Before the
United States Federal Trade Commission and
Department of Justice
Washington, D.C.

In re	
Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies	Docket No. **FTC-2024-0028**

COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

In response to the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice ("DOJ") (jointly "Agencies") joint Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies ("RFI"),[1] released on May 23, 2024,[2] the Computer & Communications Industry Association ("CCIA")[3] submits the following comments.

I. The Agencies Should Consider the Potential Procompetitive Aspects of Serial Acquisitions and Roll-Up Strategies and Clarify Their Definitions

CCIA appreciates the Agencies' efforts to study the competitive dynamics of serial acquisitions and roll-up strategies in the U.S. economy. However, the RFI seems to focus predominantly on potential anticompetitive consequences of these transactions without considering their potential procompetitive or competitively neutral effects. Further, the RFI does

[1] Fed. Trade Comm'n and U.S. Dep't of Justice, "Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies" (May 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Serial%20Acquisition%20RFI_5.22.24.pdf.

[2] Fed. Trade Comm'n, "FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy" (May 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-doj-seek-info-serial-acquisitions-roll-strategies-across-us-economy.

[3] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit http://www.ccianet.org/members.

not clearly define serial acquisitions and roll-up strategies, posing the risk of creating flawed competition analyses of market realities.

Mergers and acquisitions are integral to any industry and a common business practice. The majority of transactions are competitively neutral, or often result in procompetitive benefits.[4] These benefits include achieving economies of scale, integrating complementary functions to boost research and development for spurring innovation,[5] increasing efficient management and lowering risk, and offering a wider array of products and services, ultimately benefiting consumers with greater choice and lower costs.[6] As the Agencies have regularly recognized in past statements, "mergers are one means by which firms can improve their ability to compete."[7]

Moreover, serial acquisitions and roll-up strategies can promote competition by challenging incumbent companies and increasing market contestability, creating more diversified and resilient market participants.[8] These transactions can help companies to create synergies, lower risk, expand faster relative to organic growth, and pool resources, thereby increasing access to capital, more and better assets, and opportunities.[9] Acquisition strategies afford firms the ability to optimize efficiencies in ways that fragmented markets cannot.[10]

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[4] International Competition Network, "ICN Recommended Practices for Merger Analysis" (2018), at 1, Comment 2, https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RPsforMergerAnalysis.pdf.

[5] Maureen K. Ohlhausen and Taylor M. Owings, CPI Antitrust Chronicle, "The Case for M&A: Evidence of Efficiencies in Consummated Mergers" (Aug. 29, 2023), at 4, https://www.pymnts.com/wp-content/uploads/2023/08/8-THE-CASE-FOR-M-A-EVIDENCE-OF-EFFICIENCIES-IN-CONSUMMATED-MERGERS-Maureen-K-Ohlhausen-Taylor-M-Owings-1.pdf.

[6] Antitrust Modernization Commission, "Antitrust Modernization Commission Report," (Apr. 2007), at 57-60, https://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf.

[7] *See, e.g.* OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Conglomerate effects of mergers – Note by the United States" (Jun. 4, 2020), at 5, https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-conglomerate_mergers_us_submission.pdf; Statement of Ass't Att'y Gen. Christine Varney, Merger Guidelines Workshops, Third Annual Georgetown Law Global Antitrust Enforcement Symposium (Sep. 22, 2009), https://www.justice.gov/atr/speech/merger-guidelines-workshops.

[8] OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Serial Acquisitions and Industry Roll-ups - Note by BIAC" (Dec. 6, 2023), at 10, https://one.oecd.org/document/DAF/COMP/WD(2023)78/en/pdf.

[9] OECD, OECD Competition Policy Roundtable Background Note, "Serial Acquisitions and Industry Roll-ups" (Nov. 3, 2023), at 6, https://one.oecd.org/document/DAF/COMP(2023)13/en/pdf.

[10] *See, e.g.*, Jay Ezrielev, Competition Policy International, "Shifting the Burden in Acquisitions of Nascent and Potential Competitors: Not so Simple" (Nov. 4, 2020), at 10, https://www.competitionpolicyinternational.com/wp-content/uploads/2020/11/North-America-Column-November-2020.pdf; Carl Shapiro, University of Chicago Press, National Bureau of Economic Research, "Competition and Innovation: Did Arrow Hit the Bull's Eye?" (Mar. 2012), at 365, https://www.nber.org/books-and-chapters/rate-and-direction-inventive-activity-revisited/competition-and-innovation-did-arrow-hit-bulls-eye.

While procompetitive efficiencies do not necessarily redeem an otherwise anticompetitive merger,[11] over enforcement in merger control may have a detrimental impact on the broader merger ecosystem.[12] This can potentially stifle innovation and competition, particularly in the highly disruptive and innovative digital markets.[13]

CCIA encourages the Agencies to consider the competitive aspects of mergers and acquisitions more broadly, evaluating these transactions through an objective, evidence-based, and proportional inquiry that considers their potential procompetitive impacts.[14] Through such analysis, the Agencies will obtain more robust data, enabling a better understanding and assessment of the impact of merger transactions on markets. This approach is similar to previous FTC merger studies on agricultural fertilizers,[15] hospitals,[16] and grocery stores.[17]

CCIA also cautions against the use of an overly broad definition of serial acquisitions.[18] The Agencies consider the similar yet distinguishable terms "serial acquisitions," "roll-up strategies," "platform add-ons," and "buy-and-build" to be analogous,[19] despite the absence of clear definitions for any of these. The Agencies' analysis of these transactions would benefit

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[11] Christine S. Wilson, Bates White Antitrust Webinar The Other Side of the Coin: Proper Evaluation of Efficiencies in Merger Analysis, "Breaking the Vicious Cycle: Establishing a Gold Standard for Efficiencies" (Jun. 4, 2020), at 3, https://www.ftc.gov/system/files/documents/public_statements/1577315/wilson_-_bates_white_presentation_06-24-20-_final.pdf. ("The result is that evidence of likely efficiencies rarely, if ever, suffices to overcome a determination that anticompetitive effects may result from a merger.").

