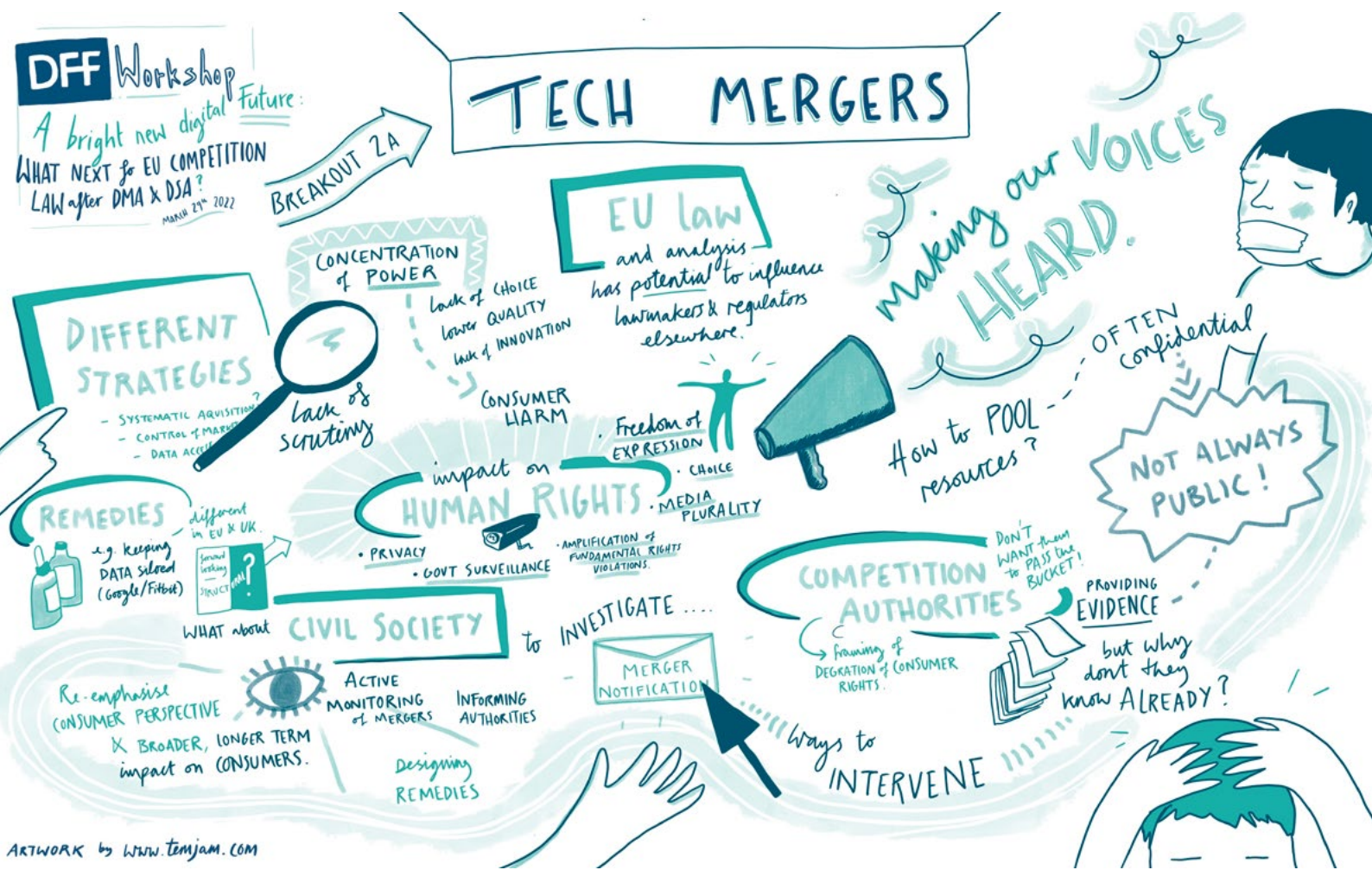


# Tech Mergers

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Digital Freedom Fund



## 01. What was this session about?

1. Digital companies have made extensive use of mergers and acquisitions (also called 'concentrations', or simply 'tech mergers') to expand their scale and scope. These have included, for example:

Buying businesses that have become or could become competitors to the acquiring company (for example Facebook's acquisition of Instagram).

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Acquiring businesses that have given a firm a strong position in a related market (for example Google's acquisition of DoubleClick, the advertising technology business)

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Concentrations targeting data-driven businesses in adjacent or downstream markets which may help to entrench the acquirer's strong position (for example Google's acquisition of Fitbit, the wearables firm).

