Patel (n 6).

¹⁹ Colleen Cunningham, Florian Ederer and Song Ma, ‘Killer Acquisitions’ (2021) 129 *Journal of Political Economy* 649.

²⁰ Florian Ederer, ‘Digital (Killer) Acquisitions?’ (Florian Ederer 2024) <https://florianederer.github.io/digital.pdf>.

²¹ S (L) Wu and Z Qian, ‘Talent Hoarding, Misallocation, and Innovation: A Dynamic Model of Labor Market Distortions by Large Incumbents’ (2025) SSRN Working Paper No 5127023; Jean-Michel Benkert, Igor Letina and Shuo Liu, ‘Startup Acquisitions: Acquihires and Talent Hoarding’ (2025) 178 *European Economic Review* 105103.

²² Bar-Isaac, Johnson and Nocke (n 14).

²³ Balan, Chen and Patel (n 6); Choi (n 9).

²⁴ Brian J Broughman, Matthew T Wansley and Samuel N Weinstein, ‘No Exit’ (2025) 100 *NYU L Rev* (forthcoming) <https://www.promarket.org/2026/01/07/antitrusts-hydraulic-effects-on-startups/>.

²⁵ Competition (Amendment) Act 2023 (India).

gap by moving towards prescription by reevaluating the pre-merger notification thresholds through the Indian DVT and the doctrine of material influence, supporting a swadeshi jurisprudential approach as a viable model.

III. ANATOMY OF REVERSE ACQUIHIRE

Reverse acquihires are fluid, each deal is different, but the structure largely includes (i) signing of a non-exclusive license agreement for the start-ups' technology specifically intellectual property in a manner to indirectly pay off the investors; (ii) hiring or paying compensation to key talent to incentivize them to stay longer with the acquirer; (iii) other payments made to startup for a waiver of litigation on grounds of employee poaching. However, it importantly lacks equity purchase, assets, or noncorporate interests that give the acquiring company any control. The startup continues to operate, albeit like a zombie.

Polsky & Coyle define an acquihire as “the acquisition of a firm, including all of its assets, primarily for the purpose of acquiring the target firm’s employees rather than its assets of products.”²⁶

The transition from traditional M&A to the reverse-acquihire model, particularly in the AI market, is not rooted in the spirit to avoid antitrust laws but to have a swifter transition where the focus is on output and not on regulatory checkpoints.²⁷ If a company fails to acquire talent and intellectual property assets quickly, it risks losing to its competition, which will devise a plan to usurp the talent.²⁸ Investors are convinced to leave the acquiring company since they receive licensing fees, which equate to de facto exit payments.²⁹ However, such mechanisms leave the company with no leadership and promote mass unemployment.³⁰

Regardless of spirit, the reverse acquisition mechanism avoids antitrust review thresholds.³¹ Large conglomerates simply hire talent and license tech, and thereby effectively neutralise a competitor without triggering oversight.³² This affects innovation since the talent is secured before competition intensifies, thereby reducing competitive pressure as well as labour mobility. Start-up investors benefit from tenfold returns during Initial Public Offering or

²⁶ John F. Coyle & Gregg D. Polsky, *Acqui-hiring*, 63 *Duke Law Journal* 281-346 (2013).

²⁷ Choi (n 9).

²⁸ Bar-Isaac, Johnson and Nocke (n 14).

²⁹ ‘36Kr’ (n 15).

³⁰ Portuguese Competition Authority (n 13).

³¹ Choi (n 9).

³² ‘Conceptualizing the Reverse Acquihire: Evolutionary Dynamics of Antitrust and Talent Concentration in India and Global Markets’.³²
<https://www.concorrenca.pt/sites/default/files/documentos/Competition%20and%20Generative%20AI%20-%20Labour%20Markets.pdf>.

acquisition. However, this framework incentivises lower pay-outs, fewer investment opportunities and weaker market signals about business models.³³

