

Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies

I. Background

The Federal Trade Commission (“FTC” or “Commission”) and the United States Department of Justice’s Antitrust Division (“DOJ”) (collectively, the “Agencies”) are launching an inquiry to identify sectors of the economy being impacted by serial acquisitions. Serial acquisitions involve the same firm consolidating a fragmented market through a number of acquisitions, typically of many relatively small companies. When serial acquisitions occur, a company becomes larger, and potentially dominant, by buying several smaller firms in the same or related business sectors or industries.¹

Under some circumstances, businesses do not have to report smaller transactions to the Agencies for premerger screening which would otherwise allow them to ask a federal court to block the deal if its effect may be to substantially lessen competition or tend to create a monopoly.² When serial acquirers make a number of acquisitions that are not reported in advance or make a combination of reported and unreported transactions, they can amass significant control over key product, service, or labor markets without revealing the full scope of their acquisition strategy to federal antitrust enforcers. As a result, some companies use serial acquisitions of small firms as a business strategy that can harm competition to the detriment of consumers, workers, and innovation in an industry or business sector without detection by the Agencies.

¹ Org. for Econ. Co-operation & Dev., Serial Acquisitions & Industry Roll-ups – Note by the United States 2-7 (Dec. 4, 2023), [https://one.oecd.org/document/DAF/COMP/WD\(2023\)99/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2023)99/en/pdf). For this Request for Information, the term, “serial acquisition” is interchangeable with “roll-ups,” “buy-and-build,” and “platform add-ons.” *Id.*

² Premerger Notification Office Staff, *HSR Threshold Adjustments and Reportability for 2024* (Feb. 5, 2024), <https://www.ftc.gov/enforcement/competition-matters/2024/02/new-hsr-thresholds-filing-fees-2024>. HSR thresholds are adjusted annually with changes in gross national product. 15 U.S.C. § 18a(a)(2).

Both public reports and investigations by the Agencies suggest that corporate actors³ including private equity firms⁴ have engaged in serial acquisition strategies across a wide array of markets and industries. Accordingly, this Request for Information (“RFI”) seeks information from the public on serial acquisitions in any sector or industry in the U.S. economy, including, but not limited, to housing, agriculture, defense, cybersecurity, distribution, construction, aftermarket/repair, and professional services markets. Comments submitted in response to this RFI will inform the Agencies’ enforcement priorities and future actions.

This RFI complements an FTC/DOJ/HHS initiative to understand how certain health care market transactions may increase consolidation while threatening patient health, worker safety, quality of care, and affordable health care for patients and taxpayers.⁵

³ See, e.g., Press Release, U.S. Dep’t of Justice, TopBuild Abandons Proposed Acquisition of SPI After Antitrust Division Concerns (Apr. 22, 2024), <https://www.justice.gov/opa/pr/topbuild-abandons-proposed-acquisition-spi-after-antitrust-division-concerns> (transaction involving two providers of building insulation products—both of which had engaged in a pattern of serial acquisitions—abandoned after the Justice Department raised antitrust concerns); Krista Brown & Sara Sirota, *Health Care’s Intertwined Colossus*, AM. PROSPECT (Aug. 2, 2023), <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>; David Dayen, *Rollups: There’s a Hospital Bed Monopoly*, AM. PROSPECT (Jan. 5, 2022), <https://prospect.org/power/rollups-theres-a-hospital-bed-monopoly/>; Robert Kuttner, *Rollups: All Monopolies Are Local*, AM. PROSPECT (Jan. 14, 2022), <https://prospect.org/power/rollups-all-monopolies-are-local/>; Gabriela Barkho, *With Winc Acquisition, New Wine Club Roll Up Full Glass Launches*, MODERNRETAIL (Oct. 5, 2023), <https://www.modernretail.co/operations/with-winc-acquisition-new-wine-club-roll-up-full-glass-launches/>.

