

Novel Aspects of Merger Control Pertaining to Nascent Acquisition: An Analytical Legal Research

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Abstract : It is often noted that the value of a novel idea lies in its successful implementation. However, successful implementation requires the nurturing and encouragement of innovation. Nascent competitors are a true representation of innovation in any given industry. A nascent competitor is an entity whose prospective innovation poses a future threat to an incumbent dominant competitor. While a nascent competitor benefits in several ways, it is also exposed significantly and is at greater risk of facing the brunt of exclusionary practises and abusive conduct by dominant incumbent competitors in the industry. This research paper aims to explore the risks and threats faced by nascent competitors and analyse the benefits they accrue as well as the advantages they proffer to the economy; through an analytical, critical study. In such competitive market environments, a rise of the acquisitions of nascent competitors by the incumbent dominants is observed. Therefore, this paper will examine the dynamics of nascent acquisition. Further, this paper hopes to specifically delve into the role of antitrust bodies in regulating nascent acquisition. This paper also aspires to deal with the question how to distinguish harmful from harmless acquisitions in order to facilitate ideal enforcement practice. This paper proposes mechanisms of scrutiny in order to ensure healthy market practises and efficient merger control in the context of nascent acquisitions. Taking into account the scope and nature of the topic, as well as the resources available and accessible, a combination of the methods of doctrinal research and analytical research were employed, utilising secondary sources in order to assess and analyse the subject of research. While legally evaluating the Killer Acquisition theory and the Nascent Potential Acquisition theory, this paper seeks to critically survey the precedents and instances of nascent acquisitions. In addition to affording a compendious account of the legislative framework and regulatory mechanisms in the United States, the United Kingdom, and the European Union; it hopes to suggest an internationally practicable legal foundation for domestic legislation and enforcement to adopt. This paper hopes to appreciate the complexities and uncertainties with respect to nascent acquisitions and attempts to suggest viable and plausible policy measures in antitrust law. It additionally attempts to examine the effects of such nascent acquisitions upon the consumer and the market economy. This paper weighs the argument of shifting the evidentiary burden on to the merging parties in order to improve merger control and regulation and expounds on its discovery of the strengths and weaknesses of the approach. It is posited that an effective combination of factual, legal, and economic analysis of both the acquired and acquiring companies possesses the potential to improve ex post and ex ante merger review outcomes involving nascent companies; thus, preventing anti-competitive practises. This paper concludes with an analysis of the possibility and feasibility of industry-specific identification of anti-competitive nascent acquisitions and implementation of measures accordingly.

Keywords : acquisition, antitrust law, exclusionary practises merger control, nascent competitor

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