IV. CASE STUDIES: THE 2024–2025 WATERSHED MOMENTS

The shift from the asset heavy combinations to the nimble “reverse acquihire” model can be best illustrated through a series of eye opening deals that took place between early 2024 and mid-2025. These cases will help in assisting the study by providing an empirical foundation for understanding how dominant hyperscalers utilize and have already utilised licensing fees as a proxy for acquisition capital to secure the work of elite human assets while bypassing traditional merger review.³⁴

a) **The Microsoft / Inflection**

In March of 2024, Microsoft went forward with what is now considered the archetypal reverse acquihire. Microsoft hired its co-founders, Mustafa Suleyman and Karén Simonyan, alongside approximately 70% of its technical staff to give life to the newly established “Microsoft AI” division.³⁵ The transaction was including \$650 million licensing agreement for Inflection’s IP. Crucially, these funds were utilized to provide a “de facto exit” for Inflection’s investors akin to an acquisition or a merger in actual terms, granting them returns comparable to an acquisition without a formal change-of-control event. The move immediately prompted an FTC investigation into whether the deal was specifically engineered to evade Hart-Scott-Rodino (HSR) Act reporting. The investigation is still ongoing, and the result is still under consideration.³⁶

b) **Amazon / Adept and the Character.AI**

Amazon, in mid-2024 subsequently entered into a non-exclusive licensing agreement with Adept AI, simultaneously hiring its CEO, David Luan, and its founding team.³⁷ Similarly, Google executed a \$2.5 billion licensing deal with Character.AI to re-secure the talent of Noam

³³ Broughman, Wansley and Weinstein, ‘Hydraulic Effects’ (n 24).

³⁴ MarketMinute (n 16).

³⁵ Krystal Hu and Harshita Mary Varghese, ‘Microsoft pays Inflection \$650 million in licensing deal while poaching top talents’ (*ETHRWorld*, 22 March 2024) <https://hr.economicstimes.indiatimes.com/news/industry/microsoft-pays-inflection-650-million-in-licensing-deal-while-poaching-top-talents/108701799> accessed 26 March 2026.

³⁶ Choi (n 9).

³⁷ Taylor Soper, ‘Amazon hires founders from well-funded enterprise AI startup Adept to boost tech giant’s “AGI” team’ (*GeekWire*, 28 June 2024) <https://www.geekwire.com/2024/amazon-hires-founders-from-well-funded-enterprise-ai-startup-adept-to-boost-tech-giants-agi-team/> accessed 26 March 2026.

Shazeer and Daniel De Freitas.³⁸ By securing these founders who were originally part of their own ecosystems, so what these companies have done is essentially closed the innovation feedback loop, neutralizing any potential rivals before they could achieve the scale and infrastructure necessary to challenge dominant foundational models.

c) The Windsurf/ Google

The July 2025 Windsurf (formerly Exafunction) transaction represents the most complex evolution of the acquisition dynamic changing. After a proposed \$3 billion acquisition by OpenAI collapsed, which was reportedly due to conflicts with Microsoft regarding IP Access, Google took full advantage of the situation and promptly intervened with a \$2.4 billion talent grab. Google DeepMind hired the CEO of Windsurf Varun Mohan and almost the entirety of its research team, while also licensing its vibe coding technology.³⁹ In a novel “split” outcome, the remaining corporate assets (the IDE, brand, and enterprise contracts) were acquired by Cognition AI.⁴⁰ This case demonstrates the “human capital moat” in practice: the most valuable components of the startup (the minds) were ingested by a dominant incumbent, while the secondary product assets were left for the broader startup ecosystem.

The common thread across these cases is the use of functional control to achieve the economic results of a merger without triggering the “size-of-transaction” thresholds. By utilizing HSR Rule 801.90 workarounds and structuring payments through non-exclusive licenses.⁴¹ These transactions, if permitted in their current form, that is, without notification and initiation of regulatory approvals, will essentially kill the economic cycle of innovation. This is what the law must adapt to fight, not stringent norms in other domains, just a more eased and comprehensive net that catches all mergers, whether actual or constructive.

³⁸ Founders Forum Group, ‘AI AcquiHires: How Microsoft, Google, & Meta Acquire for Hire in the Talent Wars’ (Founders Forum, 17 September 2025) <https://ff.co/ai-acquiHires/> accessed 3 February 2026.

