CORPORATE POWER QUICK TAKE

AMERICAN ECONOMIC LIBERTIES PROJECT

To Save Jobs and Slow Inequality, Stop the Merger Frenzy

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January 2022

Corporations are enjoying what industry observers have called a "once-in-a-generation opportunity to make acquisitions and consolidate power." The results are having a profound impact on American workers and fueling a broad range of short- and long-term economic challenges.

The creation and preservation of good jobs, the revitalization of small and independent business, and the promotion of competitive markets are essential to a healthy, resilient, and just economy. However, COVID-19 and policymakers' response to it have instead facilitated a rapid economic restructuring that is exacerbating already extreme levels of corporate concentration across the economy through a massive increase in mergers.

Policymakers must move quickly to put the brakes on corporate consolidation or risk jeopardizing short- and longer-term efforts to strengthen the American economy. Most immediately, rampant consolidation promises to deliver mass layoffs and further drive down wages in communities around the country if policymakers are unable to adequately intervene.

The merger wave also endangers many Biden administration objectives, from addressing economic inequality and insecurity to strengthening supply chain resiliency, rebalancing bargaining power between labor and employers, and promoting business dynamism and innovation.

A RECORD-BREAKING PACE OF MERGERS AND ACQUISITIONS

Ballooning stock prices have driven up company valuations, resulting in more companies willing to sell at today's high prices. Corporate buyers, armed with their own high valuations, are on the hunt. Incentivized by cheap capital and huge cash reserves, dealmakers have created an unprecedented merger wave, pushing already overtaxed antitrust enforcement capacity to its limit.

U.S. corporations and their financiers have reaped the benefits. Merger activity reached an all-time high of $5.8 trillion in 2021, with private equity spending more than $1 trillion on deals over the course of the year—up 110 percent compared to 2020.[1] Banks announced a larger total deal value in mergers and acquisitions in the first half of 2021 than in all of 2020.[2]

In scale and scope, the current tidal wave of mergers and buyouts is bigger than ever before. Composed of a record number of $5 billion-plus "megadeals," the onslaught is raging through nearly every sector. Mark Sorrell, Goldman Sachs' co-head of global mergers and acquisitions, explained: "Folks across the spectrum, whether that be technology, consumer industries, healthcare, all came out and said, 'I'm going to make moves now.'"[3] The evidence concurs, showing more major cross-sector mergers and more acquisition interest in markets that don't typically see significant M&A activity.[4] There is no evidence that this deal flow is primarily comprised of failing-firm acquisitions.

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The record-breaking merger boom is even overwhelming the banks facilitating them. Last spring, Goldman Sachs analysts described "inhuman" 100-hour work weeks brought on as the result of the deal frenzy.[5] Corporations are taking seriously the words of Instituto de Estudios Superiores de la Empresa (IESE) professor of finance Nuno Fernandes, who in a

1 Nicket Nishant, "Global M&A Volumes Hit Record High in 2021, Breach $5 Trillion for First Time," Reuters, Dec. 31, 2021, https://www.reuters.com/markets/us/global-ma-volumes-hit-record-high-2021-breach-5-trillion-first-time-2021-12-31/; Lina Saigol, "Global Deal Making Hits Record High at $5.8 trillion," Barrons, Dec. 31, 2021, https://www.barrons.com/articles/global-deal-making-record-high-2021-51640960224

2 Id., Benjamin Robertson and Beata Wijeratne, "Private Equity Is Smashing Records with Multi-Billion M&A Deals," Bloomberg, Sept. 17, 2021, https://www.bloomberg.com/news/articles/2021-09-17/private-equity-is-smashing-records-with-multi-billion-m-a-deals?sref=q0qR8k34; Jennifer Surane and Max Reyes, "Banking Merger Frenzy May Meet Early End After Biden Order," Bloomberg, Jul. 9, 2021, https://www.bloomberg.com/news/articles/2021-07-09/banking-merger-frenzy-may-meet-an-early-end-after-biden-order

3 "Big, Bold, Strategic Moves: The 2021 M&A Outlook." Exchanges at Goldman Sachs, Feb. 16, 2021. https://www.goldmansachs.com/insights/podcasts/episodes/02-16-2021-stephan-feldgoise-mark-sorrell.html

