Re-examining Acquihires in Competition Law

The Role of Intellectual Property

Manya and Harsh Bhardwaj
13 February 2026

Re-centering Acquihires Around Intellectual Property

Acquihire is a transaction that emphasises on acquiring an enterprise's staff and expertise, usually supported by licence agreements for the entity's intellectual property, over purchasing its assets, services, or products. Acquisitions in the IT sector are currently subject to increased regulatory scrutiny across jurisdictions. Competition regulators have closely reviewed transactions using *Microsoft-inflection AI, Amazon-Adept AI, Meta-Scale AI,* and *Google-Character AI*. In India, the Competition Commission of India (CCI) has also stated that it aims to look at labour market arrangements and their potential competitive effects, particularly in developing and innovative fields like artificial intelligence.

Acqui-hires are occasionally characterised as transactions targeted at obtaining competent personnel rather than technology, which obscures the underlying economic reality of today's technology markets: talent's competitive relevance stems predominantly from intellectual property and creative output. Intellectual property (IP), whether protected or incorporated in code, algorithms, datasets, or trade secrets, is the primary source of competitive advantage in information-intensive industries such as artificial intelligence, software, and platform technologies.

The Microsoft-Inflection AI transaction was investigated thoroughly by the UK and German regulatory agencies. The UK Competition and Markets Authority (CMA) was unequivocal in its reasoning, noting, "*the acquisition of the core pre-Transaction Inflection team, with the associated know how of that team, would be sufficient in itself to constitute the acquisition of an enterprise*." Legally, this means that even if no IP license had been granted or no formal assets like patents, copyrights, or models had transferred, the transfer of the core team together with their accumulated know-how was enough for the CMA to conclude that Microsoft acquired an *enterprise* (i.e., a business with economic continuity) and thus subject to review by Competition Regulatory Authority.

By contrast, the Bundeskartellamt observed, "*Based on its investigations the Bundeskartellamt concluded that the takeover of the workforce and the terms governing the use of Inflection's key intellectual property rights by Microsoft amounted to a de facto takeover of Inflection by Microsoft and as such they were subject to German merger control.*" Unlike the CMA's analysis, the German authority's reasoning does not clearly indicate whether the acquisition of the workforce alone, absent the IP usage arrangements, would have been sufficient to characterise the transaction as an acquihire or a notifiable concentration.

The UK's Competition law framework is comparatively liberal, since parties are not required to notify the competition authority of a merger, in contrast to India's mandatory notification regime triggered upon crossing statutory thresholds under section 5 of the Competition Act, 2000. For this reason, it is important to examine the case from an Indian perspective and to reassess the role and significance of IP transfer in the context of acqui-hiring.

Why Labour Alone Is Insufficient: An IP-Based Justification

From an IP perspective, employees are carriers and not owners of innovation. Skills, expertise, and experience remain inherently personal and legally non-transferable. Unlike patents, copyrights, or protected datasets, human capital cannot be alienated, owned, or secured on a lasting basis. Employees may resign, compete, or exit at will, carrying only general skills protected by freedom of occupation.

If competition law were to treat mass hiring alone as a concentration, it would conflate 'access to human capital' with 'control over innovation outputs'. This would collapse merger control into a form of labour market regulation, undermining both competition policy and IP doctrine. Accordingly, an acquihire becomes competition-relevant only when the acquirer also obtains legal or functional access to the IP that embodies the target's innovative activity.

IP licensing performs this stabilising function. It allows the acquirer to exploit, reproduce, modify, or commercialise the target's innovation independent of continued employee retention. In doing so, it creates durability, exclusivity (even if non-exclusive), and economic continuity: features that competition law has traditionally required before asserting jurisdiction.

The Indian Merger Control Framework

The Competition Act, 2002 regulates mergers and acquisitions under Section 5. Section 5 provides two thresholds, namely the asset or turnover threshold. However, since acqui-hiring is done by mega companies to acquire talent from 'small' startups, the numbers under Section 5 are likely to go unmet in most cases.

In addition to the jurisdictional thresholds under Section 5, the Competition (Amendment) Act, 2023 introduced the Deal Value Threshold (DVT). Under this regime, combination transactions with a deal value exceeding INR 20 billion (approximately USD 237 million) are required to obtain prior approval from the Competition Commission of India (CCI).

