AMERICAN ECONOMIC LIBERTIES PROJECT

The Roll-Up Economy: The Business of Consolidating Industries with Serial Acquisitions

December 2022

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WORKING PAPER SERIES ON CORPORATE POWER #10

AMERICAN ECONOMIC LIBERTIES PROJECT
economicliberties.us

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INTRODUCTION

In June 2022, the Federal Trade Commission (FTC) took two separate actions against JAB Consumer Partners – a Luxembourg based private equity fund — partially blocking their acquisition of specialty and emergency veterinary clinics. The FTC is requiring JAB to divest themselves from clinics in four geographic regions in the United States and is imposing a requirement that JAB pre-notify the FTC of any future acquisitions in the industry.[1] This was a rare action by the FTC against an investor, rather than a company, and comes after two decades of aggressive consolidation of the veterinary industry by private equity.

JAB is the latest owner of one of the world's largest veterinary consolidators, National Veterinary Associates ("NVA"). NVA was founded by veterinarian Stanley Creighton in 1997 when he saw an opportunity to transition veterinary practices, normally independently run businesses, to corporate ownership. By 2007, NVA had grown to 96 clinics and received a $128M investment from private equity firm Summit Partners[2] to accelerate the company's acquisition strategy. Summit became the first of many cycles of private equity ownership of NVA over the next decade. In 2014, when Ares Management and OMERS acquired NVA from Creighton and Summit, it had grown to 240 clinics[3], which then tripled to 740 clinics by the time Ares and OMERS exited their investments by selling to JAB in 2019. This growth has accelerated even further under JAB, and in less than 3 years of ownership, NVA has grown to own over 1,400 clinics and pet resorts globally.[4]

NVA's growth has been achieved almost entirely through acquisitions, the vast majority of which were small enough to fall under the radar of regulators. As a result, there has been a structural shift in the veterinary market away from individual ownership to corporate ownership, and the industry has consolidated without any intervention by antitrust authorities. In a way, the FTC's recent action against JAB comes nearly too late. JAB has already consolidated a large share of veterinary clinics in the US and is positioned to be the sole provider in some regions—giving it the power to potentially hike prices in areas where no competition exists.

1 Federal Trade Commission Press Release, "FTC Takes Second Action Against JAB Consumer Partners to Protect Pet Owners from Private Equity Firm's Rollup of Veterinary Services Clinics," June 29, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-second-action-against-jab-consumer-partners-protect-pet-owners-private-equity-firms-rollup-of-veterinary-services-clinics

2 DVM 360, "NVA gets $128 million from investment firm, plans more acquisitions," May 1, 2007, https://www.dvm360.com/view/nva-gets-128-million-investment-firm-plans-more-acquisitions

3 Business Wire, "Ares Management Private Equity Fund to Acquire National Veterinary Associates," July 17, 2014, https://www.businesswire.com/news/home/20140717006365/en/Ares-Management-Private-Equity-Fund-to-Acquire-National-Veterinary-Associates

4 National Veterinary Associates, "Our Story," https://www.nva.com/our-story

While large mergers in concentrated industries make national news and do present a serious problem, this ignores a potentially more concerning and pervasive trend that JAB and NVA exemplify: the intentional consolidation of fragmented industries through small acquisitions. This business strategy has become prolific in the private equity (PE) industry, as firms like JAB have increasingly pursued “add-on” acquisitions, or “roll-ups.” These occur when private equity firms use one of their portfolio companies to make a series of small acquisitions, rather than investing in many smaller companies directly and keeping them operationally separate. This helps the private equity firm build a larger company that it can eventually re-sell at a higher price, often because of newly acquired market power. Over 70% of private equity deals in the US are this kind of “add-on” acquisition,[5] as consolidation has become an attractive way to generate returns for PE funds and their institutional investors, like pension funds and sovereign wealth funds.

However, PE firms are not alone in pursuing this strategy. Even startups and publicly traded companies have sought to acquire a dominant position in an industry through a chain of small acquisitions. Serial acquisitions are now endemic to American commerce. Whether it is hospital beds, magic mushrooms, youth addiction treatment centers, mobile home parks, nursing homes, physicians’ practices, local newspapers, or e-commerce sellers — many local businesses normally thought of as independent are being swept up in serial acquisition sprees. Despite occasional benefits to consumers and small businesses, these acquisitions are most often a strategy to erect competitive moats, use pricing and bargaining power against consumers and suppliers, and generate high profit margins for investors.

Despite their expanding prevalence in many industries, serial acquirers fly under the regulatory radar into an antitrust twilight zone. Because merger filing thresholds under the Hart-Scott-Rodino Act (HSR) only require that companies report transactions to the FTC if they are valued at over $101 million, serial acquirers rolling up industries with many small transactions are never seen or reviewed by antitrust enforcers. To give a sense of the potential scale of the problem, in 2021 there were 21,994 total merger transactions (both public and private) in the United States, yet under 20% – only 4,130 – were reported to the FTC. Similarly, in 2020 there was a total of 16,723 transactions, and only 1,637 – under 10% – were reported.[6]

5 Rebecca Springer, “Q2 PitchBook Analyst Note: Exploring Trends in Add-On Acquisitions,“ PitchBook, April 12, 2021, https://pitchbook.com/news/reports/q2-2020-pitchbook-analyst-note-exploring-trends-in-add-on-acquisitions
And, according to the same source, more than 50% of private equity add-on acquisitions fall below the HSR reporting thresholds, with the median private equity buyout size now around $70 million.

6 Steve Gelsi, “M&A activity cooled in the fourth quarter – but it still topped $1 trillion,” Market Watch, March 9, 2022, https://www.marketwatch.com/story/m-a-activity-cooled-in-the-fourth-quarter-but-it-still-topped-1-trillion-11646850279?mod=search_headline

The FTC noted this problem in a September 2021 report showing that from 2010 to 2019 Alphabet, Amazon, Apple, Microsoft, and Facebook (now Meta) acquired 616 companies in a spree of acquisitions.[7] Only 94 (or about 15%) of those acquisitions were filed with the agency. The remaining acquisitions fell below the HSR thresholds ($92 million at the time of the study) and were therefore conducted without direct antitrust oversight.[8] FTC Commissioner Rebecca Slaughter put it this way: "I think of serial acquisitions as a Pac-Man strategy. Each individual merger viewed independently may not seem to have significant impact. But the collective impact of hundreds of smaller acquisitions, can lead to a monopolistic behavior."

The Head of Antitrust Division at the Department of Justice (DOJ), Jonathan Kanter, has recently stated that private equity roll-ups will be a particular area of focus for the agency: “Sometimes [the motive of a private equity firm is] designed to hollow out or roll-up an industry and essentially cash out. That business model is often very much at odds with the law and very much at odds with the competition we’re trying to protect.”[9] While private equity roll-ups are a central and concerning instance of serial acquisitions, the problem is broader and growing.

Consolidating industries — even at early stages — can have serious negative consequences for stakeholders: increased prices, lower quality products or services, underinvestment, decline in access to business ownership, and harm to workers, to name a few. As the FTC and DOJ review merger guidelines, and the enforcement approach to mergers more generally, special attention should be paid to serial acquisitions and their pervasive but underappreciated effects on the US economy.

More Than Meets the Eye: EssilorLuxottica [Public Company Case Study]

Glasses and sunglasses are expensive for a reason. A consumer can shop for sunglasses at LensCrafters, Pearle Vision, Target, or Sunglass Hut, and pick brands as varied as Oakley, Ray Ban, Armani and Persol. But every purchase increases the revenue stream of only one company: EssilorLuxottica.

It owns each of these stores and brands, along with many more, and controls roughly 70 percent of the sunglass retail market.[10] To get to this level of market share, Luxottica bought up many

8 Ibid.
9 Stefania Palma and James Fontanella-Khan, “Crackdown on buyout deals coming, warns top US antitrust enforcer,” Financial Times, May 18, 2022, https://www.ft.com/content/7f4cc882-1444-4ea3-8a31-c382364aace1.
10 Cecilia Fernandez, Sunglasses Stores, Ibis World Report, February 2021, https://my.ibisworld.com/us/en/industry-specialized/od4229/major-companies.

small retailers before paying $8.5 billion to acquire GrandVision in 2021. This mega-acquisition gave them more than seven thousand storefronts in over 40 countries.[11] EssilorLuxottica also controls more than thirty percent of the glasses and contacts wholesale market (more than double any other competitor).[12]

The company's dominance came from a slow, yet steady acquisition strategy dating back to the 1970s. The first acquisition was prompted by its founder, Del Vecchio, wanting to vertically integrate manufacturing and distribution. In 1974, Luxottica (an eyewear manufacturer) bought an Italian distributor, Scarrone. Luxottica boasts about this business model, claiming that integrating "the entire value chain – from design and production to distribution and sales to the final customer – was an innovative choice that over time translated into an important competitive advantage for the Group."[13] Vertical integration is a common tactic employed by companies seeking market power and to erect competitive moats. After listing on the NYSE in early 1990, the company continued acquiring.[14]

The roll-up of retailers and storefronts gives Luxottica near complete control of the market, because even if a competitor enters, it controls the main distribution channels to customers. Oakley experienced this barrier in the early 2000s when Luxottica decided to limit the supply of Oakley sunglasses at their Sunglass Hut stores. Oakley stock subsequently dropped, and the company ended up selling to Luxottica in 2007.[15]

A website, suxottica.com, which spoke out against brand consolidation in the eyewear industry in the mid-2000s, claimed that "Luxottica is the root of all evil in the broken American optical industry." The website went on with facts about consolidation, stating "As they gobble up retailer after retailer, they're quite effectively removing almost all of the resistance to global domination and price-fixing. They are cornering this very lucrative market."[16]

In 2015, then Luxottica CEO Adil Mehboob-Khan laid out what the company's strong cash position meant in terms of business growth and R&D. He said, "We have a very good cash position even after having given what is arguably a generous dividend and we want to use that cash for meaningful and strategic acquisitions."[17] This reiterated the company's longstanding use of acquisitions to build market share. In 2011, the previous CEO, Andrea Guerra told Reuters,

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11 Bartek Bezemer, "How Luxottica Monopolized the Eyewear Industry," August 28, 2021, Everyday, https://everydayonlinemarketing.com/marketing-case-study/how-luxottica-monopolized-the-eyewear-industry/.

12 Brigette Thomas, "Glasses and Contacts Wholesaling in the United States," Ibis World Report, September 2021, https://my.ibisworld.com/us/en/industry/42346/major-companies.

13 "History of Innovation," Luxottica Group, https://www.luxottica.com/en/about-us/innovation?p=innovation/history-of-innovation.

14 See Appendix Item A for a list of EssilorLuxottica acquisitions.

15 Andrew Goodman, "There's More to Ray-Ban and Oakley Than Meets the Eye," Forbes, July 16, 2014, https://www.forbes.com/sites/agoodman/2014/07/16/theres-more-to-ray-ban-and-oakley-than-meets-the-eye/?sh=f64a08122cd3.

16 "How Luxottica Hurts Us," WayBack Machine. October 2008, http://web.archive.org/web/20100211132814/http://suxottica.com/index.php/how-luxottica-hurts-us/6.

17 "Luxottica Group conference call transcript," Luxottica Group, May 4, 2015, https://www.luxottica.com/sites/luxottica.com/files/2015_05_04_-_luxottica_group_-_1q15_results_transcript.pdf.

"We will continue to build our platforms in central and south America with small acquisitions."[18] Owning the entire supply chain resulted from Luxottica's acquisition activity and little else.

In the written history provided on their website, Luxottica dedicates a large portion of their development to mergers, acquisitions, and licensing agreements.

GROWING BY ACQUISITION

1974	Scarrone S.p.a	2004	Cole National (Pearle Vision, Target Optical, Sears Optical)
1981	Avant-Garde Optics Inc.	2007	Oakley
1990	Vogue Eyewear	2011	Multiópticas Internacional (GMO)
1995	Persol	2012	Grupo Tecnol
	LensCrafters	2013	Alain Mikli International
1999	Ray-Ban	2014	Glasses.com
2001	Sunglass Hut	2016	Salmoiraghi & Viganò
2003	OPSM	2017	Óticas Carol

SOURCE: A FASCINATING HISTORY, AN UNSTOPPABLE JOURNEY, A FUTURE TO BE BUILT DAY BY DAY, LUXOTTICA. PG. 18. HTTPS://WWW.LUXOTTICA.COM/SITES/DEFAULT/MODULES/TT_LUXHISTORY/PDF/LUXOTTICA_HISTORY_ENG_WEB_8.PDF

In 2018, Luxottica and the lens-company Essilor merged to form the eyewear giant, EssilorLuxottica. Over a span of 20 years prior to the merger, Essilor had acquired over 250 companies, making it the world's largest lens-maker with over 40 percent of the prescription lens market worldwide.[19] The merger was waived through unceremoniously by the FTC,[20] and now that the two have combined, EssilorLuxottica has an unmatched dominance in everything optical.[21] And while these more recent, billion-dollar acquisitions raise competition concerns as traditionally conceived, the small and consistent M&A transactions are what gave Essilor and Luxottica their unmatched market power to begin with.

18 Sabina Suzzi, "Luxottica Sets Sight on Small M&A," Reuters, March 1, 2011, https://www.reuters.com/article/idINLDE71R2BF20110301.

19 Lee Martin, "The Spectacular Power of Big Lens," The Guardian, May 10, 2018, https://www.theguardian.com/news/2018/may/10/the-invisible-power-of-big-glasses-eyewear-industry-essilor-luxottica.

20 "Statement of Federal Trade Commission Concerning the Proposed Acquisition of Luxottica Group by Essilor," Federal Trade Commission, March 1, 2018, https://www.ftc.gov/news-events/news/press-releases/2018/03/statement-federal-trade-commission-concerning-proposed-acquisition-luxottica-group-essilor.