4 Billion-dollar deals are leading the M&A wave (see Kevin Dowd, "A Perfect Storm": Record-Breaking M&A, A SPAC Slowdown, Antitrust Action, Media Mega-Mergers And More From A Frantic First Half Of Deals In 2021," Forbes, Jul. 14, 2021, https://www.forbes.com/sites/kevindowd/2021/07/04/a-perfect-storm-record-breaking-ma-a-spac-slowdown-antitrust-action-media-mega-mergers-and-more-from-a-frantic-first-half-of-deals-in-2021/?sh=4d250cb61dc5) "Not-quite-megadeals" are being announced a similar pace; the first five months of 2021 saw more than 200 deals worth between $1 billion and $5 billion (see PwC, "Deals Industry Insights," https://www.pwc.com/us/en/services/deals/industry-insights.html; Forbes).

5 Kalyeena Makortoff, "Goldman Sachs Raises Pay For Junior Bankers After 100-Hour Week Complaints," The Guardian, Aug. 2, 2021, https://www.theguardian.com/business/2021/aug/02/goldman-sachs-raises-pay-for-junior-bankers-after-100-hour-week-complaints

February 2021 *Harvard Business Review* article proclaimed, "Well-capitalized companies will soon face a once-in-a-generation opportunity to make acquisitions and consolidate power."[6] And without aggressive action by policymakers, the trend doesn't look to be temporary. Berthold Fuerst, global co-chief of Deutsche Bank's M&A division, declared this October that the party is just getting started. "I see current activity as the beginning of a multi-year upward cycle in M&A," he said, forecasting "elevated activity for years to come."[7]

The Federal Trade Commission (FTC) confirmed these accounts, with FTC Chair Lina Khan ringing the alarm bell over the consequences of the breakneck pace of merger activity in testimony before a House Commerce Subcommittee hearing on July 28. "Through the first three quarters of this fiscal year, antitrust agencies have processed over 2,400 merger filings—a level of activity that is already the highest in two decades," she said, concluding, "I am deeply concerned that the current merger boom will further exacerbate deep asymmetries of power across our economy, further enabling abuses."[8]

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>
> — FTC CHAIR LINA KHAN

RUNAWAY MERGERS ARE A CRISIS FOR WORKING PEOPLE

Simply put, mergers do not benefit workers. Mergers have many consequences for workers, the most immediate of which are layoffs. In October 2020, Goldman's John Waldron admitted in a speech that the merger wave would have dire consequences for American workers: "Politicians are going to be faced with the uncomfortable reality that you're going to have more big business doing better and that there's going to be more losses of jobs along the way."[9]

6 Nuno Fernandes, "How to Capitalize on the Coming M&A Wave," Harvard Business Review, February 2021, https://hbr.org/2021/02/how-to-capitalize-on-the-coming-ma-wave

7 Jan-Henrik Foerster and Myriam Balezou, "Global M&A Boom to Last for Years, Says Deutsche Dealmaker," Bloomberg, Oct. 4, 2021, https://www.bloomberg.com/news/articles/2021-10-04/global-m-a-boom-to-last-for-years-says-top-deutsche-dealmaker?sref=q0qR8k34

8 Oral Remarks of Chair Lina M. Khan Before the United States Subcommittee on Consumer Protection and Commerce of the Committee on Energy and Commerce Hearing on Transforming the FTC: Legislation to Modernize Consumer Protection, Federal Trade Commission, Jul. 28, 2021, https://www.ftc.gov/system/files/documents/public_statements/1592966/oral_remarks_of_chair_lina_khan_on_hearing_re_transforming_the_ftc_legislation_to_modernize_consumer.pdf

9 "Goldman Warns of More Job Losses with Jumbo Mergers on the Rise," Bloomberg, Oct. 2020. https://www.bloomberg.com/news/articles/2020-10-16/goldman-warns-of-more-job-losses-with-jumbo-mergers-on-the-rise

