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Serial Acquisitions and Industry Roll-ups – Summaries of contributions

6 December 2023

This document reproduces summaries of contributions submitted for Item 11 of the 141st OECD Competition Committee meeting on 5-8 December 2023.

More documents related to this discussion can be found at www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm.

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Australia

In Australia, serial acquisitions have occurred across a broad range of industries, including grocery retailing, funeral homes, taxi services, insurance broking, childcare, pathology, fuel retailing, liquor retailing, digital platforms and other sectors. Several key sectors of the Australian economy, such as banking and grocery retailing, are also highly concentrated with a small number of large firms dominating the market. Concerns have been raised that serial acquisitions by already large firms have further entrenched high levels of market concentration and exacerbated competition issues as they extend their reach. These concerns include increased market concentration, reduced choice for customers, raised barriers to entry or expansion and issues regarding common ownership. Private equity firms have also engaged in industry roll-ups in Australia, particularly in healthcare, childcare and pet retailing. In Australia, mergers or acquisitions are prohibited under section 50 of the Competition and Consumer Act 2010 (Cth) if they would have the effect, or are likely to have the effect, of substantially lessening competition in any market in Australia. For some time, the ACCC has highlighted the challenges in applying section 50 to a series of acquisitions over time that may cumulatively substantially lessen competition where individual acquisitions in the series are not likely to substantially lessen competition. In August 2023 the Australian Government announced the commencement of a Competition Review. This review will consider proposals put forward by the Australian Competition and Consumer Commission on merger reform, including proposals relating to serial acquisitions.

BIAC

Business at the OECD (BIAC) welcomes the opportunity to comment on the topic of serial acquisitions and industry roll-ups, which have come under closer scrutiny more recently from competition authorities for their possible effects on competition, innovation, and consumer welfare.

BIAC believes that serial acquisitions and roll-ups do not have predictable competitive effects and should be viewed objectively. They can generate significant efficiencies and benefits to the economy and bring added value and service to consumers. In some cases, they can reach a level of concentration that may lead to competition concerns. Competition authorities should adopt a balanced and evidence-based approach in evaluating whether such transactions result in anticompetitive effects. Authorities should use appropriate reporting thresholds, screening mechanisms, and theories of harm to identify and address potentially anticompetitive transactions, while avoiding over-enforcement and chilling effects on procompetitive acquisitions.

This submission builds on BIAC's previous contributions on related topics, including: (i) investigations of consummated and non-notifiable mergers,[1] (ii) conglomerate effects of mergers,[2] (iii) start-ups, killer acquisitions, and merger control,[3] (iv) the concept of potential competition,[4] (v) interim measures in antitrust investigations,[5] and (vi) disentangling consummated mergers.[6]

[1] OECD, Investigations of Consummated and Non-Notifiable Mergers – Note by BIAC, DAF/COMP/WP3/WD(2014)26 (Feb. 20, 2014), https://one.oecd.org/document/DAF/COMP/WP3/WD(2014)26/En/pdf.

[2] OECD, Conglomerate Effects of Mergers – Note by BIAC, DAF/COMP/WD(2020)12 (May 28, 2020), https://one.oecd.org/document/DAF/COMP/WD(2020)12/en/pdf.

[3] OECD, Start-ups, Killer Acquisitions and Merger Control – Note by BIAC, DAF/COMP/WD(2020)29 (June 4, 2020), https://one.oecd.org/document/DAF/COMP/WD(2020)29/en/pdf.

[4] OECD, The Concept of Potential Competition – Note by BIAC, DAF/COMP/WD(2021)27 (June 1, 2021), https://one.oecd.org/document/DAF/COMP/WD(2021)27/en/pdf.

[5] OECD, Interim Measures in Antitrust Investigations – Note by BIAC, DAF/COMP/WP3/WD(2022)17 (June 9, 2022), https://one.oecd.org/document/DAF/COMP/WP3/WD(2022)17/en/pdf.