21 Foo Yun Chee, "EU to Investigate $54 Bln Luxottica, Essilor Deal," Reuters, September 26, 2017, https://www.reuters.com/article/legal-luxottica-group-m-a-essilor-eu/eu-to-investigate-54-bln-luxottica-essilor-deal-idUSKCN1C125P.

THE ANTITRUST TWILIGHT ZONE

Serial acquisitions are not new, but the problem has worsened because of changing market realities and misguided regulatory changes over the past 40 years. Even as the scale and sophistication of consolidators has deepened, serial acquisitions fall into a twilight zone of antitrust enforcement and policy. Despite being overtly anticompetitive in many cases, the acquisitions in question are too small individually to raise antitrust concerns or even be reported to the agencies, and current merger policy pays scant attention to the business strategy behind a single transaction. As a result, serial acquirers today generally face neither direct enforcement actions to block their acquisitions nor regulatory review to ensure they are legal and in the public benefit.

SUCCESSFUL ENFORCEMENT AGAINST INCIPIENT MONOPOLIES

By the language of the Clayton Act, the primary law governing mergers in the United States, serial consolidation is not legal, but enforcement has been weakened in the time since the law was passed. Section 7 of the 1914 Clayton Antitrust Act sought to prohibit such acquisitions with a standard for “incipient monopolization.” It stated that no firm can acquire the stock or assets of another “where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition.”[22] The 1950 Celler-Kefauver Amendment bolstered the focus on curbing monopolization in its incipiency by removing loopholes and broadening the standard to block vertical and conglomerate mergers or acquisitions as well.

The incipiency standard of the Clayton Act—prohibiting acquisitions that might harm competition in the future—was initially interpreted very broadly. As the Supreme Court had interpreted it, “requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future; this is what is meant when it is said that the amended § 7 was intended to arrest anticompetitive tendencies in their ‘incipiency.’”[23] Even before necessarily causing any harms, smaller scale mergers are not exempt from the Clayton Act, because “remaining [competitive] vigor cannot immunize a merger if the trend in that industry is towards a monopoly,”[24] as is the case with many industries being consolidated through small acquisitions today.

22 Section 7 of the Clayton Act of 1914, as amended 1950. (15 U.S.C. § 18). The consequences of rampant monopolization across the economy were considered so serious that when the Act was drafted initially, it made infraction of these statues a criminal offense. The Senate, however, later removed criminal liability before the Act was passed. Richard M. Steuer, “Incipiency,” Loyola Consumer Law Review, 2019, https://lawecommons.luc.edu/lclr/vol31/iss2/2.

23 United States v. Philadelphia National Bank, 374 U.S. 321, 362 (1963), https://supreme.justia.com/cases/federal/us/374/321/.

24 Brown Shoe Co., Inc. v. United States, 370 U.S. 294, 333 (1962), https://supreme.justia.com/cases/federal/us/370/294/.

Serial acquisitions were explicitly considered in both the legislative background of the 1950 Celler-Kefauver Act and subsequent interpretations of it. The 1948 FTC report that motivated the 1950 Act noted that "imminent monopoly may appear when one large [company] acquires another, but it is unlikely to be perceived in a small acquisition by a large enterprise. As a large [company] grows through a series of such small acquisitions, its accretions of power are individually so minute as to make it difficult to use the Sherman Act tests against them."[25] The report noted the threat of a few firms "extending their power by successive small acquisitions, the cumulative effect of their purchases may be to convert an industry from one of intense competition among many enterprises to one in which three or four large [companies] produce the entire supply."[26] Given this legislative history, it is irrelevant that any single acquisition of a private equity roll-up does not pose a threat to competition, if the trend and cumulative effect of the roll-up would be anticompetitive consolidation.

Based on the incipiency standard, for decades the Department of Justice blocked many anticompetitive mergers before they were carried out, and among firms that were not yet dominant. The 1962 Brown Shoe decision blocked a merger where the consolidated retail chain would have constituted only 5% of the retail markets in question.[27] In another instance, Von's Grocery, the government blocked the merger of two grocery chains in a relatively fragmented market, where the merged firm would have been only 7.5% of the regional market.[28] Both mergers were blocked based on concerns about future threats to competition, on the reasoning that there was a trend towards consolidation.[29]

The Supreme Court was clear that faithful application of the Clayton Act requires acting well before any specific transaction harms competition. When ruling to block a banking merger in 1963, the Supreme Court stated, "A fundamental purpose of amending § 7 was to arrest the trend toward concentration, the tendency of monopoly, before the consumer's alternatives disappeared through merger, and that purpose would be ill-served if the law stayed its hand until 10, or 20, or 30" more firms were absorbed.[30] In the Von's Grocery case, noting that the industry in question was not already concentrated, the Court found nonetheless that a merger in a market "characterized by a steady decline, before and after the merger, in the number of small grocery companies, combine with significant absorption of small firms by larger ones, is a violation of § 7 of the Clayton Act."[31]

25 S. Rep. No. 1775, 81st Cong., 2d Sess. 5, U.S. Code Cong. and Adm. News 1950, p. 4297, citing 1948 Federal Trade Commission study on corporate mergers. Cited in Brown Shoe, 370 U.S. at 333-334.

26 Ibid.

27 Brown Shoe Co., Inc. v. United States, 370 U.S. 294 (1962)

28 United States v. Von's Grocery Co., 384 U.S. 270 (1966)

29 Following the Von's Grocery decision in 1966, antitrust agencies fell under the sway of under-enforcement while the grocery industry consolidated. Von's was eventually bought by Safeway, which was later bought by Albertsons — the second largest grocery conglomerate in the US behind Kroger.

30 United States v. Philadelphia National Bank, 374 U.S. at 367.

31 Von's Grocery, 384 U.S. 270.

One motivation for this approach to merger enforcement was a preference that companies seek to expand through investment in new plants, hiring, research, or new locations (i.e., internal expansion), rather than expansion through acquisitions. Consider, for example, Bethlehem Steel, a highly acquisitive company that had never actually built a steel plant itself and had only bought smaller companies. After a court told them they were not permitted to acquire, they began investing in building new plants and productive capacity themselves, building their largest steel plant just a few years later from 1962 to 1964.[32]

Despite the legal emphasis on incipient monopolization, policy at the time nonetheless focused mainly on mergers among firms with substantial market shares. Released in 1968, the first DOJ merger guidelines—which lay out the antitrust agencies' approach and policy toward mergers based on the Clayton Act—outlined that the DOJ would generally only block mergers where the acquiring firm represented at least 5% of the market and the acquired firm no less than 1%.[33] However, based on the incipiency standard, the 1968 guidelines did include a separate, stricter set of criteria for any "Market With Trend Toward Concentration," but the guidelines were likely not considering the possibility of serial acquisitions at the small size and rapid rate that we see today, focusing instead on the trend in concentration among the top 8 firms in a market.

WEAKENED INCIPIENCY ENFORCEMENT SINCE THE 1970S

However, enforcement against incipient monopolization has been weakened by legal and regulatory changes since the 1970s and 1980s, even for the very largest and most powerful companies. The Chicago school revolution in antitrust argued that markets were efficient as they were, that any threat posed by monopoly would be mitigated by new entrants, and that mergers occurred primarily because they were efficient. While motivated by other issues, these changes nonetheless aimed to limit the policy tools that today could be used to address serial acquisitions.

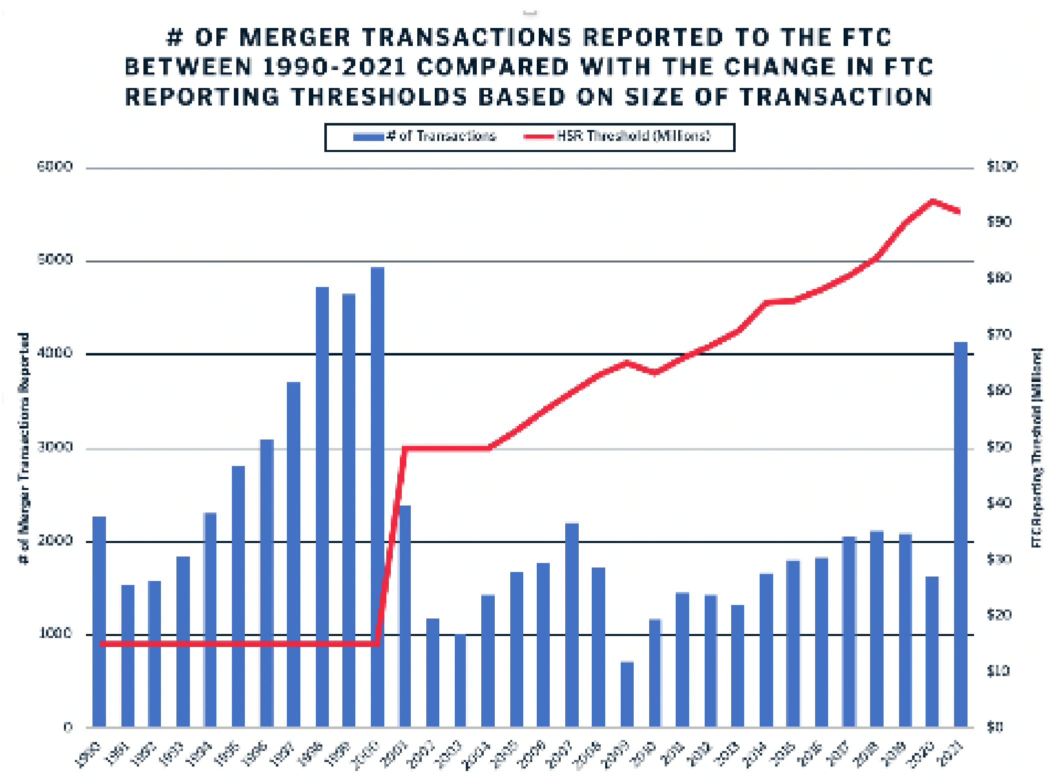
The focus on large mergers continued with the 1976 Hart-Scott-Rodino Antitrust Improvements Act (HSR), which strengthened merger control. It required merging firms to notify the FTC of their intent to merge, along with a waiting period for the Commission to approve or challenge the merger. Notification thresholds, however, exclusively considered the size of the transaction, and acquisitions were to be reviewed on an individual basis, ignoring possible anticompetitive threats from the accumulation of many smaller mergers and acquisitions.

32 United States v. Bethlehem Steel Corporation, 168 F. Supp. 576 (S.D.N.Y. 1958); Alex Brown, "Burns Harbor Steel Plant Dedicates Historical Marker," Inside Indiana Business, October 19, 2018: https://www.insideindianabusiness.com/articles/burns-harbor-steel-plant-dedicates-historical-marker.

33 1968 Merger Guidelines, Department of Justice, https://www.justice.gov/archives/atr/1968-merger-guidelines.

The Merger Guidelines were then amended in 1982 to be far more permissive towards mergers even among large firms, but also to include a “safe harbor” – a threshold of concentration below which “the Department is unlikely to challenge mergers falling in this region.”[34] The Reagan-era rollback of safeguards against harmful mergers had long-lasting impact, and this safe harbor was expanded in the 2010 amendment to the Horizontal Merger Guidelines by increasing the level of concentration where the DOJ would determine that mergers “are unlikely to have adverse competitive effects and ordinarily require no further analysis.”[35] With this safe harbor, antitrust policy has implicitly written a blank check for smaller mergers and acquisitions, including serial acquisitions, regardless of how anticompetitive they are or the harms they may cause.

Furthermore, in December 2000, the HSR Act was amended to exempt transactions valued below $50 million, substantially increasing the filing threshold (it had previously been $15 million). With many more transactions exempt, these changes in HSR thresholds had a significant impact on the number of mergers being reported to the FTC. Premerger notifications fell dramatically as a result, as shown below, and the antitrust agencies know even less about the large number of smaller acquisitions throughout the economy.



34 The 1982 “safe harbor” was a Herfindahl-Hirschman Index (HHI) of 1,000. 1982 Merger Guidelines, Department of Justice, https://www.justice.gov/archives/atr/1982-merger-guidelines.

35 The HHI for the safe harbor was increased to 1,500 from the 1,000 outlined in 1982. “Horizontal Merger Guidelines, Department of Justice, August 19, 2010, https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c/.

While these legal changes primarily served to weaken enforcement against large mergers in concentrated industries, they also had the effect of limiting the scrutiny that smaller serial acquirers face.

WHY COMPANIES PURSUE SERIAL ACQUISITIONS

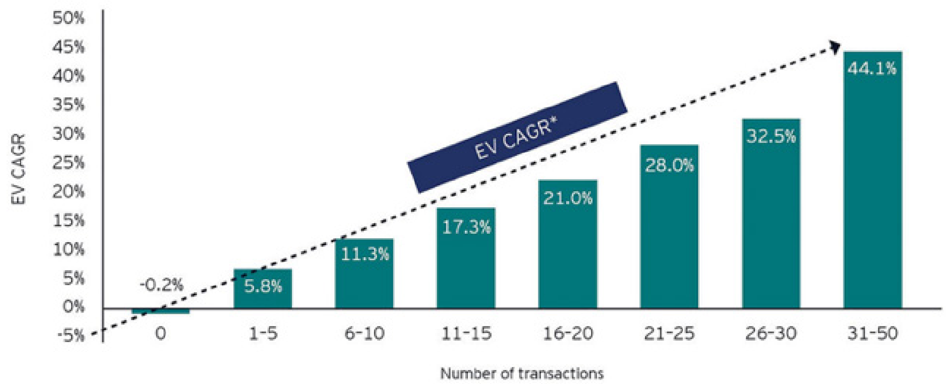
“I firmly believe that acquisitions are an addiction, that once companies start to grow through acquisitions, they cannot stop. Everything about the M&A process has all the hallmarks of an addiction.” — Aswath Damodoran, NYU Stern

In the loose regulatory environment of the past 40 years, companies have found many benefits in pursuing a strategy of serial acquisitions. While it is widely reported that M&A fails 70-90% of the time, painting M&A with one brush-stroke obscures key nuances. Big, one-off deals that are mergers of equals may be more difficult to pull off — making promised efficiencies just that: empty promises. But a strategy of serial acquisitions can be very effective for some distinct reasons beyond just the lack of regulatory oversight and risk of antitrust enforcement actions.

