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### M&A IN THE AI ERA: CONSIDERATIONS FOR ACQUIHIRING

By Ingrid Vandenborre, Kenneth Schwartz, Christopher Barlow, Page Griffin, Michael Cardella, Stuart Levi, Taylor Votek, Benjamin Salzer, Lisa G. Liu & Liz Kraus

Acquihiring is a transaction structure that focuses on acquiring key talent and intellectual property rather than an entire business. The prevalence of acqui-hiring transactions has dramatically increased in recent years and is anticipated to gain further traction in the AI boom. This article offers practical insights into intellectual property, employment, regulatory, and tax considerations for acqui-hires. We also explore how acqui-hiring transactions may impact the regulatory framework moving forward.

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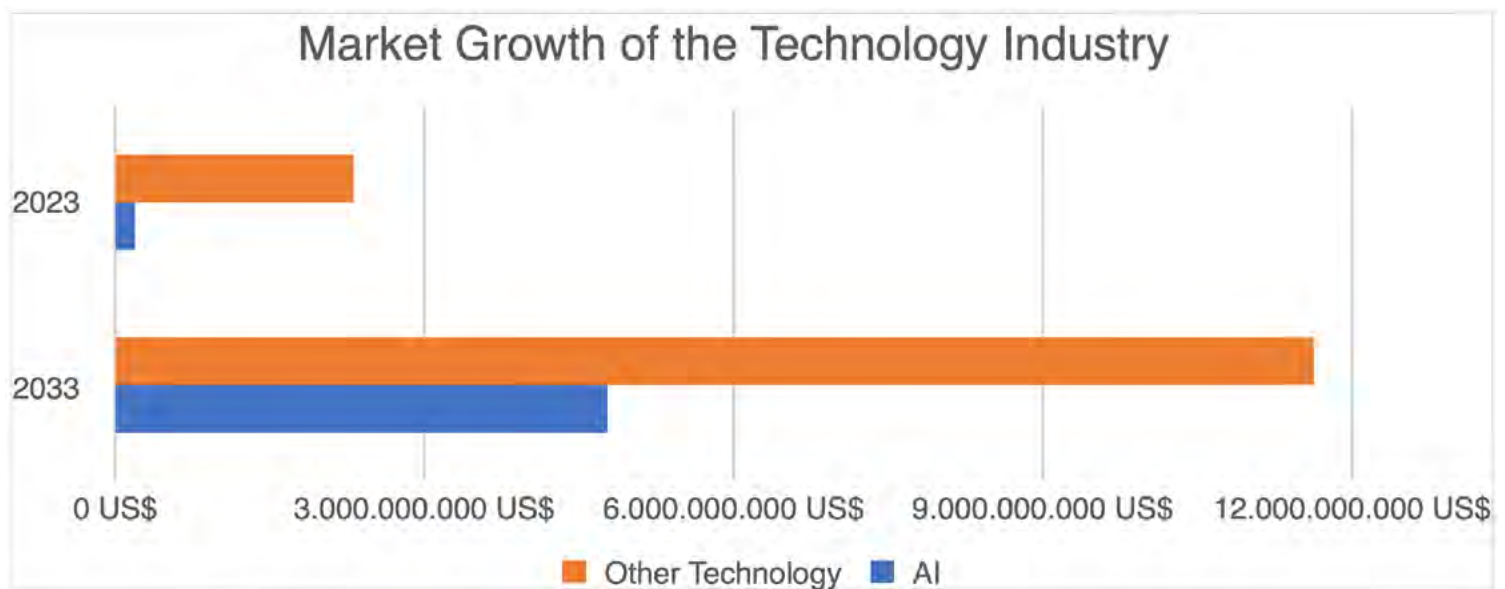


# I. THE RISING TREND OF ACQUIHIRING

Acquihiring has been gaining traction in recent years, particularly with technology companies looking to access key talent. The explosive growth of artificial intelligence (“AI”) has shown the transformative potential of this technology across industries. Technology companies and non-tech companies alike have invested significantly in AI capabilities, with acquihiring being an important piece of the playbook.

## A. AI Market Trends

AI has reshaped the technology landscape. In 2023, the market size of the technology industry was estimated to be \$2.5 trillion, with AI accounting for approximately \$189 billion of the total. While the total market size of the technology industry may increase six-fold in the next decade, the AI market size is projected to increase over twenty-five times by 2033, reaching a projected \$4.8 trillion in value.<sup>2</sup>



The widespread use of AI has not only led to innovation within the AI space itself, but also innovation in how businesses acquire relevant technology and talent, particularly for leading technology companies that are investing in AI. Big tech firms in particular have adopted acquihiring as a strategy for landing key talent, particularly as it relates to AI. Given the anticipated continued rapid growth of the AI industry, we expect this trend to continue.