Although no centralized data exists on merger-induced layoffs, anecdotal data is plentiful. TD Ameritrade's acquisition of Scottrade Financial Services saw more than 1,100 jobs cut in its Missouri headquarters since 2018, while TD's merger with Charles Schwab has terminated another 1,250 since October 2020.[10] In 2021, a defense contractor in Idaho, Perspecta, fired all 302 of its employees after a merger—just months after finishing construction of a $5 million office complex outside Boise.[11] Drug company Viatris, the product of a 2019 Pfizer-Mylan merger, announced plans to cut 9,000 jobs worldwide after the deal, while health insurer Centene announced cuts of 3,000 after two major acquisitions in late 2020.[12] Around the same time, a bank mega-merger between BB&T and Suntrust saw 1,300 jobs lost; the deal made SunTrust CEO William Rodgers Sr. eligible for a $30 million golden parachute payout.[13]

> "Politicians are going to be faced with the uncomfortable reality that you're going to have more big business doing better and that there's going to be more losses of jobs along the way."
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> — GOLDMAN SACHS' PRESIDENT AND COO JOHN WALDRON

While executives can walk away from mergers with enormous paydays, the long-term effects of layoffs are borne by workers years down the road. Evidence shows that workers whose jobs are eliminated frequently struggle with underemployment for years after the initial job loss and even those who find new jobs may be paid less and receive poorer benefits. Laid-off workers may be forced to move into lower-wage sectors entirely.[14] These devastating trends are omitted from the one-dimensional standpoint of unemployment rates, even as they rise from their initial pandemic lows.

10 Brian Feldt, "Scottrade layoffs climb to over 1,000," St. Louis Post-Dispatch, Mar. 22, 2018, https://www.stltoday.com/business/local/scottrade-layoffs-climb-to-over/article_6dc4f951-b4ae-53b1-8066-63e4b9436222.html; Ian Wenik, "Schwab Tips More Layoffs as TD Integration Continues," Citywire, Jun. 8, 2021, https://citywireusa.com/registered-investment-advisor/news/schwab-tips-more-layoffs-as-td-integration-continues/a1516986

11 Don Day, "Company Built 'Landmark' Meridian Building For 100s Of Employees. Now It's Laying Them Off And A New Co. Will Take Over," BoiseDev, May 18, 2021, https://boisedev.com/news/2021/05/14/perspecta-meridian-layoffs/

12 https://www.biopharmadive.com/news/viatris-restructuring-layoffs-west-virginia/592054/; Bethan Moorcraft, "Centene Corp to Slash 3,000 Jobs," Insurance Business Magazine, Feb. 9, 2021, https://www.insurancebusinessmag.com/us/news/breaking-news/centene-corp-to-slash-3000-jobs-246024.aspx

13 Austin Weinstein, "Truist Cuts 800 Jobs. More Cutbacks Expected in BB&T, Suntrust Merger," The Charlotte Observer, April 20, 2020, https://www.charlotteobserver.com/news/business/banking/article242131711.html; Richard Craver, "BB&T, Suntrust Merger Is The Biggest Banking Deal Since The Great Recession," Greensboro News & Record, Jul. 29, 2019, https://greensboro.com/business/bb-t-suntrust-merger-is-the-biggest-banking-deal-since-the-great-recession-shareholder-meetings/article_8e72178c-cc19-5c9a-a7c8-cb2131968e32.html

14 Benjamin G. Hyman, "Can Displaced Labor Be Retrained? Evidence from Quasi-Random Assignment to Trade Adjustment Assistance," University of Chicago, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3155386

ANTITRUST UNDER THE CONSUMER WELFARE STANDARD: LAYOFFS ARE GOOD, ACTUALLY

Traditionally, the bipartisan business-friendly approach to antitrust enforcement has employed the consumer welfare standard to interpret layoffs the same way corporations do: as a useful efficiency that contributes to lower consumer prices, despite a slate of evidence to the contrary.[15] (Recent research suggests that mergers in industries that result in six or fewer significant competitors see price hikes in 95 percent of cases.)[16] Antitrust enforcers in the past have ignored the destructive effects of mergers on jobs. Today, that's changing. The Biden administration has been clear about making labor and market competition a priority, releasing an executive order on the topic and appointing strong antitrust enforcers like Lina Khan and Jonathan Kanter to top posts at the FTC and Department of Justice (DOJ). Khan and Kanter represent a welcome defense of labor—Khan has made wage-fixing, employee classification, and protecting workers' right to organize a priority at the FTC, while Kanter has vowed to implement a strong antitrust enforcement program at the DOJ to protect workers from the anticompetitive abuses that result from corporate consolidation.[17] "Dominant companies have the ability to exploit their monopoly power to the detriment of Americans in so many different ways," he said in testimony before the Senate Judiciary Committee. "The critical mission of the antitrust laws is to protect competition for people in the workplace to ensure that thriving competitive markets leads to adequate compensation."[18]