³⁹ ‘Windsurf Saga: OpenAI, Google & Cognition’s’ (*Ronin Legal*, 18 July 2025) <https://roninlegalconsulting.com/the-windsurf-saga-openai-google-and-cognition/> accessed 26 March 2026.

⁴⁰ Kevin, ‘The HALO Effect’ (Kwokchain, 15 July 2025) <https://kwokchain.com/2025/07/15/the-halo-effect/> accessed 3 February 2026.

⁴¹ Choi (n 9).

V. ECONOMIC IMPLICATIONS: BEYOND ASSET TRANSFERS

Acquihire based deals mark a move away from asset value to human value density-based acquiring.⁴² The terms provide for limited restrictions on leaving the new employer, thereby in theory reducing negative downstream effects on customers. Small startups also benefit from reverse acquihire by marketing themselves with talent concentration for larger tech firms to acquihire.

When looking at the entire playing field, the economic implications of these acquihires as a whole will be, that a small number of firms with an already dominant position in consumer technology, will establish an endearing lead in the race for the development of the best frontier AI models as well. And will do so by leveraging the gap in the regulation, stripping the sector of the competitive rivalry that breeds innovation. Ultimately resulting in a stagnation of innovation and oversaturation in the market.

a) Talent Monopsony

A Monopsony is a market phenomenon where a single buyer exists for any number of sellers, and exerts a dominant position on prices. And in terms of the market for engineers as exists in this case, it means that for any number of sellers of services (AI Engineers), the acquihire will make sure only one buyer exists (The Acquiring Firm), and they will be the ones to dictate prices.⁴³ While it requires “one party”, *Big Tech* effectively acts as the dominant player.

This creates a “talent monopsony” in labour markets, where large conglomerates, act as the only purchasers in the market thereby absorbing the scarce specialized engineers that are required for development of large language models.⁴⁴

The same employees that would normally have to be captured via a competitive bidding process and compensation war with the Target Firm, now have to join the acquirer at terms that may be unfavourable to them, simply because their leaders and frontier models have been poached for record amounts.⁴⁵

⁴² Mariateresa Maggolino, ‘The Case of Acquihires’ (2025) SSRN Electronic Journal

⁴³ Bar-Isaac, Johnson and Noeke (n 14).

⁴⁴ Benkert, Letina and Liu, ‘Startup Acquisitions’ (n 21).

⁴⁵ Broughman, Wansley and Weinstein, ‘No Exit’ (n 5).

This strategy relies primarily on the Hire-and-License-Out model.⁴⁶ Unlike traditional distressed exits, these are active team acquisitions.⁴⁷ So by securing talent before competition can intensify or train engineers, large firms effectively reduce labour mobility and nip potential rivals at the bud. What's more is this is all under the eye of the law, which currently typically ignores functional control that has been derived through the movement of personnel.⁴⁸

b) The Human-Capital “Killer Acquisition”

Traditionally, killer acquisition framework describes purchasing a competitor to shut down its product, in the AI era, the “kill” is executed through the acquisition of the workforce itself.⁴⁹ Because existing antitrust frameworks rely heavily on turnover and physical asset-based thresholds, they are doctrinally insufficient to police an economy where the “asset” is the C-suite and the core technical team.⁵⁰

This represents a sophisticated form of “regulatory-arbitrage”. When a titan absorbs the core workforce of a high-valuation AI startup, they are effectively acquiring “practical control” of the target’s capability while executing non-exclusive intellectual property (“IP”) licensing agreements. This slips under the radar simply because the days of sophisticated machines and a score of assembly lines being the reasons for acquisitions is gone, the density of a value of a firm is concentrated completely in the intellect of its engineers. This current regulatory landscape is simulating a “hydraulic effect” of antitrust enforcement where the regulation of certain industries pushes activity into novel, unregulated channels, which means that a good portion of consolidation is now occurring outside the ambit of merger law, largely through these acquihires.⁵¹ And while they may not be inherently harmful, the spirit of the law and intent of the legislators is to be given heed to.

c) Impact on the Startup Ecosystem and Market Signals

The reverse acquihire model has shaken up the investment opportunity suite for startups. On one hand, investors are often convinced to accept these deals because they receive licensing fees that essentially cover the exit payments, sometimes yielding tenfold gains that are similar

⁴⁶ Kevin (n 40).