[12] Damien Geradin, Chicago Journal of Int'l Law, "The Perils of Antitrust Proliferation: The Globalization of Antitrust and the Risks of Overregulation of Competitive Behavior" (Jun. 1, 2009), at 206, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1305&context=cjil.

[13] *See* Luis Cabral, CEPR Discussion Paper no. DP14785, "Merger Policy in Digital Industries" (May 2020), at 4, http://luiscabral.net/economics/publications/IEP%202021.pdf.

[14] *See, e.g.*, Asheesh Agarwal, Alden Abbott, Dan Caprio, Theodore A. Gebhard, Darren Tucker & Daniel J. Gilman, "Former Enforcers Comment on Request for Information on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies" (Jun. 26, 2024), at 2, https://laweconcenter.org/wp-content/uploads/2024/06/FTC-alum-comments-serial-acquisitions.pdf.

[15] *See, e.g.,* Nicholas Kreisle, Fed. Trade Comm'n, Bureau of Economics, "Price Effects from the Merger of Agricultural Fertilizer Manufacturers Agrium and PotashCorp" (Jul. 2020), https://www.ftc.gov/system/files/documents/reports/price-effects-merger-agricultural-fertilizer-manufacturers-agrium-potashcorp/working_paper_345.pdf.

[16] *See*, *e.g.*, Deborah Haas-Wilson and Christopher Garmon, Fed. Trade Comm'n, Bureau of Economics, "Two Hospital Mergers on Chicago's North Shore: A Retrospective Study" (Jan. 2009), https://www.ftc.gov/sites/default/files/documents/reports/two-hospital-mergers-chicago%E2%80%99s-north-shore-retrospective-study/wp294_0.pdf.

[17] *See*, *e.g.*, Daniel Hosken, Luke M. Olson, and Loren K. Smith, Fed. Trade Comm'n, Bureau of Economics, "Do Retail Mergers Affect Competition? Evidence from Grocery Retailing" (Dec. 2012), https://www.ftc.gov/sites/default/files/documents/reports/do-retail-mergers-affect-competition%C2%A0-evidence-grocery-retailing/wp313.pdf.

[18] OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Serial Acquisitions and Industry Roll-ups - Note by the United States" (Dec. 6, 2023), at 2, https://one.oecd.org/document/DAF/COMP/WD(2023)99/en/pdf.

[19] *Supra* n. 1, at 1, footnote 1.

from a clearer definition of "platform add-ons," and further clarification on whether they are considered serial acquisitions as used in the private equity context or related to other terms commonly used to describe digital markets.

Serial acquisitions are a business strategy meant to acquire and integrate multiple companies involving similar or complementary businesses. However, from the Agencies' RFI[20] and other policy documents,[21] it is unclear if there is a particular timeframe within which serial acquisitions should be analyzed. Without a clear timeframe, any two mergers could be construed as part of a "series." Hence, to better consider the competitive dynamics of serial acquisitions in the U.S. economy, it is important for the Agencies to clarify, based on empirical evidence, in which circumstances two or more acquisitions fall within the same "series."

Roll-up strategies aim to combine and integrate companies from a more fragmented market in the same industry or sector.[22] To appropriately consider the competitive dynamics of roll-ups, the Agencies should clarify on what basis a series of acquisitions should be considered to fall within the same commercially relevant sector or market being "rolled up." Without a clear definition of roll-up strategies, what they cover, or how to quantify the sector or market affected by them, there is a potential risk of misinterpreting the competitive nature of these transactions and alleging competitive harm where there might not be any.

II. Empirical Evidence Does Not Indicate a Systemic Competition Problem

As these issues continue to be explored, CCIA asks whether the Agencies have sufficient empirical evidence indicating that serial acquisitions pose a serious risk to competition. Though the Agencies have indicated they may consider serial acquisitions and roll-up strategies to be inherently anticompetitive,[23] they fail to clearly determine in the RFI how and why these business strategies raise particular competitive concerns. The Agencies highlighted their focus regarding unreported acquisitions falling beneath the merger reporting thresholds of the Hart-

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[20] *Supra* n. 1, at 1.

[21] *See, e.g.*, OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Serial Acquisitions and Industry Roll-ups - Note by the United States" (Dec. 6, 2023), at 2, https://one.oecd.org/document/DAF/COMP/WD(2023)99/en/pdf; OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Conglomerate effects of mergers – Note by the United States" (Jun. 4, 2020), at 2, https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-conglomerate_mergers_us_submission.pdf.

[22] OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Serial Acquisitions and Industry Roll-ups - Note by BIAC" (Nov. 29, 2023), at 3, https://one.oecd.org/document/DAF/COMP/WD(2023)78/en/pdf.

[23] *Supra* n. 14, at 2.