A recent EY study, for example, showed “a strong, positive correlation” between serial M&A and total shareholder returns (TSR), as well as enterprise value (EV): **"Stated simply, on an overall basis, the more acquisitive the company, the analysis shows, the greater the value created.”** EY also encouraged companies that “More frequent M&A activity by companies of all sizes can boost enterprise value and shareholder return” and that **“there is a strong pattern of shareholder value growth, correlating with frequent acquisitions."**[36]

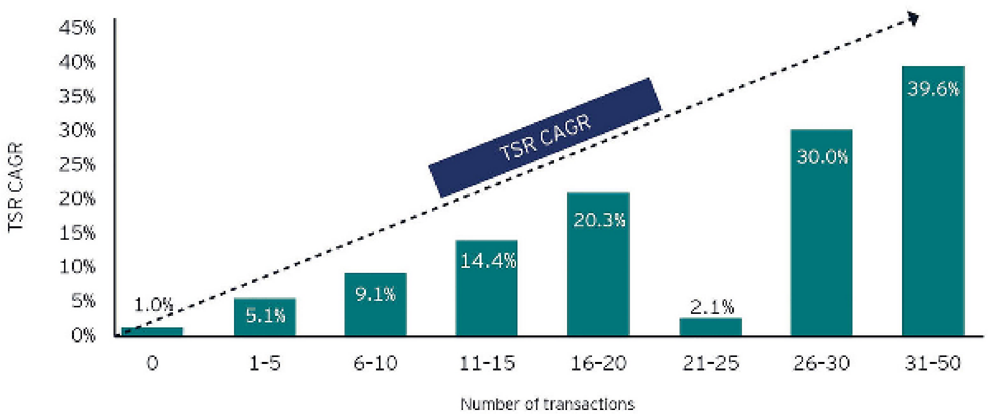
36 Full quote: “Interestingly, companies that did not make any acquisitions experienced essentially flat EV and TSR growth, but companies that engaged in limited M&A activity (one to five companies) experienced EV and TSR growth at a rate nearly five times higher than non-buyers. As the scale increases, for every five additional acquisitions made, EV and TSR growth increased by roughly 500 basis points...it is clear from the analysis that there is a strong pattern of shareholder value growth, correlating with frequent acquisitions." See: Gregory Schooley, “How mergers and acquisitions can create value, defying M&A skeptics,” Ernst & Young, March 03, 2021, https://www.ey.com/en_us/strategy/how-mergers-and-acquisitions-can-create-value-defying-m-and-a-skeptics.

Figure 1: Median EV CAGR (2015-19)



Source: Capital IQ, EY analysis
Note: Sample sizes vary across each category
*Compound annual growth rate (CAGR)

Figure 2: Median TSR CAGR (2015-19)



Source: Capital IQ, EY analysis
Note: Sample sizes vary across each category

A Boston Consulting Group report comes to similar conclusions: "There is a set of companies, however, that routinely overcomes the challenges inherent to M&A-driven growth....These companies are successful serial acquirers: they do many acquisitions (on average, spending more than 5 percent of their entity value per year), grow faster than their rivals (as much as three times as fast), and deliver attractive shareholder returns (nearly double the returns of their peers over a sustained 15-year period)."[37]

37 Gerry Hansell, Decker Walker, and Jens Kengelbach, "Lessons from Successful Serial Acquirers: Unlocking Acquisitive Growth," Boston Consulting Group, October 01, 2014, https://www.bcg.com/publications/2014/mergers-acquisitions-unlocking-acquisitive-growth.

How serial acquirers turn acquisitions into shareholder value varies. Sometimes the value derives from increased efficiencies or valuation increases, but in other cases, it comes from exercising consolidated market power by raising prices or extracting concessions from stakeholders like workers or suppliers. In the words of management professor Martin Sikora, "Companies merge and end up doing business on a larger scale, with increased economic power. But the important questions are whether or not they gained competitive advantage or increased market power. And that will be reflected in the stock price."[38]

As a result, companies that make serial acquisitions a core part of their corporate strategy are typically motivated by one or more of five commercial pursuits: lower-risk expansion, greater efficiency from scale, increased pricing power, stronger buyer power, and valuation arbitrage. Some of these motivating factors – like greater efficiency and lower-risk expansion – can genuinely enhance the quality of products, services, or supply chains. However, acquisitions that seek to increase their market power and then leverage stronger pricing or buyer power can easily find themselves in anti-competitive territory or demonstrating monopolistic behavior that's harmful to the economy and society at large.

LOWER-RISK EXPANSION

Companies pursuing growth have long been faced with a "buy versus build" decision. The merits of each approach vary significantly across industries. Often the choice to grow through acquisitions is a much less risky proposition than building from scratch, and this is especially true in an environment of limited antitrust enforcement. Buying a company not only provides an established operation and revenue stream, but it can also circumvent the need to compete to gain market share. As a result, acquisitions can be an attractive, low-risk growth strategy, especially when it involves expanding a company's geographic footprint. For investors, this can result in a quicker payback period on the capital they invested.

In the context of serial acquisitions in particular, an additional benefit that PE investors cite, is that add-on acquisitions are an attractive strategy during recessions. Struggling businesses, particularly smaller companies with less cash reserves to survive a downturn, may be more likely to sell at a lower value, and investors can pursue roll-up strategies in the down years while they wait for market conditions to improve before exiting in stronger, more profitable markets.

38 "Why Do So Many Mergers Fail?" Knowledge At Wharton, March 30, 2005, https://knowledge.wharton.upenn.edu/article/why-do-so-many-mergers-fail/.

GREATER EFFICIENCY

Another potential benefit of consolidation -- including for serial acquirers – is improved efficiency through economies of scale from a larger company. There are several potential approaches a company can use to pursue efficiency gains through acquisitions, particularly if the target company is fully integrated into the acquiring firm's operations. For example, any increase in scale can theoretically improve a company's profitability, as fixed costs are spread over more products or services. Companies can also improve their capacity utilization for equipment, labor productivity, or internal systems and processes.

However, so called "efficiency gains" can also come at the expense of employment, where jobs are made redundant following an acquisition. Smaller companies, affected by roll-ups and add-ons, can expect 4.4% of jobs to disappear within the first two years of a leveraged buyout.[39] Additionally, improved efficiency is not always passed on to customers through lower prices, as investors seek to reinvest excess profits in additional acquisitions or use the proceeds to payback investors who financed the acquisition.

The dental industry, previously fragmented and operated by independent dentists, has seen large waves of consolidation through serial acquisitions ostensibly to make practice management more efficient for dentists. According to a 2019 Dental Economics article, "There are now at least a couple dozen well-funded private equity–backed consolidators in the [Dental Service Organization (DSO)] space. Many of these platforms are looking to employ a roll-up or consolidation strategy whereby the platform practice acquires the clinical assets of many smaller practices and the DSO acquires the nonclinical assets of the smaller targets. This acquisition strategy enables the DSO to create a much larger enterprise over which it can leverage a much more efficient cost structure and implement professional business management arrangements."[40]

Today, the largest dental management company in the US is Heartland Dental, founded by former dentist Richard Workman in 1993. Heartland used a roll-up strategy to acquire dentist after dentist, and the company now manages over 1600 dental practices.[41] Private equity has actively swooped into the industry to participate in profits that consolidators like Heartland are churning out. "It feels a bit like the gold rush," said Stephen Thorne, chief executive officer of Pacific Dental Services. "Some of these private equity companies think the business is easier than it really is."[42] KKR, the private equity giant, purchased a 58% stake of Heartland in 2018. Workman's net worth was estimated at $400 million that year.

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39 Eileen Appelbaum, "Lobbying Arm of Private Equity Industry Pays E&Y for Misleading Report on PE's Economic Contributions," Center for Economic and Policy Research, October 23, 2019, https://cepr.net/lobbying-arm-of-private-equity-industry-pays-e-y-for-misleading-report-on-pe-s-economic-contributions/.

40 Bart Walker, JD, and Diana Castro, JD, "Investments in the dental industry: Consolidation strategies: Bart Walker, JD, and Diana Castro, JD, identify some of the challenges to dental industry consolidation and offer practical solutions for investors," Dental Economics, November 1, 2019, https://www.dentaleconomics.com/macro-op-ed/professional-trends/article/14072121/consolidation-strategies-for-dsos-and-dental-industry-investors.

41 Rick Workman of Heartland Dental: Things I Wish Someone Told Me Before I Became A Founder," Authority Magazine, May 18, https://medium.com/authority-magazine/rick-workman-of-heartland-dental-5-things-i-wish-someone-told-me-before-i-became-a-founder-bbeba7493e53.

42 Ibid.

As Bloomberg put it, “One of the richest dentists in the U.S. hasn’t seen a patient for more than two decades.”

Part of the logic for consolidation was to allow individual dental professionals to focus on their patients, while leaving the business management to Heartland’s shared corporate function. Despite purported efficiency gains that should be passed onto consumers in the form of lower prices, corporate dental consolidators have been found to charge Medicaid for expensive and completely unnecessary services provided to children.[43] Heartland has also been sued for wage theft by denying overtime pay to workers[44] and improper billing to Medicaid.[45]

INCREASED PRICING POWER

The most traditional concern of antitrust policy is that firms in consolidated industries have pricing power – the ability to arbitrarily inflate prices on consumers who have few alternatives. While the degree of pricing power varies across industries, the mechanisms of exercising pricing power are the same. Consolidators can directly raise prices, bundle different products or services together, or attach new fees to existing products. When companies prepare presentation materials for investors or board members, they are often not shy about discussing pricing power, gained through acquisitions and high switching costs, as a key strategy. Even if an industry is consolidated through a series of small mergers rather than a few large ones, the remaining firms will still have harmful market power.

One company that has significant pricing power resulting from consolidation is the publicly traded funeral home chain, Service Corporation International (SCI). SCI was founded in 1962 by Robert Waltrip as a family funeral business. Beginning in the 1960s, SCI began purchasing additional funeral homes in a series of individual transactions.[46] SCI has acquired nearly all of the more than 1,700 independent funeral services locations they now operate in the US in a chain of many individual transactions. SCI continues their serial acquisition strategy, making 121 further acquisitions in 2021 alone.[47] Most of its locations still operate under the family names of the original owner, maintaining a façade of an independent business.

At their May 2022 Investor Day, Senior Vice President of Revenue and Business Development, John Faulk, had this to say: “So, let's talk about acquisitions. We feel that acquisitions are our best use of capital as a company. They have great IRRs. And if you come back to [the] strategy that

43 William Mathis and Tom Metcalf, “Private Equity Is Pouring Money Into a Dental Empire,” Blomberg News Wire, June 28, 2018, https://www.bnnbloomberg.ca/private-equity-is-pouring-money-into-a-dental-empire-1.1100209.

44 “Judgments Obtained with Heartland Dental on Behalf of Three Workers Denied Overtime Pay; Many More May Be Eligible,” Joseph, Greenwald & Laake, P.A., June 15, 2017, https://www.jgllaw.com/news/judgements-obtained-heartland-dental-behalf-three-workers-denied-overtime-pay-many-more-may-be.

45 “Illinois Dental Management Company To Pay $3 Million To Settle Allegations of Improper Billing, Dentist Registration,” Central District of Illinois, U.S. Attorney’s Office, April 11, 2008, https://www.justice.gov/archive/usao/ilc/press/2008/04April/0411.html.

46 Nicholas V Ille, “Who is Service Corporation International (SCI)?,” May 10, 2020, https://www.us-funerals.com/who-is-service-corporation-international-sci/.

47 “Service Corporation International: Investor Presentation,” Service Corporation International, March 2022, https://filecache.investorroom.com/mr5ir_scicorp/233/download/SCI%20Investor%20Presentation%20March%202022.pdf.

served us so well...it's deploying capital to grow our revenue and leverage our scale. We do very well in the local market. We can take advantage of our local leadership, our local infrastructure. And then at a national level, the great departments at our home office just 30 miles south of here can be leveraged as well as our purchasing power as a company with vendors."[48]

Funeral businesses are local in nature, because people don't shop around very far when finding a place to honor a loved one. Often providing services to communities of specific cultural and religious backgrounds, funeral businesses are 'sticky' in that they don't usually have many local competitors.

Even though SCI does take advantages of some economies of scale for more efficient operations, those savings are not passed on to consumers. For example, embalming services could often be consolidated into single facilities in a region, which lowered costs for the company.[49] Despite these cost savings, Bloomberg Businessweek journalists found that prices at SCI facilities were 42% higher than independently owned competitors.[50] The unfortunate reality for mourning families is that they are captive to SCI, who is often the only service provider in their community. This enables SCI to lower their own costs, while increasing prices for consumers as they continue to expand through acquisition.

STRONGER BUYER POWER

One of the most important elements of the rationale for a serial consolidation strategy is improved negotiating power over suppliers, meaning that as a larger buyer it can get better terms. Large businesses often receive volume discounts on their purchases, and when they acquire a small company, they can improve the margins of that company almost immediately as a result. In more extreme cases, where a large business becomes the primary buyer of a product or service, there can be a monopsony effect that allows businesses to exert market power over their supply chain by squeezing suppliers. This can result in either financial pressures on supplier companies or drive out other firms who can't compete with the cost advantages of large consolidators. Whether suppliers willingly offer volume discounts which benefit their margins due to scale, or whether suppliers are coerced into unfair deals due to the monopsony power of a large buyer, both scenarios can make supply chains less resilient overall.