[6] OECD, Disentangling Consummated Mergers–Experiences and Challenges – Note by BIAC, DAF/COMP/WD(2022)45 (June 3, 2022), https://one.oecd.org/document/DAF/COMP/WD(2022)45/en/pdf.

Chile

In Chile, the National Economic Prosecutor's Office ("FNE") is the agency in charge of reviewing all transactions that exceed certain income thresholds. In 2017, the FNE published its Guidelines on Jurisdiction, that provide certainty to undertakings about when the FNE has jurisdiction to analyse a transaction and, specifically, when an agreement or business qualifies as a market concentration in legal terms. In these guidelines, the FNE included the concepts of successive transactions and interrelated transactions to establish the circumstances under which transactions that are not considered concentrations on their own, still fall under the scope of the FNE's jurisdiction. This contribution presents two cases that involve this kind of transactions. The first is a successive transactions case that consisted in four different acquisitions of assets from Inmobiliaria Santander S.A. by Walmart Chile S.A. that occurred in the same year. Although the acquisitions were notified separately, they were analyzed as one, due to their characteristics. The second case refers to the association between Aguas de Marubeni SpA and Transelec Holdings Rentas Limitada, and the association between Aguas Nuevas S.A., IDE Water Assets Ltd. And Transelec holdings Renta Limitada, which were notified as interrelated transactions.

Costa Rica

Telecommunication services in Costa Rica opened up in 2008, thereby promoting a more dynamic market. This gave rise to the emergence of new service providers, and subsequently to a series of acquisitions and mergers in the sector, which is typical of a market with increasing competitive maturity.

Given that the value of a telecommunications network is exponential to its coverage and services, the proliferation of emerging operators continued until the industry reached a certain level of maturity. Companies gradually began to expand their networks to more remote areas and competition increased in rural communities.

In connection with network expansion, access to utility pole infrastructure (predominantly owned by electric companies) became indispensable to the expansion of fixed networks, in particular for companies seeking to increase their coverage, since the telecommunications sector, as a network-based industry, is highly dependent on the supporting infrastructure.

The effects of all serial acquisitions and industry roll-ups in the telecommunications industry are examined on the basis of the same standard of analysis, that is: to determine whether the object or the effect of the concentration significantly impedes competition in the relevant market affected by the transaction, or in other similar or substantially related markets (Article 101, "Ley de Fortalecimiento de las Autoridades de Competencia" [Strengthening of Competition Authorities Act], Act No. 9736).

It should be noted that in every transaction that was analyzed, no risks to competition were found. In general terms, as the acquirees contended with network modernization processes and competitive pressure, from which they were initially exempt, they gradually lost market positioning and were left with low residual market share. The sale provided access to capital in the face of a possible closure of operations. The buyers sought immediate access to supporting infrastructure to ensure their geographic expansion in Costa Rica.

An additional component to these transactions is the positive effect it had on the end users. This effect is most likely due to the modernization of the networks, to an increase in efficiency, and to the economies of scope that resulted from powerful competitors that entered the market in specific regions across the country.

Estonia

The Estonian Competition Authority has been able to review serial acquisitions since the introduction of merger control in 2001. Paragraph 24(7) of the Competition Act, the so-called two-year rule, complements the general turnover thresholds by including the turnover of the undertakings over which control has been acquired within the two years preceding concentration provided they operate within the same economic sector.

During the period of 2001 – 2022, 79 mergers were notified under paragraph 24(7), which constitutes approximately 11 percent of all merger notifications. Mergers notified under the two-year rule cover a variety of economic sectors, dominated by real estate (22 notifications), media (15 notifications), pharmacies (12 notifications) and health care (8 notifications).