⁴⁷ Balan, Chen and Patel (n 6).

⁴⁸ Choi (n 9).

⁴⁹ Cunningham, Ederer and Ma (n 19).

⁵⁰ Maggiolino (n 42).

⁵¹ Broughman, Wansley and Weinstein, ‘No Exit’ (n 5).

to what an IPO would bring.⁵² However, this framework incentivizes lower payouts for the broader workforce and fewer overall investment opportunities as the company will remain merely a shell of its past commercial self.

While some empirical evidence suggests these deals can lead to innovation through “complementarity,” the overarching risk will still always remain suppression of innovation.⁵³ By absorbing the only talent capable of training frontier models, dominant firms cut off the hands of their competitive rivals, the rivals which would normally push against the firms and drive breakthrough research. The killing of competition hence, cannot be said to be the cost for short-term economic benefits for a group of dominant firms; Takeaway being, the “reverse acquihire” must be recognized not merely as a recruitment strategy, but as a structural challenge to global competition law.⁵⁴

Supporters for reverse acquihires underline the benefits the researchers get in Big Tech due to higher funding, better technological facilities and resources for improved research. However, the literature highlights that firms are frantic for ‘Talent Hoarding’, not to utilise it productively, but as a pre-emptive measure to prevent rivals from accessing. Talent hoarding, is when an organisation hires the services of talented people it doesn’t require, just so that rival organisations do not gain access to those people. Scholarship on “talent hoarding” suggests that dominant firms may excessively pay for exceptional talent only to restrict competitive access to those individuals, not even completely using them at times, and at a later stage be present as the only purchasers of all available talent.⁵⁵ Contemporary literature highlights that competitive disadvantage stems from the inefficient use of talent rather than from a reduction in market incentives for the acquired talent to compete in the marketplace.⁵⁶

Speed is an essential characteristic required to decide the winners in the AI Race, and that is precisely why the reverse acquihire strategy is so crucial, because it avoids wastage of time in slow regulatory processes. Additionally, the avoidance of a premerger notification

⁵² Broughman, Wansley and Weinstein, ‘Hydraulic Effects’ (n 24).

⁵³ Selcukhan Ünekbaz, ‘Killer Acquisitions: A Killer Story, But Still Not Much Evidence’ (Truth on the Market, 1 October 2025) <https://truthonthemarket.com/2025/10/01/killer-acquisitions-a-killer-story-but-still-not-much-evidence/> accessed 3 February 2026.

⁵⁴ Benkert, Letina and Liu, ‘What Economics Tells Regulators’ (n 5).

⁵⁵ Wu and Qian (n 21).

⁵⁶ Benkert, Letina and Liu, ‘Startup Acquisitions’ (n 21).

guarantees primary consummation of the deal. This does not mean absolute immunity from regulators, but it delays inspection and insulates them when the consummated deal comes under scrutiny.

VI. LEGAL LANDSCAPE ON ANTITRUST LAWS

The jurisprudence is signaling towards an effects-based approach, wherein the actual outcome is analysed rather than the corporate structure to factor in any loopholes exploited by any entity.

a) Indian Framework and Jurisprudence

Competition law serves as the bedrock of a healthy market economy. It ensures that markets remain dynamic, innovative, and efficient. The legal antitrust architecture in India is primarily governed by the Competition Act, 2002. Section 3 prohibits agreements that are likely to cause an Appreciable Adverse Effect on Competition within India, sub-clause 3 deals with horizontal collusion (price-fixing or bid-rigging), while clause (4) applies the “rule of reason” to vertical agreements (exclusive supply or resale price maintenance). Abuse of Dominant Position Section 4, which deals with abuse of dominant position, has its underlying ethos not in preventing dominance per se but its abuse thereof. Dominance abuse occurs when an enterprise, unaffected by market forces, channels its strength to sway the competitors or consumers in its favour, often via imposing unfair conditions, restricting production, or fortifying entry barriers. However, for reverse acquire, the regulation of Combinations (Sections 5 and 6) governs mergers, acquisitions, and amalgamations that exceed specific asset or turnover thresholds. Such a combination is considered void if it causes or is likely to violate section 4.

