



# Assessing the Merger of Online Platform Companies: Does it Lead to Monopoly or just Business Expansion? (Analysis of The Merged Company of GoTo)\*

Sukarmi<sup>1</sup>, Sholahuddin Al-Fatih<sup>2</sup>,  
Kukuh Tejomurti<sup>3</sup>, Moch. Zairul Alam<sup>4</sup>

Faculty of Law, Brawijaya University  
Faculty of Law, University of Muhammadiyah Malang  
Faculty of Law, Universitas Sebelas Maret



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## Abstract

Two large digital platform companies, Gojek and Tokopedia, officially merged to form a holding company called the GoTo Group that is considered to have anti-competitive behavior and potentially data monopoly. This article aimed to analyze the adequate response to potential violations of the Prohibition of Monopolistic Practices and Unfair Business Competition Regulation and legal issues related to consumer data monopoly issues. This article uses normative legal research with the conceptual research and statute approach. The result shows that it is necessary to define "relevant markets" and the "substituted products" to determine the existence of unfair business competition in the Gojek-Tokopedia merger. It requires analyzing the consumer behavior in other marketplaces other than Tokopedia; when consumers do not "run" to Gojek, it means they are not in the same market. To prevent privacy protection failures in post-merger data integration, companies need to assess data sharing that may be carried out as part of a risk assessment. Regarding the rights of data subjects, The company needs to provide notification to the data subject regarding the Merger and Acquisition (M & A) given the data subject's right to refuse and guarantee that the M & A process will not violate the right to privacy of the customer's data

**Keywords:** Competition Law; Digital Platform; Merger

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<sup>1</sup> **Sukarmi** is a Doctor in Law, Associate Professor, Lecturer of the Faculty of Law, Brawijaya University, Commissioner of Business Competition Supervisory Committee of the Republic of Indonesia (Komisioner KPPU RI) 2013-2108. ORCID: <https://orcid.org/0000-0001-5176-7779>, Email: [sukarmi@ub.ac.id](mailto:sukarmi@ub.ac.id)

<sup>2</sup> **Sholahuddin Al-Fatih** is a Candidate Doctor, Faculty of Law, University of Muhammadiyah Malang, Editor in Chief of the Legality: Jurnal Ilmiah Hukum. ORCID: <https://orcid.org/0000-0003-1166-5182>, Email: [salfatih@umm.ac.id](mailto:salfatih@umm.ac.id)

<sup>3</sup> **Kukuh Tejomurti** is a Candidate Doctor, Lecturer of the Faculty of Law, Universitas Sebelas Maret. Managing Editor of the Yustisia Jurnal Hukum, ORCID: <https://orcid.org/0000-0002-8958-4174>, Email: [kukuhmurtifhuns@staff.uns.ac.id](mailto:kukuhmurtifhuns@staff.uns.ac.id)

<sup>4</sup> **Moch. Zairul Alam** is a Candidate Doctor, Lecturer of the Faculty of Law, Brawijaya University.  
**Corresponding author:** [salfatih@umm.ac.id](mailto:salfatih@umm.ac.id)

## Menilai Penggabungan Perusahaan Platform Online: Apakah Mengakibatkan Monopoli atau Hanya Ekspansi Bisnis? (Analisis Penggabungan GoTo)

### Abstrak

Dua perusahaan platform digital besar, Gojek dan Tokopedia, resmi bergabung membentuk *holding company* bernama GoTo Group yang dinilai memiliki perilaku anti persaingan dan berpotensi monopoli data. Artikel ini bertujuan untuk menganalisis respon yang memadai terhadap potensi pelanggaran Peraturan Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat serta masalah hukum terkait masalah monopoli data konsumen. Artikel ini menggunakan penelitian hukum normatif dengan pendekatan penelitian konseptual dan undang-undang. Hasil penelitian menunjukkan perlunya mendefinisikan “pasar relevan” dan “produk substitusi” untuk mengetahui adanya persaingan usaha tidak sehat dalam merger Gojek-Tokopedia. Hal ini membutuhkan analisis perilaku konsumen di pasar lain selain Tokopedia; ketika konsumen tidak “lari” ke Gojek, berarti mereka tidak berada di pasar yang sama. Untuk mencegah kegagalan perlindungan privasi dalam integrasi data pasca-merger, perusahaan perlu menilai pembagian data yang mungkin dilakukan sebagai bagian dari penilaian risiko. Mengenai hak subjek data, Perusahaan perlu memberikan pemberitahuan kepada subjek data mengenai Merger dan Akuisisi (M&A) mengingat hak subjek data untuk menolak dan menjamin bahwa proses M&A tidak akan melanggar hak privasi data pelanggan