In general, concentrations notified under paragraph 24(7) have been considered non-problematic. However, the number of notifications in the pharmacies´ sector dropped after an intervention by the Competition Authority in 2008. The case concerned the acquisition by the pharmacy chain Terve Pere Apteek OÜ (which belonged to the largest wholesaler of pharmaceuticals in Estonia – AS Magnum Medical) of a small pharmacy. The concentration was prohibited due to its anticompetitive tendency, although the target´s market share on the market for retail sale of pharmaceuticals was below 1%.

This was the first time the Estonian Competition Authority prohibited a concentration, which in this case wouldn't have been notified without the two-year rule. However, the rule does have shortcomings, the merging parties may manipulate turnovers and leave longer periods between transactions so that the two-year period would pass.

The mentioned issue also arose a year after the above-mentioned prohibition decision. The company argued that the transaction wouldn't have to be notified anymore, i.e. the two-year period had passed, the turnover thresholds would not have been met and the legal foundation had changed. The Competition Authority relied on the prohibition decision in force to deny the acquiring company. However, the situation would have been less clear if the parties had withdrawn their initial notification.

Another issue has been the definition of economic sector which is not specifically defined in any legal act. Merging parties have turned to the Competition Authority for clarification in this regard. The main tool the Competition Authority uses for defining the economic sector is the NACE classification of economic activities. Furthermore, there has been no court practice addressing different aspects related to paragraph 24(7) of the Competition Act so far.

As a conclusion, despite the described issues, a two-year rule has been justified in the case of a small country. In the future, introduction of the call-in option would make merger control even more efficient in terms of targeting the potentially harmful transactions, including serial acquisitions.

Greece

The Hellenic Competition Commission (HCC) has not dealt with a case exactly fitting the scenario of serial or roll up acquisition strategies. Concentration rates are in most industries not very high compared to EU averages, but there exists in many industries a trend towards concentration. Also the fact that in most industries there is a large number of small and medium sized companies results in weak competitive constraints. The HCC is monitoring issues of increased sectoral concentration and common ownership issues. Merger control is based on a turnover threshold and does not allow for other considerations to establish a notification obligation and would therefore not allow for the direct assessment of serial acquisitions not meeting the notification thresholds. In addition merger control considers the impact of a specific transaction and not the role of the transaction as part of a broader acquisition strategy composing of transactions that do not meet the turnover thresholds. In this context the HCC should and indeed has been looking beyond merger control, towards ex post enforcement powers and market studies to identify and where necessary to deal with anticompetitive issues that may arise from serial acquisitions and common ownership.

This has been the case in the construction sector through the use of the tool of regulatory intervention. In the second opinion (final decision pending) the HCC found that despite the significant reduction of the scale of horizontal common ownership in the two largest construction companies, the remaining common ownership and the structural conditions of the market for the construction of large public works which is an oligopoly with high barriers to entry, remains favourable to competitive distortions. The second interim HCC report proposes various remedies including : (a) Independent Management – Chinese Walls – Code of conduct, in cases of horizontal common ownership of competing companies, (b) an obligation to notify to the HCC which will carry out an economic analysis of competitive effects, in cases of an increase in the percentage of horizontal common ownership, when any legal entity, acquires a percentage of more than 5% in the share capital of more than one competing company (c) a procedure for formulating an opinion by the HCC regarding the effects of each infrastructure PPP project on competition, at the stage of designing the project, as well as in its implementation and development stage (d) in relation to construction consortia (joint ventures), the second interim report proposes for the HCC to provide specific guidance, in collaboration with the Hellenic Single Public Procurement Authority.

In the healthcare sector and observing inter alia a trend toward consolidation the HCC is conducting a sector inquiry, a tool which allows the HCC to identify and describe anticompetitive issues in a specific industry. Overall description and identification of consolidation trend has not so far led to the definition of a specific issue relating to serial acquisitions, however this is an issue to be addressed in the final report.

