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Reverse Acquihires in AI

Introduction

The new big tech playbook

Silicon Valley's innovation ecosystem thrives on the circulation of talent, knowledge, and ideas. Having talented people is crucial to stay ahead and grow as a company. Over the past decade, large technology firms have consolidated their market power, often acquiring emerging start-ups not for their products or intellectual property, but for their human capital. As Marc Zuckerberg famously stated: "*Facebook has not once bought a company for the company itself. We buy companies to get excellent people*."[1] These so-called 'acquihires' – a portmanteau of 'acquisition and 'hiring' – represent a strategic means of absorbing talent while eliminating potential competition.[2]

With the arrival of artificial intelligence, a new competition has opened, and it is fierce. Winning the AI race depends again highly on the talent you host and the money you can invest.

Recently, tech giants have employed a new strategy to win this race, and to do so quickly and smoothly. Rather than purchasing the start-up, big tech companies pay the start-up for its team and technology. This new phenomenon has been dubbed 'reverse acquihires' and it presents new challenges to competition law.

Over the past two years, five notable deals in the AI sector were structured as reverse acquihires. In all of these, an incumbent hires founders and key employees of an AI start-up and pays the start-up an enormous sum for a licensing agreement for its technology and AI models.

In March 2024, Microsoft hired the two co-founders of Inflection AI, as well as most of the employees. Inflection could continue to exist as an independent company, but without its founders and with just two employees who stayed at the company. Microsoft gained the entire AI team of Inflection and paid Inflection $620 million to license and use its AI models and another $30 million for Inflection's agreement not to sue Microsoft for poaching its people.[3] Inflection AI was valued at $4 billion at the time of the reverse acquihire. Investors in the start-up were paid between 1.1 and 1.5 times their initial investment although exact numbers have

[1] Nathaniel Cahners Hindman, 'Mark Zuckerberg: 'We Buy Companies To Get Excellent People'' (*Huffpost*, 25 May 2011) *https://www.huffpost.com/entry/mark-zuckerberg-we-buy-co_n_767338*, accessed 23 July 2025.
[2] Bailey Bartel, 'Back to the Basics: Reformation of Employment Noncompete Agreement Law' (2025) 57 Suffolk U L Rev 549; Paige Ouimet and Rebecca Zarutskie, 'Acquiring Labor' (2020) The Quarterly Journal of Finance Vol. 10, No. 3; Samantha Nolan, 'Talent for Sale: The Need for Enhanced Scrutiny in Judicial Evaluation of Acqui- Hires' (2016) 67 Hastings L.J. 849; Kenneth A. Younge, Tony W. Tong and Lee Fleming, 'How anticipated employee mobility affects acquisition likelihood: Evidence from a natural experiment' (2015) Strategic Management Journal Vol 36, No 5, 686; Aaron Chatterji and Arun Patro, 'Dynamic Capabilities and Managing Human Capital' (2014) Academy of Management Perspectives, Vol. 28, No. 4.
[3] Brian Broughman, Matthew Wansley and Sam Weinstein, 'No Exit' (2025, forthcoming) NYU Law Review.

not been made public.[4] Inflection currently still exists but has shifted its focus and mainly licenses its technology to other companies.[5]

In June of that year, Amazon hired the co-founders and two-thirds of the employees of Adept. Adept received just $25 million in licensing fees, a low number considering the start-up was valued at $1 billion.[6] It has been reported that investors will recoup some of their money, although exact numbers have not been given.[7] In August 2025, Bloomberg reported that only four people still work at Adept which does not seem to have a leadership anymore since the CEO left for Amazon.[8]

Two months later, Google entered into an agreement with Character AI. Character AI was founded by two AI engineers who were previously working for Google but wanted Google to move quicker. They created their own AI chatbot start-up which raised $200 million.[9] Two years later, they returned to the tech giant, together with 30 of the 130 employees of Character AI. The deal also included a non-exclusive licensing agreement for the start-up's technology for $2.7 billion. This money was used to buy out investors and provide remaining employees with one-time cash-outs and equity in the restructured company.[10] The deal thus ensured compensation for investors and employees and the employees still own and run the company as a co-operative. The company no longer develops its own AI models as it does not have the capital to train such models.

In 2025, reverse acquihiring deals in Silicon Valley occurred twice over the summer. Meta made a deal with Scale AI in June that was structured more as an ongoing partnership. Meta invested $14 billion in the start-up and acquired a 49% stake for this sum.[11] Scale AI's CEO left for Meta, as well as a few top researchers. Although it remains active as a company, Scale AI already cut 200 jobs in July.[12]

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[4] Jack Arenas, 'The Rise of Reverse Acquihires' (*Stack Trace,* 18 July 2025), *https://jackarenas.substack.com/p/the-rise-of-reverse-acquihires,* accessed 25 September 2025; Founders Forum Group, 'AI Acquihires: How Microsoft, Google, & Meta Acquire for Hire in the Talent Wars' (*Founders Forum Group,* 17 September 2025), *https://ff.co/ai-acquihires/#:~:text=There's%20even%20a%20trend%20called,Big%20Tech%20can't%20resist*, accessed 25 September 2025.

