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US FEDERAL ANTITRUST AND EU MERGER CONTROL: A COMPARATIVE ANALYSIS OF SUBSTANTIVE STANDARDS, PROCEDURE AND ENFORCEMENT

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Abstract

With a critical lens, this paper comparatively examines the scope and implementation processes of the two sets of merger regulation regimes at the U.S. federal level and in the European Union, to verify whether a widely held narrative that U.S. regulation centers exclusively on consumer interests, while EU regulation focuses solely on market structure can genuinely explain why the two jurisdictions frequently reach divergent outcomes when assessing the same merger transaction. This study adopts a methodology of statutory decomposition and transnational legal comparison, sorting through the U.S. Clayton Act, the Hart-Scott-Rodino regulatory framework, and the EU Merger Regulation, while also analyzing select judicial rulings, regulatory authorities' administrative decisions, and relevant academic scholarship in this field from both jurisdictions. The analysis finds that the vast majority of economic terminology used by both jurisdictions to evaluate mergers overlaps: both employ concepts such as market concentration, market foreclosure, coordinated effects, unilateral effects, and innovation harm. However, substantial differences persist in institutional design for regulation, evidentiary requirements, review timelines, and remedial practices for non-compliance. In the United States, advancing merger enforcement relies on adversarial litigation in courts; regulatory authorities must convince a federal court to block a problematic merger. In the European Union, by contrast, the European Commission leads a centralized, ex-ante administrative review process, with judicial review of its decisions only initiated after they are issued. This paper argues that the divergence between the two jurisdictions is not rooted in a simplistic opposition of "prioritizing consumer welfare versus prioritizing fairness." clarify the framework for assessing innovation-related harms, increase transparency in the evaluation process for remedies, establish a standardized, regular ex-post review mechanism to audit past merger assessments, and deepen cross-border regulatory collaboration to enhance the effectiveness of global merger enforcement.

1. Introduction

Mergers and acquisitions between firms are standard business practices, employed by companies to expand scale, adjust investment portfolios, and restructure their operations. Yet these transactions carry inherent risks: they may eliminate the core competitive constraints that previously prevented firms from raising prices, enabling large incumbents to block new market entrants, or collude to coordinate pricing for

excess profits. For this reason, merger regulation has long occupied the intersection between firms' private commercial planning and governments' public economic governance. Among all jurisdictions that enforce merger regulation globally, the United States and European Union are the most influential. The assessments they issue for any merger directly shape the pace of cross-border transactions worldwide, and the success of most multinational mergers hinges entirely on the regulatory stances of these two jurisdictions.

For decades, a simplified template has been used to describe the differences between the two regimes: U.S. regulation focuses exclusively on delivering benefits to consumers and improving market efficiency, while EU regulation fixates on market structure, pursues proactive intervention, and prioritizes the integration of the EU's internal market above all else. This generalized narrative contains a kernel of truth, but it relies on an overly binary framing that fails to align with the current realities of merger regulation in both jurisdictions.

U.S. law has long relied on a framework of structural presumptions that identify problematic mergers based on market characteristics, and has always sought to mitigate emerging monopoly risks. The EU, meanwhile, increasingly employs economic methodologies that measure actual competitive impacts when evaluating mergers, requiring robust, convincing evidence that a transaction will significantly impede effective competition before it can block a deal. To truly unpack the differences between the two systems, one must examine how legal standards are implemented in practice: which institution holds final decision-making authority? At what threshold will regulators intervene to block a merger? What quantum of evidence must regulators present to justify halting a transaction? And how do enforcement authorities on both sides of the Atlantic address inherently uncertain predictions about future competitive harms?

1.1 Research Problem and Research Gap

The core problem this paper addresses is that even though the stated regulatory objectives of the two jurisdictions are nearly identical—preserving competitive markets and preventing anticompetitive market concentration—the application of these objectives within fundamentally distinct legal and institutional frameworks produces drastically divergent outcomes.

A large body of existing comparative commentary directly attributes this outcome divergence to simplistic ideological differences between the two jurisdictions. The flaw in this analytical framework is that it systematically omits core factors that shape final outcomes, including the impacts of regulatory procedures, judicial review, administrative discretion, burden of proof, and remedy design, all of which it systematically undervalues.

The research gap this study addresses, therefore, is a missing analytical dimension: rather than isolating and comparing statutory provisions in isolation, this paper combines analysis of substantive legal rules, institutional design logic, and actual enforcement practices.

1.2 Research Objectives

(1) To identify and compare the principal legal foundations and substantive merger standards in the United States and European Union.

(2) To assess how differences in institutional design, review procedure and judicial control affect enforcement choices and evidentiary burdens.

(3) To evaluate the treatment of horizontal, vertical, conglomerate and innovation-related theories of harm through selected cases.

(4) To examine extraterritorial reach, remedies and the potential for greater transatlantic coordination without erasing legitimate legal differences.

1.3 Research Questions

This study puts forward four specific research questions regarding U.S. and EU merger regulation:

RQ1. What convergences and differences exist between the substantive merger standards and legal foundations of U.S. federal antitrust law and EU merger control, when applied across jurisdictions to global corporate merger transactions?

RQ2. How do the procedural architectures and allocations of authority in each jurisdiction

shape the timing of merger review milestones, the collection and assessment of evidence, and final regulatory outcomes?

RQ3. How do regulatory authorities in each jurisdiction address issues of structural market concentration, vertical foreclosure, and innovation harm when adjudicating representative high-stakes merger cases?

RQ4. What pathways for convergence and models of regulatory cooperation are most feasible to align the divergent U.S. and EU regulatory frameworks, to build a coherent and efficient cross-border merger control system?