⁴ See, e.g., Complaint, Fed. Trade Comm’n v. U.S. Anesthesia Partners (S.D. Tex. Sept. 21, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2010031usapcomplaintpublic.pdf; see also, Claire Kelloway, *Private Equity’s Cold Storage Roll-Up Could Pay Off in 2024, but It Cost Small Food Companies*, FOOD & POWER (Jan. 11, 2024), <https://www.foodandpower.net/latest/lineage-ipo-cold-storage-consolidation-jan-24>; Lee Harris, *Private Equity Intensifies Rollups of HVAC Installers*, AM. PROSPECT (Oct. 16, 2023), <https://prospect.org/environment/2023-10-16-private-equity-intensifies-rollups-hvac/>; Michael Sasso, *Why Private Equity Is Chasing Plumbers and Lumber Yards*, BLOOMBERG (July 12, 2023), <https://www.bloomberg.com/news/articles/2023-07-12/why-private-equity-is-chasing-plumbers-and-lumber-yards>; Adam Harris, *Private Equity Has Its Eyes on the Child-Care Industry*, THE ATLANTIC (Feb. 21, 2024), <https://www.theatlantic.com/ideas/archive/2024/02/private-equity-childcare/677511/>; Miriam Gottfried, *Private Equity Wants to Wash Your Car*, WALL ST. J. (Aug. 20, 2022), <https://www.wsj.com/articles/private-equity-wants-to-wash-your-car-11660968031>.

⁵ Press Release, Fed. Trade Comm’n, Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care (Mar. 5, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-department-justice-department-health-human-services-launch-cross-government>.

Once these serial acquisition strategies are identified, the Agencies are committed to using the full scope of their statutory authorities to protect free and fair competition and prevent undue consolidation. In recent years, the FTC and DOJ have taken steps to ensure our tools keep pace with changes in how firms do business.⁶ The Agencies have proposed amending the premerger notification forms to require firms to disclose more information about each party's prior acquisition history.⁷ In addition, the FTC and DOJ jointly issued the 2023 Merger Guidelines, which recognize that "[a] firm that engages in an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate Section 7" of the Clayton Act.⁸ Moreover, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, which explicitly identifies "a series of mergers, acquisitions, or joint

⁶ In June 2022, the FTC took action to protect competition in markets for specialty and emergency veterinary services. JAB Consumer Partners sought to expand its holdings in the markets for specialty and emergency veterinary services. The FTC's relief addressed not only the allegedly unlawful aspects of the specific transaction at issue, but also contained prior approval and nationwide prior notice provisions that were the first of their kind. This first-of-its-kind nationwide remedy established key safeguards against future dealmaking that could have proven to be unlawful. *See* Statement of Chair Lina M. Khan Joined by Comm'r Rebecca Kelly Slaughter & Comm'r Alvaro M. Bedoya, In the Matter of JAB Consumer Fund/SAGE Veterinary Partners (June 13, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2022.06.13%20-%20Statement%20of%20Chair%20Lina%20M.%20Khan%20Regarding%20NVA-Sage%20-%20new.pdf. More recently, the FTC brought a case charging U.S. Anesthesia Partners, Inc. with undertaking an illegal roll-up scheme to monopolize anesthesiology markets in Texas. Press Release, Fed. Trade Comm'n, FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas (Sep. 21, 2023), <https://www.ftc.gov/news-events/news/pressreleases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>. The FTC has also sued to block Tapestry, Inc.'s acquisition of Capri Holdings Limited on the theory that the transaction, in light of Tapestry's "pattern of serial acquisitions," will further entrench the company's stronghold and make it harder for new brands to both enter the market and have a meaningful presence. Press Release, Fed. Trade Comm'n, FTC Moves to Block Tapestry's Acquisition of Capri (April 22, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-moves-block-tapestrys-acquisition-capri>.

⁷ Press Release, Fed. Trade Comm'n, FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

⁸ U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, MERGER GUIDELINES, at 23 (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

ventures that tend to bring about the harms that the antitrust laws were designed to prevent” as a potential unfair method of competition.⁹

II. REQUEST FOR INFORMATION

The Agencies seek information from consumers, workers, businesses, advocacy organizations, professional and trade associations, local, state, and federal elected officials, and others. The Agencies also seek comment from academics and other experts with knowledge of the operation of specific industries and business sectors as well as the effects of serial acquisitions more generally. In response, you may address any, all, or none of the following questions and may address additional topics related to serial acquisitions and anticompetitive conduct affecting any industry or business sector you have identified as having been subject to serial acquisition.

Please identify, where possible, the request number(s) your comments are intended to address.

Please DO NOT include sensitive or confidential information in the comments including:

- social security numbers;
- dates of birth;
- driver’s license numbers or other state identification numbers;
- financial account information;
- sensitive health information; or
- competitively sensitive information.

⁹ Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

Comments will be posted on the Internet and made available to the public (subject to exceptions such as for personal privacy information of persons other than the submitter).