The Hon’ble Supreme Court in the landmark decision of *Coal India Ltd. & Anr. v. Competition Commission of India* reaffirmed that the Competition Act applies to State-owned monopolies and public sector undertakings, establishing that “common good” objectives do not exempt statutory monopolies from antitrust scrutiny.⁵⁷ This position indicates the heavy-handed objection to any form of anti-competitive practice. Additionally, in *Google Android case*, the CCI fined Google ₹1,337.76 crores for abusing its dominant position through restrictive contractual arrangements that foreclosed rival operating systems.⁵⁸ This indicates that restrictive contracts, similar to those in reverse acquisitions, can craft dominance without specific overt pricing exclusion.⁵⁹ Even under the old Monopolies and Restrictive Trade Practices Act, 1969 Act, the Hon’ble Apex Court in *Hindustan Lever Employees’ Union v.*

⁵⁷ *Coal India Ltd & Anr v Competition Commission of India* (2023) 10 SCC 345.

⁵⁸ *Google LLC v Competition Commission of India* (NCLAT, 29 March 2023) Competition Appeal (AT) No 01 of 2023.

⁵⁹ *Ibid.*

Hindustan Lever Ltd weighed amalgamation in the lens of public interest and employee protection.⁶⁰

b) International Framework

While both the United States and Europe are moving toward more aggressive oversight (Biden administration curtailed multiple investigations), their statutory underpinnings and jurisprudential strategies remain distinct.

1. *The United States*

The USA Sherman Act⁶¹ and the Clayton Act⁶² are the major legislation on antitrust. Historically, the focus has been on downstream consumer effects; however, the recent trend signals a shift toward protecting upstream consumers of jobs.

In *United States v. Bertelsmann*⁶³ the Department of Justice successfully blocked the merger by focusing almost exclusively on monopsony power in the market for “top-selling book authors”.⁶⁴ This position underlines a situation where a merger was enjoined primarily due to harms to upstream suppliers rather than downstream consumers. U.S. regulators increasingly use Rule 801.90 of the Hart-Scott-Rodino (HSR) Act⁶⁵ to investigate “reverse acquisitions,” such as the Microsoft/Inflection AI deal. The threshold is to check whether the transactions are engineered to “defeat the law” by achieving the economic result of a merger. This rule has faced scrutiny in recent times, as regulators may not be able to establish that a merger was undertaken to defeat the purpose of law.

2. *The European Union*

The European stance is dealt with by utilising Articles 101 and 102 of the Treaty on the Functioning of the European Union⁶⁶ and the European Union Merger Regulation (EUMR).⁶⁷

⁶⁰ *Hindustan Lever Employees' Union v Hindustan Lever Ltd* (1995) Supp (1) SCC 499.

⁶¹ Sherman Antitrust Act 1890, 15 USC §7.

⁶² Clayton Act 1914, 15 USC.

⁶³ *United States v Bertelsmann SE & Co KGaA* 646 F Supp 3d 1 (DDC 2022).

⁶⁴ Albrecht BC, Auer D and Manne GA, ‘Labor Monopsony and Antitrust Enforcement: A Cautionary Tale’ (International Center for Law & Economics White Paper No 2024-05-01, 2024) <https://laweconcenter.org/> accessed 25 March 2026

⁶⁵ Hart-Scott-Rodino Antitrust Improvements Act 1976, 16 CFR § 801.90.

⁶⁶ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

⁶⁷ Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings [2004] OJ L24/1.

Traditionally, the European Commission reviewed deals with specific turnover thresholds, Article 22 is invoked by member states to refer “sub-threshold” deals for investigation.