The market-scale effect of mergers also has compounding effects on workers' earning ability and job security. Mergers eviscerate competition, increasing dominant firms' market power and leading to depressed worker wages—even as consumer costs and shareholder profits rise, further increasing income inequality.[19] The more consolidated the industry,

15 John E. Kwoka, "The Structural Presumption and The Safe Harbor In Merger Review: False Positives or Unwarranted Concerns?," Antitrust Law Journal 81, no. 3 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782152

16 John E. Kwoka, "U.S. Antitrust And Competition Policy Amid the New Merger Wave," Washington Center for Equitable Growth, Jul. 2017, https://equitablegrowth.org/research-paper/u-s-merger-policy-amid-the-new-merger-wave/

17 Press Release, "Federal Trade Commission and Justice Department Issue Joint Statement Announcing They are on Alert for Collusion in U.S. Labor Markets," Federal Trade Commission, Apr. 13 2020 https://www.ftc.gov/news-events/press-releases/2020/04/federal-trade-commission-justice-department-issue-joint-statement

18 David McLaughlin, "Biden Antitrust Nominee Vows Enforcement to Benefit Workers," Bloomberg, Oct. 6, 2021 https://www.bloomberg.com/news/articles/2021-10-06/biden-antitrust-nominee-vows-enforcement-to-benefit-workers?sref=q0qR8k34

19 Gauti B. Eggertsson et al., "Kaldor and Piketty's Facts: The Rise of Monopoly Power in the United States," National Bureau of Economic Research, Working Paper No. 24 (2018): 40-287, http://www.nber.org/papers/w24287; Lawrence Mishel and Josh Bivens, "Identifying the Policy Levers Generating Wage Suppression and Wage Inequality," Economic Policy Institute, May 13, 2021, https://files.epi.org/uploads/215903.pdf

the smaller the share of profits that workers receive.[20] For workers, fewer competitors mean fewer potential employers. Concentration even poses a threat to workers' future job prospects, since dominant corporations may collude to depress wages industry-wide and employ anticompetitive practices such as noncompete agreements to prevent workers from finding new employers or starting their own businesses.[21]

The more consolidated the industry, the smaller the share of profits that workers receive.

When it comes to mergers, this much is clear: workers, even those that keep their jobs, are worse off—but executives, their bankers, and shareholders certainly aren't. CEOs are awarded eye-popping payments for selling their firms.[22] In 2018, AT&T's $85 billion takeover of Time Warner netted the latter's CEO, Jeff Bewkes, a $97.7 million payday—and even massive Trump-era tax cuts didn't prevent the company from firing 45,000 workers in the years since.[23]

THE SYSTEMIC CONSEQUENCES OF CORPORATE CONSOLIDATION ON AMERICAN JOBS

Further industry consolidation will have serious implications not only on short-term job preservation, but also on a broad range of systemic economic challenges. In August 2020, the American Economic Liberties Project published *A Ledger of Harms*, which summarizes a growing body of research documenting how concentrated power leads to unequal and abusive outcomes, ranging from depressed wages to supply chain fragilities to racial inequity.[24]

In May 2021, the U.S. auto industry alone lost 27,000 jobs as computer chip shortages forced manufacturing plant closures and production halts.