Given that stronger buyer power could theoretically lower prices for consumers, it has been less of a concern in recent antitrust regimes which have focused almost exclusively on the 'consumer welfare standard' of enforcing antitrust law. However, the Robinson Patman Act – passed in

48 "SCI 2022 Investor Day," Service Corporation International, May 5, 2022, https://www.sci-corp.com/Investor-Day.
49 Paul M. Barrett, "Is Funeral Home Chain SCI's Growth Coming at the Expense of Mourners?," Bloomberg News, October 24, 2013, https://www.bloomberg.com/news/articles/2013-10-24/is-funeral-home-chain-scis-growth-coming-at-the-expense-of-mourners.
50 Ibid.

1936 – was enacted to counter abuses of dominant buyers in markets, who could use their market power to extract concessions from suppliers and gain an unfair advantage in retail markets like grocery. As Sandeep Vaheesan and Brian Callaci of Open Markets state, “Historically, Congress restricted the ability of powerful corporations to unfairly lower the prices they pay to suppliers, farmers, and other producers — it was once a pillar of its antitrust strategy.”[51]

Installed Building Products (NYSE:IBP), the Columbus, Ohio based insulation contractor, has highlighted its national buying advantage as a core rationale for its acquisition strategy.[52] IBP began in 1977 with one location, but in the late 1990s, began an acquisitions strategy to create a national platform, with 180 acquisitions in 1999,[53] 87 of which were since 2011.[54] That equates to an average of almost 8 acquisitions every year for two decades. An overwhelming majority of IBP’s investment is spent on acquisitions rather than productive investments.[55] The company today highlights its ability to “apply increased buying power” and “benefits to gross margin from purchaser power” as key to its acquisition strategy.[56]

Given IBP’s national scale, it negotiates favorable terms with insulation suppliers, which allows the company to capture cost savings on its acquisitions immediately by integrating the procurement of building supplies for its businesses. As this trend continues, insulation suppliers may struggle by having a small number of customers with huge bargaining power to lower their prices, resulting in lower margins.

VALUATION ARBITRAGE

One of the lesser known, but particularly important factors driving serial consolidation is “valuation arbitrage.” Businesses are typically sold for a multiple of their annual cashflow. For most local small businesses, the valuation multiple that is applied ranges from 3-5x cashflow. However, large businesses can sell from anywhere from 10-20x cashflow or more. As a result, when a large company acquires a small one in the same industry, there is an immediate financial gain resulting from the acquired company’s cashflow being integrated into the acquiring firm’s balance sheet.

Say, for example, you’re a large consolidator valued at 15x cashflow. When you buy a small business with $2M in cashflow for $10M ($2M x 5), that acquisition now adds $30M to your

51 Brian Callaci and Sandeep Vaheesan, “How an Old U.S. Antitrust Law Could Foster a Fairer Retail Sector,” Harvard Business Review, February 09, 2022, https://hbr.org/2022/02/how-an-old-u-s-antitrust-law-could-foster-a-fairer-retail-sector.
52 “Installed Business Products: Fiscal 2021,” Installed Business Products, February 24, 2022, https://investors.installedbuildingproducts.com/static-files/e92bc202-c256-4e3f-b333-c60df4cf6ee5.
53 Installed Building Products, 2021 Form 10-K, Securities and Exchange Commission, https://www.sec.gov/ix?doc=/Archives/edgar/data/1580905/000158090522000004/ibp-20211231.htm.
54 “Installed Business Products: Fiscal 2021,” Installed Business Products, February 24, 2022, https://investors.installedbuildingproducts.com/static-files/e92bc202-c256-4e3f-b333-c60df4cf6ee5.
55 Ibid., page 6.
56 Ibid.

valuation ($2M x 15). This is a critical factor that explains the uptick in interest in consolidation strategies like roll-ups. Not only do investors have a highly lucrative incentive to consolidate a market, but they also have an advantage competing to buy businesses because they can pay a higher price for acquisitions, while still capturing the arbitrage. This helps them win against other potential acquirers such as independent veterinarians or investors without an existing business in the sector.

In the context of serial acquisitions, the buyer is usually rather large and the seller is rather small. So, in contrast to larger scale acquisitions, the arbitrage is quite big. As a result, the small business being acquired is worth much more to the serial acquirer than it is to the local family business being bought out.

One of the more extreme examples of valuation arbitrage with serial acquisitions is in the veterinary industry. The consolidation of veterinary practices by large companies and private equity has been rampant the last two decades,[57] as the opening case of JAB demonstrated. It is estimated that there are around 60 consolidators in the space currently looking to roll-up vet clinics.[58]

Today, a typical vet practice sells for 5-8x cashflow[59]. However, large consolidators like the American Veterinary Group are being valued at as much as 21x cashflow.[60] What that means is that when a large consolidator buys a $1M cashflow clinic, it may cost them as little as $5M, while increasing the value of the consolidator by $21M. This has created a goldrush for veterinary consolidators. While the arbitrage has shrunk in recent months as the industry has further consolidated and competition for remaining practices has intensified, this remains a core motivation for consolidators.

CASHING IN ON CONSOLIDATION

It is no coincidence that an increasing number of firms pursuing consolidation through small acquisitions are private equity backed or public companies. Both investors and executives in these companies are compensated on the growth in value of shares over a finite time. That means that every dollar gained through increased prices, or dollar saved through using market power over suppliers, can be worth many times more to the PE firm and its investors. This creates an even stronger incentive for these firms to utilize their market power to increase prices

57 Sally Herships and Stacey Vanek Smith, "The Vet Clinic Chow Down," NPR, June 22, 2021, https://www.npr.org/2021/06/22/1009137378/the-vet-clinic-chow-down; Deborah Balshem, "PE Firms Still Drooling Over Veterinary Practice Management Space," Forbes, May 7, 2018, https://www.forbes.com/sites/mergermarket/2018/05/07/pe-firms-still-drooling-over-veterinary-practice-management-space/?sh=5969943f78af.
58 Ivan Zak, "Veterinary Consolidators: North American Market Analysis," January 27, 2022, https://vetintegrations.com/insights/veterinary-consolidators/ .
59 "Diagnosing Your Practice's Valuation," Veterinary Practice Partners, https://www.vetpartners.com/wp-content/uploads/Valuation.pdf.|
60 Sarah Pringle, "Oak Hill said to buy American Veterinary Group," PE Hub, February 18, 2021, https://www.pehub.com/oak-hill-said-to-buy-american-veterinary-group/.

for consumers, decrease supplier and workers costs, and churn out high returns for investors. Some companies have pursued consolidation purely to expand with less risk while capturing cost efficiencies. A select few of these consolidators may even pass these cost efficiencies on to consumers in the form of lower prices. But those instances are rare.

DEMOGRAPHIC AND MACROECONOMIC FACTORS THAT LED HERE

In addition to some of these intrinsic commercial motivations and the permissive environment created by the non-enforcement of key areas of antitrust law, the growing trend of serial acquisitions has been amplified by several notable factors converging in the aftermath of the financial crisis and, more recently, the COVID-19 pandemic. An increase in the number of acquirers, and their unprecedented access to capital, has coincided with the "silver tsunami" demographic change as more business owners look to retire. This has produced record M&A activity, across all segments of the market.

MORE ACQUIRERS WITH MORE CAPITAL

The current wave of small-firm consolidation can be traced back to the 2008 financial crisis, which gave rise to historic levels of cheap debt from the Federal Reserve, the growth of the private equity industry, and increased investments in alternative assets by institutional investors. These factors helped drive up the size of private equity funds, but also resulted in higher prices for acquisitions. As a result, private equity firms and other corporate acquirers increasingly pursued roll-up type strategies, which allowed them to deploy significant capital while benefitting from the lower prices of smaller acquisitions. The result has been countless acquirers, active in almost all segments of the market, with more money than ever.

CHEAP DEBT

Monetary policy decisions that were made to manage the financial crisis, such as central bank interest rate cuts and quantitative easing, dramatically increased the availability of low-cost debt. To put it in context, the Federal Reserve's balance sheet grew from $870 Billion in August 2007 to $4.5 Trillion in early 2015, reaching 35% of US GDP.[61] Interest rates were also cut to effectively zero, ushering in a decade of "ZIRP" (zero-interest rate policy). Many consolidation

61 Sarah Foster, "What is the Federal Reserve's balance sheet?," MSN, June 14, https://www.msn.com/en-us/money/personalfinance/what-is-the-federal-reserve-s-balance-sheet/ar-AAUQFR2#:~:text=In%20August%202007%2C%20before%20the%20financial%20crisis%20hit%2C,occurred%2C%20its%20balance%20sheet%20swelled%20to%20%244.5%20trillion.

strategies are financed predominantly by debt, so these decisions in many ways served as a catalyst for corporate-backed consolidation.

This is particularly relevant as serial acquirers often carry higher levels of debt, especially when private equity backed. White & Case, a leading M&A law firm, points out that "...smaller add-on deals...are simpler to finance and manage from a regulatory standpoint."[62] This has been aided by the emergence of a dedicated lending market for serial acquirers, who can now secure "acquisition facilities" well in advance of completing any transactions. These facilities often help finance the entirety of the price for an add-on and receive greater flexibility (or exemption) on leverage tests, which is particularly helpful to private equity backed companies who are more comfortable carrying high levels of debt. To put the add-on financing market in context, through November 2021 a record of $68.3 billion[63] in debt was raised for these purposes. While there is limited detail available on the debt levels of serial acquirers, as of 2018 debt to EBITDA for public companies was approximately 2.0x[64], whereas private markets on the whole averaged slightly over 4.5x[65] and serial acquirers like Heartland Dental reached 7.9x.[66]

THE RISE OF PRIVATE EQUITY

The majority of private equity transactions are financed by debt, so PE firms specifically have benefitted tremendously from the availability of low-cost debt. The growth of the PE industry — measured in both number and size of funds — is staggering. Over the past decade, more than 4,000 US private equity firms have raised over $2 trillion, and this is only for buyout strategies.[67] These funds range from individuals who are funded to buy and operate a single company, to large Wall Street firms — like KKR and Apollo — managing funds with over $100B in assets. There are now more than twice the number of private equity-owned companies as there are public companies — more than 8,000 — in the US.[68]

62 David Bilkis, Colin Harley, Shameer Shah, and Justin Wagstaff, "Buy-and-build boom sees add-on debt surge," White & Case, February 9, 2022, https://debtexplorer.whitecase.com/leveraged-finance-commentary/buy-and-build-boom-sees-add-on-debt-surge#.

63 Ibid.

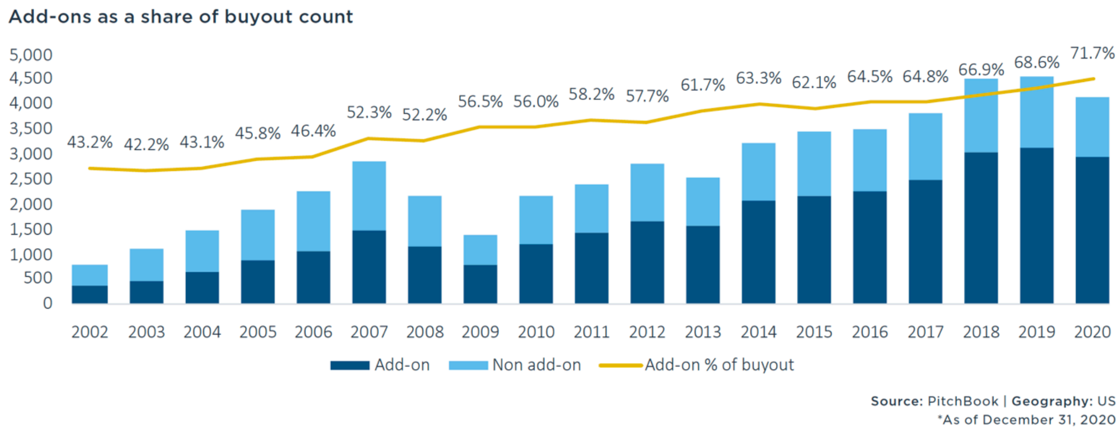
64 Cobalt LP, "Leverage in Private vs. Public Equity," December 3, 2018, https://cobaltlp.com/blog/leverage-multiples-private-equity/.

65 Ibid.

66 Michael Davis, "Private Equity Firms Target DSOs Through Leveraged Buying," Dentistry Today, July 13, 2018, https://www.dentistrytoday.com/private-equity-firms-target-dsos-through-leveraged-buying/.

67 Hugh MacArthur, Josh Lerner and State Street Global Markets & State Street Private Equity Index, "Public vs. Private Equity Returns: Is PE Losing Its Advantage?" Bain and Company, February 24, 2020, https://www.bain.com/insights/public-vs-private-markets-global-private-equity-report-2020/.

68 Phil Mackintosh, "The Battle for Public vs Private Equities," Nasdaq, February 27, 2020, https://www.nasdaq.com/articles/the-battle-for-public-vs-private-equities-2020-02-27 ; There are 3,286 listed public companies, according to Mergr, accessed June 20, 2022: https://mergr.com/public-united-states-companies#:~:text=List%20of%203%2C286%20Public%20companies%20in%20United%20States,Company%20Search%20Sector%20State%20%2F%20-Province%20United%20States.



A majority of private equity deals are pursuing a strategy of serial acquisitions. There is hardly an industry private equity has not tried to roll-up using add-on acquisitions: comedy clubs,[69] ad agencies,[70] water bottles,[71] local newspapers,[72] and healthcare providers[73] like hospitals, ERs, and nursing homes.[74] In 2020, 71.1% of PE deals in the US were add-ons, and "add-ons have steadily increased in importance as a PE strategy over the past two decades" according to Pitchbook [75] Many of these add-on acquisitions fall below the HSR reporting threshold, with the median buyout size now around $70 million.[76] The chart below shows that over 50% of add-ons are below $100 million.