Hungary

This contribution provides a summary of the impressions of the Hungarian Competition Authority (GVH) on serial acquisitions and industry roll-ups, based on the legal background and the experience of the GVH. The GVH operates under the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Hungarian Competition Act, HCA), which includes provisions for merger control.

Under the Hungarian merger control regime, there are mandatory and also voluntary notification thresholds. Parties are obliged to notify a transaction if their net turnover reaches a certain threshold, and they may also notify the merger if their joint net turnover reaches a lower threshold, and it is not obvious that the transaction would not harm competition on the relevant market. What is more, there is also a 'calculation rule' embedded in the HCA. Also, financial investors can be considered as frequent buyers, often gaining joint control over smaller companies doing business in complementary fields; therefore, the HCA contains a separate provision (Article 25/B) for their acquisitions, too.

The aim of the 'calculation rule' is the same as that of the provision laid down in Subsection 2 of Section 2 of Article 5 of Council Regulation No. 139/2004. There is, however, a significant difference, which is the fact that in Hungary only the transaction which happened last within a two-year period and by which the turnover threshold was exceeded may be investigated. The experience of the GVH is limited in the use of this regulation, the GVH has had only 2 cases so far.

The voluntary notification regime, which can also be mentioned as the call-in option, – besides the 'calculation rule' – is also particularly relevant in case of dealing with industry roll-ups as it can capture killer acquisitions, or even mergers that could have happened under the radar. The GVH has already handled quite a few cases notified to it based on Section 4 of Article 24 of the HCA, but we must underline that all formal competition supervision proceedings were cleared unconditionally.

Even though the introduction of Article 25/B to the HCA was primarily an intention to decrease bureaucracy, the GVH can still get informed about the different acquisitions of state-owned venture capital funds, if their acquisition results in gaining joint control rights and the equity investment carried out with State aid has been declared by the European Commission to be compatible with the internal market. If these types of mergers happen, the acquiring venture capital funds have to submit a short informative form to the GVH.

Despite the limited experience of the GVH, we can say that the Hungarian merger regime can be considered well-prepared for dealing with industry roll-ups, as far as the legal basis is concerned, as the 'calculation rule', the call-in option and the provisions regarding the acquisitions of state-owned venture capital funds as financial investors, all complement the ordinary merger threshold of the HCA quite well. On the other hand, digital mergers can obviously raise some unexpected and more difficult questions, that have to be answered carefully but properly at the same time.

Italy

The Italian Competition Authority (hereinafter also the Authority, or the AGCM) evaluated a wide number of successive acquisitions of control, as well as cases in which several merger transactions and contractual agreements resulted to be interconnected.

In Italy, serial acquisitions and industry roll-ups, characterized by gradual and deferred acquisitions over time, have shaped certain industries. These include Information & Communication Technology (ICT), publishing, periodicals, fuel, and retail food distribution, both locally and nationally. The AGCM adopted a practice of thoroughly evaluating such operations, which extend beyond individual transactions. This approach considers the entire set of related contractual relationships to accurately assess potential competition risks.

A major challenge in addressing this phenomenon is that individual transactions often do not meet the relevant merger control notification thresholds, thus avoiding prior examination by competition authorities. However, the AGCM has frequently overcome this hurdle by reviewing subsequent transactions through an in-depth evaluation that considered the entire spectrum of related contractual relationships, in order to assess associated competition risks accurately. In some sectors, such as pay-TV and the promotion and organization of pop music events in Italy, serial mergers were deemed a building block of a more complex competitive strategy. In these cases, where the transaction had already closed, the Authority imposed measures to restore pre-existing market conditions.

To address serial acquisitions below the relevant thresholds, the AGCM employed a range of tools. This includes a broad interpretation of the European Commission's Consolidated Jurisdictional Notice (2008/c 95/01), treating subsequent transactions as parts of a single one — a stance supported by Italian Administrative Courts. Additionally, the AGCM paid close attention to the referral provisions under Article 22 of Regulation 139/2004 and applied Article 102 TFEU ex-post to serial mergers deemed part of an exclusionary strategy.