[5] Sonia Ketkar, 'The Uncomfortable Truths About Reverse Acquihires' (*Medium,* 22 August 2025), *https://medium.com/innovest/the-uncomfortable-truths-about-reverse-acquihires-c44f16b2a3a6*, accessed 29 September 2025.

[6] Jack Arenas, 'The Rise of Reverse Acquihires' (*Stack Trace,* 18 July 2025), *https://jackarenas.substack.com/p/the-rise-of-reverse-acquihires,* accessed 25 September 2025.

[7] Reed Albergotti, 'Investors in Adept AI will be paid back after Amazon hires startup's top talent' (*The Scoop,* 2 August 2024); Erin Griffith and Cade Metz, 'The New A.I. Deal: Buy Everything but the Company' (*The New York Times,* 8 August 2024), who note that Amazon will pay at least $330 million to Adept in total. Investors had provided $414 million to the start-up and would see some of that money being paid back.

[8] Julianne Culey, 'Reverse Acquihires' (*Business Journalism,* 2 September 2025), *https://businessjournalism.org/2mintip/reverse-acquihires/* accessed 25 September 2025.

[9] Erin Griffith and Cade Metz, 'The New A.I. Deal: Buy Everything but the Company' (*The New York Times,* 8 August 2024).

[10] Jack Arenas, 'The Rise of Reverse Acquihires' (*Stack Trace,* 18 July 2025), *https://jackarenas.substack.com/p/the-rise-of-reverse-acquihires,* accessed 25 September 2025.

[11] Jack Arenas, 'The Rise of Reverse Acquihires' (*Stack Trace,* 18 July 2025), *https://jackarenas.substack.com/p/the-rise-of-reverse-acquihires,* accessed 25 September 2025.

[12] Maxwell Zeff and Marina Temkin, 'Cracks are forming in Meta's partnership with Scale AI' (*Tech Crunch,* 29 August 2025), *https://techcrunch.com/2025/08/29/cracks-are-forming-in-metas-partnership-with-scale-ai/* accessed 25 September 25.

In July, Google paid $2.4 billion to Windsurf to license the start-up's AI coding technology and hire its founders and core technology team. The start-up's remaining team of 250 employees was left in uncertainty and without leadership, until the start-up was eventually bought by Cognition – another AI start-up.[13]

Pattern

These examples demonstrate a pattern in the AI sector: an incumbent poaches the founders and key talent of a start-up, licenses the technology and pays a large sum to compensate the start-up's investors. The incumbent essentially drains the start-up and takes most of its value and assets, but it does not become the owner of the firm.[14] Remaining employees are left with an empty company, often without leadership or certainty of being rewarded for their efforts in helping the start-up grow.[15] The company can be an empty shell or could remain active, but without its most talented workers and leadership, it will not be a source of competition for the incumbent anymore. Acquihiring and reverse acquihiring reflect the intensity of the competition for talent in the AI sector.[16] However, these transactions are not a good development for all stakeholders involved, nor for competitive markets.

Effects

Big Tech firms have increasingly used reverse acquihires to obtain highly valuable talent as these deals have clear advantages for the tech giants. Saving time is one of the most obvious ones. The deals were reached within weeks, a lot quicker than most mergers. Especially in the AI race, speed is crucial. However, saving time does not seem to be the main motivation behind structuring the deals this way. Reverse acquihiring avoids antitrust scrutiny as the deals are not structured as transactions, and some critics note that big tech chooses this structure specifically to avoid having to undergo merger review.[17] The New York Times even reported that people involved in the deals have said that the agreements are driven by a '*desire to sidestep regulatory scrutiny while trying to get ahead in AI*'.[18]

There are, however, clear competition concerns. Talent is being concentrated in the same five companies. The AI market is becoming increasingly more concentrated and starts to reflect an oligopoly as big tech companies dominate the market.[19] The incumbents eliminate start-ups as future competitors by absorbing promising talent before it becomes threatening which

[13] Maxwell Zeff, 'Cognition, maker of the AI coding agent Devin, acquires Windsurf' ((*Tech Crunch,* 14 July 2025), *https://techcrunch.com/2025/07/14/cognition-maker-of-the-ai-coding-agent-devin-acquires-windsurf/,* accessed 25 September 25.
[14] Erin Griffith and Cade Metz, 'The New A.I. Deal: Buy Everything but the Company' (*The New York Times,* 8 August 2024).
[15] Josipa Majic Predin, 'How 'Acquihires' Are Reshaping Silicon Valley's AI Investments' (*Forbes,* 15 July 2025), *https://www.forbes.com/sites/josipamajic/2025/07/15/why-acquihires-are-reshaping-silicon-valley-ai-investments/,* accessed 25 September 25.
[16] Josipa Majic Predin, 'How 'Acquihires' Are Reshaping Silicon Valley's AI Investments' (*Forbes,* 15 July 2025).
[17] Brian Broughman, Matthew Wansley and Sam Weinstein, 'No Exit' (2025, forthcoming) NYU Law Review; Josipa Majic Predin, 'How 'Acquihires' Are Reshaping Silicon Valley's AI Investments' (*Forbes,* 15 July 2025); Mike Turner, 'Reverse Acquihires are incredibly Dangerous' (*The Sifted Podcast,* 11 September 2025).
[18] Erin Griffith and Cade Metz, 'The New A.I. Deal: Buy Everything but the Company' (*The New York Times,* 8 August 2024).
[19] Max Von Thun and Claire Lavin, 'The EU Must Revise Its Merger Guidelines To Strengthen Innovation, Security, and Democracy' (*ProMarket,* 25 September 2025), *https://www.promarket.org/2025/09/25/the-eu-must-revise-its-merger-guidelines-to-strengthen-innovation-security-and-democracy/* accessed 29 September 2025.