Scott-Rodino Act ("HSR"),[24] and their proposed modifications to HSR premerger notifications forms to address this concern.[25] The Agencies have also indicated their intent to gauge individual acquisitions in light of the cumulative effect of related patterns or business strategies.[26]

Current agency data and enforcement experience do not seem to suggest there is a systemic problem concerning serial acquisitions and roll-up strategies,[27] nor a lack of enforcement by the Agencies. In the FTC's recent study of non-HSR reported acquisitions of five technology firms between 2010 and 2019,[28] the findings did not provide a basis for concern that digital markets have experienced a greater degree of concentration through acquisitions than other sectors of the economy, nor indicate that acquisitions in these markets generate any particular competitive concerns.[29]

The Agencies' HSR Annual Report for Fiscal Year ("FY") 2022[30] also underscores how the Agencies do not seem to identify a competitive concern in most notified mergers. Out of the 3029 notified merger transactions for which the Agencies were authorized to request additional information, only 47[31] received a so-called Second Request,[32] representing less than two percent of total reportable transactions that may pose competition concerns – a ratio similar to that of previous years.[33] By comparison, of the 49 transactions reported in FY 2022 concerning digital

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[24] *See* Hart-Scott-Rodino Antitrust Improvements Act of 1976", Pub. L. 94-435, Sep. 30, 1976, 90 Stat. 1383, 15 U.S. Code § 18a, https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-section18a&edition=prelim.

[25] *Supra* n. 1, at 2.

[26] Fed. Trade Comm'n and U.S. Dep't of Justice, "Merger Guidelines, Guideline 8: When a Merger is Part of a Series of Multiple Acquisitions, the Agencies May Examine the Whole Series" (Dec. 18, 2023), at 23, https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

[27] *See, e.g.*, Fed. Trade Comm'n and U.S. Dep't of Justice, "Hart-Scott-Rodino Annual Report; Fiscal Year 2022" (Dec. 21, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/FY2022HSRReport.pdf.

[28] *See generally,* Fed. Trade Comm'n, "Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019: an FTC Study" (Sep. 2021), https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf.

[29] *See, e.g.*, D. Bruce Hoffman, "Antitrust in the Digital Economy: A Snapshot of FTC Issues" (May 2019), https://www.ftc.gov/system/files/documents/public_statements/1522327/hoffman_-_gcr_live_san_francisco_2019_speech_5-22-19.pdf, ("[T]here's no robust evidence that below-threshold acquisitions are particularly pervasive or problematic in the digital arena.")

[30] *Supra* n. 27.

[31] *Id.*, Appendix A, at 39.

[32] Fed. Trade Comm'n, "FTC Premerger Notification Office, "Model Request for Additional Information and Documentary Material (Second Request)" (May 2019), https://www.ftc.gov/system/files/attachments/merger-review/may2019_model_second_request_final.pdf.

[33] *See Supra* n. 27, at Appendix A; Fed. Trade Comm'n and U.S. Dep't of Justice, "Hart-Scott-Rodino Annual Report Fiscal Year 2021" (Feb. 10, 2023), Appendix A, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf. (1.9 percent of transactions in Fiscal Year 2021 versus 1.55 percent in Fiscal Year 2022.)

markets, only one required a Second Request to analyze potential competition concerns, accounting for two percent of notified transactions.[34]

The Agencies' self-reported data and enforcement record show that there does not appear to be a systemic concern, nor a need for heightened scrutiny in merger enforcement of serial acquisitions and roll-up strategies. If a transaction appears to pose a risk to competition in the market, the current U.S. antitrust framework provides the necessary tools for the Agencies to address any concerns that may arise. This is reflected by the number of merger enforcement challenges brought during FY 2022[35] against transactions the Agencies considered anticompetitive. Further, the Agencies can challenge non-reportable and consummated mergers at any time.[36] Both the DOJ and the FTC review and regularly challenge non-notifiable and consummated mergers, having conducted 33 in-depth investigations of non-notified transactions conducted between 2015 and 2020,[37] and five additional challenges against consummated mergers between 2020 and 2023.[38]

III. Startup Ventures Rely on Acquisition as a Means of Exit

Founders and early investors of startups and nascent companies have three primary exit outcomes: an initial public offering ("IPO"), exit via an acquisition, or venture failure.[39] Generally, an IPO represents the best possible outcome for investors, while venture failure is considered the worst-case scenario. An acquisition by another firm can be a middle-ground scenario for investors, serving as either a profitable outcome for a successful startup, or mitigation of potential losses. Experience and data show that venture capital ("VC") funded

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[34] *Supra* n. 27, Appendix A, at 38.

[35] *Id.*, at 2.

[36] 15 U.S.C. § 18a(i)(1).

[37] OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Start-ups, killer acquisitions and merger control – Note by the United States" (Jun. 4, 2020), at 13, https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-killer_acquisiitions_us_submission.pdf.

[38] Thomson Reuters, Practical Law, "Consummated Mergers Antitrust Enforcement Chart" (2023), https://1.next.westlaw.com/Link/Document/Blob/Id7c98f0f938811ee8921fbef1a541940.pdf?targetType=PLC-multimedia&originationContext=document&transitionType=DocumentImage&uniqueId=91ad7073-00e1-439c-b152-f485fa02a72d&ppcid=650290b3fa7548238bed149ae1fe0f82&contextData=(sc.DocLink).

[39] A fourth exit type, a reverse merger with a special purpose acquisition company (SPAC), has historically been rare, but saw a surge from 2020-2022. Most of the outcomes for startups undergoing reverse mergers have been poor, with 25 percent going out of business within two years of a reverse merger transaction, according to Crunchbase and VentureSource data. As of 2024, reverse mergers appear to be declining in frequency, making a return to their pre-2020 historical frequency, which is a rounding error compared to the three primary exit types.

startups prefer to be acquired rather than risk failure, resulting in total loss of investments.[40] As such, startups, as well as small and medium businesses, rely on the potential of mergers and acquisitions to enter a market, grow within it, and better compete with established market participants.[41] Most firm exits via acquisition are profitable, with founders typically selling firms for more than the total capital raised until that point.[42]