20 Simcha Barkai, " Declining Labor and Capital Shares," Journal of Finance 75, no. 5 (October 2020), https://research.chicagobooth.edu/~/media/5872FBEB104245909B8F0AE8A84486C9.pdf

21 Josh Bivens et. al, "It's Not Just Monopoly and Monopsony: How Market Power Has Affected American Wages," Economic Policy Institute, Apr. 2018, https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/

22 Matt Stoller and Sarah Miller, "No More Payoffs for Layoffs," Opinion, Buzzfeed, May 3, 2019, https://www.buzzfeednews.com/article/mattstoller1/no-more-payoffs-for-layoffs

23 Chris Isidore, "Top Time Warner Executives Set for $180 Million Payout," CNN, Jun. 13, 2018 https://money.cnn.com/2018/06/13/media/time-warner-exit-package/index.html; Jon Brodkin, "AT&T to Spin Off Warnermedia, Basically Admitting Giant Merger Was a Mistake," ARS Technica, May 17, 2021, https://arstechnica.com/tech-policy/2021/05/att-to-spin-off-warnermedia-will-try-to-act-like-a-telecom-company-again/

24 "Confronting America's Concentration Crisis: A Ledger of Harms and Framework for Advancing Economic Liberty for All," American Economic Liberties Project, Jul. 2020, https://www.economicliberties.us/wp-content/uploads/2020/08/Ledger-of-Harms-R41.pdf

Corporate concentration can also exacerbate shortages, which have become more evident across the economy during the recovery. The stripping of slack from global supply chains in search of profit maximization has enabled historic disruptions across the economy, which have cost workers thousands of jobs as companies pare back production. In May 2021, the U.S. auto industry alone lost 27,000 jobs as computer chip shortages forced manufacturing plant closures and production halts.[25] Since consolidating firms often seek to cut spending in their capital investments, supply chains, and input purchases, mergers can negatively impact employment even outside the merging corporations' industries.[26] Ultimately, economists estimate that the wide-ranging effects of market concentration have reduced employment today by nearly 13 percent and artificially suppressed wages by an average of more than $10,000.[27]

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HOW DID WE GET HERE? LEARNING FROM THE FAILINGS OF THE CARES ACT

The economic stimulus efforts undertaken under the Trump administration in response to the COVID-19 pandemic, particularly the CARES Act, helped unleash today's unprecedented merger wave. In an April 2020 interview with *The American Prospect*, Sarah Bloom Raskin, former Deputy Secretary of the Treasury and member of the Federal Reserve Board of Governors, summed up the long-term consequences of the Trump administration's approach to administering relief, in which the bulk of the aid supported Wall Street and large corporations. She explained, "We are in the midst of a massive restructuring of the economy. It might be hard to see because of the pandemic, but the actions taken by the Federal Reserve and by Congress in the CARES Act will have profound consequences for the economic landscape—both in terms of economic concentration and inequality. "[28] The Biden Administration is now considering appointing Bloom Raskin as a top banking regulator at the Federal Reserve.[29]

25 David Shepardson, "Auto Sector Urges U.S. Congress To Help Fund Its Computer Chip Needs," Reuters, May 7, 2021, https://www.reuters.com/technology/us-lawmakers-should-prioritize-automotive-chips-needs-industry-2021-05-07/

26 Paul Beamish and Kevin Boeh, Mergers and Acquisitions: Text and Cases, India: SAGE Publications, 2007, 273

27 Suresh Naidu et. al, "Antitrust Remedies for Labor Market Power," Harvard Law Review, Dec. 2018, https://harvardlawreview.org/2018/12/antitrust-remedies-for-labor-market-power/

HOW POLICYMAKERS AND ENFORCERS CAN ADDRESS POST-PANDEMIC CONSOLIDATION

Accelerating economic consolidation and the harms it poses to American workers require immediate attention from policymakers and antitrust enforcers. The Biden administration has already taken important steps to address corporate power, mandating in its Executive Order on Promoting Competition in the American Economy that every federal agency take on the problem of corporate concentration. FTC Chair Lina Khan announced that reviewing mergers, both consummated and proposed, will be one of the agency's key enforcement priorities.[30] Within the first month, the agency walked the walk, voting to rescind a 1995 policy statement limiting its ability to deter problematic mergers and reinstating a practice in which it may seek to offer consent decrees with the requirement that companies that had attempted any unlawful merger or acquisition to gain prior approval from the Agency before pursuing a similar deal.[31] Anecdotally, Chair Khan's early moves have helped to dissuade some number of corporations from attempting to make an acquisition they'd previously intended to pursue.