entrenches the power of the incumbent.[20] Eliminating rivals through these deals also reduces consumer choice and stifles innovation. Silicon Valley thrives on the dissemination of knowledge and ideas, for which labour mobility is essential.[21] By systematically eliminating or draining start-ups, the ecosystem no longer works like it used to and loses value.[22]

In the context of Silicon Valley, another issue comes up. Venture capital (VC) and growth capital play a crucial role in the dynamic start-up ecosystem of Silicon Valley. Investors provide not just capital but mentorship, strategic guidance, and access to networks. Investors believe and invest in the founders of start-ups. When those founders later leave the business and move to a tech giant, the original rationale for the investment is taken away. As these deals are becoming more common, this could undermine the VC and growth capital markets that have been crucial in providing start-ups with capital.[23] Reverse acquihires are thus not only anticompetitive but can fundamentally change how the high-tech hub functions and how capital moves around in the ecosystem.

Acquiring for talent

These transactions are part of a broader challenge on how to deal with different effects of mergers, such as the effects of mergers on labour markets and employees. Mergers between competing employers – employers who hire from the same pool of workers – increase concentration on the labour market and can have negative effects on worker welfare. Acquisitions can also be driven by a desire to obtain the staff of the target company. Those transactions – the acquihires – have been commonplace in markets where competition for talent is fierce, like pharma or tech and have thus bee noted in Silicon Valley for a lot longer. Companies are interested in the staff of the target company, and the transaction is the tool to acquire that asset.

Acquihiring can be interesting to obtain an entire team of skilled workers all at once.[24] These teams are already used to working together and can thus be more productive. Acquihiring also avoids difficulties concerning non-compete clauses and trade secret agreements.[25] Research has indeed found a causal effect between constraints on employees due to NCCs and the likelihood of a firm becoming a target for an acquisition.[26] When firms have difficulties poaching

[20] Jonathan Kanter, 'Billion-dollar 'acqui-hires' are bad for competition' (*Financial Times,* 18 August 2025), accessed 25 September 2025; Radhika Sharma, 'When Big Tech poaches startup founders, employees pay the price' (HR Katha, 17 September 2025), *https://www.hrkatha.com/news/when-big-tech-poaches-startup-founders-employees-pay-the-price/*. Accessed accessed 25 September 2025.
[21] AdC Short Papers, 'Competition and Generative AI: Labour Markets' (2025), 2.
[22] Josipa Majic Predin, 'How 'Acquihires' Are Reshaping Silicon Valley's AI Investments' (*Forbes,* 15 July 2025).
[23] Mike Turner, 'Reverse Acquihires are incredibly Dangerous' (*The Sifted Podcast,* 11 September 2025).
[24] Jun Chen, Shenje Hshieh and Feng Zhang, 'Hiring High-Skilled Labor Through Mergers and Acquisitions' (2024) Journal of Financial and Quantitative Analysis 59, no. 6, 2762; Jaclyn Selby and Kyle J Mayer, 'Startup Firm Acquisitions as a Human Resource Strategy for Innovation: The Acqhire Phenomenon' (2018) Academy of Management Proceedings.
[25] Jun Chen, Shenje Hshieh and Feng Zhang, 'Hiring High-Skilled Labor Through Mergers and Acquisitions' (2024) Journal of Financial and Quantitative Analysis 59, no. 6, 2762; Kenneth A. Younge, Tony W. Tong, Lee Fleming, 'How anticipated employee mobility affects acquisition likelihood: Evidence from a natural experiment' (2015) Strategic Management Journal Vol 36, No 5, 686.
[26] Jun Chen, Shenje Hshieh and Feng Zhang, 'Hiring High-Skilled Labor Through Mergers and Acquisitions' (2024) Journal of Financial and Quantitative Analysis 59, no. 6, 2762; Kenneth A. Younge, Tony W. Tong, Lee

employees, such as in tight labour markets or in the presence of strong NCCs, acquihiring becomes more prevalent.[27]Acquihires indeed occur more often in sectors where employees are bound by NCCs and mostly in case of knowledge workers.[28]

When start-ups do not raise the capital that they need to grow and are close to liquidation, an acquihire can be a good exit solution. Investors are compensated, and both founders and employees are taken on board at the buyer. Competition or innovation are not harm if the start-up would have liquidated if not for the acquihire.