Nascent technology firms often rely on acquisition as an exit strategy, treating them as their most reliable source of market growth and income generation.[43] Prospective acquisitions provide strong incentives for firms entering highly dynamic and competitive environments.[44] There is sufficient evidence indicating the potential of acquisition has inspired innovators to assume greater risks and spur innovation by creating, inventing, patenting, and commercializing new technology to increase a firm's prospective value.[45] The Organisation for Economic Co-operation and Development has noted how "the mere prospect of an acquisition by an incumbent can incentivize investments by the target company for the benefit of consumers."[46]

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[40] Susan Woodward, Juan Delgado, and Shawn Blosser, "International Outcomes of Venture-funded Companies: The Role of Acquisitions" (Oct. 2023), at 14, https://www.competitionpolicyinternational.com/wp-content/uploads/2023/10/Adigital_The-Role-of-Acquisitions-DRAFT.pdf; (In the August 2002 - March 2020 Dow Jones VentureSource data, 66.7 percent of startup exits are acquisitions, and just 4.7 percent of startup exits are IPOs. The remaining 28.6 percent of exits are failures).

[41] *See, e.g.,* Noah Joshua Phillips, "Competing for Companies: How M&A Drives Competition and Consumer Welfare" (May 31, 2019), at 18, https://www.ftc.gov/system/files/documents/public_statements/1524321/phillips_-_competing_for_companies_5-31-19_0.pdf; Faster Capital, "Reasons why startups get acquired" (Jun. 13, 2023), https://fastercapital.com/content/Reasons-why-startups-get-acquired.html#:~:text=Acquisitions%20of%20startups%20are%20often,to%20build%20something%20from%20scratch; Dan Wang, Emily Cox Pahnke, & Rory M. McDonald, The Past Is Prologue? Venture-Capital Syndicates' Collaborative Experience and Start-Up Exits, 65 ACAD. MGMT. J., at 5, https://foster.uw.edu/wp-content/uploads/2021/04/Wang-Pahnke-McDonald-2021.pdf.

[42] Susan Woodward, "Irreplaceable Acquisitions: Proposed Platform Legislation and Venture Capital" (Nov. 2021), at 5, http://www.sandhillecon.com/pdf/Woodward_Irreplaceable_Acquisitions.pdf.

[43] *See, e.g.*, Susan Woodward, "Irreplaceable Acquisitions: Proposed Platform Legislation and Venture Capital" (Nov. 2021), at 6, http://www.sandhillecon.com/pdf/Woodward_Irreplaceable_Acquisitions.pdf; Jeffrey Bartel, Forbes, "Exploring Trends In Venture Capital Acquisitions For 2023" (Dec. 1, 2022), https://www.forbes.com/councils/forbesfinancecouncil/2022/12/01/exploring-trends-in-venture-capital-acquisitions-for-2023/.

[44] *See, e.g.*, Froeb, Luke M. and Sokol, D. Daniel and Wagman, Liad, "Cost-Benefit Analysis Without the Benefits or the Analysis: How Not to Draft Merger Guidelines" (Aug. 10, 2023), Southern California Law Review, Forthcoming, SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4537425; Dan Wang, Emily Cox Pahnke, & Rory M. McDonald, "The Past Is Prologue? Venture-Capital Syndicates' Collaborative Experience and Start-Up Exits" (Apr. 14, 2022), Academy of Management, at 65, https://foster.uw.edu/wp-content/uploads/2021/04/Wang-Pahnke-McDonald-2021.pdf.

[45] See, e.g., Jan Bena & Kai Li, "Corporate Innovations and Mergers and Acquisitions," (Nov. 6, 2014), Journal of Finance, at 22, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1917215; Marianna Makri, Michael A. Hitt & Peter J. Lane, Texas A&M University, "Complementary Technologies, Knowledge Relatedness, and Invention Outcomes in High Technology Mergers and Acquisitions" (Feb. 1, 2010), Strategic Management Journal, at 610, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1995792.

[46] OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, "Start-ups, Killer Acquisitions and Merger Control – Background Note" (May. 12, 2020), at 29,

IPOs for startup firms are considerably high risk, particularly at lower valuations. Between August 2002 and March 2020, approximately 40 percent of startups that were valued under $50 million at IPO, and 31 percent of those that were valued at under $100 million, failed.[47] In particular, startups with valuations under $50 million rely heavily on acquisition, comprising 80.7 percent of startups that exit via a merger. With over 80 percent of IPOs valued at $150 million or more,[48] smaller startups face considerable difficulty in scaling to a successful IPO. In a merger-less environment, 82.4 percent of startup exits would be a result of companies failing, providing zero recovery for investors.[49] This would not only harm the overall economy, but hinder innovation as investors would be inclined to mitigate risk by avoiding nascent firms.[50]

While a nearly merger-less environment for startups is presented as an upper-bound scenario for potential impacts of a vaguely defined and potentially uncapped-by-time conception of serial acquisitions and roll-up strategies, it is not implausible, particularly for small startups.[51] Analysis of acquisition data suggests that the so-called GAFAM[52] companies, which have been publicly targeted for especially harsh antitrust scrutiny in recent years, decreased their acquisition activity of small startups by 97 percent over a time horizon when overall acquisitions by all acquirers of small startups had declined by just 31 percent.[53] Even for startups that raised more than $20 million, GAFAM companies reduced acquisitions by 75 percent over a time horizon when all acquisitions of such startups only declined by 28 percent. Expanding the analysis to 18 large companies that have likely faced antitrust scrutiny shows declines nearly as large as those of GAFAM companies: a 95 percent reduction in small startup acquisitions and an

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https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf; OECD, OECD Competition Policy Roundtable Background Note, "Serial Acquisitions and Industry Roll-ups" (2023), at 8, https://www.oecd-ilibrary.org/docserver/0b4362f8-en.pdf?expires=1720024128&id=id&accname=guest&checksum=86C02BACB9C28B97F80C3BE5F4C1885E.