## B. What Is Acquihiring?

Acquihiring is a strategic acquisition where the buyer's goal is to acquire a target company's talent and technology through key personnel hires, often with a focus on founders, employees, engineers, or the core team that has developed an AI offering.

These transactions often involve licensing or purchasing a target company's intellectual property, in addition to hiring key talent. Acquire transactions often involve a license agreement if intellectual property is not divisible between the buyer and target company. Such licenses typically allow the buyer to use the intellectual property with few limitations; therefore, the buyer is free to further develop and build on the intellectual property. Often, sellers in these transactions choose to wind down the target company following the acquisition.

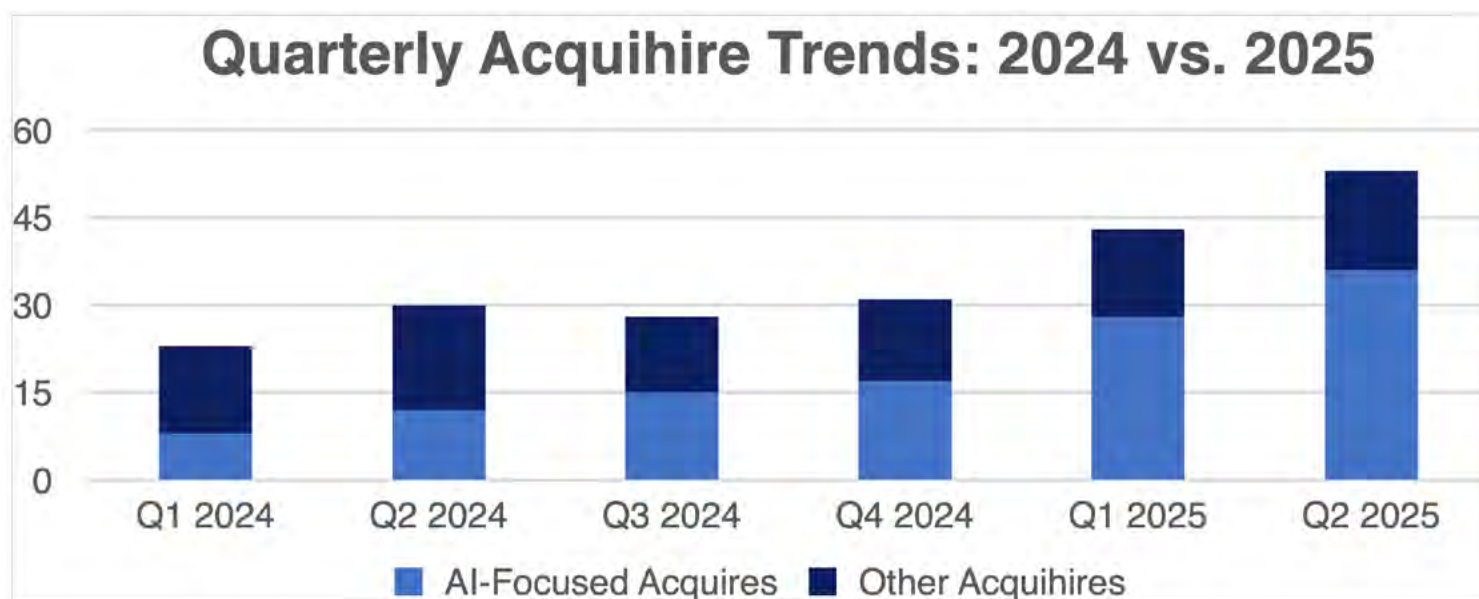
Parties generally structure payments in acquihiring transactions as (1) direct payments to employees transferring to the buyer, through compensation and benefits packages, and (2) compensation to the target company, through a solicitation fee, assignment fee, or license fee. In most cases, the majority of the transaction value comes from employee compensation in the form of retention bonuses, salaries and benefits, and equity grants.

<sup>2</sup> Wai Kit (Jackie) Si Tou and Antonio Vezzani *et al.*, UNITED NATIONS CONF. ON TRADE & DEV., TECHNOLOGY AND INNOVATION REPORT (2025), [https://unctad.org/system/files/official-document/tir2025\\_en.pdf](https://unctad.org/system/files/official-document/tir2025_en.pdf) (providing total and AI market size based on total revenue generated from the sales of products and services in the market).