For the founders and employees at the start-up being bought by an incumbent, reputational reasons or social norms can be driving factors motivating them to agree on the acquihiring deal. There can be threats of informal sanctions when employees leave start-ups.[29] Especially when start-ups are funded by VC, founders and employees of the start-up might want to maintain close relationships with the VC investors so as not to burn any bridges should they want to create a new start-up.[30] When the entire start-up is bought by an incumbent, they avoid these difficulties. We have indeed noted above how reverse acquihires – where founders leave the business – can be dangerous to the VC and growth capital markets as those deals undermine the investments.

Acquihiring can also be a strategy to eliminate a competing employer, which allows the acquirer to lower wages.[31] Since employees have more bargaining power in situations of direct hiring, acquihiring can lower costs for the acquirer.

Companies can of course still directly hire employees, which is how reverse acquihires are structured. The company does not buy an entire target company to onboard its team. Rather, the target company continues to exist and remains independent, but the key employees or managers of the company leave to the larger company. The 'buyer' practically extracts all the value out of the company, without having to buy it.

These transactions are mainly interesting for firms who need talented, high-skilled employees. Acquiring talent is vital to compete and thrive in those markets. For that reason, acquihiring is a popular way to grow which has been around for a while and occurs in different sectors.[32]

Reverse acquihiring has now become the new playbook in Silicon Valley as the need for tech talent and AI engineers is particularly high. These deals are an appealing strategy for companies to win the war for talent, dominate the AI market, and avoid competition agencies scrutinizing

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Fleming, 'How anticipated employee mobility affects acquisition likelihood: Evidence from a natural experiment' (2015) Strategic Management Journal Vol 36, No 5, 686.

[27] Jun Chen, Shenje Hshieh and Feng Zhang, 'Hiring High-Skilled Labor Through Mergers and Acquisitions' (2024) Journal of Financial and Quantitative Analysis 59, no. 6, 2762.

[28] Kenneth A. Younge, Tony W. Tong, Lee Fleming, 'How anticipated employee mobility affects acquisition likelihood: Evidence from a natural experiment' (2015) Strategic Management Journal Vol 36, No 5, 686.

[29] Gregg D. Polsky and John F. Coyle, 'Acqui-Hiring' (2013) 63 Duke L.J. 281.

[30] Jun Chen, Shenje Hshieh and Feng Zhang, 'Hiring High-Skilled Labor Through Mergers and Acquisitions' (2024) Journal of Financial and Quantitative Analysis 59, no. 6, 2762.

[31] Heski Bar-Isaac, Justin P. Johnson and Volker Nocke, 'Acquihiring for Monopsony Power' (2024) Management Science 71(4), 3485-3496.

[32] Gregg D. Polsky and John F. Coyle, 'Acqui-Hiring' (2013) 63 Duke L.J. 281, 287.

the deal.[33] However, competition agencies have not – and should not – ignore these deals. The next section analyses the pathways for EU competition agencies to handle these agreements.

Competition Law

This paper analyses the competition law instruments that could apply to these transactions and could address the concerns they have raised. This article focuses on EU competition law – specifically merger control and Article 102 TFEU – but the analysis brings to light insights that can be useful for the counterparts in US merger control and antitrust law.

Merger control

The first question to consider is whether the transactions described above constitute a concentration within the meaning of the EU Merger Regulation ('EUMR'). Article 3, 1 EUMR sets out the definition of a concentration:

"1. A concentration shall be deemed to arise where a change of control on a lasting basis results from:

(a) the merger of two or more previously independent undertakings or parts of undertakings, or

(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings."

We have seen three types of transactions relevant here: 1) mergers between competing employers, 2) acquihiring, and 3) reverse acquihires. For the first two, no issue arises as they are mergers between two previously independent undertakings. Remember that acquihiring referred to a transaction where a company acquires a target company with the aim of obtaining the team. Since this is still the acquisition of a company, this falls within the definition of Article 3, 1, (a) EUMR.

Reverse acquihires – not structured as a traditional merger – require more elaboration.

Besides mergers, the EUMR covers all transactions that cause "*a change in control".* A change in control can substantiate when a company acquires certain assets of a company. Indeed, taking over parts or assets of a company without actually buying the company as a whole can also bring about about a lasting change in the structure of the market, which is covered by the EUMR.[34]

The Consolidated Jurisdictional Notice adds that "*the acquisition of control over assets can only be considered a concentration if those assets constitute the whole or a part of an*

[33] Lea Hogg, 'Microsoft's AI talent acquisition race' (*Sigma,* 24 March 2024), *https://sigma.world/news/microsofts-ai-talent-acquisition-race/* accessed 22 September 2025.

[34] Recital 20 EUMR and paragraph 7 of the Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01) ('Consolidated Jurisdictional Notice').

undertaking, ie, a business with a market presence, to which a market turnover can be clearly attributed".[35]

Acquiring (some) parts or assets of a company can thus constitute a change in control and be considered a concentration.[36] Since employees are an asset of a company, directly hiring certain employees can come within the scope of the EUMR. This is the case when the hiring of certain employees causes a lasting change in the structure of the market. Such deal can consitute a concentration and be subject to merger control. This condition is more likely to be fulfilled when a company hires an entire team, rather than individual employee.[37] However, when a company hires the founders or key employees, without hiring all the staff, carving out this selection of people can still cause a lasting change in the structure of the market. In the AI sector, we have seen that such deals have gained importance.