**Kata Kunci:** Hukum Persaingan Usaha; Platform Digital; Penggabungan

### Оценка слияний компаний онлайн-платформ: приведет ли это к монополии или просто к расширению бизнеса? (Анализ слияний GoTo (Gojek и Tokopedia))

#### Аннотация

Две крупные компании, занимающиеся цифровыми платформами, Gojek и Tokopedia, официально объединили свои усилия, чтобы сформировать холдинговую компанию GoTo Group, которая, как считается, ведет антиконкурентную политику и может монополизировать данные. Данная статья направлена на анализ адекватного реагирования на возможные нарушения Положения о запрещении монополистической практики и недобросовестной конкуренции, а также на правовые вопросы, связанные с проблемой монополии на данные потребителей. В данной статье используется нормативно-правовое исследование с концептуальным и правовым исследовательским подходом. Результаты исследования указывают на необходимость определить «соответствующие рынки» и «продукты-заменители», чтобы определить наличие недобросовестной деловой конкуренции в слиянии Gojek-Tokopedia. Это требует анализа поведения потребителей на рынках, отличных от Tokopedia; когда потребители не «бегут» в Gojek, это означает, что они не находятся на одинаковом рынке. Чтобы предотвратить свои в защите конфиденциальности при интеграции данных после слияния, компаниям необходимо оценить возможное совместное использование данных в рамках оценки рисков. Что касается прав субъекта данных, Компания должна уведомить субъект данных о слиянии и поглощении (M&A), учитывая право субъекта данных отказаться и гарантировать, что процесс M&A не нарушит права на конфиденциальность данных клиента.

**Ключевые слова:** Закон о деловой конкуренции; цифровые платформы; слияние

## A. INTRODUCTION

Two large digital platform companies, Gojek and Tokopedia, officially merged to form a holding company called the GoTo Group on May 17, 2021. The company is expected to combine the three services including Gojek (Ride hailing-on demand), Tokopedia (Marketplace/E-Commerce), and GoTo Financial (financial technology service platform). The merger is also expected to drive more orders and increase income but was observed to have led to the combination of a total Gross Transaction Value (GTV) of more than USD 22 billion which is approximately IDR 314 trillion in 2020. The company has also become increasingly competitive in the non-Indonesian market (Lee & Baigorri, 2021).

The graph of the business development is increasingly showing an increase. Every company must continue to race to accelerate its business field to generate excellence in the destination market. Even now, all parties have made peace with the current globalization, which has made the existence of technology active in every line of life, including the life of the business world (Njatrijani & Prananda, 2020, p. 5405). At first, the element of technology in a business was not something that attracted consumers' attention. But, since entering the industrial revolution era, the aspect of technology has become a business advantage for business actors and the quality of the products produced and good human resources.

The use of technology brings the world to know the existence of Online Business, or people often call it online commerce (E-Commerce). E-Commerce is an excellent opportunity for business people (Chong et al., 2011, p. 518-519), especially in Indonesia, where most of the population are internet users. Based on a report released by the Association of Indonesian Internet Service Providers (APJII) in November 2020, internet users in Indonesia have increased by 73.7 percent of the total population of Indonesia or approximately 196.7 million internet users (APJII, 2020). This situation is a positive signal for business people or entrepreneurs, especially from the millennial generation, to run their online businesses. Many young entrepreneurs in Indonesia start to create startup businesses or what is called "Start-up Business." Eric Ries (2019) explained that a startup is a startup that usually consists of several people, where the company focuses on technology, ideas, and information (Ries & Euchner, 2013, p. 14-15).

The development of online business is correlated with developing start-up businesses in Indonesia, which is overgrowing along with the growth of creative ideas from the millennial generation. This idea's "free charge" nature is

then combined with soft skills assembled to present innovative solutions to meet needs and create new types of value for the market (Paunescu & Monica, 2013, p. 100). Start-up businesses in Indonesia, including Tokopedia and Gojek, Two large digital platform companies, Gojek and Tokopedia, officially merged to form a holding company called the GoTo Group on May 17, 2021.

