

**Nascent Competition Trends from the European and American Experience:
The Issue of Vertical Mergers**

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Abstract

This article explores how, under the current wave of the New Brandeis Movement, Taiwan can learn from European and American experiences to more effectively identify and review vertical integration cases involving nascent competitors, and thereby protect nascent competition. Since the 1980s, U.S. antitrust law has believed that vertical integration enhances efficiency and consumer welfare. However, this view poses many challenges in today's digital market, especially as digital markets struggle to self-correct. Moreover, cases related to vertical integration are dated and may not be applicable to the current digital competition environment. Since the Trump administration, there has been increased scrutiny of merger cases, coupled together with greater skepticism. For instance, in the *AT&T/Time Warner* case, the U.S. Department of Justice failed to prevent the merger. The court, while rejecting the Department's arguments, did not provide clear new guidelines, leading to uncertainties for startups during acquisitions. European and American enforcement agencies have increasingly become more active and strict when reviewing vertical integration cases involving nascent competitors. The *Meta/Within* case drew widespread attention as the Federal Trade Commission (FTC) attempted for the first time to conduct its review using the potential competition principle. Although the FTC failed to prevent the merger, its damage theory was supported by the court. In the *Illumina/Grail* case, the FTC reverted to the stricter *Brown Shoe* standard to veto the acquisition. Europe also expressed concerns about Illumina's motives and capabilities for exclusive competition, rejecting the *Illumina/Grail* case. The UK's *Meta/Giphy* case is noteworthy, indicating that the UK's Competition and Markets Authority might intervene in digital market vertical integration, regardless of the case's ties to the UK or merger turnovers. Our country should prioritize comprehensive data collection and research on nascent technology industries.

Keywords: Nascent Competition, Vertical Merger, Actual Potential Competition, Perceived Potential Competition, Clayton Act, Sherman Act.

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