As mentioned, Microsoft hired the two co-founders and most of the employees at Inflection in 2024. Microsoft and Inflection also entered into agreements on IP and financing.

The Commission declared that this constituted a concentration under Article 3 EUMR, as "*the transaction involves all assets necessary to transfer Inflection's position in the markets for generative AI foundation models and for AI chatbots to Microsoft."*

The Commission further noted that since *"the 'new Inflection' would shift its focus to a different activity, namely its AI studio business, the Commission regards the agreements entered into between Microsoft and Inflection as a structural change in the market that amounts to a concentration as defined under Article 3 of the EUMR*."[38]

The Microsoft/Inflection case was also considered at national level. The German Competition Authority (FCO) examined the transaction and noted that direct hiring of employees could constitute a merger and be subject to German merger control.[39] The agency further clarified that this is the case when the direct hiring transfers the competitive potential to the acquirer. In the Microsoft/Inflection case the FCO concluded that the hiring of Inflection's employees and the acquisition of IP in conjunction constituted a "*de facto takeover of Inflection by Microsoft.*"[40]

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[35] Paragraph 24 of the Consolidated Jurisdictional Notice, referring to Case COMP/M. 3867 – Vattenfall / Elsam and E2 Assets of 22 December 2005.
[36] Paragraph 24 of the Consolidated Jurisdictional Notice.
[37] Ruchit Patel and Rupert Phillips, 'Are employee acquisitions a gap in European merger control?' (2024) 20 Competition Law International 1, 84.
[38] European Commission, Press Release of 18 September 2024, "Commission takes note of the withdrawal of referral requests by Member States concerning the acquisition of certain assets of Inflection by Microsoft".
[39] Bundeskartellamt, Press Release of 29 November 2024, "Übernahme von Mitarbeitenden kann der deutschen Fusionskontrolle unterliegen – Microsoft/Inflection nur mangels erheblicher Inlandstätigkeit von Inflection nicht anmeldepflichtig",
https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/29_11_2024_Microsoft.html. accessed 23 September 2025.
[40] Bundeskartellamt, Press Release of 29 November 2024, "Übernahme von Mitarbeitenden kann der deutschen Fusionskontrolle unterliegen – Microsoft/Inflection nur mangels erheblicher Inlandstätigkeit von Inflection nicht anmeldepflichtig",
https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/29_11_2024_Microsoft.html, accessed 23 September 2025.

Similarly, the UK Competition Authority (CMA) deemed the transaction to be a concentration.[41] Eventually, neither the Commission nor the FCO or CMA conducted an in-depth assessment since the transaction did not meet the required thresholds.

The statements of the Commission make clear that reverse acquihires can constitute a concentration when the competitive position of the 'target company' is transferred to the buyer. Employees bring talent, know-how and business relationships. Especially in the AI sector, human talent is crucial, and companies are willing to pay enormous sums for key talent (as seen in the examples above). Employees can thus be a critical asset of a company and when key talent leaves to a tech giant, that could constitute the transfer of the competitive position of the start-up to the incumbent.[42]

In the case of Microsoft/Inflection, Microsoft also entered into separate licensing agreements for IP. The Commission nor the FCO explained whether the direct hiring of the team *on its own* would constitute a merger.

Besides the Commission and the FCO, other competition authorities have made clear that reverse acquihires can be subject to merger control be it that such transaction might often fall below the thresholds.[43]

This answers the first question: mergers and acquihiring constitute a transaction. Reverse acquihires can also constitute a transaction and be subject to the EUMR when the takeover of the employees brings about a lasting change in the market.

This brings us to the second check within the EUMR: the Community dimension. The Commission can only review transactions that have a Community dimension, which is based on the turnover of the undertakings concerned.[44] When companies' turnover does not meet these thresholds, they could still be subject to merger review on Member State level.

Mergers between companies whose turnover exceeds the thresholds have to be notified to and checked by the Commission. Suppose, for example, a merger between two large supermarket chains who compete for the same employees. There is no legal reason why this transaction between competing employers would not come in the scope of the EUMR. In the US, such transactions have been reviewed – and blocked – by the authorities. The merger between Kroger and Albertsons – two supermarket chains who hire from the same pool of workers – was blocked as the FTC successfully argued that this would lead to higher prices and less bargaining power for unions which would suppress wages and worsen working conditions.[45]

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[41] Competition and Markets Authority, 'Microsoft / Inflection inquiry' (2024), *https://www.gov.uk/cma-cases/microsoft-slash-inflection-ai-inquiry*.

[42] Björn Christian Becker, Florian Bien and Toker Doganoglu, 'Microsoft/Inflection: Direct Hiring as a New Challenge for Merger Control' (*Kluwer Competition Law Blog,* 25 March 2025), *https://legalblogs.wolterskluwer.com/competition-blog/microsoftinflection-direct-hiring-as-a-new-challenge-for-merger-control/* accessed 23 September 2025.