1.4 Scope, Significance and Contribution

This paper focuses exclusively on U.S. federal corporate merger enforcement, and the EU's supranational merger review process conducted under the EU Merger Regulation. With the exception of limited contextual details to support the analysis of institutional backgrounds, this paper does not provide a comprehensive overview of U.S. state-level antitrust laws, EU Member States' national merger rules, or other non-merger competition rules.

The core contribution of this paper is to disaggregate four core dimensions of merger regulation that are often conflated in prior research, and conduct a structured, independent comparative analysis of each: normative objectives, substantive legal standards, procedural design, and enforcement style. Separating these four elements resolves a longstanding paradox: why do the professional tools that U.S. and EU regulators use to analyze mergers grow increasingly similar, while the final enforcement outcomes they reach still frequently diverge?

2. Literature Review

Existing academic and regulatory comparative research on merger control can be categorized into four overlapping strands of scholarship.

The first strand comprises research tracing the evolution of U.S. antitrust, which tracks the shifting relationship between populist demands, economic efficiency, consumer welfare, and enforceable legal rules. Sawyer's research confirms that U.S. antitrust policy has never been a static, monolithic standard; over decades, judicial and political understandings of "what constitutes competition" have continuously evolved, leading to repeated adjustments in the interpretation and application of antitrust policy. This historical context is critical, as modern merger enforcement, even when employing modern industrial organization economics, still relies on early, structure-focused landmark precedents as a basis for enforcement.

The second strand comprises scholarship on EU competition rules, which emphasizes that EU competition law is not solely intended to achieve the economic goal of regulating market competition, but is also integral to the EU's constitutional framework and broader project of internal market integration. Jessen and other scholars situate Articles 101 and 102 of the TFEU within the EU's overarching framework for preserving competitive conditions in the internal market. For merger regulation specifically, the EU's core enforcement basis is the EU Merger Regulation, whose SIEC test is designed to identify market concentrations that will substantially impede effective competition, including non-coordinated effects that fall outside the scope of traditional single-firm monopoly—scenarios where multiple firms collectively restrict competition without forming a single dominant entity.

The third strand comprises comparative research that analyzes the diffusion of national regulatory frameworks and the growing global influence of EU competition law. Bradford and co-authors demonstrate that EU competition rules have achieved substantial global reach, in part because firms operating across borders often proactively adapt their business models to comply with the EU's stricter regulatory requirements, gradually establishing EU standards as the de facto global baseline for merger review. Behrens and Levy, as well as Rimsa and Buzatu, have also examined the challenges of extraterritoriality and jurisdiction for mergers—i.e., how to define regulatory authority when a merger is negotiated outside a jurisdiction, but would generate significant competitive impacts within it.

The fourth strand is a recently emerging body of new research focused on the intersection of market concentration, dynamic competition,

and innovation. Shapiro and Yurukoglu analyze empirical data on U.S. competitive trends, while Allan, Zele and White specifically assess theories of harm for digital sector mergers. This research is particularly relevant to contemporary policy debates, as modern merger cases increasingly require consideration of long-term impacts such as future competitive constraints, data, business ecosystems, R&D pipelines, and innovative capacity, rather than focusing solely on whether a merger will immediately lead to higher consumer prices.

The most prominent flaw in existing comparative merger regulation research is its reliance on broad, simplistic labels such as "consumer welfare," "fairness," "structuralism," and "interventionism" to explain cross-jurisdictional enforcement differences, without conducting granular, institutional-level analysis. This study therefore treats these common labels as initial hypotheses to be tested, rather than established, proven conclusions. This study will test these hypotheses one by one by combining statutory standards, procedural rules, and representative enforcement decisions from both jurisdictions, ultimately exploring whether institutional design differences are the core factor that best explains the persistent divergence in merger enforcement outcomes on both sides of the Atlantic.

3. Legal Framework / Legal Background

3.1 United States Federal Merger Control

The core statutory provision governing U.S. federal corporate mergers is Section 7 of the Clayton Act. This rule explicitly prohibits any form of acquisition where the transaction may substantially lessen competition in a market, or tend to create a monopoly. The statutory design makes clear that this framework was built to enable pre-emptive risk mitigation from its inception: enforcement authorities are not required to wait for a monopoly to fully form, or for consumers to have already incurred quantifiable, tangible losses, to intervene and block a merger.

An earlier statute, the Sherman Act, with its Sections 1 and 2 forming the foundation of U.S. antitrust law, has never served as the primary legal basis for merger review. A common mistake made by many analysts is to misclassify these two provisions, which regulate general restraints of trade and monopolistic conduct, as the core framework for assessing the legality of mergers; the distinction outlined above corrects this widespread misunderstanding.

A third statute, the Hart-Scott-Rodino Act, establishes another core framework: all merger transactions meeting statutory filing thresholds must complete pre-merger notification before the transaction can proceed. Federal merger enforcement is jointly led by the FTC and the DOJ. After a firm submits its filing, it enters a statutorily required waiting period, granting both agencies time to conduct an initial review. If, following the initial review, material competitive risks remain unresolved, either agency may issue a Request for Additional Information and Documentary Material, colloquially known in the industry as a "Second Request." The issuance of a Second Request automatically extends the original review period, allowing regulators to conduct a more comprehensive and in-depth analysis, with a new statutory waiting period only resuming once the merging parties have substantially complied with all requests for supplementary materials.