Recently, the Authority gained additional tools to manage such situations, following a recent amendment of the Italian Competition legislation that strengthens its investigative powers in the field of fact-finding investigations and introduced the possibility to call-in below-threshold transactions.

Latvia

The submitted summary scrutinizes Latvian Competition Law and thresholds for submitting merger notifications, as well as the changes that have occurred over time. It also examines the possibility of requiring the filing of a merger notification in cases where the thresholds set by the law are not met.

While the Latvian market does not possess an adequate amount of sectors for serial mergers, some industries do display acquisitions of smaller companies, with most of them falling below the threshold for notification.

The healthcare sector, specifically the pharmacy market, presents as one such industry where serial mergers have produced pharmacy chains under the ownership of significant pharmaceutical wholesalers. These companies have gained considerable market power in Latvia and a dominant position in certain local markets.

As a result of legislative changes since 2009, many mergers in the pharmacy market are now below the threshold. Even in the past, merger notifications were generally cleared on the basis of low combined market shares.

The Competition Council of Latvia regularly monitors the competitive situation in the relevant market through market surveillance. The pharmacy market has been subject to three market reviews in the last 12 years, which examined the regional markets for retail pharmacies, the pricing of medicines and harm to competition.

The retail fuel market presents a comparable scenario regarding serial mergers. However, since petrol stations have a higher turnover rate, the majority of the mergers were reported to the Competition Council of Latvia. Similar to the pharmaceutical industry, most companies in the Latvian market were eliminated due to small market shares.

Private equity activity in Latvia is limited, potentially due to high financial costs. However, many small business owners who began in the 1990s may wish to sell their companies and reap the rewards of their labor. This could provide a significant number of businesses for sale.

Based on the above analysis of the pharmacy and fuel markets, three key actions can be taken limiting the potential harm of serial mergers by monitoring serial mergers, focusing on in-depth analysis of merger notifications, and enhancing the legal and regulatory framework.

Mexico

Merger analysis comprises operations or transactions involving a succession of acts, a figure like a serial acquisition. The Federal Economic Competition Law (LFCE) provides the necessary legal framework for the Federal Economic Competition Commission (Cofece or Commission) to review such mergers.

This contribution addresses the Mexican legal framework of the merger review process, particularly in transactions that involve a succession of acts. After, the theories of harm that are considered by Cofece when analyzing such successions of acts are presented. Finally, this contribution details a recently resolved case where a merger involving a succession of acts was challenged.

Romania

The Romanian Competition Council has limited means to intervene against acquisitions below a certain threshold. Thus, small serial acquisitions' harm to competition is currently underestimated considering that a series of small sequential transactions due to their dimension fall below notification thresholds and thus escape merger control scrutiny.

In Romania, small serial acquisitions are more prevalent in sectors such as: pharmaceutical retail sector, private medical services sector and food retail market. In these sectors, it is observed that companies extend their power by successive small acquisitions.

The potential for competitive harm of small, serial acquisitions, including through increased concentration and market power, may not be able to be adequately addressed by the authority under existing merger regime.

Regarding the pharmaceutical retail sector, the existence of the demographic criterion contributed to the increase in the number of acquisitions in which large competitors bought relatively small players, leading to a steady increase in concentration.

In 2022, the Romanian Competition Council launched a sector inquiry into the retail market for pharmaceutical products. Thus, the competition authority will carry out an analysis of the entire pharmaceutical retail market and will examine the changes in the market structure by capturing all concentrations in terms of their effect on the structure of competition, regardless of whether or not these concentrations were subject to the authority's control.

Slovak Republic

The strategy of serial acquisitions arises relatively often in Slovakia, probably also due to the size of economy. In some sectors the turnovers are far lower than in most of other segments what causes almost all such sectors falling out of merger notification thresholds and at the same time lot of segments are distinctive with only regional or local presence of stores or operations what stands for small mergers.