69 Dade Hayes, "Famed Comedy Outfit The Second City Acquired by Strauss Zelnick-Run Private Equity Firm ZMC," Deadline, February 18, 2021, https://deadline.com/2021/02/second-city-improv-comedy-acquired-by-strauss-zelnick-private-equity-firm-zmc-1234696308/.

70 Patrick Coffee, "Private equity firms are looking to snap up ad agencies as the pandemic grounds traditional buyers," Insider, February 15, 2021, https://www.businessinsider.com/private-equity-will-dominate-ad-industry-ma-analysts-say-2021-2.

71 Garret Ellison, "Michigan water bottling assets part of Nestle $4.3B sale to NY firm," M Live, February 17, 2021, https://www.mlive.com/public-interest/2021/02/michigan-water-bottling-assets-part-of-nestle-43b-deal-with-ny-firm.html.

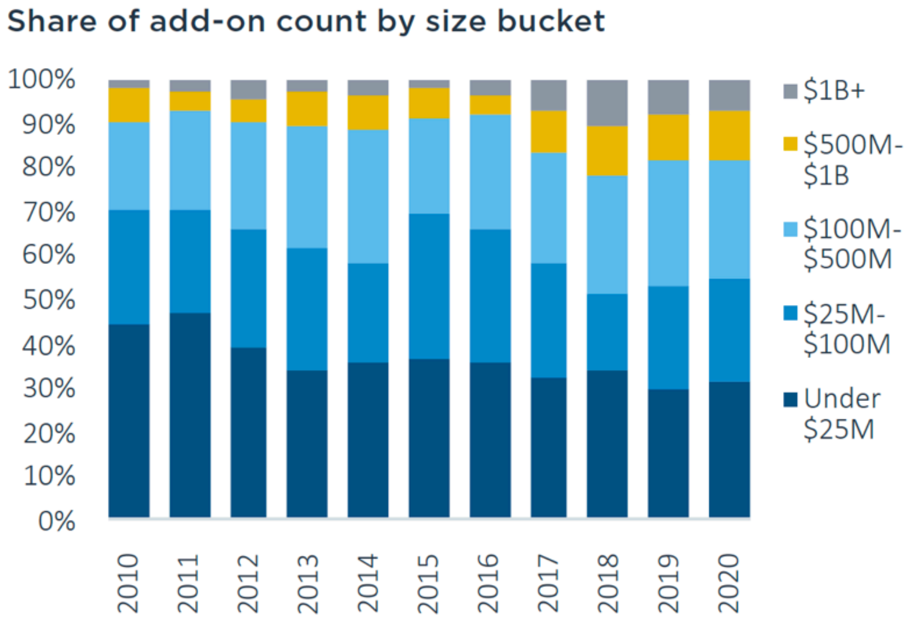
72 Claire Atkinson, "Hedge funds scoop up local newspapers withering under COVID-19 cuts," NBC News, July 14, 2020, https://www.nbcnews.com/business/business-news/hedge-funds-scoop-local-newspapers-withering-under-covid-19-cuts-n1233800.

73 Gretchen Morgenson and Emmanuelle Saliba, "Private equity firms now control many hospitals, ERs and nursing homes. Is it good for health care?," NBC News, May 13, 2020, https://www.nbcnews.com/health/health-care/private-equity-firms-now-control-many-hospitals-ers-nursing-homes-n1203161.

74 A recent study showed that patients were 10% more likely to die in PE-owned nursing homes as a result of fewer nurses and the use of more antipsychotic drugs: Dylan Scott, "Private equity ownership is killing people at nursing homes," Vox, February 22, 2021, https://www.vox.com/policy-and-politics/22295461/nursing-home-deaths-private-equity-firms.

75 Rebecca Springer, "Q2 PitchBook Analyst Note: Exploring Trends in Add-On Acquisitions," PitchBook, April 12, 2021, https://pitchbook.com/news/reports/q2-2020-pitchbook-analyst-note-exploring-trends-in-add-on-acquisitions.

76 Ibid.



SEARCH FOR YIELD IN A LOW INTEREST RATE ENVIRONMENT

Private equity activity has not only grown because of cheap debt, but because, in a low interest rate environment, institutional investors like pension funds and sovereign wealth funds have pursued higher returning investment opportunities to offset lower returns on bonds. Average allocations to private equity for US pension funds, as an example, have increased almost 40% from 6.5% to almost 9% between 2010 and 2021, and now totals approximately $480B.[77]

Public companies also looked to M&A following the financial crisis, and research suggests that acquisitive companies saw higher average total shareholder returns than their peers during that period.[78] Similar to private equity firms, public companies benefitted from access to cheap capital, as well as lower valuations for potential acquisitions following the 2008 market correction — struggling companies were easy targets. Public companies engaged in both large acquisitions during this period, as well as numerous small acquisitions that were intended to consolidate industries.

INCREASED COMPETITION FOR ACQUISITIONS

Over a relatively short period of time, widely available, low-cost debt and an increasing number

77 The massive shift in allocations to private equity funds has benefitted PE managers tremendously, who charge high fees on funds raised by institutional investors. The number of private equity multibillionaires rose from three in 2005 to 22 in 2020, despite private equity likely returning no better performance than public equity indices. See: Ludovic Phalippou, "An Inconvenient Fact: Private Equity Returns & The Billionaire Factory," July 15, 2020, University of Oxford, Said Business School, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3623820.
78 Brian Salsberg, "The Case for M&A in a Downturn," Harvard Business Review, May 17, 2020, https://hbr.org/2020/05/the-case-for-ma-in-a-downturn.

of acquirers entering the market has driven up the price for acquisitions overall, but particularly for larger acquisitions. This did not deter acquirers, but instead forced many to move down market where companies are sold at lower valuation multiples. Nonetheless, from 2012 through 2021, average valuation multiples for private companies (the usual target of acquisitions by PE firms or public companies) grew from 8.6x to 13.7x.[79]

For both public companies and private equity firms, however, there are operational challenges with investing in small, unrelated businesses. Often these require significant attention, so are not worth the resources for acquirers. As a result, acquiring firms tend to look for smaller companies in industries in which they have already invested so that they can integrate them into existing portfolio companies. For private equity that means not buying these companies directly, but pursuing roll-up strategies where they back a single company which would subsequently go out and acquire many small companies in their sector.

MORE OWNERS PURSUING RETIREMENT

Another important factor has been the demographics of business owners. Discussion of the "silver tsunami" of business ownership transitions has been ongoing for at least a decade. Approximately half of businesses are owned by Baby Boomers, and 60% are expected to sell within the next 10 years.[80] This equates to 2.9 million businesses that employ approximately 32 million people, or an average of 11 employees per business.[81] After two financial crises in just over a decade, many business owners are exhausted and have decided to pursue retirement.

For these owners, there is often no alternative to selling their business. Few have family members to take over, and often the management teams or employees would lack the resources to purchase the company themselves. Often owners see selling the company as crucial to ensuring that their business can continue to provide its products or services in local communities – and to protect their employee's livelihoods.

However, not all buyers are created equal. Consolidator companies are more likely to produce the harms associated with concentrated markets, whether through higher prices, job cuts, abuses of dominance over suppliers, or others. But, as described, these same consolidator companies have an advantage over other buyers in that they often offer to acquire a company at a higher price. As much as business owners may not like the idea of selling to competitors, these transactions will determine the financial future of their family. In lieu of antitrust enforcement, there is a strong financial incentive to sell to a consolidator.

79 Pitchbook Data Inc., "US PE Breakdown 2021 Annual – Data Pack," PitchBook, January 11, 2022, https://pitchbook.com/news/reports/2021-annual-us-pe-breakdown.
80 "The Small Business Closure Crisis," Project Equity, https://project-equity.org/wp-content/uploads/2021/03/Silver-Tsunami-United-States-business-closure-crisis-Project-Equity1.pdf.
81 Ibid.

The Roll-Up of Physician's Practices [Private Equity Case Study]

In 2019 Envision, a healthcare company then-owned by private equity firm KKR, made headlines for surprise medical billing[82] – a practice which shackles patients with large bills for out-of-network providers, despite visiting an in-network hospital. In one instance, a woman afflicted with COVID-19 was unconscious and intubated when she was flown via helicopter to another Philadelphia hospital 20 miles away. When she returned home after recovering, she was hit with a $52,112 bill.[83] The "health equivalent of a carjacking,"[84] in the 2010s surprise bills increasingly came from medical practices owned by private equity, such as emergency room physicians, anesthesiologists, and radiologists.[85]

Envision, and other private equity owned healthcare providers, are only able to get away with anti-patient practices because many segments of American healthcare have been consolidated through serial acquisitions. Prior to the medical billing scandal, in November 2017, KKR raised a $1.45 billion investment fund specifically to consolidate the healthcare industry or, in their words, invest in "health care growth equity investment opportunities in the Americas."[86] The average check size was under $100 million, again meaning that many – if not most – deals fell below HSR thresholds. In January of 2022, KKR raised a second version of the same fund – this time with $4 billion.[87] KKR, alone, has invested $18 billion across health care since 2004.[88]

Because the private equity industry is, by nature, private, it is very difficult to get accurate information on the number and history of acquisitions, but we know that private equity has taken a particular interest in health care industries. According to a report from the American Antitrust Institute and the Petris Center "On a macro level, healthcare was the second major sector for private equity investment in 2020, accounting for 18 percent of all reported deals, up from 12 percent in 2010. From 2010 to 2020, the number of reported private equity deals soared from 352 to 937, more than a 250% increase. This is likely an undercount as smaller deals are

82 Tara Bannow, "Envision CEO steps down amid surprise billing scrutiny," Modern Healthcare, February 06, 2020, https://www.modernhealthcare.com/providers/envision-ceo-steps-down-amid-surprise-billing-scrutiny.

83 Sarah Kliff, "A $52,112 Air Ambulance Ride: Coronavirus Patients Battle Surprise Bills," The New York Times, October 13, 2020, https://www.nytimes.com/2020/10/13/upshot/coronavirus-surprise-medical-bills.html.

84 John, "Surprise Billing: Even When Staying In-Network, Patients Can Be Hit With Out-Of-Network Bills," Patients Rising, December 22, 2016, https://www.patientsrising.org/surprise-billing-out-of-network-bills/.

85 Margot Sanger-Katz and Reed Abelson, "Surprise! Insurance Paid the E.R. but Not the Doctor," The New York Times, November 16, 2016, https://www.nytimes.com/2016/11/17/upshot/first-comes-the-emergency-then-comes-the-surprise-out-of-network-bill.html; Lovisa Gustafsson, Shanoor Seervai, and David Blumenthal, "The Role of Private Equity in Driving Up Health Care Prices," Harvard Business Review, October 29, 2019, https://hbr.org/2019/10/the-role-of-private-equity-in-driving-up-health-care-prices.

86 "KKR Closes $1.45 Billion Health Care Strategic Growth Fund," Businesswire, November 29, 2017, https://www.businesswire.com/news/home/20171129005291/en/KKR-Closes-1.45-Billion-Health-Care-Strategic-Growth-Fund.

87 "KKR Closes $4.0 Billion Health Care Strategic Growth Fund II," Businesswire, January 10, 2022, https://www.businesswire.com/news/home/20220110005267/en/KKR-Closes-4.0-Billion-Health-Care-Strategic-Growth-Fund-II.

88 Michelle F. Davis, "KKR Raises 4 billion to invest in high growth health care firms," Bloomberg, January 10, 2022, https://www.bloomberg.com/news/articles/2022-01-10/kkr-raises-4-billion-to-invest-in-high-growth-health-care-firms?sref=q0qR8k34.

often ignored and not counted. Deal values are much more difficult to measure because about 86 percent of deal values are not public or reported in the PitchBook data, which is considered the most comprehensive source."[89]

Private equity has employed roll-up strategies in numerous medical specialties like anesthesiology, emergency medicine, family practice, and dermatology, among others.[90] As a result, more and more doctors now work for a private equity owner or hospital than do for themselves. In the late 1980s around 70% of physicians owned their practice, but by the end of 2020, nearly 70% of physicians reported being employed by a hospital or corporation.[91]

Larger practices are increasingly common, as various facets of the industry have consolidated.[92] The American Medical Association noted that private equity acquisitions of independent practices increased from 34 percent of acquisitions in 2016 to 77 percent in 2019.[93]

Most of these acquisitions are small and fall well-below HSR thresholds.[94] A 2017 report titled, "Physician Practice Consolidation Driven By Small Acquisitions, So Antitrust Agencies Have Few Tools To Intervene" claims that concentration is occurring from "piecemeal acquisitions of small group practices and the hiring of new physicians, rather than from mergers or acquisition involving independent large group practices." The authors note that individual acquisitions are not likely to change HHI measures on a case-by-case basis, and so are not considered significant antitrust risks. However, "Our examination of the sizes of acquired groups revealed that the growth of large physician groups resembles "whale eats krill," rather than "shark eats shark." Roughly half of the growth of the groups that initially had more than a hundred physicians involved acquisitions of groups of ten or fewer physicians."[95]

Judith Gorelick, a neurosurgeon and professor, confirms these trends: "The major driving force in healthcare is consolidation...which escalates the cost of healthcare, limits patient choices, limits physician independence and limits negotiating power."[96]

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89 Richard M. Scheffler, Laura M. Alexander, and James R. Godwin, "Soaring Private Equity Investment in the Healthcare Sector: Consolidation accelerated, competition undermined, and patients at risk," The Nicholas C. Petris Center, May 18, 2021, https://publichealth.berkeley.edu/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL.pdf.

90 Jane Zhu, "Private Equity Investment in Physician Practices," University of Pennsylvania Leonard Davis Institute of Health Economics, February 15, 2020, https://ldi.upenn.edu/our-work/research-updates/private-equity-investment-in-physician-practices/.