The 2023 Merger Guidelines, jointly published by the FTC and DOJ, outline a unified analytical framework that both agencies use to evaluate all mergers. It is important to note that these guidelines are not binding statutory law, and impose no legally enforceable obligations on courts; their practical function is to publicly and transparently communicate the current merger enforcement policies of both agencies, and to clarify the regulatory logic for assessing the potential harms that a merger may generate. The guidelines also reaffirm that longstanding structural presumptions, potential competition, vertical foreclosure, serial acquisitions, and all other mechanisms that may cause a transaction to lessen market competition, remain core priorities for regulatory review.

Judicial precedent plays a central role in the entire merger regulatory system: any regulatory authority seeking to block a merger transaction must ultimately convince a federal court to approve its enforcement action. The early Philadelphia National Bank case established

the enduring centrality of market concentration and related structural presumptions to all merger analysis; the subsequent FTC v. H.J. Heinz case further clarified that concerns rooted in market structure—specifically, that a merger would reduce the number of core competitors in an already highly concentrated market—remain fully legally enforceable to this day.

3.2 European Union Merger Control

The EU's core merger rules are primarily set out in Council Regulation (EC) No 139/2004, commonly referred to as the EU Merger Regulation, or EUMR, rather than relying directly on Articles 101 and 102 of the TFEU. While these two treaty provisions remain an important foundation of the EU's broader competition law framework, governing most standard anticompetitive conduct, they are not the designated rules for EU-level corporate mergers, or "concentrations" in industry terminology. Only the EUMR serves as the specialized regime for these cases: it sets out exclusive jurisdiction and lists the substantive standards for adjudication, and is tailored specifically for large, cross-border mergers. The European Commission is responsible for reviewing all such cases, and must assess whether a merger would significantly impede effective competition in the EU's internal single market, or a substantial part of that market, with a core review focus on whether the merger would create a monopoly, or strengthen the market power of an already dominant firm.

The core standard used to make this assessment is the SIEC, or "significant impediment to effective competition" test, which was intentionally designed to move beyond the narrow framework of traditional "single-firm monopoly." Even if the merged entity would not become a traditional, market-dominating sole player, if the market in question is an oligopoly dominated by a small number of large firms, the merger could produce two anticompetitive outcomes: either the new entity could unilaterally control the market and foreclose rivals, a "unilateral effect," or it could coordinate its conduct with the remaining large firms in the market, a "coordinated effect," and the European Commission may block the merger in either scenario. Critics who claim this framework only considers market structure and ignores consumer interests are mistaken: EU law has never excluded consumer welfare from its core objectives. The framework simply treats factors such as the reasonableness of market structure, the strength of competitive constraints facing incumbent firms, the preservation of industry innovation incentives, and the ability of new entrants to access the market as transmission channels that will harm consumer interests over a timeline of years or decades—these issues will not immediately raise prices for consumers, but their long-term accumulation will ultimately impact consumers.

The EU's entire merger review process is an administrative review initiated before a merger is formally completed, not an ex-post enforcement action taken to address harms after a transaction is finalized. The process is divided into two phases. The first phase is an initial review, where the European Commission typically has only 25 working days to reach a decision: it may either unconditionally approve the merger to allow the transaction to proceed, or identify sufficient concerns to launch a more in-depth second phase investigation. This 25-day deadline may only be extended in specific, statutorily defined exceptional circumstances. If a second phase in-depth investigation is launched, the Commission typically has 90 working days to issue a final ruling, which may also only be extended under statutorily permitted conditions. Throughout the review process, the Commission will undertake the following actions: request the merging parties to submit supplementary evidence, solicit feedback from other market participants such as upstream suppliers, downstream customers, and competitors, disclose the case file to the merging parties, and safeguard the merging parties' formal right to defend their transaction. At the same time, rules allow the merging parties to proactively submit remedial commitments, such as divesting overlapping business lines or complying with certain behavioral rules, to mitigate the merger's potential competitive risks in exchange for Commission approval.

The European Commission's merger jurisdiction is not limited to transactions between firms headquartered within the EU. The ruling in the Gencor case clarified this scope long ago: even if a merger is completed in a country outside the EU, so long as its impacts on the EU market meet three conditions—they are foreseeable, they directly affect the EU market, and they are material in scale—the EU's merger rules apply to the transaction. This jurisdiction logic, which focuses solely on actual impacts regardless of where a transaction is executed, is broadly similar to the extraterritorial jurisdiction logic in U.S. antitrust law, but not identical, with many detailed differences in the specific practices of the two jurisdictions.

3.3 Comparative Legal Position

The core starting point of the U.S. and EU merger regulatory systems is identical: both seek to pre-emptively block potential competitive harms from mergers, but their approaches to allocating legal authority diverge completely. Both jurisdictions adopt a forward-looking perspective, analyzing the impacts a merger will have on future market competition; both use market definition and market concentration calculations as analytical tools, rather than treating these metrics as the ultimate regulatory objectives; and both incorporate non-price factors such as product quality and industry innovation into merger review considerations.

The most fundamental divergence between the two lies in their institutional design for this oversight. U.S. regulatory authorities operate under a litigation-led enforcement model: for any contested merger where the merging parties challenge the agency's position, regulators must file a lawsuit to block the transaction, with the final decision resting solely with the courts. The EU's model is fundamentally different: the European Commission itself holds first-instance administrative decision-making authority over merger reviews, with judicial review of the Commission's decisions only initiated after they are issued. this core institutional difference directly impacts every stage of the merger review process: it shapes the incentives of all parties, the timeline of the entire review, the evidentiary requirements, and even the entire framework for negotiations between regulators and merging parties over remedies and settlements.