[47] *Id.*

[48] *Id.*

[49] Susan Woodward, Juan Delgado, and Shawn Blosser, "International Outcomes of Venture-funded Companies: The Role of Acquisitions" (Oct. 2023), at 15, https://www.competitionpolicyinternational.com/wp-content/uploads/2023/10/Adigital_The-Role-of-Acquisitions-DRAFT.pdf. (80.7 percent of the total acquisitions were valued below $50 million, which represents roughly 5848 exits via acquisitions. If we consider these acquisitions as failures in a merger-less environment, the total number of exits due to failures rises to 8953. This represents 82.4 percent of all the exits from August 2002 to March 2020.)

[50] For more information, please see the annex to our comments on how acquisitions drive the start-up ecosystem.

[51] Small startups are defined as startups that have raised to date $20 million or less from investors, predominantly venture capitalists.

[52] Google, Apple, Facebook, Amazon, Microsoft (GAFAM).

[53] *See* Annex to this comment letter for full data and explanation of analysis.

80 percent decline in acquisitions of startups that have raised more than $20 million. This outcome follows a clear economic logic:

- The increased scrutiny applied to these publicly targeted firms can be modeled as a fixed-cost barrier to any acquisition, representing the costs of responding to an investigation and related litigation.
- Smaller startups are typically acquired for smaller values, making these fixed-cost regulatory barriers larger as a share of the total acquisition cost to the acquirer.
- All acquisitions of targeted firms decrease significantly relative to the overall market trend in acquisitions, but the decrease becomes a near-total disappearance of acquisition activity for smaller startups, and a very large decline, but not total disappearance, of acquisition activity for larger startups.

The implication is clear: the threat of increased antitrust scrutiny carries with it an assumed increase in acquisition costs, which makes acquiring small startups generally uneconomical, and significantly reduces even larger startups' access to acquisition as a viable exit strategy. If the Agencies create a presumption that nearly any acquisition that is a company's second or higher acquisition in a given sector will be subject to intense scrutiny, such a presumption could nearly eliminate smaller startups' access to acquisitions as an exit strategy, and massively reduce larger startups' chances of being acquired.

IV. Conclusion

CCIA appreciates the Agencies' efforts to study the competitive dynamics of serial acquisitions and roll-up strategies in the U.S. economy, and recommends that the Agencies rely on an objective, evidence-based approach to analyze both the potential procompetitive and anticompetitive effects of these transactions, providing additional clarity on defining important terms. Current data from the Agencies does not indicate there is a systemic competition concern regarding serial acquisitions and roll-up strategies that needs to be addressed, nor a lack of enforcement by the Agencies. Further, CCIA notes the important role of acquisitions in fostering innovation and risk-taking in start-up ventures, and the potential chilling effect that a harsher scrutiny of these transactions could create. CCIA thanks the Agencies for inviting input on these important issues and is available to provide any additional information they may require.

ANNEX

Acquisitions Drive the Startup Ecosystem

Key Takeaways

- Nearly all tech exits are acquisitions or failures. There are very few initial public offering (IPO) exits.
- For most acquired companies, an IPO was never feasible.
- Investors lose money on many of their acquisitions -- many acquisitions are only partial recoveries for investors.
- The most common alternative to an acquisition motivated by partial recovery is a failure and a total loss for investors.
- When antitrust enforcers overdeter startup acquisitions by leading companies, aggregate acquisition values for startups decrease and failure rates increase.
- There was a noteworthy decline in startup acquisitions concomitant with an increase in startup failures in the current Administration prior to any increase in policy interest rates by the Federal Reserve.
- The overdeterrence of acquisitions due to increased regulatory scrutiny of mergers led to a near cessation of acquisitions of smaller startups by companies targeted for increased scrutiny, and a 75-80 percent decline in acquisitions of larger startups by the companies targeted for increased scrutiny.

Acquisitions are the lifeblood of the startup ecosystem. When venture capitalists invest in a startup, their incentive is the possibility of a successful exit: either an IPO or a profitable acquisition. However, IPOs are rare, and IPOs are not a viable option for most smaller companies below $50 million in value due to the significant fixed costs of operating a publicly traded company. Moreover, most startups are never valued above $50 million, and about four fifths of acquisitions are of companies valued at less than $50 million. Consequently, acquisitions have long accounted for the vast majority of startup exits, and typically represent the best possible exit for the startups being acquired.

In the absence of acquisitions, IPOs would represent the only viable successful exit opportunity, and would thus be unavailable for the overwhelming majority of startups. Moreover, a significant fraction of acquisitions represent loss mitigation for investors as an alternative to failure and a total loss. Removing acquisitions as an exit opportunity would limit startups to a binary set of options: IPO or fail completely.

In recent years, antitrust enforcers have increased efforts to deter large companies from making acquisitions of startups. This trend was widely seen as taking off in force in the current Administration. Both the literature and the data show a reduction in startup acquisitions by

leading companies since June 2021, which has led to a significant decline in the aggregate value of acquisition deals, a decrease in the fraction of acquisitions with disclosed prices (indicative of a decline in the fraction of acquisitions that were profitable for investors in the acquiree), and an increase in the number of startups that have failed.