2. There are concerns that some of these mergers have not faced proper scrutiny in the past and that big technology firms have been using merger and acquisitions as a strategy to cement their market dominance, leading to harms to consumers and to competitors. As part of we will examine how and to what extent digital rights organisations can become involved in the enforcement of tech merger regulations with a view to protecting digital rights.

## 02. Why should digital rights organisations care?

1. Competition authorities are generally concerned that mergers can make the market more concentrated, entrench the power of dominant firms, and lead to undesirable consumer outcomes, such as higher prices and lower quality, service, and range of products and services.





2. Digital rights organisations should care about these issues, because mergers between technology firms could lead to new forms of consumer harms which are not easily or fully captured by competition authorities. For example:

Some tech mergers could have important implications for human rights, because they often make markets more concentrated. Dominant firms in concentrated markets can more easily undermine human rights like privacy and freedom of expression, because consumers/users do not have another platform to move to.

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Consumers could face reduction in the quality of digital services when existing competitors are eliminated, for example the dominant firm can increase its digital advertising, or lower privacy standards and adopt more intrusive data collection practices.

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Acquisitions by dominant platforms of small start-up companies with a quickly growing userbase could cause the elimination of potential rivals (also called 'killing-acquisition') leading consumers to ultimately lose out as future competition and innovation from these nascent firms will be eliminated.

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The acquisition of a firm that provides inputs or complementary services and goods to the market could lead to the unfair treatment of business users, foreclosing competitors and firms operating in adjacent or downstream markets.

### **03. What are the enforcement and litigation opportunities and what are the barriers to civil society engagement?**

1. From the perspective of the competition authority, it is often hard to frame the issues around merger review in terms of human rights, precisely because of the type of analysis they do when deciding whether or not a merger can take place, and when designing remedies.
2. Instead, competition authorities have traditionally investigated mergers in the technology and digital sectors using metrics and standards that aim to determine whether they will benefit or damage competition and consumers.
3. Digital rights organisations could bring a broader perspective and help to steer the competition authorities towards issues and market concerns that they might not have considered or might have discarded.



## 04. Ways for digital rights organisations to get active

### 1. Digital rights organisations can:

Engage with mergers by reframing the human rights issues in terms of degradation of the user experience, which is a more familiar language to competition authorities. So, for example, reduction of privacy through intrusive data collection could be described as a way to degrade the quality of services and the experience of users;

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Be involved in the direct enforcement of tech merger regulations as third parties and through this help to inform investigations by competition authorities and the policy debates more generally, and help to design suitable remedies, for example, by submitting evidence and providing answers to questions such as:

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Could the tech firm that is being acquired grow to become a relevant competitor to the incumbent firm in the future?

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Is the dominant firm engaged in systematic patterns of such acquisitions?

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Could the merger give a tech firm the power to control access to key infrastructure or key inputs, for example access a marketplace or a dataset?

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Could the merger give a technology firm access to consumer data that would raise barriers to entry and make the platform harder to challenge?

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How effective proposed remedies would be in mitigating competition concerns and threats to digital rights?

### 2. At the same time, it is clear that monitoring of merger activity has resource implications for digital rights organisations, many of which already have limited capacity. Collaboration between organisations is also often hindered by confidentiality obligations relating to case-specific information.



3. Other useful next steps would therefore include:

Different organisations sharing input and/or joining forces of those NGOs that have worked with competition authorities.

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Establishing international cooperation / coordination between digital rights organisations in different jurisdictions to share non-classified information and expertise, particularly in cases where the same merger case is reviewed by multiple jurisdictions, and where the competition authorities themselves cooperate.

**FOR MORE INFORMATION, SEE:**

Competition Policy for the Digital Era, a report by Jacques Crémert, Yves-Alexandre de Montjoye and Heike Schweitzer, Chapter 6. Available online at: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

Tech-over: Mergers and merger policy in digital markets, by Elena Argentesi, Paolo Buccirossi, Emilio Calvano, Tomaso Duso, Alessia Marrazzo, Salvatore Nava. Available online at: <https://voxeu.org/article/mergers-and-merger-policy-digital-markets>.



# About the Digital Freedom Fund

The Digital Freedom Fund supports strategic litigation to advance digital rights in Europe. With a view to enabling people to exercise their human rights in digital and networked spaces, DFF provides financial support for strategic cases, seeks to catalyse collaboration between digital rights activists, and supports capacity building of digital rights litigators. DFF also helps connect litigators with pro bono support for their litigation projects. To read more about DFF's work, visit: [www.digitalfreedomfund.org](http://www.digitalfreedomfund.org).