[43] European Commission, Press Release of 18 September 2024, "Commission takes note of the withdrawal of referral requests by Member States concerning the acquisition of certain assets of Inflection by Microsoft"; AdC Short Papers, 'Competition and Generative AI: Labour Markets' (2025).

[44] Article 1 EUMR.

[45] Federal Trade Commission Press Release, 'Statement on FTC Victory Securing Halt to Kroger, Albertsons Grocery Merger' (10 December 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/12/statement-ftc-victory-securing-halt-kroger-albertsons-grocery-merger*.

However, for (reverse) acquihires of employees at innovative start-ups, this requirement can pose an issue. Start-ups often do not have a high enough turnover to meet the thresholds at European nor at national level. The value of these start-ups – and the reason why large companies would acquire them – is in their future profitability or potential.

Again, in the AI sector, enormous sums are being paid to innovative start-ups. These start-ups are often running on losses as they are making huge investments in the research and development of their products or services. Buyers predict that these products or services will disrupt the industry and as such, will provide them high returns on their acquisition.

This is the same problem as the issue of killer acquisitions. Authorities are faced with a merger that rings some alarm bells and causes antitrust concerns, but they cannot review the transaction because the company that is being bought does not have a high enough turnover. The formal requirement thus hinders the substantive review of this type of transactions.

Towercast

Merger review is the most relevant instrument when addressing transactions. However, since the Court of Justice decided on the *Towercast* case in 2023, Article 102 TFEU has become relevant for concentrations as well.[46] Hence, this instrument is analysed here as well.[47]

In this case, the Court decided that national competition authorities and courts can, in specific circumstances, assess a concentration *ex post* on the basis of Article 102 TFEU. When doing so, authorities and courts should apply their own national procedural law.

The Court based its judgement on the reasoning that Article 102 TFEU, as primary law, cannot be limited by the EUMR which is secondary law. Control by national competition authorities or courts based on Article 102 TFEU has thus not been rendered impossible by the introduction of the EUMR. Moreover, the supplementary application of Article 102 TFEU is necessary for the effective protection of competition.

This possibility for review is limited as it only applies to acquisitions by an already dominant undertaking. Moreover, the merger may not have already been referred to the Commission based on Article 22 EUMR. Lastly, the merger itself should not have a Union dimension, nor meet the thresholds for national merger control. Agencies can only review non-notifiable mergers, mergers that were not yet subject to *ex ante* merger control, under Article 102 TFEU.

In those situations, a merger can be found abusive if it sufficiently strengthens the dominant undertaking's position in such a way that it substantially impedes competition on the relevant market. According to the Court, this is the case when only companies whose behaviour depend on the dominant undertaking remain in the market.

In doing so, the Court introduces a new substantive test, which it formulates differently from the test in the EUMR. The EUMR requires authorities to check whether a merger significantly impedes effective competition. Under Article 102 TFEU, authorities should check whether the transaction substantially impedes competition, meaning only companies whose behaviour

[46] Case C-449/21 *Towercast* [2023].
[47] Building on: Justine Haekens, 'The ECJ's Towercast decision: ex post review of mergers that have not been subject to ex ante control' (*CCM Blog*, 19 March 2023).

depend on the dominant undertaking remain in the market. Using two different tests in two different instruments is not necessarily problematic, but it further complicates the legal framework. Moreover, the specific implementation of the new test is unclear as the Court did not indicate when companies' behaviour is deemed dependent on the dominant firm.

The acquisition of a competitor is thus added to the non-exhaustive, and expanding, list of abuses that can be caught by Article 102 TFEU (in accordance with *Continental Can*).[48]

Towercast can come into play for (reverse) acquihires that involve a smaller start-up, such as the examples from the AI industry described above.

These transactions often do not meet the thresholds for *ex ante* review laid down in the EUMR or national merger control laws as the target start-up often does not have large enough turnover. The acquiring firm is often an already dominant undertaking in the relevant (product) market – like the big tech firms in the AI industry. The third condition in *Towercast* related to the referral to the Commission based on Article 22 EUMR has since been limited (*Illumina/Grail*).[49] Thus, for the examples regarding Big Tech draining AI start-ups' talent, the conditions for an *ex post* assessment could be fulfilled.

The substantive test might pose more difficulties. A transaction violates Article 102 TFEU if *only* companies whose behaviour depend on the dominant undertaking remain in the market. This burden seems too high to meet for many transactions. In the AI sector, we have seen how (reverse) acquihiring is contributing to an oligopolistic market structure. The five largest firms active in this sector (which are simultaneously some of the world's largest and most powerful firms) still compete with each other. Start-ups in Silicon Valley increasingly depend on the behaviour of those five firms, and the more start-ups are being bought (or drained), the more difficult it becomes to compete with the incumbents. However, the behaviour of the tech giants does not depend on each other. It thus does not appear that this condition would be fulfilled and *Towercast* is not likely to fill the gap that killer acquisitions pose to merger control.

Even if the condition would be fulfilled, the question remains how an agency would remedy the anticompetitive harm. When an incumbent hires founders or key staff of a start-up, should these people rejoin the start-up? How does that impact their labour mobility and freedom to choose their employer?