91 In 2018, 47.4% of practicing physicians were employed, while 45.9% owned their practices. Carol Kane, "Policy Research Perspectives: Updated Data on Physician Practice Arrangements: For the First Time, Fewer Physicians are Owners Than Employees," American Medical Association, 2019, https://www.ama-assn.org/system/files/2019-07/prp-fewer-owners-benchmark-survey-2018.pdf; Nathan Eddy, "Nearly 70% of U.S. physicians are employed by hospitals or corporate entities," Healthcare Finance, July 13, 2021, https://www.healthcarefinancenews.com/news/nearly-70-us-physicians-are-employed-hospitals-or-corporate-entities.

92 Between 2018 and 2020, the shifts toward larger practices and fewer physician-owned practices accelerated. "AMA analysis shows most physicians work outside private practice," American Medical Association, May 5, 2021, https://www.ama-assn.org/press-center/press-releases/ama-analysis-shows-most-physicians-work-outside-private-practice.

93 Ibid.

94 Cory Capps, David Dranove, and Christopher Ody, "Physician Practice Consolidation Driven By Small Acquisitions, So Antitrust Agencies Have Few Tools To Intervene," Health Affairs, September 2017, https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0054.

95 Ibid.

96 Patsy Newitt, "Hospitals are snapping up physicians: Who wins?" Becker's ASC Review, February 23, 2022, https://www.beckersasc.com/asc-news/hospitals-are-snapping-up-physicians-who-wins.html.

The consequences for patients can be dire.

Patients are hit with higher prices, some of which can bankrupt families. One study showed that concentrated health systems charge fees 14 to 30 percent higher than in the least concentrated markets.[97] And according to HBR, "Private-equity-owned freestanding emerging rooms (ERs) are garnering scrutiny because of their proliferation and high rates.[98] The majority of freestanding ER visits are for non-emergency care, and their treatment can be 22 times more expensive than at a physician's office." Anther well-publicized study concluded that ER charges for the same services roughly double after a hospital outsources its emergency room to private equity-owned company Envision.[99]

In many states, corporations or investment groups are prevented from owning medical practices outright. These are known as 'corporate practice of medicine' laws. To skirt these regulations, PE firms will often link a PE-owned management company with a group practice that is physician owned — combining the two businesses into a "platform." They then grow the practice by acquiring small physician's practices or adding additional doctors to the practice.

With the current merger reporting thresholds and guidelines, regulators have few tools to intervene, while patients deal with rising costs and lower quality of service. The policy attempts to rein in these abuses have had limited success. For example, private equity spent millions of dollars on lobbying to deter bi-partisan efforts to stop surprise billing, but thankfully Congress prevailed and passed the No Surprises Act in early 2021.[100] With surprise billing now illegal, private equity owners are still in dominant positions in many healthcare markets, and investors are finding other ways to recoup losses, in some cases pointing to a coming glut of ER doctors which they hope will enable wage declines.[101]

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97 Abe Dunn and Adam Hale Shapiro, "Do Physicians Possess Market Power?" The Journal of Law & Economics, 2019, https://chicagounbound.uchicago.edu/jle/vol57/iss1/6/.

98 Les Masterson, "Free-standing ERs costs 22 times more than doctor's office, UnitedHealth study says," Healthcare Dive, March 7, 2019. https://www.healthcaredive.com/news/free-standing-ers-costs-22-times-more-than-doctors-office-unitedhealth-st/549904/.

99 See: Angie Stewart, "Envision faces lawsuit over surprise bills for emergency services – 5 insights," Becker's ASC Review, February 13, 2018, https://www.beckersasc.com/asc-coding-billing-and-collections/envision-faces-lawsuit-over-surprise-bills-for-emergency-services-5-insights.html and Zack Cooper, Fiona Scott Morton and Nathan Shekita, "Surprise! Out-of-Network Billing for Emergency Care in the United States," Yale University Institution for Social and Policy Studies, March 2018, https://isps.yale.edu/sites/default/files/publication/2018/03/20180305_oon_paper2_tables_appendices.pdf.

100 Margot Sanger-Katz, Julie Creswell, and Reed Abelson, "Mystery Solved: Private-Equity-Backed Firms Are Behind Ad Blitz on 'Surprise Billing,' The New York Times, Sept. 13, 2019, https://www.nytimes.com/2019/09/13/upshot/surprise-billing-laws-ad-spending-doctor-patient-unity.html?auth=login-email&login=email.

101 Maureen Tkacik, "Private Equity Gloats Over A Doctor Glut," The Lever, May 20, 2022, https://www.levernews.com/private-equity-gloats-over-a-doctor-glut/.

The Great Amazon Aggregator: Thrasio [Start-Up Case Study]

The serial acquisition business strategy doesn't just consolidate legacy industries. It is now being used to roll-up newer industries, like e-commerce, and it is growing and attracting an increasing amount of capital. Thrasio is a company that most venture capital and private equity investors are paying attention to, but one that few Amazon customers have heard of. Ever come across the fitness brand, URBNFit? Or the massage gun, YVBE? How about the coffee accessories brand, Coffee Gator? The EEZ-Y umbrella? These are just a few of the more than 22,000 Thrasio products on the Amazon Marketplace, but none of them are labeled as such.

A young startup founded in 2018, Thrasio acquired an average of 1.5 independent e-commerce businesses per week over the course of 2021.[102] Now valued at more than $10 billion, the so-called "Amazon aggregator" boasts that it is "building a next generation consumer product good company that uses M&A as our R&D engine." With a focus on acquiring businesses with revenue between $1 and $30 million, by the end of 2021, Thrasio owned more than 22,000 products, which appear to consumers to come from distinct, independent sellers.[103]

Thrasio is one of the pioneers in what is sometimes referred to as "acquisition entrepreneurship." People typically think of entrepreneurs as building products or brands from scratch, but with "acquisition entrepreneurship," a company purchases existing businesses and scales them. Startups using this model to buy e-commerce sellers have received more than $12 billion in early-stage investment to date, mostly in just the last two years.[104] While each individual acquisition Thrasio makes is not alarming, the number and aggregated control the company gains through them should raise alarm bells for antitrust regulators. Maybe this is why Ken Kubec, Thrasio's VP of Acquisitions, has commented that "roll-ups underneath the covers is really where you add tremendous value."

To understand Thrasio's rapid expansion, it's important to consider the seller side of the equation. Third-party sellers are often small business owners who lack access to capital, don't have the expertise or the number of employees needed to operate on Amazon's platform efficiently, and don't have the size or capacity to withstand supply chain disruptions like those of the past two years.

Sellers can also get frustrated and despondent at the challenges of operating on Amazon's

102 Ingrid Lunden, "Thrasio, the Amazon aggregator, raises $1B in fresh funding at a valuation of up to $10 billion," Tech Crunch, October 25, 2021, https://techcrunch.com/2021/10/25/thrasio-the-amazon-aggregator-raises-1b-in-fresh-funding-at-a-valuation-of-up-to-10-billion/.
103 See Appendix Item B: A non-comprehensive list of Thrasio brands.
104 "Who's Funding the Aggregators," Hahnbeck Blog, Nov. 30, 2021, https://www.hahnbeck.com/blog/2021/11/30/whos-funding-the-aggregators.

platform. One seller put it this way: “At any point in time, you can get taken down. You are at Amazon’s mercy.” Another seller, named BisonPuncher on Discord, lamented about being automatically miscategorized and subsequently kicked off for weeks at a time, finally driving him to contact an aggregator and sell the business. Many third-party sellers who now spend more than a third of their revenue on Amazon’s fees wonder whether it’s all worth it.

So Thrasio, with billions of dollars of early-stage investments, appears to some sellers like a good exit opportunity. Exiting is common for many entrepreneurs, and that option is a blessing for those who hit tough times or who are not looking to manage a large team if sales take off. Buyers like Thrasio give these vendors a profitable exit.

The issues come later, for the millions of business owners who still want to operate independently on Amazon. It’s very difficult for them to compete against a conglomerate third-party seller like Thrasio.[105] There is a general consensus that if Amazon sells a product, it will be nearly impossible as a third-party seller to maintain any substantial market share of that product on the Amazon platform.[106] Amazon has been caught using seller data to mimic top selling products and put the competing sellers out of business. But now, individual sellers are up against not only Amazon, but roll-up companies like Thrasio.

Thrasio is also not thinking like most of the other independent sellers. It openly strategizes on how to gain and use market power. In a 2020 investor call, Thrasio’s Founder Josh Silberstein presented their plans to use market dominance to gain and maintain Amazon’s Top Seller status. “Every time we buy product it gives us market power that we can use to launch another product.” Silberstein went on to illustrate this strategy by talking about using their best-selling whipped cream dispenser on Amazon to launch a whipped cream charger. “Every time somebody buys our whip cream dispenser, we can give them the ability to pick up the whipped cream charger for essentially a dollar or two. And what will end up happening is we’ll end up with conversion rates on our whipped cream charger of 80 percent or 90 percent with no marketing.” Silberstein went on to explain that, using this strategy, they could create a top-five product leader “out of the market power that we have on the whipped cream dispenser side.”

Without market dominance from the serial acquisition strategy, which helps minimize the risks of a failed product, Thrasio wouldn’t be in a position to use its market power so readily.

Thrasio’s investors, including massive asset managers like Goldman Sachs, BlackRock, Advent International, Bain Capital, and Barclays, see a massive market opportunity in this strategy.

105 Krista Brown, “Rollups: Gators Defining the Merchant Market,” The American Prospect, February 10, 2022, https://prospect.org/power/rollups-gators-defining-the-merchant-makeover/.

106 Dana Mattioli, “Amazon Scooped up Data From Its Own Sellers to Launch Competing Products,” Wall Street Journal, April 23, 2020, https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015.

Kubec, speaking to how the company's unmatched capital stock helps it beat other sellers, stated, "One mistake some people make is they focus so much on the margin when you can give up a dollar of profit to make one and a half six months from now ... It's hard to do when you're boot-strapped or cash-strapped. But that's one of the things that we're able to do with our huge capital base."[107]

But Thrasio's capital composition is somewhat unique in the startup space. While most companies grow by selling equity or convertible notes, Thrasio has taken on a significant amount of debt. With a debt round reaching $500 million in January 2021, and an addition $650 million in October 2021, Thrasio may have about 50 percent of its investments through debt facilities. This is not common for most start-ups, but it is how most private equity roll-ups finance their acquisition strategies. Acquisition debt facilities are the fuel for most consolidators, as financing acquisitions with debt can help generate significantly higher returns. Lenders consider acquisitions to be lower risk than other forms of growth, and as a result play an enabling role in consolidation.

The debt financing is not the only part of Thrasio that is reminiscent of a private equity model. On the same investor call when Silberstein spoke about market power, he also explained the mentality towards their thousands of brands, "We actually have sort of stopped looking at these companies as companies and have just begun to think of them as portfolios of products."

Thrasio will not become a monopoly, but it is substantially lessening competition in e-commerce. Individual sellers stand little chance against Thrasio when it decides to assert its muscle. With a team of hundreds of marketers, SEO managers, and marketplace analytics, Thrasio's digital performance will always have a tailwind making them most likely to come out on top.

Thrasio and its look-alikes currently fly under the radar as they rapidly acquire thousands of successful products. Unless regulators begin to analyze these trends of consolidation at the ground level, firms like Thrasio will continue to tip the scale, making it less and less feasible to survive as an independent seller on the platform. "Having worked at Thrasio, I cannot imagine being an individual seller," said a current Thrasio employee. With over 200 brands and 20,000 products — and with thousands of employees whose job it is to maximize search words, navigate Amazon's policy changes, respond to customer reviews, and change pricing to maintain customers — Thrasio will continue to have an upper hand.

107 Brown, "Rollups: Gators Defining the Merchant Market," https://prospect.org/power/rollups-gators-defining-the-merchant-makeover/.

LEGISLATIVE, REGULATORY, AND ENFORCEMENT RECOMMENDATIONS TO ADDRESS THE HARMS FROM SERIAL ACQUISITIONS

Despite their growing prevalence, there is widespread recognition that threats from serial acquisitions are, as of now, left unaddressed by antitrust enforcement, even though there are existing antitrust laws to which they should be subject. As Jeffrey M. Wilder, Acting Deputy Attorney General, Antitrust Division, U.S. Department of Justice said in 2019:

> "Consider the case of the serial acquirer, a firm that slowly grows its share through a series of small acquisitions until it accounts for a sizable share of the market. It is exceptionally hard to establish that any individual acquisition leads to a substantial lessening of competition under the Clayton Act. Yet when we step back and look at the totality of the evidence, it is clear that a focus on individual transactions makes for a very blurry snapshot of what is happening in the market... In [the] context [of serial acquisitions], with many acquisitions involving targets with market shares of 5-10%, we tend to miss what is happening in the market when we look at each transaction in isolation. We also struggle to identify which single transaction leads to a substantial reduction in competition. That same logic applies to the acquisition of start-ups operating outside a platform's core market."[108]

Serial acquisitions pose potential harms to the resiliency of supply chains, can lower wages, contributed to a declining small business ecosystem, be a factor in rising inequality, and ultimately be a threat to competitive markets. For these reasons, it is important that the agencies have a full view of what is happening in markets as a result of this kind of consolidation. Fortunately, the tide is shifting, as the FTC and DOJ jointly commit to enforcing the Clayton Act as it is written, and in response to shifting market realities. In a recent speech to the New York Bar Association, Jonathan Kanter stated:

> "We have an obligation to enforce the antitrust laws as written by Congress, and we will challenge any merger where the effect "may be substantially to lessen competition, or to tend to create a monopoly." The second prong—or tend to create a monopoly—has often been given less emphasis. No longer: we intend to remain faithful to the plain language of the Clayton Act."[109]

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108 Jeremy Wilder, "Potential Competition in Platform Markets, Department of Justice, June 10, 2019, https://www.justice.gov/opa/speech/file/1176236/download.