4. Research Methodology

This study adopts a mixed research approach of statutory analysis and cross-jurisdictional comparison. Primary legal materials used for statutory analysis include the Clayton Act, the Hart-Scott-Rodino Act, the EU Merger Regulation, and a curated selection of U.S. judicial rulings, European Commission and EU Court decisions. Secondary research materials include monographs and journal articles from the study's core academic literature repository, as well as specialized comparative law scholarship; a small number of targeted official regulatory documents are also used to clarify current procedural standards and the legal status of the 2023 US Merger Guidelines.

This cross-jurisdictional comparative analysis focuses on the functional operation of the two systems, rather than limiting analysis to a comparison of the text of statutory provisions in each jurisdiction. The study begins with a shared baseline task: both the U.S. and EU regulatory systems must complete the same core work—identifying anticompetitive market concentrations and blocking those mergers. The study then compares the institutional frameworks each jurisdiction has built to complete this task. All cases used for analysis are deliberately selected to align with a specific theory of competitive harm or a feature of institutional operation: the Philadelphia National Bank and Heinz cases are used to analyze concentration issues from horizontal mergers between direct competitors; the Airtours case is used to analyze the impacts of coordinated anticompetitive conduct and the evidentiary rigor required for review; the GE/Honeywell and AT&T/Time Warner cases are used to analyze regulatory disputes over conglomerate mergers or vertical mergers between upstream and downstream firms; the Dow/DuPont and Siemens/Alstom cases are used to analyze competitive impacts related to industry innovation; the Gencor and Hartford Fire cases are used to analyze the scope of regulatory jurisdiction for cross-border mergers.

All analysis in this study is qualitative interpretive analysis, not quantitative research.

The study does not calculate the overall intervention rate of regulators across all filed mergers, estimate the total welfare impacts of these transactions, or reference any non-public confidential case files or interviews with relevant personnel. The conclusions of the study are therefore interpretive conclusions rooted in legal logic, not econometric quantitative findings. It is critical to state this limitation clearly: all individual cases referenced in the paper are used solely as examples to illustrate legal reasoning, and cannot represent the overall regulatory record of either the U.S. or EU jurisdiction, nor do they constitute a statistical sample of all merger outcomes.

5. Results / Findings

5.1 Finding One: Convergence in Objective, Divergence in Institutional Architecture

As is often noted, the core logic of the U.S. and EU merger regulatory systems is identical: both are designed to intervene before competitive harms occur, with protecting healthy market competition as their fundamental objective. Neither jurisdiction's statutory provisions require regulators to wait until a merger has actually raised consumer prices, until tangible harm has occurred, to initiate intervention.

The most fundamental difference between the two is that the institutional operating frameworks that carry this regulatory logic are fundamentally distinct at their roots. In the United States, if regulators seek to block a merger and the merging parties refuse to comply with the decision, regulators cannot unilaterally enforce their ruling; they must refer the case to a federal court to complete the full judicial litigation process, with the final outcome dependent on the court's ruling. In the EU, by contrast, the legality of all mergers is first assessed by the European Commission, and this assessment must be completed within a pre-defined administrative review process with clear deadlines, rather than being allowed to drag on indefinitely.

This core difference in institutional framework directly creates divergent requirements for the entire review process on both sides of the Atlantic: it produces not only starkly different requirements for the form of evidence submitted, but also entirely different standards for the quantum of evidence required to sustain a claim.

5.2 Finding Two: Structural Evidence Remains Important in Both Systems

All evidence reviewed in this study fails to support the overly simplistic narrative that U.S. merger regulation only considers actual competitive impacts, while EU regulation fixates solely on market structure, a binary framing that artificially splits the two systems. The Philadelphia National Bank and Heinz cases both confirm that methodologies for calculating market concentration, and the logic of structural presumptions that identify potentially problematic mergers based on market characteristics, remain important in the U.S. legal system to this day, and have never been abandoned. On the EU side, the EUMR and the EU's actual decisional practice do not rely solely on market structure metrics; instead, they increasingly combine these metrics with economic evidence related to unilateral effects, coordinated effects, foreclosure, and innovation impacts. The analytical frameworks of both jurisdictions have long diverged from the stereotypes that external observers often apply to them.

5.3 Finding Three: The Main Difference Is Tolerance for Predictive Intervention

The core difference between the U.S. and EU merger regulatory systems lies in how they address "future potential competitive harms"—harms that have not yet materialized, that rely entirely on predictions, and that carry inherent uncertainty; the two jurisdictions' response logics for these scenarios are completely distinct.

The EU's administrative review process is designed from its inception to conduct this type of pre-emptive prediction: the law sets fixed statutory deadlines for merger review, and regulators must resolve all future risks posed by the transaction within this period. If they identify concerns, they may impose binding restrictions on the transaction before it is completed, rather than waiting for harms to emerge to implement remedies.

U.S. regulatory authorities also conduct the same type of predictive assessment, in nearly

identical scenarios and for the same core questions, as their EU counterparts. But this logic fails to hold in contested cases: if the merging parties reject the regulators' assessment and challenge the decision, the U.S. government cannot rely on these predictions as a basis for enforcement. All forecast-based conclusions must be converted into tangible, court-admissible evidence that meets judicial requirements to persuade a judge.

This burden of proof imposed on regulators by the judicial process eliminates many unsubstantiated claims: vague, speculative predictions, or theories of long-term harm that would only emerge over a period of decades, cannot produce the hard evidence required by courts, and therefore cannot be used to block mergers.