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The term of "merger", based on Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Limited Company Law), is a legal action carried out by one or more companies to merge with another existing company, resulting in the assets and liabilities of the merging companies being transferred to the company that accepts the merger and subsequently the legal entity status of the merging companies is terminated by law.

The current practice of corporate mergers that have the public's attention is the merger between Ride-hailing and Payment Companies, namely "Gojek" and "Tokopedia," in May 2021. These two companies merged under one Holding Company named "GoTo." Gojek and Tokopedia are unicorns that dominate the Indonesian market. Unicorn itself is a term for start-up companies with a valuation value of 1 billion US dollars. In fact, in December 2020, Gojek became the only next-level unicorn company, namely Decacorn, in Indonesia (Lee, 2021), whose valuation reached 10 billion US dollars.

The merger agreement between Gojek and Tokopedia is seen as very promising because Gojek's valuation value of 10 billion US dollars and Tokopedia of 7 billion US dollars can increase the two companies' profitability in the future under the auspices of GoTo. In addition, the merger agreement is more promising to be successful because Gojek and Tokopedia run a complimentary business related to the demands of the community's needs (Globe, 2021). GoTo is the only company in Indonesia that has a sophisticated and complete business model, where Gojek features digital financial transactions and transportation with high volume and mobility then combined

with features of medium frequency and value e-commerce transactions height from Tokopedia.

The allegations of monopolistic practices and unfair business competition will be raised. These arises because of the great strength of GoTo, which can make it a dominant position to attract consumers in the digital world (Sokoi & Camerford, 2015, p. 1129) in terms of meeting the daily needs of urban communities. Article 12 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition mentioning that business actors are prohibited from entering into agreements with other business actors to cooperate by forming a combination of larger companies while maintaining the viability of each company which aims to control the production of goods and or services. These provisions serve as guidelines for GoTo in running its business to keep in mind the position of market dominance

In addition to GoTo's alleged monopolistic practice and unfair business competition, It plays an essential role in storing and processing extensive consumer personal data in Indonesia. Based on the official Gojek website, at least 190 million more users have downloaded and used the Gojek application. Even from Tokopedia, based on a survey conducted by similar web, Tokopedia is the number one marketplace most accessed in Indonesia, reaching 126 million visitors (Anonim, 2021). The amount of data held by GoTo makes GoTo suspected of monopolizing personal consumer data and has the potential for data misuse. As happened at Tokopedia in May 2020. As many as 91 million Tokopedia user accounts, such as names, emails, and phone numbers, were leaked, and the data was then sold on the internet black market for 5,000 US dollars or around Rp. 75.8 million

Based on the description of the legal issues that have been described in the background, the authors focus on elaborating the legal issues regarding the analysis of the Gojek and Tokopedia merger actions from the perspective of business competition law and legal issues regarding the storage and processing of personal consumer data.

## **Literature Review**

Andi Fami Lubis (2009) states that mergers can create or strengthen market power by increasing concentration on relevant products and geographic markets. The increase in market power can increase the company's ability to coordinate, either implicitly or explicitly (Yudiansah, 2020, p. 84-86). Mastery of market share is related to the dominant position. Based on the structure

conduct and performance (SCP), the percentage of the market share becomes a reference in determining the dominant role of a company (Mochtar, 2013, p. 116). Companies resulting from mergers or acquisitions will strengthen their dominant position, opportunities to abuse their dominant position will automatically form after the merger

Ningrum Natasya Sirait (2010) states that a dominant position does not automatically occur because we need to use a *Per se Illegal* approach. *Per se Illegal* is a competitive approach that states that any agreement or particular behavior has violated competition law (illegal) without the need for further proof of the impact resulting from the contract or prohibited conduct (Sirait, 2006, p. 60-61). Therefore, the dominant position cannot always be directly blamed. The dominant position will only become an obstacle to competition if digital service providers exploit their dominant position (Riva'i & Erhandy, 2018, p. 200), resulting in consumer losses and unfair competition. Ditha Wiradiputra (2021) said that the type of market for digital platforms is an oligopoly. They become significant because they merge with other companies or Merge and Acquisition (M&A) other companies (Fahamsyah & Suri, 2019, p. 215). Many digital platforms are formed to be acquired by large companies. However, the Competition Authority can be concerned about the abuse of its power. We can see that the Google company that owns Google Maps is allowed to acquire Waze, which is also a guide feature.