> **Anecdotally, Chair Khan's early moves have helped to dissuade some number of corporations from attempting to make an acquisition they'd previously intended to pursue.**

Assistant Attorney General Jonathan Kanter, though only confirmed in November 2021, is making a strong impression in his first few months at the agency. Soon after his confirmation, the Department of Justice filed an important new suit to stop United States Sugar Corporation from acquiring Imperial Sugar Company.[32] In December 2021, Kanter and Khan launched the EU-U.S. Joint Technology Competition Policy Dialogue with Executive Vice President Margrethe Vestager of the European Commission to ensure strong antitrust enforcement and cooperation across borders.[33] He has also called for additional public comments to help inform bank merger guidelines and banking

28 Robert Kuttner, "The Bailout, the Fed, and the Aftermath," The American Prospect, Apr. 21, 2020, https://prospect.org/economy/the-bailout-the-fed-and-the-aftermath/

29 Rachel Siegel, "White House Closes in on Three Remaining Fed Nominations," The Washington Post, Jan. 4, 2022, https://www.washingtonpost.com/business/2022/01/05/fed-biden-nominees-raskin-cook-jefferson/

30 Memo from Chair Lina M. Khan to Commission Staff and Commissioners Regarding the Vision and Priorities for the FTC, Federal Trade Commission, Sept. 22, 2021, https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf

31 Press Release, "FTC Rescinds 1995 Policy Statement that Limited the Agency's Ability to Deter Problematic Mergers," Federal Trade Commission, Jul. 21, 2021, https://www.ftc.gov/news-events/press-releases/2021/07/ftc-rescinds-1995-policy-statement-limited-agencys-ability-deter

32 Press Release, "Justice Department Sues to Block U.S. Sugar's Proposed Acquisition of Imperial Sugar," U.S. Department of Justice, November 23, 2021, https://www.justice.gov/opa/pr/justice-department-sues-block-us-sugar-s-proposed-acquisition-imperial-sugar

33 Press Release, Justice Department, Federal Trade Commission and the European Commission Issue Joint Statement Following the Inaugural EU-U.S. Joint Technology Competition Policy Dialogue, Dept. of Justice, Dec. 7, 2021, https://www.justice.gov/opa/pr/justice-department-federal-trade-commission-and-european-commission-issue-joint-statement

regulation—a joint effort with antimonopoly champion and Consumer Financial Protection Bureau Director, Rohit Chopra.[34]

Moving forward, the Biden administration must continue to commit to using the full administrative authorities of the federal government to reverse corporate consolidation and protect American workers from its destructive effects.

Congress must also take action to address and prevent torrential post-pandemic corporate consolidation. Below are a number of additional options for mitigating the heightened deal flow and beginning to support the redistribution of power to promote fair and competitive markets over the longer term, including important legislative reforms.

- **Congress should include prohibitions against mergers and acquisitions in proposed infrastructure legislation or as a stand-alone legislative priority.** The Biden administration's infrastructure or government funding bills injected large sums of money into the economy, but without stronger merger laws, dominant corporations and private equity firms will likely leverage those funds to gain even more opportunities to engage in acquisitions and predatory roll-ups. A temporary prohibition on mergers, such as the proposed Pandemic Anti-Monopoly Act of 2020, which block deals that involve companies with over $100 million in revenue and financial institutions with a market cap over $100 million, could serve as a stopgap. A more limited approach might require recipients of government contracts to agree on a moratorium on mergers and acquisitions.[35]

  Other legislative approaches could include:

  - Make mega-mergers, or mergers where merging firms are of a certain size or market share, unlawful.
  - For mergers where the resulting corporation will be in a market with fewer than five significant competitors, shift the burden to merging parties to prove their transaction will not harm competition. Similarly, for mergers valued over $1 billion, shift the burden to merging parties to prove their transaction will not harm competition.
  - Prohibit serial acquisitions, which a corporation or private equity fund buys multiple firms in an industry in a short amount of time.

