



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*Regarding Private Equity Roll-ups and the Hart-Scott Rodino Annual Report to Congress
Commission File No. P110014
July 8, 2020*

Today, the Federal Trade Commission and the Department of Justice have transmitted the Hart-Scott-Rodino Annual Report to Congress. The Hart-Scott-Rodino Antitrust Improvement Act (HSR Act) requires dealmakers to notify the Federal Trade Commission and the Attorney General prior to consummating an acquisition. This notification is generally required for larger transactions, typically in excess of \$94 million. The FTC and the Department of Justice review these pre-merger notification filings to determine whether a transaction might violate the antitrust laws.

While the HSR Act has undoubtedly provided needed market intelligence to antitrust enforcement when it comes to larger transactions, the FTC must also increase its focus on non-reportable transactions, given broader market trends. In particular, over the last decade, there has been significant consolidation through roll-up transactions not subject to HSR reporting.

Roll-ups are a multi-merger strategy where a buyer acquires many companies in a particular sector. There are many variations of roll-up strategies. In today's marketplace, many private equity firms commonly employ "buy-and-build" approaches. A buy-and-build strategy typically involves an initial takeover of a platform company with subsequent "bolt-on" and "tuck-in" acquisitions. Through these strategies, private equity sponsors can quietly increase market power and reduce competition. This leads to a higher valuation when the combined company is eventually sold.

According to data from PitchBook, 68% of private equity buyouts are add-ons from previous acquisitions. One quarter of these private equity acquisitions are tied to an investment with at least five add-ons. In addition, the bulk of private equity transactions over the last decade were valued at less than \$100 million.¹ Most of these transactions will never be subject to HSR reporting, even though many will be part of a roll-up strategy.

While each individual acquisition may not trigger HSR reporting, the sheer number of follow-on acquisitions can be staggering. For example, in 2011, GTCR, a private equity firm, began its ownership of AssuredPartners, an insurance brokerage. From 2011 to 2015, GTCR completed

¹ Eliza Haverstock, *In the US middle market, soaring valuations beget an add-on frenzy*, PITCHBOOK (Dec. 20, 2019), <https://pitchbook.com/news/articles/in-the-us-middle-market-soaring-valuations-beget-an-add-on-frenzy>; see also Graham Linley, *Here are the 9 charts that capture the US private equity industry in 2Q*, PITCHBOOK (July 22, 2019), <https://pitchbook.com/news/articles/here-are-9-charts-that-capture-the-us-private-equity-industry-in-2q>.

112 acquisitions of other insurance brokerages, before selling to Apex Partners, another private equity fund. Under Apex's control, AssuredPartners subsequently executed another 124 acquisitions of insurance brokerages, before selling the company back to GTCR in 2019.²

While roll-ups are occurring across sectors of the economy, I am especially concerned about the unreported roll-ups in the health care sector. M&A activity in health care is among the highest of any sector in the U.S. economy, and the median deal size of leveraged buyouts by private equity firms is estimated to be between \$60-\$70 million – below HSR reporting thresholds.³

Private equity roll-ups occupy a growing proportion of this activity. For example, private equity firms are actively acquiring physician practices, with a particular focus on specialties like anesthesiology and emergency medicine.⁴ In a letter to Congress in 2018, I expressed concerns about roll-ups in the opioid treatment sector,⁵ where investors have deployed billions of dollars of capital to make acquisitions of fragmented players.⁶ In health care markets, we also see the growing role of private equity acquisitions in hospice care and air ambulances. In addition to the risk of loss of competition, I am also troubled by other collateral consequences, such as the scourge of surprise medical billing by out-of-network physicians and “body brokering” in the treatment of opioid dependency.⁷ The FTC must halt these acquisition strategies that result in higher costs and reduction in quality of care.

Given trends in today's markets, it is critical that the FTC find new ways to ensure the agency has a rigorous, data-driven approach to market monitoring and enforcement. The Commission should actively identify enforcement targets who may be engaged in monopolization or who have consummated unlawful mergers. The Commission should also act on the proposal by Commissioner Christine S. Wilson to order information on non-reportable mergers in the health care sector using our authority pursuant to Section 6(b) of the FTC Act.⁸ The Commission also needs to closely scrutinize any HSR filings by private equity firms to gain insight on their future acquisitions that may be non-reportable. Finally, we will need to consider whether there should be changes to the HSR Act or its implementing regulations that would help the agency detect harmful roll-up activity.

² Press Release, Apex Partners, Apex VIII sells its stake in AssuredPartners to GTCR (Feb. 21, 2019), <https://apex-partners.com/apax-sells-assuredpartners-to-gtcr-led-group/>.

³ Eileen Appelbaum & Rosemary Batt, *Private Equity Buyouts in Healthcare: Who Wins, Who Loses?* 1-18 (Inst. For New Econ. Thinking, Working Paper No. 118, 2020), <https://www.ineteconomics.org/research/research-papers/private-equity-buyouts-in-healthcare-who-wins-who-loses>.

⁴ Jane M. Zhu et al., *Private Equity Acquisitions of Physician Medical Groups Across Specialties*, 7 J. OF AM. MED. ASSOC. 663, 664 (2020), <https://jamanetwork.com/journals/jama/fullarticle/2761076>.

⁵ Letter from Rohit Chopra, Fed. Trade Comm'r, to Gregory Walden, Chairman, H. Energy and Com. Comm., and Gregg Harper, Chairman, H. Energy and Com. Subcomm., Regarding Deceptive Marketing Practices in the Opioid Addiction Treatment Indus. (July 24, 2018), <https://www.ftc.gov/public-statements/2018/07/letter-commissioner-chopra-congress-deceptive-marketing-practices-opioid>.

⁶ Jeanne Whalen & Laura Cooper, *Private-Equity Pours Cash Into Opioid-Treatment Sector*, WALL STREET J. (Sept. 2, 2017, 8:00 AM), <https://www.wsj.com/articles/opioid-crisis-opens-opportunities-for-private-equity-firms-1504353601>.

⁷ Letter to Congress from Comm'r Rohit Chopra, *supra* note 5 at 2.

⁸ Statement of Comm'r Christine S. Wilson, Joined by Comm'r Rohit Chopra Concerning Non-Reportable Hart-Scott Rodino Act Filing 6(b) Orders (Feb. 11, 2020), https://www.ftc.gov/system/files/documents/reports/6b-orders-file-special-reports-technology-platform-companies/statement_by_commissioners_wilson_and_chopra_re_hsr_6b_0.pdf.