5.4 Finding Four: Vertical, Conglomerate and Innovation Cases Expose the Widest Divergence

The point of greatest divergence in merger review between the two jurisdictions has never been simple scenarios such as rising market shares from horizontal mergers between direct competitors. The harm logic for simple horizontal mergers is clear, with few disputes in adjudication. The true challenges, and the scenarios where U.S. and EU regulatory divergences are most pronounced, are complex competitive harms that rely on prediction: whether a merger will block potential new market entrants, whether it will use a combined business portfolio to squeeze the operating space of other competitors, whether it will eliminate future emerging competition, or even slow the pace of innovation across an entire industry. The GE/Honeywell and AT&T/Time Warner cases illustrate how the institutions on both sides of the Atlantic reached entirely different decisions when applying harm assessments to these non-horizontal mergers. The review processes for the Dow/DuPont and Siemens/Alstom mergers, meanwhile, demonstrate the EU's willingness to treat firms' innovative capacity and future market competitive pressures as core review factors in merger assessments.

5.5 Finding Five: Extraterritoriality Creates a Practical Need for Cooperation

The U.S. and EU merger regulatory systems both have jurisdiction over cross-border mergers completed outside their territories but that generate material impacts on their domestic markets. The Gencor and Hartford Fire cases embody this shared, impact-focused logic, even if the specific legal pathways supporting this authority are not identical. A single global merger transaction will rarely trigger regulatory review in only one jurisdiction; it will often come under the scrutiny of regulators in multiple countries simultaneously. This multi-jurisdictional oversight can create regulatory conflicts, but resolving these conflicts does not require all jurisdictions to adopt identical substantive legal rules: so long as authorities cooperate on review procedures, implement safeguards to protect the confidential information submitted by firms, and adopt consistent standards for analyzing economic impacts, divergences between jurisdictions can be substantially reduced.

6. Discussion / Legal Analysis

6.1 Beyond the Consumer-Welfare versus Fairness Dichotomy

Early discussions of the differences between U.S. and EU merger rules were dominated by a mainstream narrative that U.S. merger law focuses exclusively on one core question: whether a merger will directly raise costs for consumers, i.e., it only considers price impacts; while EU merger law is centered on safeguarding market fairness and monitoring whether the industry's competitive structure is at risk. This widespread narrative is overly simplistic and must be re-examined to align with the actual rules of both jurisdictions.

Turning first to the U.S., Section 7 of the Clayton Act was built from its legislative inception with a pre-emptive logic, and regulators may intervene without waiting for consumers to have actually suffered harm from price increases, or to produce tangible evidence of price harm. In fact, the logic of structural presumptions that identify potentially problematic mergers based on a market's concentration level is deeply rooted in decades

of U.S. federal court precedent, and is not a new development of recent years. Conversely, EU merger regulation is not a loose framework that allows regulators to intervene arbitrarily by citing only "fairness" as a justification. To block a merger, the European Commission must first present legally sufficient, credible evidence that the transaction will truly significantly impede effective competition—this requirement is a hard rule codified in the EUMR, and cannot be loosened at the discretion of any authority.

The true point of divergence between the two jurisdictions has never been a core ideological split between prioritizing consumers or prioritizing fairness, but rather a difference in underlying institutional operating logics: the EU's administrative framework inherently accommodates concerns such as "whether market structure will become unbalanced" and "whether new firms can successfully enter the industry to compete," by incorporating these considerations into predictions of future market conditions, with the entire review process designed for pre-emptive intervention. U.S. enforcers, by contrast, must first litigate their regulatory claims against the merging parties' legal teams in court, pass the test of adversarial judicial scrutiny, to gain legal support for their assessments.

This revised analytical framework also explains another widely misunderstood phenomenon: why do the economic and legal tools that both jurisdictions use to analyze mergers grow increasingly similar, while the final outcomes they reach still frequently diverge? Economists and lawyers on both sides of the Atlantic all use professional concepts such as diversion, entry, foreclosure, concentration, innovation incentives, and coordinated effects when analyzing cases, but even with identical analytical tools, their conclusions can still differ drastically. At its root, this divergence stems from three differences in underlying rules: the legally defined burden of proof—who must present evidence, and what quantum of evidence is required to sustain a claim—differs, the time available for institutional review differs, and the entity with final decision-making authority differs.

From this perspective, it is clear that regulatory enforcement style is never a separate layer disconnected from the substantive law written on paper; it actively shapes and mediates how substantive law is implemented and applied to every individual merger case.

6.2 Horizontal Concentration, Presumptions and Evidentiary Discipline

Among all areas of merger control analysis, the review frameworks for horizontal mergers between direct competitors in the U.S. and EU are the most closely aligned.

In the United States, the Philadelphia National Bank case remains the foundational precedent for core rules: if market concentration exceeds a critical threshold, the merger may be presumed unlawful, and the merging parties have the right to present evidence to rebut this presumption if they challenge it. The subsequent Heinz ruling extended this logic; even if the merging parties presented data showing that the combined firm would generate operational efficiencies, the court still treated the loss of one core active competitor in an already highly concentrated market as a serious threat to the entire market's competitive environment. The 2023 updated U.S. Merger Guidelines also reaffirmed that structural market metrics remain important to merger assessment, but these guidelines are only a policy statement published by regulators, and cannot replace the statutory evidentiary requirements in court: if regulators seek to persuade a court that a merger is unlawful, they must still present complete, legally admissible evidence, and cannot rely solely on the guidelines as a basis for their claim.

On the other side of the Atlantic, the EU addresses the same core merger compliance question through the SIEC standard. The Airtours/First Choice case is a landmark for the implementation of this framework: the European Commission initially sought to block the transaction on the grounds that the merger would enable collective monopolistic coordination between firms, but the General Court ultimately overturned this decision, ruling that the evidence presented by the Commission was insufficient to prove that all preconditions for coordinated anticompetitive conduct were met. The significance of this ruling is not that it labels the EU's merger

regime as either overly lenient or excessively interventionist, but that it clarifies a core principle: even the EU's centralized administrative review model, led by a single administrative authority, is subject to judicial oversight. The legal reasoning and evidence supporting any decision must meet the strict standards required by courts, and cannot be based solely on administrative discretion.