109 "Assistant Attorney General Jonathan Kanter of the Antitrust Division Delivers Remarks to the New York State Bar Association Antitrust Section," Department of Justice, January 24, 2022, https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-remarks-new-york.

Through a combination of expanded enforcement procedures from the antitrust agencies and statutory changes to merger laws, the anticompetitive harms of serial mergers can be addressed. By turning back to the incipiency standard as it was originally conceived and updating it to match the realities of contemporary markets, policy can block serial acquisitions and maintain competitive markets.

REINVIGORATE THE CLAYTON ACT'S INCIPIENCY STANDARD

The FTC and DOJ already have the authority to act against these harmful serial acquisitions through a broad reinvigoration of the incipiency standard from Section 7 of the Clayton Act. Section 7 prohibits any acquisition or merger where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."[110] Should a serial acquirer be found consolidating an industry, any attempted acquisitions in that industry should be blocked. Fitting with this broad mandate from Congress, enforcement against would-be monopolists under the incipiency standard should consider a broad range of price and non-price effects relevant to serial acquisitions, including the long-term business strategy of the acquirer, the current trend or prevalence of concentration or acquisitions in the industry, and the investment structure of the transactions.

In pursuing incipiency cases or investigations, the agencies should investigate and examine the business strategies of the acquiring firms in more detail than just their short-term price effects or the individual transaction under review. Despite clearly tending to reduce competition as a business strategy, these serial acquisitions fall in a gap in existing regulation as currently conceived, because they neither immediately raise prices as they are acquiring small firms nor are they large enough to raise flags according to the existing merger guidelines or notification requirements. However, the clear anticompetitive intent of these new business strategies should be considered as attempts at incipient monopolization, regardless of whether the serial acquirer already has the market power to create anticompetitive harms.

Re-asserting the incipiency test, particularly for mergers and serial acquisitions in similar or adjacent industries, or which draw from the same labor pool, is a return to the aim of enforcers who drafted Clayton and the 1950 Celler-Kefauver Act. The 1950 House Report stated that acquisitions "have a cumulative effect" and that the Act was "intended to permit intervention in such a cumulative process when the effect of an acquisition may be a significant reduction in the vigor of competition, even though this effect may not be so far-reaching as to amount to a combination in restraint of trade, create a monopoly, or constitute an attempt to monopolize."[111]

110 Section 7 of the Clayton Act of 1914, as amended 1950. (15 U.S.C. § 18).

111 "The committee wish to make it clear that the bill is not intended to revert to the Sherman Act test. The intent here ... is to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding." House Report. REP. NO. 1191, 81st Cong., 2d Sess. 12-13 (1950). See also: S. REP. No. 1775, 81st Cong., 2d Sess. 4-5 (1950).

To reflect this renewed enforcement of the incipiency standard, revised merger guidelines should incorporate a new section for industries or markets where there is a trend towards concentration, akin to the original 1968 Guidelines. The 1968 Guidelines, however, were still rather limited, promising to challenge any merger in markets "not wholly unconcentrated, in which there is a significant trend toward increased concentration," based on whether "the aggregate market share of any grouping of the largest firms in the market from the two largest to the eight largest has increased by approximately 7% or more of the market over a period of time extending from any base year 5-10 years prior to the merger."[112]

An updated incipiency standard for the new merger guidelines should not only contain such a statement about blocking mergers where there is a trend towards consolidation, but also state a policy of challenging mergers where the acquisition strategy is to eventually consolidate the industry over time, even if no individual transaction would significantly increase concentration or present a threat to competition. This reflects the legislative history and intent of the Clayton Act.

Furthermore, the default remedy for an anticompetitive merger or acquisition on incipiency standards should be to fully block the merger, rather than any post-merger remedies such as divestment, behavioral remedies, or requiring alterations to the originally proposed transactions. Evidence has shown that such solutions are rarely effective,[113] and that the merging or acquiring firms often break promises made to the agencies once the merger is fully consummated and thus more difficult to unwind.

CONSIDER NON-PRICE EFFECTS

Merger policy and enforcement has, for too long, had a near singular focus on efficiency through price, which has ignored many other substantial harms to stakeholders. In many serial acquisition strategies, efficiency claims will be used to justify the strategy, arguing it provides economies of scale or other cost-saving benefits for consumers. This may or may not be true.

In addition to price effects, regulators and enforcers should focus on additional harms such as monopsony effects on labor, quality of products and services, new firm exit and entry rates, effects on innovation, and disinvestment strategies by the acquiring firm.

Moving away from tools like HHI for market-share analysis in these kinds of cases is critical for the purposes of focusing on non-price effects. Often roll-up strategies concentrate regional or

112 1968 Merger Guidelines, Department of Justice, https://www.justice.gov/archives/atr/1968-merger-guidelines.

113 John Kwoka, "Mergers, Merger Control, and Remedies: A Response to the FTC Critique," Northwestern University Department of Economics, March 31, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2947814.

local markets, or similar labor pools, which may not be reflected in measure such as HHI. As Jonathan Kanter remarked in January 2022, "Market realities should drive the antitrust analysis, not merely market definition. In a dynamic, multi-dimensional economy, the static formalism of market definition may not always be the most reliable tool for assessing the potential harms of mergers."[114]

CONSIDER ROLE OF DEBT IN MERGER ANALYSIS

The increased availability and high levels of debt financing for serial acquisitions merits further investigation by the FTC. Through acquisition facilities for serial acquirers and similar lending products, debt markets are not just enabling consolidation but preferencing scale. This is because the availability of these facilities, with less pressure on high leverage levels, enables serial acquirers to offer higher prices for acquisitions and to close transactions faster. This, in turn, provides a competitive advantage over other more local acquirers or independent entrepreneurs.

In addition, it is possible that the high levels of debt and the corresponding cost of interest payments put greater pressure on serial acquirers to raise prices or cut costs, especially in a rising interest rate environment. Depending on the market in question, past a certain level of debt, acquirers can only hope to recover their investment through anticompetitive price increases or wage suppression. As a result, it's important that the FTC consider how debt in general, and specifically the use of acquisition facilities, magnifies the potential for antitrust abuses.

REMOVE "SAFE HARBOR" PROVISIONS FROM MERGER GUIDELINES

Existing merger guidelines since 1982 have included general guidelines for a "safe harbor" – a level of industry-wide concentration below which the agencies will not challenge a merger. Combined with the lax regulatory environment of recent decades, this safe harbor guidance signals an approval of business strategies to rapidly roll-up non-concentrated industries via a series of smaller acquisitions.

In conjunction with the broader investigative efforts, these assurances should be eliminated. The FTC should clearly state that the safe harbor is eliminated in the new merger guidelines. Serial acquisitions present a threat to competition that is not effectively captured by the structural presumptions of concentration measures, like HHI, and serial acquisitions can pose a threat to competition at low levels of concentration.

114 "Assistant Attorney General Jonathan Kanter Delivers Remarks on Modernizing Merger Guidelines," Department of Justice, January 18, 2022, https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-modernizing-merger-guidelines.

TRANSPARENCY IN MERGER NOTIFICATIONS

The FTC should publicly report the existence of all Hart-Scott-Rodino merger filings from the moment they are filed. Many of these serial acquirers eventually attain the size to then pursue mergers sufficiently large to require notification to the FTC through the HSR. While Hart-Scott-Rodino filings themselves include details of business practices or trade secrets that should remain confidential, the public should have access to knowledge about the existence and prevalence of mergers and acquisitions.

EXPANDED FEDERAL TRADE COMMISSION EXEMPTION FROM THE PAPERWORK REDUCTION ACT

The Paperwork Reduction ACT (PRA) of 1995 governs how federal agencies collect information from the public. PRA clearances are made through the Office of Information and Regulatory Affairs (OIRA), under the Office of Management and Budget (OMB). As it stands, the FTC is given some exemption from the Act during antitrust investigations, but the law hampers the agency's ability to request information from "ten or more persons," including companies, during a 6(b) study.[115] This labyrinthine process constrains the agency's research capabilities, providing unnecessary administrative burden on the normal course of operations, particularly when stakeholders have specifically requested 6(b) studies due to anticompetitive or abusive tactics within a particular industry. Likewise, the FTC was created as an independent regulatory authority, and this restriction provides the OMB with an effective veto over the FTC's investigative actions. We recommend that the FTC be completely exempted from the Paperwork Reduction Act.

NEW INVESTIGATIVE CRITERIA FOR SERIAL ACQUISITIONS

To target enforcement against the incipient monopolization threat posed by serial acquisitions, new investigative criteria should be developed to challenge this acquisition strategy. First, this should include both criteria about the size, number, and rate of acquisitions. For example, firms making more than 6 acquisitions per year valued at $70 million total or more, could be made subject to extra scrutiny under revised merger guidelines, regardless of the total size of the firm or the individual acquisitions. The agencies should determine the appropriate levels based on further review.

Complex legal or tax structuring can often convolute who the ultimate acquiring firm is in a transaction. One example in healthcare is where there are prohibitions against the corporate practice of medicine in certain states. In these cases, private equity firms may use management companies with revenue or profit-sharing agreements while leaving the "ownership" of the practice with the health care professional.[116] As a result, it's critical for the agencies to ensure that beneficial ownership is properly defined for these new reporting requirements, otherwise an acquirer may be able to skirt such obligations.

In the case of private equity firms, beneficial ownership should be traced through to their portfolio company, as is reported to their limited partners, as well as the private equity firm itself. This is important because in some cases it may be most appropriate to investigate all acquisitions by a portfolio company, whereas in others it may be best to investigate all investments by a private equity firm in a specific industry. For example, by ruling against JAB Consumer Partners, the FTC has ensured that neither JAB nor its portfolio company NVA can circumvent the requirements to receive FTC approval for future clinic investments within specified geographic areas.[117]

Second, having identified a serial acquirer based on the rate, number, and expenditures on acquisitions, investigations should request new information specifically relevant to serial acquisitions. The agencies should request any investment materials, such as Private Placement Memorandums, Management or Lender Presentations, or any documents prepared for the purposes of soliciting investment. Such documents often plainly describe the anticompetitive roll-up or consolidation strategy of the acquiring firm. In addition, serial acquirers often have financing arrangements with commercial lenders to support their acquisition strategies. Agencies can request loan documentation to understand the acquisition plans of a company and its financing strategy.

PRE-APPROVAL OR MORATORIUM REQUIREMENTS FOR VIOLATIONS

Companies who have recently been found to have violated the antitrust laws or the terms of a consent decree should face a time-limited moratorium on future acquisitions for a period of 3-5 years following the violation. An alternative penalty would require the company to seek pre-approval from the FTC for any future acquisitions.

Legislative changes can also enhance the deterrent effect. For example, the "Prohibiting Anticompetitive Mergers Bill" sponsored by Rep. Mondaire Jones recommends that enforcement

116 Patrick Souter and Andrew Meyercord, "Private Equity Investment in the Physician Practice: Has Its Time Finally Come or Will the Mistakes of the Past Be Repeated?" Journal of Health and Life Sciences Law, June 01, 2020, https://www.americanhealthlaw.org/content-library/journal-health-law/article/5a4d6c17-f1cb-4c1f-b233-24a6688ac674/private-equity-investment-in-the-physician-practic.

117 The FTC states: "Under the FTC's order, JAB must obtain the Commission's prior approval before acquiring a specialty or emergency veterinary clinic within 25 miles of any then-owned JAB-owned clinic anywhere in California or Texas. The company must also notify the FTC in writing 30 days prior to acquiring any specialty or emergency veterinary clinic within 25 miles of a clinic owned by JAB anywhere in the United States that otherwise is not required to be reported under the Hart-Scott-Rodino Act. 'Private equity firms increasingly engage in roll up strategies that allow them to accrue market power off the Commission's radar,' said Holly Vedova, Director of the Bureau of Competition. 'The prior notice and approval provisions will ensure the Commission has full visibility into future consolidation and the ability to address it.'" See: "FTC Acts to Protect Pet Owners from Private Equity Firm's Anticompetitive Acquisition of Veterinary Service Clinics," Federal Trade Commission, June 13, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-acts-protect-pet-owners-private-equity-firms-anticompetitive-acquisition-veterinary-services.

agencies be prohibited from negotiating remedies with the merging parties if the merger is in violation of antitrust laws. It also recommends that firms with a history of corporate crime or antitrust violations in the previous ten years be prevented from acquiring other companies.[118]

Because consent decrees have been shown to rarely produce the intended pro-competitive outcomes and are often violated without consequence, we recommend that the FTC study whether a moratorium or pre-approval would be a stronger and more practical deterrent to illegal behavior. Whichever approach the FTC prefers, we recommend that it apply to all of the portfolio company's future acquisitions within the specified time frame, as well as those by its majority shareholder (i.e., a private equity fund manager) within the same sector or market (including labor markets) for the same time period. This ensures that the beneficial owner of these acquisition strategies cannot use other portfolio companies to achieve the same anti-competitive outcomes.

For these acquisition pre-approvals or moratoriums, both the geographic region and the sector definition should be broad enough to ensure the acquisition strategy is arrested in its incipiency, before consolidation is successfully achieved. If, instead of a moratorium, the FTC opts to require firms to be granted pre-approval by the agency, they should include a provision that approved acquisitions can still be unwound by the agencies in the future if they are later deemed anti-competitive.

REVIEW ENFORCEMENT OF REGULATIONS AGAINST CORPORATE OWNERSHIP

In numerous industries in the US, particularly in healthcare, there are existing regulations that are intended to prohibit corporate ownership of businesses by non-licensed professionals. These industries include dental,[119] veterinary,[120] medical,[121] and many more. However, these also tend to be industries with significant consolidation activity by large corporations or private equity firms. This consolidation is enabled in many cases by a lack of enforcement of existing regulations, as well as by complex legal structuring that masks who the ultimate beneficial owner is — in many cases, it is a private equity firm or corporation.