34 Press Release, Antitrust Division Seeks Additional Public Comments on Bank Merger Competitive Analysis, Dept. of Justice, Dec. 17, 2021, https://www.justice.gov/opa/pr/antitrust-division-seeks-additional-public-comments-bank-merger-competitive-analysis

35 Pandemic Anti-Monopoly Act, H.R. 6989, 116th Congress (2020), https://www.warren.senate.gov/imo/media/doc/Merger%20Moratorium%20One%20Pager.pdf

- Require that merging firms with an annual revenue above the HSR threshold be bound to clear, long-term commitments regarding pricing, employment, pay, and other competitive benefits. If firms fail to meet their obligations, the transactions should be automatically unwound.

- Increase merger transparency and reporting requirements for private and public companies. Require the FTC and DOJ to publish monthly data on HSR filings by industry, with a statement about the competition assessment for all mergers valued over $1 billion.

- Prohibit "payoffs for layoffs," in which executives earn enormous bonuses when they sell firms, incentivizing both consolidation and reductions in headcount, to dampen merger activity.[36]

- Grant the Department of Defense the authority to block mergers that impact the defense industrial base.

- **The enforcement agencies can continue to signal to market participants that they shouldn't expect business as usual.** In addition to maintaining the uptick of second requests, enforcement agencies should block mergers and initiate investigations with the goal of bringing additional cases against dominant corporations in highly concentrated industries. The FTC could automatically make a second request for every merger reportable under the Hart-Scott-Rodino Act.[37] Automatically making a second request implicitly acknowledges the anticompetitive nature of large mergers, while giving the agency more time to request information from the parties and evaluate the transaction.[38] In addition, the suspension of early terminations should be made permanent. The Federal Reserve should act to stem the pace of bank M&As, which are on track to hit their highest level since the 2008 financial crisis.[39] The Fed has rubber-stamped a record number of bank mergers in recent years, and hasn't blocked one since 2003.[40]

- **The enforcement agencies should end the use of settlements and divestments for merger transactions.** Studies show settlements in concentrated industries are

36 Stoller and Miller, "No More Payoffs for Layoffs"

37 The number of second requests made has decreased significantly in recent years. See "The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New, Structuralist Approach," American Economic Liberties Project, Jan. 2021, at 177, https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn_12.12.pdf

38 "HSR Early Termination After a Second Request Issues," Federal Trade Commission, Mar. 12, 2021, https://www.ftc.gov/news-events/blogs/competition-matters/2021/03/hsr-early-termination-after-second-request-issues

39 Orla McCaffrey, "Bank Mergers Are On Track to Hit Their Highest Level Since the Financial Crisis," The Wall Street Journal, Sept. 28, 2021 https://www.wsj.com/articles/bank-mergers-are-on-track-to-hit-their-highest-level-since-the-financial-crisis-11632793461

40 Jeremy C. Kress, "Modernizing Bank Merger Review," Yale Journal on Regulation 37, 2020, https://digitalcommons.law.yale.edu/yjreg/vol37/iss2/2/

ineffective and negotiating settlements is a waste of resources.[41] The FTC should litigate to block mergers in concentrated industries and curtail the practice of negotiating settlements to facilitate mergers.

A more comprehensive set of immediate and long-term policy actions can be found in Economic Liberties' recent report, *Democratizing Markets: How the Biden Administration Can Advance an Antitrust and Competition Policy Agenda for Working People, Independent Businesses and Resilient Communities.* [42]

41 John E. Kwoka, "Mergers, Merger Control, and Remedies: A Response to the FTC Critique" Northeastern University Department of Economics, Mar. 31, 2017, https://ssrn.com/abstract=2947814 or http://dx.doi.org/10.2139/ssrn.2947814

42 Democratizing Markets: How the Biden Administration Can Advance an Antitrust and Competition Policy Agenda for Working People, Independent Businesses and Resilient Communities," American Economic Liberties Project, Feb. 8, 2021, https://www.economicliberties.us/our-work/democratizing-markets-how-the-biden-administration-can-advance-an-antitrust-and-competition-policy-agenda-for-working-people-independent-businesses-and-resilient-communities/#

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The American Economic Liberties Project is a non-profit and non-partisan organization fighting against concentrated corporate power to secure economic liberty for all. We do not accept funding from corporations. Contributions from foundations and individuals pay for the work we do.

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