A.M. Tri Anggraini argued that if the company did a horizontal merger, the competition authority would identify potential anti-competitive behavior in the form of a unilateral or coordinated effect. The essence of the assessment is to see if there are incentives for post-merger business actors to increase profits. The unilateral effect means that post-merger companies become dominant in the market to make their policies that have a negative impact on the market without paying attention to the policies of other competitors (Anggraini & Nasution, 2013, p. 195). Nevertheless, Suppose the post-merger company becomes non-dominant so that every strategy implemented will get a backlash from other competitors in the market. In that case, the anti-competitive impact generated is by coordinating behavior with other competitors (coordinate effect). Suppose the company carries out a vertical merger. In that case, the attention of the competition authority will be on whether there is an incentive for the merged company to conduct market foreclosure, namely, creating artificial barriers for its competitors to access the market..

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## **B. METHODS**

This study uses a normative juridical approach (Irwansyah, 2020, p. 93). According to Soerjono Soekanto, the normative juridical approach is legal research carried out by examining library materials as the basic material for research, through a search for regulations and literature related to the problems studied (Soerjono Soekanto, 2018).

## **C. RESULT AND DISCUSSION**

### **1. Merger in the Online Platform Companies: Competition Law Perspective**

Two large digital platform companies, Gojek and Tokopedia, officially merged to form a holding company called the GoTo Group on May 17, 2021. The company is expected to combine the three services including Gojek (Ride hailing-on demand), Tokopedia (Marketplace/E-Commerce), and GoTo Financial (financial technology service platform). The merger is also expected to drive more orders and increase income but was observed to have led to the combination of a total Gross Transaction Value (GTV) of more than USD 22 billion which is approximately IDR 314 trillion in 2020. The company has also become increasingly competitive in the non-Indonesian market as evident in the report of Bloomberg (Lee, 2021) that it is considering a dual listing with the Indonesia Stock Exchange and Wall Street Stock Exchange of the United States (Nurhaliza, 2021). The merger of these two companies has two interesting legal issues despite the business development opportunity it provides in this all-digital "World in grab hand" era (Cusumano et al., 2020, p. 46). These include the allegations of monopolistic practices and unfair business competition as well as consumer data monopoly issues.

The first issue focuses on providing the adequate response to potential violations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition as well as its derivative regulations which is the Government Regulation Number 57 of 2010 concerning Consolidation of Business Entities and Company Shares Acquisition which may result in Monopolistic Practices and Unfair Business Competition. Moreover, Business Competition Supervisory Commission (KPPU) provides a measure of monopolistic practices and unfair business competition in company mergers and these include the presence of market concentration, barriers to market entry, and potential anti-competitive behavior (Rahman et al., 2020, p. 376-377).

It is necessary to define “monopolistic practices”, “relevant markets” and their products in order to determine the existence of monopolistic practices and unfair business competition in the Gojek-Tokopedia merger. Article 1 point 2 of Law Number 5 of 1999 defines monopolistic practices as “the concentration of economic power by one or more business actors which leads to the controlling of the production and/or marketing of certain goods and services...”. Moreover, Article 1 point 10 of Law Number 5 of 1999 defines “relevant market” as a market related to a certain marketing range or area with similar or substitute goods and services. The phrase “similar or substitute goods and services”, however, needs to be further explored to determine the similarity in the market relevance of Gojek-Tokopedia.

This is achievable through direct examination of consumer behavior and not on the participation of business actors in certain organizations or associations such as the Indonesian Chamber of Commerce (KADIN) or IDEA (Indonesian E-Commerce Association). This means attention needs to be placed on consumer trends in determining the “relevant market” (Koehler, 1998, p. 521). For example, the rise in the price or expensiveness of a certain product in the Tokopedia marketplace requires analyzing the consumer behavior in other marketplaces other than Tokopedia such that when consumers “head” towards Gojek for the same product it means they are both in “relevant market”. However, when consumers do not “run” to Gojek it means they are not in the same market.

Another important concept is the which is related to the direct behavior of the consumer is the “substituted products” (Werden, 2012, p. 729). Is Gojek a “substitute” for Tokopedia? Business Competition Supervisory Commission (KPPU) Regulation No. 3 of 2009 defines substitute products as the products with the same character and function regardless of technical specifications, brands, and packaging styles. It was discovered that when most consumers find one product to be too expensive on Tokopedia, they usually switch to buy similar products in other marketplaces such as Shopee, Lazada, Bukalapak at a cheaper price. This, therefore, means all these businesses are in “relevant market” while Gojek and Tokopedia have different markets. Moreover, Gojek is in the same market as online transportation and delivery order companies like Grab and this means consumers usually turn to Grab for cheaper prices when they find the services of Gojek to be more expensive. This shows the merger of Gojek and Tokopedia to form GoTo is not based on concentration as observed from the differences in their markets.