The breadth stance was challenged before the European Court of Justice ruling in *Illumina/Grail*, where they denied member states from referring transactions that fell below notification that fall below their own national notification thresholds to the Commission. While the sub-threshold was a key instrument to review talent-heavy, asset-light deals, it was judicially invalidated. This creates a legislative vacuum that can be resolved solely through statutory amendment.⁶⁸ The “Maverick Firm” was codified in *T-Mobile Austria / Telering*, where the Election Commission can block a merger because it eliminated a disruptive competitor that pushed others toward better pricing and innovation.⁶⁹ Furthermore, the approach during *Facebook/WhatsApp*⁷⁰ and *Apple/Shazam*⁷¹ demonstrate the European Commission’s willingness to bypass traditional turnover thresholds for a substance over form approach.

The European Union’s attempts may be insufficient to classify mass-hiring as a ‘concentration’ under the EUMR,⁷² citing recent investigations into Microsoft/Inflexion.⁷³ Looking at these cases and analysing the pros and cons, what India’s Competition (Amendment) Act, 2023⁷⁴ adopts is the new DVT of ₹2,000 crore⁷⁵ and the codification of ‘Material Influence.’⁷⁶ Such a framework may offer a more efficient tool for catching asset-light, talent-heavy transactions, which can inspire global regulatory bodies.

⁶⁸ Case C-611/22 P *Illumina v Commission* [2024] ECLI:EU:C:2024:677.

⁶⁹ Case T-282/06 *T-Mobile Austria GmbH v Commission* [2008] ECR II-0000.

⁷⁰ *Facebook/WhatsApp* (Case COMP/M.7217) Commission Decision of 3 October 2014.

⁷¹ *Apple/Shazam* (Case COMP/M.8788) Commission Decision of 6 September 2018.

⁷² EUMR (n 67).

⁷³ Noerr (n 11).

⁷⁴ Competition (Amendment) Act 2023 (n 25).

⁷⁵ Competition (Amendment) Act, 2023 (India); *Merger Control Regime in India: 2023 Revisions to the Competition Law*, India-Briefing (10 July 2023) <https://www.india-briefing.com/news/merger-control-regime-in-india-analyzing-the-2023-revisions-to-competition-law-28830.html> accessed 28 January 2026; Tarushi Tewari, ‘Evaluating the Deal Value Threshold Under the Competition (Amendment) Act, 2023: A Comparative Analysis and Recommendations for India’s Merger Control Regime’ (2025) 5(2) *Indian Journal of Integrated Research in Law*.

⁷⁶ CCI Merger Control Reforms: Deal Value Threshold & The Growing Impact On Deal Structuring & Transaction Planning In Indian M&A (Global Law Experts, 2024) <https://globallawexperts.com/cci-merger-control-reforms-deal-value-threshold-the-growing-impact-on-deal-structuring-transaction-planning-in-indian-ma/>.

VII. PROPOSED DOCTRINAL REFORMS

As discussed above, Current merger control regimes, which are primarily predicated on turnover-based or asset-based thresholds, are by design doctrinally ill-equipped to police a sector where the primary “asset” is the collective cognitive output of an engineering team. They are laws of an era where this level of capital concentration in humans did not exist. So logically, to prevent “stealth mergers” from bypassing regulatory oversight, global competition law must undergo a structural evolution focused on a test of functional rather than formal control.

a) Adopting a “Substance-over-Form” Standard

The primary change has to be the adoption of a substance over form mode of regulatory scrutiny, even at the preliminary notification stage. Regulators should leverage and expand existing provisions that stipulate that the economic substance of a transaction should trigger reporting requirements. What makes 801.90 a “blank round” is the fact that to attract the section, the Federal Trade Commission or the Department of Justice must prove that the primary purpose of the deal was to “defeat the law”, and disproving this claim merely requires companies to prove that there was a genuine business necessity or research requirement. Failure to expand the scope at the preliminary notification stage would unjustifiably burden the regulatory bodies to pursue a consummated deal and prove with documentary evidence. While *prima facie* it appears that if the regulators are not allowed to prove via documentary evidence, then why should the firms be made to suffer? However, in the era of information asymmetry, even if documentary proofs are substantiated, the consummated deal would already sow its anticompetitive seed in the market. The firms are not being subjected to any egregious burden; they are merely being subjected to *procedure established by law*.