Acquisitions are the Most Common Exit Type for Startups

Expert analysis of startup data confirms that acquisitions account for the vast majority of exits by startups. In the August 2002 - March 2020 Dow Jones VentureSource data, 66.7 percent of startup exits are acquisitions, and just 4.7 percent of startup exits are IPOs. The remaining 28.6 percent of exits are failures.[54]

Exits for US VC-Funded Tech Firms, August 2002 - March 2020, Dow Jones VentureSource Data

Exit Type	Percent of Companies
Acquired	66.7%
Failed	28.6%
IPO	4.7%

Source: Susan Woodward, Juan Delgado, and Shawn Blosser, "International Outcomes of Venture-funded Companies: The Role of Acquisitions", October 2023, available at https://www.competitionpolicyinternational.com/wp-content/uploads/2023/10/Adigital_The-Role-of-Acquisitions-DRAFT.pdf

Generally speaking, an IPO represents a successful outcome for investors in the startup, and a failure results in a total loss for investors. Acquisitions can be either a successful outcome or a loss mitigation outcome for investors: in the Dow Jones VentureSource data from August 2002 to March 2020, about 42.5 percent of acquisitions are at a loss, and about 57.5 percent of acquisitions are profitable for investors in the acquiree; overall, about 56.9 percent of startups lose money for their investors, while about 43.1 percent of startups are profitable for investors.[55]

Most Startups Could Not Exit Successfully with an IPO

IPOs are typically only available as an exit strategy for startups displaying strong signs of success with a valuation well above $50 million. Prior research has found that while only 7

[54] Susan Woodward, Juan Delgado, and Shawn Blosser, "International Outcomes of Venture-funded Companies: The Role of Acquisitions" (Oct. 2023), at 14, https://www.competitionpolicyinternational.com/wp-content/uploads/2023/10/Adigital_The-Role-of-Acquisitions-DRAFT.pdf.
[55] *Id.*, at 15.

percent of startups have failed since their IPO, that failure figure rises to 40 percent among the companies who went public at values under $50 million (pre-money), while 31 percent of startups who had an IPO at values less than $100 million have failed.[56]

80.7 percent of startups are acquired for less than $50 million; by contrast, more than 80 percent of IPOs are valued at more than $150 million. The median startup IPO is valued at $361 million, and the average startup IPO is slightly above $1.2 billion.[57]

The 80.7 percent of startups acquired for less than $50 million represent 53.8 percent of all startup exits. Absent acquisitions, these 53.8 percent of startup exits would combine with the existing 28.6 percent who failed for a total failure rate of 82.4 percent with zero recovery for investors.

Overdeterrence of Acquisitions Is Harming Investors and Increasing Failures

Analysis of Crunchbase data suggests that the current Administration's policies since June 2021 have been followed by rapid overdeterrence of startup acquisitions by large companies, even prior to the Federal Reserve increasing policy rates. Looking at acquisitions of U.S.-headquartered startups with at least $100,000 in confirmed prior funding, a notable decline in acquisition activity in the current Administration's 273 days before the Federal Reserve's announcement of the first policy interest rate increases, when compared to the prior 273 days. The decline continues in the 273 days following the Federal Reserve's beginning of interest rate hikes.

Acquisitions for US VC-Funded Tech Firms with at least $100k in Funding, Crunchbase Data

Dates	Acquisitions with a Disclosed Price	Aggregate Acquisition Prices	Fraction of Reported Acquisitions with a Disclosed Price
September 14, 2020 to June 14, 2021	297	$460.4 billion	25.2%
June 15, 2021 to March 15, 2022	266	$312.4 billion	21.3%
March 16, 2022 to December 14, 2022	198	$301.8 billion	22.0%

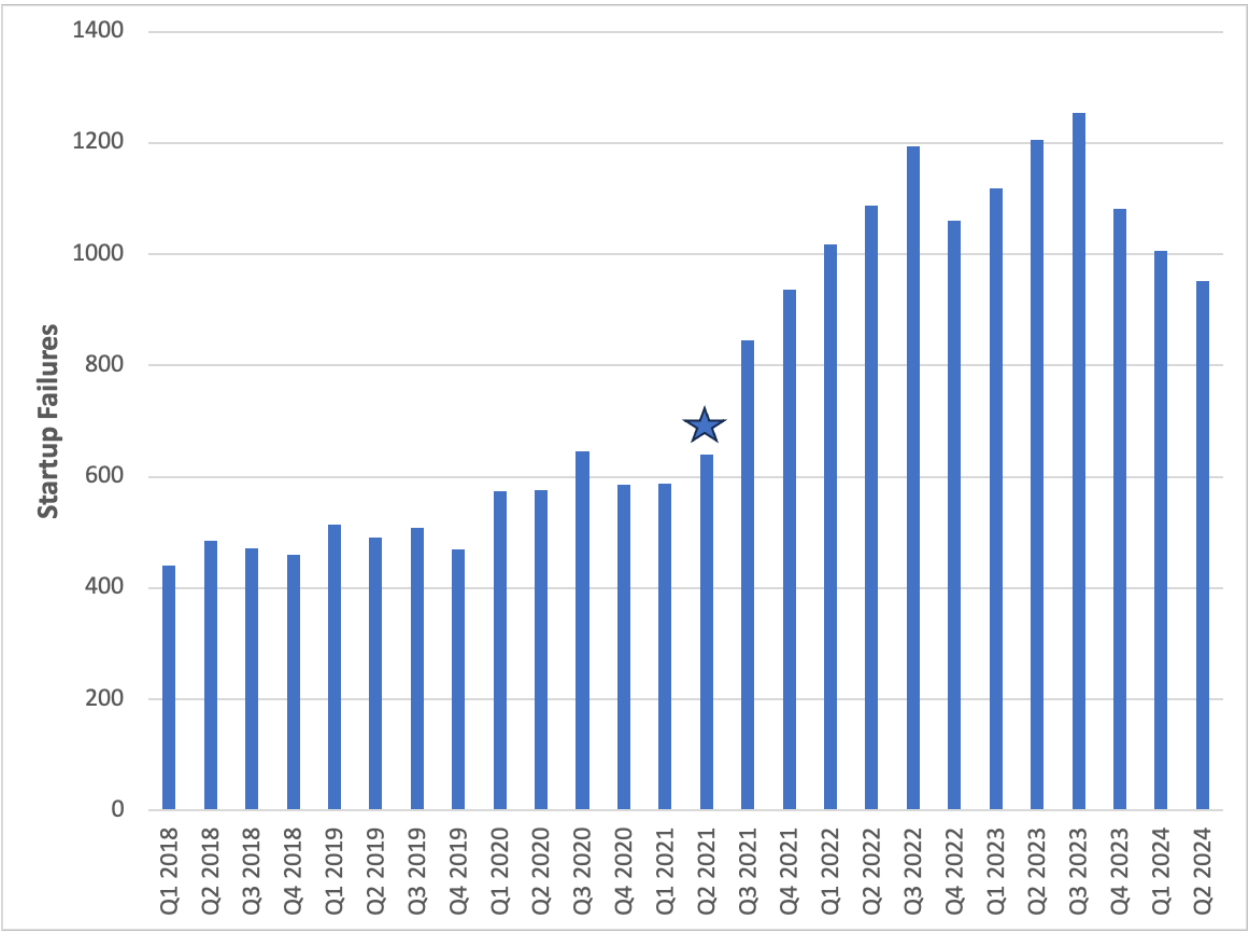
[56] *See, e.g.*, Susan Woodward, "Irreplaceable Acquisitions: Proposed Platform Legislation and Venture Capital" (Nov. 2021), http://www.sandhillecon.com/pdf/Woodward_Irreplaceable_Acquisitions.pdf.