Vertical integration is also not prohibited by Law Number 5 of 1999 as long as it does not cause unfair business competition such as restricting



competitors from conducting business activities in the same relevant market using discriminatory and exclusive behavior (Hanifah Prasetyowati, Paramita Prananingtyas, 2017, h. 10-11). The Gojek-Tokopedia merger does not automatically have an anti-competitive effect on the market nor changes its dominant position which involves restricting the access of the merging companies' competitors in the same market.

Whether a monopoly position is prohibited in Indonesia's business competition law (Pratama et al., 2019, p. 228), then the provisions related to the threshold for assessing market concentration post-merger in Indonesia apply a scoring system using the Herfindahl Hiersmann Index (HHI) (Fuady, 2002, p. 101). HHI used shows the level of concentration of a product in the relevant market, quantified by an index in the form of a number size between 0-10,000 (Wijaya & Yani, 2003).

The closure of access to the relevant market can only be done if one party in the transaction has a dominant position in the relevant market and practices vertical integration (discriminatory and exclusive) against other parties in the transaction (Silalahi, 2018, p. 20). Even though the competition authority considers GoTo to have a dominant position if there is no vertical integration practice (discriminatory and exclusive), Gojek results in closing competitors' access from Gojek and Tokopedia to the relevant market. The merger between Gojek and Tokopedia will not have an anti-competitive effect automatically. Thus, if there are no things that result in the practice of vertical integration (discriminatory and exclusive), then the Merged Company of Gojek and Tokopedia will not harm business competition.

## **2. Does data monopoly lead to anti-competitive behavior?**

In the past, in traditional relationships, companies only produced products to make a profit and obtain simple data (Bintoro, 2010, p. 351). Nevertheless, in the Industrial Revolution era, data has become so valuable that companies such as Facebook, Twitter, or Instagram are willing to provide free services to obtain data.

Almost all digital platform companies use consumer data obtained from the name, email, address, telephone number, and other information inputted during the application process (Aisa, 2016, p. 137-138). It is, however, quite difficult to determine the ethical use of this data by these companies with the majority of information technology-based business actors discovered to be using them to innovate and survive (Wahyuni & Turisno, 2019, p. 385-386). There are legal violations associated with the use of consumer personal data as

indicated by the sale of the information to other companies without the consent of the consumers. An example of this is the allegation that Online Loans provided the data of its customers to debt collectors which subsequently led to unethical and unlawful loan recovery methods (Dewi, 2016, p. 36-37). However, unfortunately that specific regulations to protect electronic personal data are presently being regulated at the ministerial level using only administrative sanctions.

The company's legal activities, such as this merger, are based on considering the integration of property assets and shares. Yet, there is a merger of digital assets such as big data that plays an essential role in making a profit (Aliy & Susilowati, 2019, p. 2). Practically, data monetization is proven to increase product offerings; advertising based on user preferences can help make the best business decisions (Suciati, 2019, p. 146).

Companies use various ways to obtain data, one of which is by companies conducting mergers and acquisitions. In 2017, Verizon acquired Yahoo to explore online advertising ventures. At the acquisition, Verizon had access to all Yahoo user data and activities (Gura, 2021). We are interested that Yahoo's failure to manage data resulted in data leak scandals in 2013 and 2014. The data leak incident affected in decreased Yahoo's bargaining power and resulted in several responsibilities, especially regarding pre and post-merger and acquisition liability. Yahoo agrees to pay compensation to more than 200 million affected users worth 50 USD

Access and control of consumer data play an important role in expanding market power to companies. Ownership of data without the ability to process and utilize data can result in losses for data owners and related companies, such as damage to company image. Asep Irawan (2020) states that the market owned by big data-based companies will significantly benefit the company because of its high bargaining position, both in negotiating cooperation to corporate action (Kurniawan & Yun, 2018, p. 66-67). Companies with a lot of data will provide sales benefits and attract many parties to cooperate, such as advertising, marketing certain products, or collaborating with other parties.