One notable factor that may influence the lack of enforcement is that older business owners who are looking to retire benefit economically from the more attractive acquisition offers that

118 United States, Congress, House, Prohibiting Anticompetitive Mergers Act of 2022, https://www.congress.gov/bill/117th-congress/house-bill/7101/text?r=75&s=1.
119 C. Scott Litch, "Corporate Ownership of Dental Practices, and Management Service Organization Issues: Part II," Litch's Law Log, September 2010, https://www.aapd.org/assets/news/upload/2010/4194.pdf.
120 Non-Veterinarian Ownership by States," Mahan Law, https://mahanlaw.com/practice-areas/buying-a-veterinary-practice/non-veterinarian-ownership-by-states/.
121 "Issue Brief: Corporate Practice of Medicine," American Medical Association, 2015, https://www.ama-assn.org/media/7661/download.

consolidators can provide. The FTC and DOJ should work in collaboration with state regulators to review the lack of enforcement on restricted ownership, and where necessary consider changes to enhance enforcement.

STATUTORY CHANGES TO HART-SCOTT-RODINO ACT

In addition to these immediate regulatory and enforcement actions, several possible statutory changes should be considered to improve merger review:

- **Lower Notification Thresholds:** Notification thresholds for Hart-Scott-Rodino filings should be lowered. There is evidence of large numbers of smaller anticompetitive mergers and acquisitions occurring below the notification thresholds, but with large anticompetitive effects, and evidence indicates that the mere existence of notification requirements is an effective deterrent to many anticompetitive mergers.[122] Under current standards, this "stealth consolidation" is invisible to the public eye and regulatory oversight but could be deterred by lower filing requirements.

- **New notification threshold by number of transactions:** Expand Hart-Scott-Rodino notification requirements to include the most rapidly acquisitive firms, regardless of their size. Firms making large numbers of acquisitions in a given year – regardless of the acquiring firm's current size or the size of the acquired firms – should be required to file pre-merger notifications to the FTC under an amended Hart-Scott-Rodino Act. We recommend that firms who make more than six acquisitions in one calendar year—which equates to roughly one acquisition every other month—within the same sector or labor market, and in cases where the acquisition grants the acquiring firm a controlling interest, are required to report these acquisitions to the FTC on an annual basis.

- **New Disclosure Requirements:** Merger notification requirements should be amended to require new information to identify and investigate serial acquisitions. In addition to the amended notification thresholds, the ultimate beneficial economic owners of the acquiring firm should be required to file merger notifications, so a complex ownership structure cannot be used to hide the anticompetitive intent or threat from serial acquisitions. This is especially relevant in private equity roll-ups, where in certain sectors like healthcare, private equity is known to use complex legal structures that circumvent regulations against corporate ownership.[123] Merger notification requirements should also require the disclosure of any investment memoranda or investment summaries used to attract investment in the acquiring firm or its ultimate beneficial economic owners.

122 Thomas G. Wollman, "Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act," American Economic Review, June 2019, https://www.aeaweb.org/articles?id=10.1257/aeri.20180137.

123 Souter and Meyercord, "Private Equity Investment," https://www.americanhealthlaw.org/content-library/journal-health-law/article/5a4d6c17-f1cb-4c1f-b233-24a6688ac674/Private-Equity-Investment-in-the-Physician-Practice.

- **Sharing of HSR Filings with States:** The Hart-Scott-Rodino Act should be amended to specifically permit the FTC to share HSR filings with state attorneys general. Even though the statutory language of the HSR Act places no specific restrictions on the sharing of merger notifications with the states, existing court decisions have restricted the FTC's ability to do so.[124] Given that serial acquirers often operate in local and regional markets rather than national or international markets, state governments and attorneys general will often have a greater interest than the federal antitrust agencies in the acquisition activity of specific serial acquirers, and should have access to the HSR filings.

These statutory changes to the HSR would both (a) deter many anticompetitive mergers by creating additional notification requirements, and (b) provide the agencies with the necessary information to investigate and appropriately respond to the anticompetitive threat posed by serial acquisitions.

STATUTORY CHANGE FOR CRIMINAL LIABILITY UNDER CLAYTON ACT

Lastly, criminal liability for the harms caused by anticompetitive mergers like serial acquisitions should be considered as part of new legislation. In particular, the dealmakers—investment bankers, attorneys, consultants—who usher through anticompetitive mergers should face possible criminal penalties in addition to possible civil liability for their role in facilitating the deal. Section 2 of the Sherman Act includes criminal penalties for attempted monopolization.[125] When first introducing the Clayton Act, criminal sanctions were originally included as part of the law, only to be later removed. As a deterrent to prevent the harms caused by serial acquisitions and other anticompetitive mergers, Congress should consider reintroducing such provisions into the merger provisions of the Clayton Act.

124 Section 7A(h) of the Hart-Scott-Rodino Act states that any information shared in an HSR filing is "exempt from disclosure ... and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress." While this wording is ambiguous, the Second and Fifth Circuits have ruled that 7A(h) prohibits disclosure of the contents of HSR filings to state attorneys general. See Mattox v. FTC, 752 F.2d 116 (5th Cir. 1985) and Lieberman v. FTC, 771 F.2d 32 (2d Cir. 1985).
125 15 U.S. Code § 2.

CONCLUSION

As the Federal Trade Commission and Department of Justice conduct a wholesale review of both the strength of current merger guidelines and agency enforcement practices, we believe serial acquisitions should be an area of particular attention. They cause substantial harms to consumers, suppliers, workers, and competition itself. The scale of the problem is still likely underappreciated, given that neither regulatory nor public attention has focused on the issue. At the same time, while private equity roll-up strategies are a primary area of concern, the business strategy of consolidation through many small transactions has grown beyond PE, and it is now being deployed by startups and even publicly traded companies in a range of industries.

The antitrust statute regarding mergers, the Clayton Act, was written specifically to prohibit monopolization "in its incipiency," well before dramatic harms were inflicted on stakeholders across the economy. Today, a similar strength of vision is needed to course correct the roll-up economy that threatens American workers, consumers, and prosperity.

GLOSSARY

Add-on acquisition: These occur when a private equity firm uses one of its portfolio companies to make a series of small acquisitions, rather than investing in many smaller companies directly through separate investments that leave the acquired companies operationally separate. Add-on acquisitions help the private equity firm build a larger company that it can eventually re-sell at a higher price, often because of newly acquired market power. More than 70% of private equity transactions are add-ons. When a number of add-on acquisitions are made in one industry, it is referred to as a "roll-up" because they are meant to "roll-up" or consolidate an industry.

Arbitrage: Arbitrage refers to purchasing and selling the same asset to make a profit. It often involves exploiting short-term variations in the valuation or price of an asset. In this paper, "valuation arbitrage" refers to a private equity-owned company buying a small business with cashflow which immediately bumps up the acquiring company's valuation. This means there is an immediate gain from the acquired company's cashflow being integrated into the acquiring firm's balance sheet, and the possibility of selling the larger company at a higher price.

General partner: A general partner (GP) is one of two or more partners who start a business or investment company that is structured as a partnership together. A GP is involved in running the fund or business day to day and is the primary owner of the businesses. GPs raise funds from limited partners (LPs), who take a partial ownership stake in the company.

Hart-Scott-Rodino (HSR): The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires that companies seeking to merge or make an acquisition over a certain size must pre-notify the FTC of the transaction at least 30 days in advance, primarily to give the agency staff time to review the transaction. As of 2022, the relevant threshold is that if the value of the transaction is over $101 million, the FTC must be pre-notified of the transaction under the Act.

Incipient monopolization: Incipient monopolization refers to attempts to consolidate and industry or attain a monopoly, but in its "incipiency" before sufficient consolidation to have enduring market power. Thus the "incipiency standard" of the Clayton Act prohibited incipient monopolization by prohibiting mergers where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." With such broad language, consolidation through mergers is illegal even before a monopoly or market power would exist.

Limited partner: A limited partner (LP) invests money in a business or investment fund (owned by a general partner) in exchange for shares in the partnership but has restricted voting power on company business and no day-to-day involvement in the business.[126] Often, private equity funds will seek investment from institutional investors like pension funds, insurance companies, family offices, or other asset managers who then become LPs in their funds.

Portfolio company: A portfolio company is a single company which a private equity or venture capital firm adds to its existing "portfolio" of investments. Investment firms may target specific sectors or look for companies that could add diversity or growth potential to their overall portfolio. In this paper, portfolio companies most often refers to companies which private equity firms have invested in to use as a vehicle for 'add-on' acquisitions.

Roll-up: Roll-ups occur when an investor, such as a private equity firm, buys up companies in the same market and merges them together. Roll-up mergers combine multiple small companies into a larger entity that is better positioned to enjoy economies of scale or exercise market, pricing, or buyer power. Private equity firms use roll-ups to consolidate previously fragmented markets to combine companies with complementary capabilities or to attain market power.[127]

Serial acquirer: A serial acquirer is a company which uses many small acquisitions with an intentional strategy of consolidating an industry, or gaining market, pricing, or buyer power. For the purposes of this paper, we define a serial acquirer as any company conducting more than six acquisitions in one calendar year.

APPENDIX

A. EssilorLuxottica Acquisitions:

- Scarrone S.p.A
- Sferoflex
- Avant-Garde Optics Inc.
- United States Shoe Corp. (LensCrafters)
- Sunglass Hut International
- Grupo Tecnol
- Bausch & Lomb (Ray-Ban, Revo, Arnette, Killer Loop)
- Oakley
- Vogue Eyewear
- Persol
- OPSM
- Cole National (Pearle Vision, Target Optical, Sears Optical, BJ's Optical)
- Alain Mikli International
- Glasses.com
- Fukui Megane Co. Ltd
- First American Health Concepts Inc.
- Optical Shop of Aspen
- D.O.C Optics
- Sunglass World
- Occhiali for Sunglasses
- Óticas Carol
- Sun Planet
- Ming Long Optical
- Barberini S.p.A.
- Walman Optical
- SightGlass Vision
- GrandVIsion
- Team Effort Optical
- MyOptique Group Ltd
- VisionDirect.co.uk
- ECP Spain
- Jai Kudo Polska Sp. Z o.o.
- Infinity Vision Alliance, Inc.
- The Professional Eyecare Resource CoOperative (PERC LLC)
- Coastal Contacts, Inc.
- Transitions Optical, Inc
- R.D. Cherry, Inc. (Cherry Optical)
- Plunkett Optical, Inc.
- Frame Displays, Inc.
- Benson Edwards Optical Lab
- CPS 360 Optical Ltd.

- Comprol
- Riverside Opticalab, Ltd.
- Costa, Inc.
- Interactif Visuel Systéme
- Optiminas
- Polycore Optical Pte Ltd.
- PSA Nilo
- Spherical Optics Pty Ltd.
- Onbitt
- Isbir Optik A.S.
- Servi Optica Sociedad Ltda
- Jiangsu See World Optical Co., Ltd.
- Reize Optik AG
- CSC Laboratories, Inc
- Professional Ophthalmic Laboratories, Inc.
- Opti Express
- Optiben
- VST Lab
- SIVO SA
- L'N Optic s.a.r.l.
- Embrapol Sul Brasileira Ltda.
- Tecnolens Laboratorio Optico Feira Ltda.
- Farol
- Unilab
- Easy Vision
- Essor France S.A.S.
- Prakash Services
- Zhenjiang Wanxin Optical Glasses Co. Ltd.
- Shamir Optical Industry, Ltd.
- Signet Armorlite, Inc.
- Eyebiz Laboratories Pty Ltd.
- Danyang ILT Optics Co. Ltd.
- FGX International, Inc.
- Sutherlin Optical, Inc.
- Loh Optikmaschinen GmbH
- Brille24
- Union Optic
- Indulentes
- Metalizado Optico Argentino S.A. (MOA)
- Assets of Dispensers Optical Service Corp.'s safety Rx

B. Non-comprehensive list of Thrasio Brands:

- AMZpets
- Angry Orange
- Beard King
- Beast Gear
- Bebe Earth
- Beckham Luxury
- BFR Bands
- Bikeroo
- Bitly
- Boulder
- Brush Hero
- Bye Sugah
- Café Casa
- Chalktastic
- Circadian Optics
- Cloud Massage
- Coffee Gator
- Crafts 4 All
- Creative Space
- Cool Beans Baby
- Cushy Form
- CYBE
- Dark Iron Fitness
- Deco Bliss
- Desk Cycle
- Drive Auto
- EEZ-Y
- Elderberry Hill Organics
- Elite Sportz Equipment
- FedMax
- Fern & Willow
- Flexguard Support
- Frothy
- Greener Mindset
- Goodbrik
- Guardline
- Hercules Tuff
- Heritage
- HiCoup
- HipHero
- Holiday Styling
- Home Sanitizers Today
- Hussell
- Italian Luxury
- Joy ON
- Katchy
- Kaui
- KissMeOrganics US
- Mendini by Cecilio
- Mangeroo
- Mastermind Coffee
- Neuro Drive
- Nibiru Sports
- Nuvantee
- Oasis Osmosis
- Office Owl
- Otis Classic
- Paper Code

- P.I. Auto Store
- Power Practical
- ProPooch
- Quility
- Red Tonic
- Restorology
- Roxy Epoxy
- Rymora
- SadoTech
- Sky Mats
- Sleep Restoration
- So Peep
- The Happy Swaddle
- THISWORX USA
- TrailBuddy
- Tweezer Guru
- UFlex Athletics
- UltraBlock
- Urban One Equipment
- URBNFit
- Veva Filter
- Visiocrest
- VYBE
- Willow & Everett
- Woffit
- Wrth Blends
- Wundermax
- YardStash
- Zen Home Brands (Zen Bamboo)

AMERICAN ECONOMIC LIBERTIES PROJECT

The American Economic Liberties Project is a new, independent organization fighting against concentrated corporate power to realize economic liberty for all, in support of a secure, inclusive democratic society.

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