[57] *Id.* (All values are pre-money, that is, before adding any money raised in the IPO.)

Source: CCIA Research Center analysis of Crunchbase data.

The decline in startup acquisitions by large companies was well-documented in the literature, and was noted to be particularly acute for large acquisitions.[58] As predicted by the prior research, this decline in acquisition activity led to an increase in startup failures. Analysis of Crunchbase data shows that startup failures began increasing significantly by Q3 2021.

Startup Failures



Notes and Sources: The star above Q2 2021 indicates the quarter when Lina Khan was appointed FTC Chair. Note that the Federal Reserve did not begin increasing policy interest rates until March 2022. From CCIA Research Center analysis of Crunchbase data. Startup failure is inferred after 8 years with no new funding rounds, acquisition, or IPO.

[58] Joanna Glasner, Crunchbase News, "The Most Valuable US Tech Companies Still Aren't Buying Startups" (Jul. 28, 2023), https://news.crunchbase.com/ma/most-valuable-us-tech-companies-aapl-msft-goog-amzn-nvda/; *see also* CB Insights, "Big tech isn't shelling out for acquisitions like it used to" (Sep. 8, 2023), https://www.cbinsights.com/research/technology-acquisitions-big-tech-2023-q2/; *see also* Paayal Zaveri and April Joyner, Business Insiders, "The Biden administration is more willing than ever to block Big Tech acquisitions, and it makes life even harder for startups that need an exit" (Mar. 30, 2023), https://www.businessinsider.com/tech-merger-deals-harder-adobe-figma-antitrust-startups-exit-options-2023-3.

Notably, the venture capital industry has attributed much of the declining performance of venture capital funds and startups to overzealous antitrust enforcers. For example, the president of the National Venture Capital Association told the Wall Street Journal that "acquirers will continue to stay away from high-priced deals as long as they risk getting bogged down in costly regulatory battles. 'Corporate buyers more frequently [are] sitting on the sidelines leaving startups that could have secured a profitable exit to wither on the vine.'"[59] Similarly, CNBC reported that "Expectations of stepped-up antitrust enforcement is likely a contributing factor to a slowdown in technology M&A activity in recent quarters. Per Crunchbase data, acquisitions of venture-backed startups hit an eight-year low last year."[60]

The Overdeterrence of Acquisitions Results in a Near-total Absence of Acquisitions of Smaller Startups by Targeted Firms

When analyzing acquisitions using both Crunchbase and VentureSource data, it becomes clear that the harms from overdeterrence of acquisitions fall disproportionately on smaller startups, those that have raised $20 million or less from investors. Comparing acquisition activity for US-based VC-funded companies (excluding biotech companies) from the period 2012-2021 to activity in 2022-June 2024, we see that acquisitions per year declined by about 30 percent, due to a mix of increased regulatory scrutiny of mergers and rising interest rates. Dividing startups into a larger half and a smaller half at the approximate median funding "raised to date" figure of $20 million, we find that the decline was slightly higher for smaller startups (a 31 percent decline) than for larger startups (a 28 percent decline). Looking specifically at the acquisition activity of GAFAM companies and an expanded category of 18 large companies engaged in many acquisitions, we observe quantifiable evidence that increased scrutiny has resulted in a particular overdeterrence of acquisitions of smaller startups among the firms most likely to be targeted by regulators.

[59] Angus Loten, WSJ Pro Venture Capital, "Pro Take: New Antitrust Guidelines Seen as Hampering Venture-Backed M&A" (Jul 26, 2023), https://www.wsj.com/articles/pro-take-new-antitrust-guidelines-seen-as-hampering-venture-backed-m-a-924c0caf.

[60] Joanna Glasner, Crunchbase, "US Tech Giants Have Scuttled Over $70B in M&A Deals Following EU UK Pushback" (Feb. 1, 2024), https://news.crunchbase.com/ma/tech-giants-scuttled-deals-antitrust-amzn-adbe/.