The increase in market power can increase the company's ability to coordinate, either implicitly or explicitly. Mastery of market share is related to the dominant position. Based on the structure conduct and performance (SCP), the percentage of the market share becomes a reference in determining the dominant position of a company. Merged companies will strengthen their dominant position, opportunities to abuse their dominant position will

automatically form after the merger. The American Bar Association divides the impact of merging horizontal mergers into two types (Association, 2005).

**Table 1.**

**The Impact of Merging Horizontal**

No	Effect Types	Result
1	Unilateral Effect	Creating a single business actor who has power over the market and can prevent new business actors from entering the market
2	Multilateral Effect	Make it easier for business actors in the market to coordinate the behavior of business actors to reduce competition in price, quality, and quantity. The impact of this coordination often occurs in industries that have particular characteristics, namely the same product.

*Source: American Bar Association, 2005*

In enforcing the law on business competition, we can analyze that access to significant data impacts exclusionary conduct or a form of behavior that inhibits competitors. Exclusive conduct is explicitly discussed in section 2 of the Sherman Act, which is defined as behavior to create or maintain a monopoly position by damaging competition and harming competitors. Single-Firm Conduct under section 2 of the Sherman Act: Chapter 1 (Justice, 2015) mentioning that competitive behavior and exclusionary conduct can be considered the same because both behaviors have beneficial and exclusionary effects. It is hard to distinguish between behavior that violates and does not violate competition law. That is why the court or law enforcement is said to require precise handling from the side of under deterrence and overdeterrence.

Stimulus Exclusionary Conduct will make it easier for companies to enter into exclusive agreements (Anggraeny & Al-Fatih, 2020, p. 57) with third parties for data analysis and obtain economic value data (Popofsky, 2005, p. 435). Therefore, the company will create barriers in the market by making it difficult for its customers to use competitors' platforms. The increasing market demand due to technology and big data is only the first step as a determinant of future business strategy (Sokol & Ma, 2017, p. 43). The technical fact is that service providers do not have the burden of paying license fees and are not regulated by law, which will result in an uneven playing field in business competition. The next problem is whether the condition of exclusive licenses can cause artificial or natural barriers to entry? We cannot avoid that mergers

on online/digital platforms can directly impact the formation of natural monopolies, which result in barriers to market entry that are difficult to detect.

We can note that Microsoft's acquisition of LinkedIn in 2016 has made Microsoft successful in processing personal data of LinkedIn users to increase the productivity of Microsoft products because Microsoft gives users a choice "can the LinkedIn user data be partitioned to Microsoft?". This decision provides convenience for users so that many LinkedIn users initially want to switch platforms but continue to use LinkedIn (Kumar, 2018, p. 235-241).

Facebook's acquisition of Whatsapp in 2014 also succeeded in accessing and utilizing all personal data of WhatsApp users for business purposes. On the other hand, many merged companies fail to integrate data, resulting in companies' business failures and losses. We can notice that Verizon acquired Yahoo, which is known to have suffered data leaks twice. Yahoo, which will be sold expensively, but in the end, Yahoo had to agree with Verizon's offer with a discount of up to 350 USD in 2017 (Doyle, 2015, p. 55-56). The cancellation of Facebook's plan to acquire Tiktok in 2016 because of Tiktok's application base in China and Tiktok's activities potentially against the law in the United States, such as many users are considered immature, and the data can not be partitioned (Ahmad & Setiawan, 2009, p. 336).

To prevent privacy protection failures in post-merger data integration, we recommend at least the following references: first, risk prevention. Companies need to assess data sharing that may be carried out as part of a risk assessment. Companies must determine what data will be transferred and identify the purpose of data sharing. Second, the rights of data subjects. The company needs to provide notification to the data subject regarding the Merger and Acquisition (M&A) given the data subject's right to refuse and guarantee that every M&A process will not violate the right to privacy of the customer's data.

#### **D. CONCLUSIONS**

This marketplace market has many choices and many players, so that there is no need to worry about a merger or acquisition excessively from a business competition perspective. In international practice, a transaction in the digital market generally involves a multi-sided market so that the controlled market is quite diverse and requires a complex network effect analysis. In addition, To prevent privacy protection failures in post-merger data integration, we recommend at least the following references: first, risk prevention. Companies need to assess data sharing that may be carried out as part of a risk

assessment. Companies must determine what data will be transferred and identify the purpose of data sharing. Second, the rights of data subjects. The company needs to provide notification to the data subject regarding the Merger and Acquisition (M&A) given the data subject's right to refuse and guarantee that every M&A process will not violate the right to privacy of the customer's data.

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