Enforcement gap

Killer acquisitions are no new phenomenon for competition law. Dynamic sectors such as pharma or AI have been confronted with killer acquisitions for much longer. Large companies can buy smaller, emerging firms to eliminate a potential future competitor. The smaller firm is often an innovative, potentially disruptive firm that could become a strong competitor if it has the chance the grow. The larger firm avoids having to deal with this source of competition later by acquiring the company. The smaller firm often does not have a high turnover and as a result, the transactions avoid competition scrutiny. Like killer acquisitions, (reverse) acquihires are another way for incumbents to eliminate potential rivals and consolidate their position without undergoing merger review.

[48] Case C-6/72 *Continental Can* [1972] ECR 1973, 215
[49] Case C-611/22 *Illumina/GRAIL* [2024].

Killer acquisitions have received a lot of attention in competition law literature and have been highly debated.[50] These transactions have given rise to competition concerns. When the acquirer buys the target firm and 'shelves' its product developments, these acquisitions hinder innovation and thereby hurt consumer welfare. An innovative firm and potential source of competition is eliminated from the market.[51] Empirical research has demonstrated that acquisitions in the pharmaceutical industry are indeed *aimed* at terminating the research and innovative developments done at the target firm.

Others have voiced that such transactions can be beneficial, as larger firms can add useful skills and resources to the smaller firm's work.[52] As such, the merged entity can foster innovation. Hence not every killer acquisition 'kills' innovation.

Research has mainly pointed to the digital industry, pharmaceutical industry, and healthcare as industries where killer acquisitions occur more often.[53] An empirical analysis in the pharmaceutical industry concluded that 5-7% of acquisitions are killer acquisitions.[54] Big tech companies are the incumbent that buy the most start-ups.[55] Research done between 2019-2025 demonstrates that on average, the five largest big tech firms (Alphabet, Amazon, Apple, Meta and Microsoft) buy a start-up every eleven days. Most of these do not have to be notified to the Commission. Only 4% of the acquisitions were investigated.

It is hard to obtain data on the number of projects that were discontinued after the acquisitions. Research by SOMO demonstrates that nearly 67% of the acquired firms shut down their website. Those target firms may have been killed, but they could also have been integrated in the Big Tech firm's ecosystem.[56] The acquiring companies sometimes announce that they will

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[50] For scholarship: Axel Gautier and Joe Lamesch, 'Mergers in the Digital Economy,' (2020) CESifo Working Paper 8056; Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129 Journal of Political Economy 3, 649; Elena Argentisi et al, 'Merger Policy in Digital Markets: An Ex Post Assessment' (2021) 17(1) Journal of Competition Law and Economics, 95; Peter Alexiadis and Zuzanna Bobowiec, 'EU Merger Review of "Killer Acquisitions" In Digital Markets - Threshold Issues Governing Jurisdictional and Substantive Standards of Review' (2020) 16(2) Indian Journal of Law and Technology 64. For policy: OECD, Start-ups, Killer Acquisitions and Merger Control (2020), *http://www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control-2020.pdf*; International Competition Network, ICN Conglomerate Mergers Project Report (2019-20), *https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/09/MWG_ConglomerateMergersReport.pdf*; United Nations Conference on Trade and Development, Competition Issues in the Digital Economy TD/B/C.I/CLP/54 (1 May 2019).

[51] Anna Gerbrandy and Pauline Phoa, 'The Power of Big Tech Corporations as Modern Bigness and a Vocabulary for Shaping Competition Law as Counter-Power' in Michael Bennett, Huub Brouwer, and Rutger Claassen (eds.) *Wealth and Power* (Routlegde, 2022); Carl Shapiro, 'Antitrust in a Time of Populism' (2018) 61 International Journal of Industrial Organization 714; Carl Shapiro, 'Competition and innovation: did arrow hit the bull's eye?' in Josh Lerner and Scott Stern (eds.) *The rate and direction of inventive activity revisited* (University of Chicago Press 2011).

[52] Marc Bourreau and Alexandre de Streel, Digital Conglomerates and EU Competition Policy, Social Science Research Network (2019).

[53] Esmée S. R. Dijk, José L. Moraga-González and Evgenia Motchenkova, 'How Do Start-up Acquisitions Affect the Direction of Innovation?' (2024) 71 The Journal of Industrial Economics 1, 118; Chiara Fumagalli, Massimo Motta and Emanuele Tarantino, 'Shelving or Developing? The Acquisition of Potential Competitors Under Financial Constraints' (2020) CEPR Discussion Paper No. DP15113.

[54] Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129 Journal of Political Economy 3, 649.

[55] Bruno Venditti, 'TechnologyRanked: The Companies Acquiring the Most Startups (2000-2024)' (Visual Capitalist, 24 October 2024),

[56] '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 16 September 2025.

terminate the target firm's projects – which provides proof of killer acquisitions.[57] Some venture capitalists have noted that dominant big tech companies acquire every possible competing entrant, thereby creating a "kill zone".[58]

What is more, even if the target company is not killed or the tech giant does not acquire the company with the aim of eliminating a competitor, the big tech company continues to grow through these acquisitions and so does its market power.