6.3 Vertical and Conglomerate Mergers: GE/Honeywell and AT&T/Time Warner

General Electric's acquisition of Honeywell remains a classic case of cross-Atlantic divergence in antitrust outcomes. U.S. regulators approved the transaction, but the European Commission prohibited it, citing competitive impacts from the combination of the two firms' complementary product portfolios, along with risks of foreclosure and abuse of market dominance.

This divergence was not a trivial difference in stance; it brought to the surface two underlying judgment logics hidden between regulators on both sides of the Atlantic. The first core difference was that the two jurisdictions had entirely different levels of trust in regulators' ability to accurately predict risks: the European Commission was willing to block the transaction based on the potential for the merged firm to engage in foreclosure conduct, while in the U.S. regulatory system, this type of prediction faces an extremely high barrier to enforcement. The second difference centered on the weighing of the merger's inherent tradeoffs: the two jurisdictions held fundamentally differing views on whether the efficiency gains generated by the merged firm would offset the identified competitive risks, or exacerbate those risks.

The U.S. domestic litigation over AT&T's acquisition of Time Warner illustrates the distinct pressures created by the U.S. institutional framework. The U.S. DOJ sued to oppose this vertical merger, but the court ultimately ruled that the government had failed to present sufficient evidence to support its claims.

Many observers misinterpret this case; it cannot be read as a default rule that "vertical mergers are inherently lawful." Instead, it aligns with the core requirement for non-horizontal merger regulation: any contested, non-horizontal merger assessment cannot rely solely on regulators' subjective predictions, but must present tangible, persuasive evidence that the transaction could actually harm market competition. The impact of institutional design on final outcomes turns on this critical point: a regulator's predictive assessment, if challenged in court, becomes a legal claim that must be proven, and must undergo independent judicial fact-checking. A risk does not exist simply because a regulator claims it does.

6.4 Innovation and Dynamic Competition

Relying on "innovation harm from a merger" as a justification to block a transaction is uniquely challenging for antitrust regulators: this logic seeks to protect competition over unformed products, technologies, or R&D directions, which traditional merger assessment frameworks often cannot fully observe, let alone incorporate into standard review metrics. In the Dow/DuPont case, the European Commission's remedy package specifically addressed innovation competition concerns in the agrochemical sector, requiring the firms to make large-scale divestment commitments. In the Siemens/Alstom case, the Commission directly prohibited the transaction after finding that the merger would weaken competition in the critical rail transportation market, including future competitive pressures related to innovation.

These two consecutive cases lay out both the advantages and inherent risks of the "dynamic regulation" model in global merger regulation today. If regulators only rely on current, observable product price evidence, they will systematically underestimate the risk of competitive harm in technology-intensive markets with rapid technical change and high R&D investment, and will fail to protect the competition that needs safeguarding. But at the opposite extreme, arbitrarily accepting claims of "innovation harm" without rigorous evidentiary support turns uncertainty about the future into a default presumption against any firm seeking to scale up, which will also disrupt normal business activity and cause harm. To navigate a reasonable middle path, several concrete

conditions must be met: first, define the baseline market conditions that would have persisted if the merger had not occurred, without speculating about trends; second, identify the specific competitive asset or capacity that will be affected, rather than vaguely claiming "innovation will be harmed"; third, present tangible evidence linking the transaction itself to a subsequent decline in the firm's innovative incentives, rather than conflating two unrelated events; and finally, clearly state the probability and timeline for the predicted harm to materialize, rather than relying on ambiguous language to support a judgment. The growing body of academic literature on digital mergers increasingly emphasizes that this type of theory-specific analysis is required, rather than issuing generalized concerns about all technology markets and basing regulatory judgments on vague anxiety.

6.5 Procedures, Rights of Defence and Review Timetables

Differences in procedural design generate drastically different practical outcomes. The U.S. HSR merger review process requires firms to complete a statutory waiting period after filing; if regulators identify complex issues requiring further investigation and evidence gathering, they may issue a Second Request, requiring the firms to submit a large volume of supplementary materials. If regulators ultimately seek to block a contested merger that the merging parties refuse to accept, the entire enforcement strategy centers on the litigation risk of the lawsuit: the ability to persuade a court to support the regulators' assessment directly determines whether the merger can be blocked. The EU's system follows an entirely different path: all merger reviews follow a standardized I/Phase / Phase II administrative process led directly by the European Commission, which issues a final compatibility ruling assessing whether the merger meets market competition requirements. Firms seeking to complete a merger may engage in multiple rounds of pre-filing consultations with the European Commission before formally submitting their filing, and may proactively submit tailored remedial commitments to address the Commission's concerns, in exchange for final approval of the merger.

Neither model is universally superior in all scenarios, and no single model outperforms the other in all cases. The U.S. model leverages independent judicial review to create strong oversight of regulators, providing a neutral, objective testing ground for unproven, predictive claims about merger impacts. But this model also has clear drawbacks: once a case enters litigation, the time and financial costs are extremely high. In industries with rapidly evolving markets and technologies, regulators often cannot intervene before the market structure solidifies; even if they win the lawsuit, the opportunity to prevent harm may have passed. The EU's model can complete all review steps within a unified administrative timeline, avoiding the unpredictable delays of the U.S. litigation process, and can directly tie remedial requirements to merger approval, enabling efficient implementation. But the challenge for this model is that all investigative and final decision-making authority is concentrated in the European Commission. Alongside this concentration of power must be robust procedural safeguards, fully reasoned written decisions, and effective judicial review to balance this concentrated authority and prevent abuse. Bradford and co-authors, who previously mapped the global influence of EU regulation, explained why this administrative model has generated significant global impact, even in jurisdictions far outside the EU.