Acquisition Summary, from Analysis of Crunchbase and VentureSource Data

Acquirers	Number of Acquisitions RTD <= $20M	RTD > $20M	Total	Number per Year RTD <= $20M	RTD > $20M	Total
FULL PERIOD (Oct 2002 - June 2024)						
Google, Apple, Facebook, Amazon, Microsoft	181	98	279	8.3	4.5	12.7
18 Candidate Companies *	246	199	445	11.2	9.1	20.3
All Acquisitions	**5,637**	**3,657**	**9,294**	**257.2**	**166.9**	**424.1**
GAFAM Share	3%	3%	3%			
18 Candidate Companies' Share	4%	5%	5%			
EARLY PERIOD (2012 - 2021)						
Google, Apple, Facebook, Amazon, Microsoft	133	63	196	13.3	6.3	19.6
18 Candidate Companies *	168	122	290	16.8	12.2	29.0
All Acquisitions	**3,249**	**1,895**	**5,144**	**324.9**	**189.5**	**514.4**
GAFAM Share	4%	3%	4%			
18 Candidate Companies' Share	5%	6%	6%			
LATER PERIOD (2022 - JUNE 2024)						
Google, Apple, Facebook, Amazon, Microsoft	1	4	5	0.4	1.6	2.0
18 Candidate Companies *	2	6	8	0.8	2.4	3.2
All Acquisitions	**558**	**341**	**899**	**223.2**	**136.4**	**359.6**
GAFAM Share	0%	1%	1%			
18 Candidate Companies' Share	0%	2%	1%			

*Candidate Companies include the following: Alphabet/Google, Apple, Facebook, Amazon, Microsoft, Cisco, Walmart/WalmartLabs, Paypal, Walt Disney, Comcast, VISA, JPMorgan Chase, Mastercard, Home Depot, Bank of America, Berkshire Hathaway, Netflix, AT&T.

Analysis of Acquisition Changes Between Early Period and Later Period, from Above

Acquirers	Number of Acquisitions RTD <= $20M	RTD > $20M	Total	Number per Year RTD <= $20M	RTD > $20M	Total
EARLY PERIOD (2012 - 2021)						
Google, Apple, Facebook, Amazon, Microsoft	133	63	196	13.3	6.3	19.6
18 Candidate Companies *	168	122	290	16.8	12.2	29.0
All Acquisitions	**3,249**	**1,895**	**5,144**	**324.9**	**189.5**	**514.4**
GAFAM Share	4.1%	3.3%	3.8%			
18 Candidate Companies' Share	5.2%	6.4%	5.6%			
LATER PERIOD (2022 - JUNE 2024)						
Google, Apple, Facebook, Amazon, Microsoft	1	4	5	0.4	1.6	2.0
18 Candidate Companies	2	6	8	0.8	2.4	3.2
All Acquisitions	**558**	**341**	**899**	**223.2**	**136.4**	**359.6**
GAFAM Share	0.2%	1.2%	0.6%			
18 Candidate Companies' Share	0.4%	1.8%	0.9%			
DIFFERENCE BETWEEN PERIODS						
Google, Apple, Facebook, Amazon, Microsoft				(12.9)	(4.7)	(17.6)
18 Candidate Companies	-		-	(16.0)	(9.8)	(25.8)
All Acquisitions				(101.7)	(53.1)	(154.8)
GAFAM % Change				(97%)	(75%)	(90%)
18 Candidate Companies % Change				(95%)	(80%)	(89%)
All Acquisitions % Change				(31%)	(28%)	(30%)

*Candidate Companies include the following: Alphabet/Google, Apple, Facebook, Amazon, Microsoft, Cisco, Walmart/WalmartLabs, Paypal, Walt Disney, Comcast, VISA, JPMorgan Chase, Mastercard, Home Depot, Bank of America, Berkshire Hathaway, Netflix, and AT&T.

Among GAFAM company acquisitions, there is a more dramatic decline in acquisitions, especially of lower-valued companies (*i.e.*, companies that raised less money from VC investors). For GAFAM companies, the decline for the smaller companies was much greater than the larger companies, with a 97 percent decline from 13 per year to only 0.4 per year, versus a 75 percent decline for the larger companies from 6.3 per year to 1.6. In fact, during the earlier period, GAFAM companies acquired about twice as many smaller companies than larger companies (13.3 per year vs 6.3 per year), but since 2022, the smaller companies represent only one quarter of the larger acquisitions (0.4 vs. 1.6 per year). Similar trends were observed for the entire set of 18 "candidate companies" that have likely perceived additional antitrust scrutiny over the same period, albeit with less prominence in the public discourse than GAFAM companies: a 95 percent reduction in acquisitions per year of smaller startups, and an 80 percent decline in acquisitions per year of larger startups, compared to an overall decline of about 30

percent for all startups in the period (31 percent for smaller startups and 28 percent for larger startups).

This phenomenon is consistent with some fairly simple economics of the new more challenging policy environment for acquisitions by targeted companies:

a. The companies targeted by regulators face higher barriers to acquisitions in recent years.

b. The value of acquisitions of targeted companies is roughly proportional to the value of the companies acquired.

c. The cost of these regulatory barriers to acquisition has a somewhat fixed-cost nature, and reasonably can be modeled as a fixed cost in formal economic analyses of this phenomenon.

d. The targeted companies rationally do fewer acquisitions overall, particularly far fewer lower-valued acquisitions, as the fixed cost regulatory barriers represent a relatively larger share of the total acquisition value for smaller startups than for larger startups.

We can see this phenomenon clearly in the table of acquisitions broken out by how much the acquired companies raised while private, and by acquisitions made by GAFAM companies and the full set of 18 “candidate companies” likely perceiving additional regulatory scrutiny for proposed mergers.