The current EU competition law instruments (including the merger control framework and the *Towercast* decision) can address some mergers qualified as (reverse) acquihires. Harm to competition however remains due to the formal requirement. The turnover threshold hinders the Commission from reviewing certain transactions that could significantly impede competition. The *Towercast* decision provides only a limited solution as its substantive test seems rather difficult to meet, and it relies on *ex post* control.

Some national competition authorities have adopted alternative notification criteria to trigger merger control. Germany and Austria, for example, have introduced transaction value thresholds. Spain and Portugal decided to include market share thresholds.[59] Italy is trying to address this gap using call-in powers. Scholars have suggested several possible solutions.[60]

Although there has been an extensive debate on the consolidation of big tech companies in both the literature and at competition agencies, the Commission has not introduced any changes to the EUMR framework.

Moreover, even acquisitions by Big Tech that are notified and reviewed, can sometimes be easily approved. Looking more closely at some of these decisions reveals that the Commission applies a presumption that plays in favour of the companies. The Commission seems to presume that when the increment in market share that the buyer would gain resulting from the merger is below 5%, the transaction does not pose an issue. In recent years, this has come up in Microsoft/Skype, Google/Fitbit and Microsoft/Activision.[61] Each of these digital mergers has been approved as the acquisition would not result in an increment in market share for the merged entity of more than 5%, without much additional explanation from the Commission.

This 5% increment presumption is beneficial to Big Tech. When they acquire a start-up (or engage in a reverse acquisition with the founders and key employees of a start-up), the transaction would almost always lead to a small increment in market share for the tech giant, given that the start-ups do not yet have a large market share. This presumption is not only highly untransparent as it is not set out in the Guidelines, but it also makes it even harder to deal with the competition issues resulting from incumbents buying emerging start-ups. For reverse

[57] Axel Gautier and Robert Maitry, 'Big Tech Acquisitions and Product Discontinuation' (2024) 20 Journal of Competition Law & Economics 3, 246–263.
[58] Sai Krishna Kamepalli, Raghuram Rajan and Luigi Zingales, 'Kill Zone' (2020) NBER Working paper 2.
[59] AdC Short Papers, 'Competition and Generative AI: Labour Markets' (2025), 6.
[60] Andrew P McLean, 'A Financial Capitalism Perspective on Start-Up Acquisitions: Introducing the Economic Goodwill Test' (2021) 17 Journal of Competition Law & Economics 1, 141.
[61] Point 110 of the Microsoft/Skype Art 6 (1) b decision refers to: an "*increment of less than [0-5]%";* Point 387 of the Art 8(2) Google/Fitbit decision states "*the Transaction results in a very small increment added by Fitbit (at maximum [0-5]%, likely much less*)"; Point 201 of the Art 8(2) Microsoft/Activision decision "*the Commission observes that the increment brought about by Microsoft in this market is limited: [0-5]% by revenue on PC in 2022*".

acquihires between tech giants and AI start-ups that meet the notification threshold, this could mean that they would still not be blocked if the increment in market share does not reach 5%. This way of working seems to indicate that the Commission is not trying to find a solution to the growing power and consolidation of tech giants in various markets.

Conclusion

Mergers between companies do not only affect consumers and product markets, but also employees and labour markets. When two companies merge who happen to be competing undertakings, concentration on the labour market increases as an alternative employer disappears from the market. The effects of mergers on employees have recently gotten more attention, as the US Merger Guidelines specifically include labour markets and deals in the US have been blocked because of their effects on wages and working conditions.

Some transactions are done specifically with the acquisition of the team in mind. A company that wants to obtain a whole team can rely on these concentrations – called acquihires – where they buy another company – often an innovative start-up – to get the people. Especially in markets where the competition for talent and knowledge workers is fierce – such as pharma or tech – these transactions are common.

More recently, the companies no longer buy the start-up but poach its founders, key employees or the entire staff. Direct hiring has of course always occurred but has recently gained more attention. In the AI sector, big tech companies increasingly hire AI engineers from a start-up, often combined with a licensing agreement for the start-up's technology. The incumbent basically drains the start-up from its value and often leaves it as an empty shell. Some see these deals – referred to as reverse acquihires – as a way so strategically avoid merger control.

When companies poach important employees at innovative start-ups, they consolidate talent and hinder the dissemination of knowledge and ideas. This has a detrimental impact on innovation and competition and thereby also harms consumers.

Currently, EU competition law has some tools to deal with this issue. The EUMR allows for a review of mergers and reverse acquihires as concentrations. Often, the acquisition of start-ups will however not meet the notification thresholds and do not need approval. The *Towercast* decision provides some solace but does not entirely fill this gap.

Reviewing these transactions is however vital. Tech giants are applying a variety of strategies to grow their market power in AI markets. Through these reverse acquihires, they can consolidate their position and dominate the market. Start-ups will struggle with competing with tech giants, especially when VC and growth capital markets are coming under increasing pressure. Competition agencies can and should intervene before the tech giants obtain an oligopoly on the AI market.