As the asset and turnover thresholds do not suffice for the novel regime of acqui-hiring, DVT is the only option available to bring such deals within the authority competition regulators. Deal value of any transaction in the acqui-hiring space would depend upon structured employment contracts, cost of IP portfolios transferred like trained models, algorithms or trade secrets. If the latter is excluded, acqui-hires structured around employment contracts alone may escape scrutiny, even when they effectively reallocate innovation capacity to dominant firms.

Importantly, the Combination Regulations explicitly include consideration for 'IP licensing, technology assistance, and related arrangements' in transaction value calculations. This signals legislative recognition that IP is the principal carrier of competitive value in digital markets. Yet, where acquihires omit IP licensing, either deliberately or strategically, the DVT remains ineffective. This reinforces the core claim that without IP transfer or licensing, the transaction lacks the qualities that merger control is designed to regulate.

Control: IP as the Object of Influence

The Explanation to Section 5 defines "control" broadly, including substantial influence emanating from contractual or institutional agreements. While this could potentially require coordinated personnel recruitment, an IP-centric perspective narrows the scope suitably i.e., *what is being managed: the workforce or innovation?*

In absence of intellectual property rights, an acquisition cannot control the target's innovation trajectories in terms of continuance, modification, or suppression. Controlling personnel does not entail having control over pre-existing intellectual property (IP), which belongs to the original entity unless licensed

or assigned. Thus, establishing control without IP risks pushing the doctrine beyond its conceptual limitations. However, in *Darius Rutton Kavasmaneck v Gharda Chemicals Ltd & ors*, the Bombay High Court emphasised that a person acquiring intellectual property rights such as patents during the course of their work does not automatically transfer ownership to the company with which they are involved. Such an employee falls into a grey area in which power is gained by hiring the worker.

Conversely, IP licensing, particularly when it involves key technology, datasets, or models, might result in de facto control over the target's inventive output, even if the legal organisation remains. Such arrangements warrant merger review because they allow the acquirer to internalise innovation that would otherwise be under competitive threat.

Policy Implications for India

To further regulate acqui-hires, the CCI could consider higher financial thresholds influenced by Australia's merger control framework. The Competition and Consumer Act of 2010 (CCA) in Australia mandates notification of acquisitions in which the purchasing firm has at least AUD 500 million in revenue and the target entity has at least AUD 10 million in revenue. In contrast to the Indian and European regimes, this model is more adept to capturing transactions with substantial size asymmetries between the parties, which are typical in acqui-hires.

The regulatory obstacle for India, however, is to prevent killer acquisitions without stifling talent markets. Even if turnover or asset thresholds are lowered along the lines of the Australian model, it is unclear how far they should be reduced, given that the market's understanding of acqui-hires is still nascent and shaped by only a limited set of untested cases. Certain hiring-induced acquisitions will unavoidably fall outside of a threshold, no matter how low it is set. On the flip side, if no numerical threshold is prescribed and assessments are made on a case-by-case basis, acquirers face uncertainty about whether notification is required, and any failure to notify could attract substantial penalties. Therefore, making such changes inside India's penalty-driven merger control regime is risky. An IP-centric framework offers a better calibrated solution. Safeguards including non-exclusive licensing presumptions, exemptions for failed enterprises, and scrutiny of post-transaction IP use can further improve enforcement.

Conclusion

Acquihires are theoretically complex because they exist at the intersection of labour mobility and innovation control. Intellectual property, rather than just talent, is the right focus of competition law attention. IP licensing offers the permanence, flexibility, and economic continuity that merger control requires. Without it, acquihires differ from regular employment and should be exempt from antitrust scrutiny.

Cite as (OSCOLA, 5th ed.): Manya and Harsh Bhardwaj, 'Re-examining Acquihires in Competition Law: The Role of Intellectual Property' (*The Innovation Brief*, 13 February 2026) <https://innovationbrief.nludelhi.ac.in/essays/re-examining-acquihires-in-competition-law> accessed 19 November 2026.

Manya is a fourth-year student at National Law University Delhi.

Harsh Bhardwaj is a fourth-year student at Jaipur National University.

The opinions expressed in the Blog are personal to the author/writer. The University does not subscribe to the views expressed in the article / blog and does not take any responsibility for the same.

Published by the Centre for Innovation, Intellectual Property and Competition, National Law University Delhi. Read online at https://innovationbrief.nludelhi.ac.in/essays/re-examining-acquihires-in-competition-law.