6.6 Remedies and Enforcement Styles

Prior research accurately identified remedies as a core point of divergence in cross-jurisdictional merger enforcement, but one claim was overly absolute: it simplistically categorized the two jurisdictions' enforcement styles as "one relying solely on behavioral remedies, the other only using structural remedies," which does not align with actual practice. Both regulatory systems agree on one core principle: the central purpose of all remedies must be to replace the competitive constraints that the market would permanently lose if the merger were completed, to prevent the elimination of competitive forces that would otherwise discipline the merged firm.

Structural remedies such as business divestitures are typically the preferred option for regulators. Their most direct benefit is that they can effectively recreate an independent market competitor, eliminating the need for regulators to monitor the merged firm for years after the transaction is completed to ensure compliance with behavioral restrictions. Behavioral remedy commitments are only applicable in narrow, specific scenarios, and must meet three strict conditions: the rules must be clear and implementable, capable of being enforced transparently; the standards must be explicit and verifiable, leaving no room for ambiguous interpretation; and a reliable long-term oversight mechanism must exist to monitor whether the firm complies with its commitments.

Looking at the actual enforcement processes in both jurisdictions, negotiating remedial commitments with merging parties is a standard part of merger review in the EU's administrative system; the Commission even publishes the merging parties' proposed remedy options to solicit feedback from relevant market participants such as suppliers, customers, and competitors, in a process known as market testing. U.S. regulators also use legally binding consent decrees and require mandatory business divestitures, but high-stakes, controversial cases most often proceed to full litigation, and cannot be resolved through negotiated remedies.

The core question that merits comparative analysis has never been which jurisdiction has a remedy regime and which does not, but rather under what conditions regulators will accept a tailored remedial plan from the merging parties, rather than simply prohibiting the entire transaction; and how reliably they can track the actual implementation effectiveness of a remedy over its full lifecycle, to ensure it restores the missing competitive constraints. Academic literature focused on remedies for digital platform mergers also repeatedly confirms that the enforceability of remedies, and regulators' capacity to implement them, are the core factors that shape remedy outcomes.

6.7 Extraterritoriality, Comity and Global Coordination

Today, cross-border mergers often trigger simultaneous review by multiple jurisdictions globally: the competitive impacts of a transaction are not limited by national borders or the location of a firm's headquarters. Even if the merging firms are not registered in a country, so long as the transaction would affect that country's market competition, local regulators have the authority to launch a review.

The U.S. Hartford Fire case remains the core precedent for the country's longstanding principle of "jurisdiction based on cross-border impacts"; the EU's Gencor ruling established the same "impact-centric" foundation for the EU's merger review jurisdiction.

When multiple regulators exercise overlapping jurisdiction over the same transaction, they can protect their domestic markets and prevent anticompetitive harms from affecting local consumers and firms, but the merging firms must face a set of unavoidable challenges: the review timelines of each jurisdiction are misaligned, making it impossible to coordinate preparation of materials; the demands from from different agencies for internal documents are mutually incompatible, leaving firms unable to comply with all agencies' requests; and even the remedial requirements to resolve competitive concerns may conflict, making them impossible to satisfy simultaneously. Levy, Rimsa, and Buzatu emphasize that when defining the boundaries of extraterritorial application for EU merger rules, it is critical to find a fair and feasible balance.

Fully unifying all global merger review frameworks is not only unachievable, but may not be the right approach. Each jurisdiction's competition law is rooted in its own unique institutional arrangements and constitutional priorities; these differences are inherently legitimate and should not be forcefully erased, nor can a single set of rules address the diverse circumstances of all regions.

To coordinate global merger review practices and reduce the chaos facing firms, several more pragmatic steps can be implemented: align the review timelines of all jurisdictions to prevent firms from scrambling to meet multiple,

conflicting deadlines; adopt formal information-sharing rules that allow regulators to exchange evidence without requiring firms to submit the same materials repeatedly; use unified economic terminology when analyzing competitive impacts to avoid unnecessary disputes arising from misinterpretation of the same concept; adopt consistent rules to protect firms' sensitive business information, preventing the disclosure of core confidential data during multi-jurisdictional review; proactively identify and resolve conflicts in remedies proposed by different jurisdictions to leave the merging firms with a feasible path to compliance; and if regulators from different jurisdictions reach conflicting conclusions on the same merger, publish detailed explanations for the divergence to avoid confusing firms and the market. These targeted adjustments can reduce the administrative and financial costs of global merger review, while allowing each regulator to uphold its independent statutory obligations, without abandoning local legal requirements to comply with a unified framework.

7. Recommendations

The comparative analysis in this paper supports the following evidence-based legal and policy improvements:

First, clarify the core logic of competitive harm at the earliest stage of review. Regulatory authorities on both sides of the Atlantic must clearly outline the specific way in which a proposed merger would weaken competition, including the baseline market conditions that would persist if the merger were not completed, the specific competitive pressure that would be lost, and the tangible evidence supporting these judgments. This is particularly critical for cases involving innovation, the integration of digital ecosystems, or potential future competition from firms not yet active in the market. These cases are inherently difficult to predict, and clarifying the logic early avoids subsequent disputes and confusion.