The Antimonopoly Office of the Slovak Republic (hereinafter as „AMO“) does not have any direct competence based on the Act on the protection of competition to interfere in case of serial acquisitions in the form of the ex ante/ex post merger assessment if such acquisitions do not meet notification criteria based on thresholds. The current legal background allows to the AMO to intervene in case of non-notifiable mergers only in case of the suspicion of the post-merger breaking of antitrust rules (abuse of dominant position most often).

The substantive assessment of serial acquisitions effects on markets in the form of ex ante merger control (if there is notification duty in individual cases of mergers forming part of serial acquisitions) faces certain challenges. Especially on how to assess usually small increment made by the specific merger, then whether the AMO has sufficient information on all activities of parties and if and how to take into account all increments from the other previous acquisitions that often had not met notification criteria.

The contribution provides several examples of the approach of the AMO to such mergers in cases of the ex ante merger assessment of one/some individual mergers forming part of overall strategy of serial acquisitions. Next is the consideration de lege ferenda of whether to draw a special legislative tool to address serial acquisitions properly.

South Africa

In 2018, South Africa introduced provisions to deal with creeping mergers, following the observation of this phenomenon in a number of sectors over time. Prior to this, South Africa assessed such mergers even though this was not set out in the Competition Act. This trend has mostly been observed across sectors such as retail, healthcare, pharmacy, forestry, and media.

There are several challenges to capturing creeping mergers, some with less obvious solutions than others. These include the difficulty of identifying such transactions when they occur; the analytical framework (the appropriate assessment period); and the ability to prosecute under the substantial prevention and lessening of competition standard (demonstrating substantial merger-specific effects).

South Africa's approach to dealing with this phenomenon includes the identification of those sectors that may be prone to creeping mergers. The identification of these sectors can be guided by looking at the history of merger filings and public company strategic documents such as annual reports and investor presentations. Such documents may provide insights on the broader strategy to which the merger(s) may relate. This identification process is complemented by the development of an appropriate response strategy, as discussed below.

In terms of the analytical framework for such mergers, South Africa takes a sector-specific approach which also considers the evolving the market structure in the affected sectors. For example, in the forestry sector the key issue is resource-scarcity and security of supply while in private hospital services the focus is on competition dynamics in local markets and specific customer segments. These mergers also attract in-depth assessments, mandatory notification obligations, focus on the competitive impact on narrower markets and sub-sets of customers, and consideration of creeping mergers over longer periods of time (as may be appropriate). Further, the Commission uses its advocacy tools to articulate its concerns about creeping mergers and signal that such transactions are likely to receive increased scrutiny.

A combination of these strategies has had some success in creating effective deterrent outcomes. This has been observed in the forestry and private hospital services markets. However, South Africa has also observed firms adapting their strategies, for example opting for franchising arrangements in the retail sector, and this poses new challenges in addressing such mergers.

Spain

This contribution by the Spanish National Markets and Competition Commission (CNMC)[7] addresses the topic of the Roundtable on "Serial Acquisitions and Industry Roll-ups" to be hosted by the OECD in December 2023.

To that end it relies on the CNMC's experience in assessing transactions concerning these situations in which the level of sectoral concentration has increased after several operations. Some activities affected by this trend in Spain have been telecommunications, online food delivery, press distribution, electric equipment distribution and funeral services.

There are other causes for competition authorities' concern, such as common ownership and minority shareholding among competitors. The CNMC has also faced some of these issues in its recent experience.

Some jurisdictions have considered the possibility of adapting the existing toolkit or introducing new instruments in their competition policy framework in order to address these concerns. The CNMC considers that its merger control regime is already fit to mitigate these risks, because it includes a market share notification threshold, a stricter scrutiny for those mergers with higher share increases and comprehensive criteria for the substantive assessment.

[7] This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents.