While ordinary *bona fide* deals may face review and create friction. We propose to establish “*Functional Merger Presumption*” framework to identify: **(i)** whether acquiring firm has hired significant core technical or senior managerial workforce within an limited (18-month) window **(i)** signing of a non-exclusive/non-exclusive license agreement for the start-ups’ technology specifically intellectual property in a manner to *indirectly* pay off the investors/stakeholders; **(ii)** the aggregate consideration which includes licensing fees, compensation packages, and litigation waivers exceeds the applicable DVT (or its jurisdictional equivalent); **(iii)** other payments made to startup for a waiver of litigation on

grounds of employee poaching and (iv) whether it lacks equity purchase, assets, or noncorporate interests that give the acquiring company any control.

b) The Indian “Deal Value Threshold” (DVT) as a Global Blueprint

The Competition (Amendment) Act, 2023, offers a legislative blueprint that may be viable at addressing “asset-light” digital deals. By introducing DVT under section 5(d), India has shifted the focus from the target’s revenue to the overall strategic importance of the transaction. Crucially, the codification of “Material Influence”, being the ability to influence the management or affairs of another enterprise, has allowed a door for the scrutiny of transactions that have not necessarily granted “decisive influence” in the traditional sense but still facilitate functional coordination. All without the need to prove evasive intent. Although no adjudicated decision has yet applied this doctrine to such kinds of stealth mergers. The Indian model is not a tested solution but a superior legislative design focusing on strategic value and *ability to influence management*.

VIII. CONCLUSION AND WAY FORWARD

The review of 2023 Competition Amendments, specifically the DVT and Material Influence standards, posits that India's legislation agility in targeting "asset-light" digital deals may serve as a viable blueprint for Western jurisdictions that are identifying frameworks to contain Big Tech's consolidation.⁷⁷

The nets designed to catch whale like mergers involving huge asset transfers, are letting the minnow like acquirers pass through. And as a result a fundamental problem undermining the free market has arisen India's DVT and "Material Influence" codification provide a viable blueprint for capturing these asset-light, talent-heavy deals.

The paper concludes by proposing that regulators across the world adopt a "substance-over-form" approach, where even the transfer of a C-suite and/or core technical team will be deemed as a presumptive merger.⁷⁸ Additionally, wider adoption in India of a nuanced DVT to capture high-value licensing deals will lead to expanding the definition of "control" to include decisive influence over human capital,⁷⁹ allowing hedging against any potentially innovative workarounds to the competition law. In sum, we establish that the "reverse acquire" is not merely a recruitment strategy but a sophisticated method of regulatory arbitrage to tap into swift talent acquisition.⁸⁰

The killing of competition cannot be the cost for short-term economic impetus, which requires an immediate and structural evolution in global competition law.⁸¹ Ultimately, the law must recognise that the "killing" of competition can occur as effectively through a LinkedIn recruiter as it can through a stock purchase agreement.

⁷⁷ Tarushi Tewari, 'Evaluating the Deal Value Threshold Under the Competition (Amendment) Act, 2023: A Comparative Analysis and Recommendations for India's Merger Control Regime' (2025) 5(2) Indian Journal of Integrated Research in Law <https://ijirl.com/wp-content/uploads/2025/04/EVALUATING-THE-DEAL-VALUE-THRESHOLD-UNDER-THE-COMPETITION-AMENDMENT-ACT-2023-A-COMPARATIVE-ANALYSIS-AND-RECOMMENDATIONS-FOR-INDIAS-MERGER-CONTROL-REGIME.pdf>; AZB & Partners, 'Deal Value Threshold' (30 September 2024) <https://www.azbpartners.com/bank/deal-value-threshold/>.

⁷⁸ UK Competition and Markets Authority, 'Microsoft/Inflection AI Inquiry' (2024); 'Conceptualising the Reverse Acquire' (n 32).

⁷⁹ Competition Commission of India (Combination) Regulations 2024; 'CCI Merger Control Reforms' (n 76).

⁸⁰ Choi (n 9).

⁸¹ Broughman, Wansley and Weinstein, 'No Exit' (n 5).