Second, treat structural presumptions about market concentration as a tool to screen high-risk transactions, not a substitute for full, fact-specific analysis. Calculating market concentration can quickly flag mergers that require in-depth review, allowing regulators to focus their limited resources on the highest-risk transactions. But final regulatory decisions must explain the connection between market structure and predicted competitive harms, new firm entry barriers, large buyer bargaining power, efficiency gains from the merger, and impacts on long-term dynamic competition, rather than rejecting a transaction solely based on a concentration metric.

Third, increase transparency in regulators' assessment of proposed remedies. If merging parties submit a plan to divest business lines or accept behavioral constraints to resolve competitive harms, regulators must issue a written statement explaining why the plan would (or would not) effectively restore market competition, and list all underlying assumptions about remedy monitoring that the approval relies on. Regulators cannot approve or reject a firm's proposed remedy without clear justification, leaving firms unable to understand the standards, and preventing the market from overseeing regulatory decisions.

Fourth, integrate regular ex-post merger audits into standard regulatory procedures. Conduct a retrospective evaluation of all completed mergers at set intervals—including mergers approved unconditionally, approved with remedies, or prohibited—to review each case. This allows regulators to verify whether their original prediction models were accurate, identify flaws in their logic, and refine future review guidelines without weakening the legal standards applied to individual cases, enabling increasingly mature future reviews.

Fifth, deepen formal collaboration in transatlantic merger review processes. For cross-border transactions, the U.S. Federal Trade Commission, U.S. Department of Justice, and European Commission must continue to align review timelines, the process for soliciting feedback from market participants on remedy proposals, and the design of remedial requirements, where legally permissible. At the same time, they must uphold rules protecting commercial confidentiality and preserve each regulator's independent authority to make final decisions, without abandoning their own judgments to comply with collaboration requirements.

Sixth, maintain robust judicial and procedural safeguards for merging parties. The EU must continue to enforce merging parties' full and effective right to defend their transactions, and rigorously review all evidence presented by the European Commission to support its claims, preventing gaps in the Commission's assessments. U.S. courts must remain mindful that the original purpose of Section 7 of the Clayton Act is to prevent harms before they occur, and must not evolve merger law into a regime that requires evidence of realized anticompetitive harm to block a transaction, eroding its purpose of pre-empting monopoly risks.

Seventh, apply a consistent, evidence-focused rigor when addressing claims of innovation-related harm. Regulators cannot ignore future competitive risks because they are difficult to measure with precise numerical metrics, missing the opportunity to prevent harm pre-emptively; nor can they pre-judge any merger in a fast-changing innovative industry as inherently harmful, arbitrarily intervening in firms' normal business operations. All decisions based on claims of "future innovation harm" must tie those claims to observable, verifiable evidence proving that the merger would directly cause a credible, long-term decline in market competition, rather than relying on vague speculation to block a transaction.

8. Conclusion

This study aims to compare the scope of U.S. federal antitrust merger review and EU competition law merger control, and unpack why the analytical tools used by both jurisdictions grow increasingly similar, while they may still reach entirely different outcomes. The core conclusion of this analysis is that a simple binary framework of "consumer welfare versus fairness" to summarize the divergence between the two jurisdictions is far too limited to explain the full scope of their differences. The original design of both systems is to pre-emptively prevent competitive harms, rather than waiting for consumers to suffer tangible losses or for a monopoly to fully form to intervene. Both jurisdictions rely on evidence of market structure—i.e., first assessing the number and size distribution of firms in a market to evaluate whether a merger would directly compress competitive space—and both have the capacity to address non-price harms, innovation harms, and other harms that cannot be measured solely by price increases. The true divergence between the two jurisdictions can only be explained by synthesizing the interacting impacts of legal mandates, institutional design, burden of proof, and enforcement processes.

In the United States, Section 7 of the Clayton Act provides the substantive standard for preventing emerging monopolies, i.e., it provides regulators with the legal basis to intervene pre-emptively. But any contested enforcement action is fundamentally constrained by one requirement: the FTC or DOJ must convince a federal court to support its assessment, or it cannot block the merger from proceeding. In the European Union, the EUMR incorporates the SIEC assessment into a centralized administrative process: the European Commission is responsible for investigating and issuing a decision, with subsequent judicial review of the ruling. These two entirely distinct procedural pathways directly shape the willingness of both systems to adopt new predictive theories—i.e., the speculations about future market problems that would emerge if the merger were completed, the scope of enforceable remedies, and the strategic positions that merging firms adopt to comply with the requirements of each jurisdiction.

All cases reviewed in this study support this core conclusion: when adjudicating cases of horizontal market concentration, i.e., mergers between direct competitors in the same industry, the core analytical methods of both jurisdictions are highly aligned. When encountering non-horizontal mergers, mergers involving innovation risks, i.e., mergers between upstream and downstream firms or cross-industry mergers, and mergers that may impact future R&D timelines, the two systems' approaches to assessing and addressing potential harms diverge significantly. Cases involving extraterritorial jurisdiction, i.e., mergers where the firms' headquarters are not located in the jurisdiction but the transaction would affect local market competition,

repeatedly demonstrate that cross-border collaboration is a practical necessity to address overlapping enforcement demands. The most feasible path forward is not to force the U.S. and EU merger laws to unify into a single set of rules, but to pursue methodical convergence: clarify the logic of harm transmission, present robust and credible evidence, design implementable remedies, adopt the practice of ex-post review, and coordinate cross-border enforcement procedures. Future research can build on these legal conclusions by collecting empirical data from more transaction cases, analyzing the enforcement intervention rates, remedy outcomes, and litigation rulings in both jurisdictions, to further verify the judgments of this study.

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