Turkey

The main objective of The Act no 4054 on the Protection of Competition (Act No. 4054), which the Turkish Competition Authority (TCA) is empowered to enforce, is to prohibit cartels and other restrictions on competition, to prevent the abuse of dominant position by a firm that has a dominant position in a particular market and to prevent the creation of new monopolies by monitoring certain mergers and acquisitions.

In this context, the examination and authorization of mergers and acquisitions is one of the main duties of the Turkish Competition Board (the Board).

The process of evaluation acquisitions by the TCA and obtaining the approval of the Board for the transaction in question is crucial to prevent significant lessening of competition in a market for goods or services in all or part of the country, in particular in the form of the creation or strengthening of a dominant position.

The Board evaluates acquisitions notified to it primarily in accordance with Act No. 4054 and the Communiqué on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4).

According to Article 7 of Communiqué No. 2010/4, in the event that the turnover thresholds specified in the Communiqué are exceeded, the Board's authorisation is required for the relevant transaction to be legally valid.

Consequently, an acquisition below these turnover thresholds does not require the approval of the Board.

However, there may be cases where competition in the relevant market may be adversely affected as a result of serial acquisitions of the same undertaking in the same market below the relevant turnover thresholds, in other words, acquisitions that do not require the authorisation of the Board.

In order to prevent serial acquisitions that may have anti-competitive consequences, the Board has re-regulated the calculation of turnover in serial acquisitions.

Article 8 of Communiqué No. 2010/4 provides that two or more transactions between the same persons or parties or by the same undertaking in the same relevant product market within a period of three years shall be considered as a single transaction for turnover calculation purposes.

In this way, the potential for harming effective competition in the markets for goods or services through serial acquisitions is minimised.

United States

In recent years, there has been growing concern in the United States about the effects of "roll-ups" and "stealth consolidation," primarily in the technology and healthcare industries. The U.S. Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) (together, the Agencies) recognize that serial acquisitions can result in harm to competition and are focused on identifying those situations and taking appropriate action. This paper discusses concerns raised by serial acquisitions and the challenges of detection, relevant U.S. law, and the Agencies' enforcement experience. It concludes by looking at remedies presently available and suggesting additional solutions.

Firms may find that a strategy of growth through acquisition is more profitable than organic growth. A pattern or strategy to buy up smaller competitors or firms in the same or related lines of business that pose a competitive threat can reduce competitive pressures in the market, leading to higher profits. Incumbents can be well-placed to identify industry developments and have the incentive to stave off emerging threats. Rolling up smaller competitors or killing off nascent threats before they emerge can lead to the same magnitude and type of harm as mergers of larger or established firms and are less likely to attract the attention of enforcers until the strategy is identified. Firms that already have a dominant position may preserve that market power through various "moat-building" tactics, including acquisitions, to create barriers that will protect their position from outside threats.

Serial acquisition patterns or strategies can be hard to detect when some or all individual acquisitions are not notified to the Agencies or where the harm from the specific acquisition appears insignificant in isolation. In order to provide more relevant information to the Agencies, the FTC, with the concurrence of the Assistant Attorney General of the Antitrust Division of the U.S. Department of Justice, has proposed to expand information collected in the premerger notification form to require more robust information about prior acquisitions of each party to the transaction.

When possible, the Agencies may seek to stop the series of acquisitions by obtaining an order barring any further acquisitions, thereby preventing any further degradation of competitive conditions. This remedy is particularly important if the Agencies catch the serial acquiror in early stages, but alone this remedy may be insufficient to return competitive conditions to their pre-acquisition status. To fully restore competitive dynamism, the Agencies may seek structural relief in the form of divestitures. The Agencies also may seek prior notice or prior approval of future acquisitions in the market. Ultimately, fashioning an effective remedy for a series of acquisitions should take into account marketplace realities, including degradation of assets, new entrants, and any other changes to the market that occurred during the consolidation scheme.