The Agencies invite written responses to the following requests:

1. *Examples of Serial Acquisitions*

- a. Explain how a company, either individually or through affiliates, pursued a serial acquisition strategy. This can include a pattern of buying up competing firms in the same market or industry.

2. *Effects of Serial Acquisitions*

- a. How have serial acquisitions affected competition within the industry?
 - i. Has the number of competitors changed in last ten years? How?
 - ii. Have any competitors responded to serial acquisitions by also engaging in serial acquisitions within the same industry or otherwise seeking to consolidate?
 - iii. Have any competitors responded to serial acquisitions by exiting the relevant business sector or industry?
 - iv. How have small businesses been affected by serial acquisitions?
 - v. How has innovation in the industry changed?
- b. How have serial acquisitions affected customers of the acquired companies?
 - i. Have the prices, variety, or quality of products or services changed?
 - ii. Have there been changes in customer service?
 - iii. Has consolidation impacted the accessibility of the product or service? How?
- c. Have you witnessed any actual or attempted coordination or collusion between competitors that you did not notice prior to the serial acquisitions?
- d. How have serial acquisitions affected workers at the acquired companies?
 - i. How have workers' compensation or benefits changed?
 - ii. How have the terms and conditions of employment changed?
 - iii. Have workers been able to move to other companies in the industry? If not, why? Examples here could include a serial acquirer having

consolidated all competitors, requiring employees to sign non-competes or training repayment agreements, or no existing competitors.

- iv. Have workers been reclassified (i.e., from employees to independent contractors) or outsourced to/from third-party providers?
 - v. Have work conditions, roles, or responsibilities changed? How?
 - vi. Have serial acquisitions impacted job or employment stability? How?
 - vii. Have worker-manager relations changed?
- e. How have serial acquisitions and the resulting market consolidation affected actual or potential competitors?
- i. Has there been a reduction in consumers switching to competitors?
 - ii. Has consolidation affected relationships with suppliers or vendors? Have there been challenges in accessing products, materials, or services essential for operation?
 - iii. Have there been any regulatory changes affecting the industry that favor consolidated entities over independent ones?
 - iv. Has consolidation affected access to financing?
- f. How have serial acquisitions affected suppliers of the consolidating firm.
- i. Has consolidation affected the demand for products or services? Has there been a change in customer base composition (i.e., more large companies and fewer small businesses?) If so, are there business risks associated with these changes?
 - ii. Have pricing or contract terms changed? How do the pricing and payment terms offered by larger consolidated entities compare to those offered by small businesses?
 - iii. Have market dynamics shifted due to increased consolidation? How?
3. *Serial Acquisition Business Practices:* If you identified serial acquisitions in the preceding questions, please share whether the acquirer has engaged in any of the following business practices:
- a. Selling products or services below cost with the goal or effect of rivals or driving them out of the market;

- b. Forcing or incentivizing customers to buy exclusively from the acquirer, or to purchase a certain quota of their goods, thus having the effect of barring or limiting competitors from accessing the markets;
 - c. Refusing to do business with certain parties, having the effect of excluding competitors from the market or harming their ability to compete;
 - d. Forcing customers to buy an additional product or service as a condition of purchasing another product or service, thereby restricting competition for the tied product;
 - e. Leveraging scale in one market to obtain a competitive advantage in another related or unrelated market;
 - f. Charging different prices to different buyers for the same product or service in a way that excludes rivals from the market or otherwise lessens competition;
 - g. Using actual or threatened litigation to drive parties to agree to mergers and/or to drive down acquisition costs;
 - h. Engaging in conduct that interferes with a competitor's ability to compete, such as raising costs for key business inputs or restricting access to key suppliers or distributors; or
 - i. Any other conduct that has the intent or effect of lessening competition.
4. *Claimed Business Objectives:* What were the claimed business goals and objectives of the serial acquisition strategy and have these goals and objectives been realized post-transaction? These could include, but are not limited to, claimed efficiencies from scale, innovation in the relevant product or service market, claimed or projected reduction in cost of delivering a service or product, complementing business units, or increased business valuation.
5. *Ownership and Control:* If the serial acquisitions were executed by a private equity firm, what role did the private equity investor(s) play in managing the businesses afterwards? What role did the investor(s) play in evaluating or executing potential acquisitions? Did the investor(s) maintain a majority or minority ownership stake in the businesses? Did the investor(s) exercise control over the businesses through voting rights (including proxies) or directors on the company's board or otherwise?