### C. Market Data for AI Acquihring

M&A transactions involving AI companies have doubled in the last decade, from 225 transactions in 2014 to 494 transactions in 2023.<sup>3</sup> Since 2023, acquihiring deals have continued to gain popularity as a strategic acquisition structure. The total number of acquihiring deals has tripled in the second quarter of 2025 compared to the first quarter of 2024, with a growing trend of top-talent acquisition in the AI space in particular.<sup>4</sup>



A concentrated number of firms drives a large proportion of the AI acquihire transactions.<sup>5</sup> Unsurprisingly, large tech firms have frequently employed acquihiring and have led the surge in acquihiring transactions involving AI companies. These buyers in particular are often skilled in integrating teams into their organizations and the acquihire structure allows them to avoid the complexity of a traditional M&A transaction. We expect similar acquihiring transactions will become more widespread as the AI market continues to grow.

### D. Acquihring Compared to Traditional M&A

When compared to a traditional M&A transaction, acquihiring focuses primarily on the acquisition of human resources and licensing rights. Focusing on these elements means companies can prioritize obtaining only the essential talent and technology without the complexities of integrating an entire business.

#### 1. Regulatory Considerations

Acquihring has historically been subject to less regulatory scrutiny than traditional M&A deals.<sup>6</sup> A traditional M&A transaction for the acquisition of an AI company for more than \$1 billion would typically trigger antitrust thresholds requiring regulatory review, which is a process that could span from months to years, would require extensive disclosure, and could result in a lawsuit challenging (and ultimately a judicial or regulatory order prohibiting) the transaction.

For acquihire deals, however, the employee transfers generally do not trigger any regulatory review. Instead, regulatory authorities are focused primarily on the movement of intellectual property between companies in these deals, and such transactions may only trigger governmental approval requirements in certain jurisdictions or sectors.

3 Jack Corrigan, Ngor Luong & Christian Schoeberl, *Acquiring AI Companies: Tracking U.S. AI Mergers and Acquisitions*, CTR. FOR SEC. & EMERGING TECH. (Nov. 2024), <https://cset.georgetown.edu/publication/acquiring-ai-companies-tracking-u-s-ai-mergers-and-acquisitions/>.

4 Louis Lehot, *The Rise of "Acquihring" in a Post-Layoff Tech Sector*, JD SUPRA (Aug. 11, 2025), <https://www.jdsupra.com/legalnews/the-rise-of-acquihring-in-a-post-9899409/#:~:text=The%20rise%20of%20acquihring%20represents,and%20innovation%20friendly%20policy%20approaches.>

5 See Corrigan *et al.*, *supra* note 3.

6 See Daniel Ilan *et al.*, *AI in M&A Transactions: Challenges and Opportunities*, PLI PLUS (Jan. 23, 2025), [https://plus.pli.edu/Details/Details?fq=id%3A\(430497\)](https://plus.pli.edu/Details/Details?fq=id%3A(430497)) (stating that large tech companies have argued in front of competition authorities globally that acquihiring involves moving employees over and oftentimes an intellectual property license, and whether this is subject to regulatory scrutiny is a question that remains to be resolved).

## 2. Efficiency and Strategic Talent

The acquihiring model presents unique advantages for acquiring AI talent in an efficient manner. Buyers focus on startup founders or a team of engineers that generate the technology underlying AI technology. Acquiring this experienced, high-performing team can be more economical and efficient than integrating an entire company. The transferring employees own intellectual property, or can contribute knowhow, to the buyer such that these employees can continue to innovate. This is especially valuable in a rapidly evolving industry like AI.

A traditional acquisition or merger of a target company often involve complex structure considerations, such as evaluating whether to acquire the target company in a stock or asset deal. However, acquihiring allows buyers to select the assets that drive value, while leaving behind the remainder of the target company.

## 3. Attractive Exit for Certain Targets

Acquihiring is an alternative exit opportunity for startups that have traditionally relied upon initial public offerings or traditional M&A. AI companies may face fundraising difficulties or experience high attrition rates, and high interest rates may make obtaining financing for more traditional M&A deals more challenging.<sup>7</sup> The acquihire model could be a solution to these challenges. AI founders may seek to leverage their pre-built teams and technology in favor of high-compensation acquihire deals to exit the startup, as opposed as taking the company public, which can be complex, timely and costly.

### ***E. Challenges to Acquihiring***

Acquihiring warrants various legal considerations, including regulatory, employment, intellectual property, and compliance issues.

#### 1. Increasing Regulatory Focus

As noted above, acquihire transactions have historically been subject to less regulatory scrutiny; however, AI transactions have increasingly faced regulatory scrutiny. The U.K. Competition and Markets Authority, German Federal Cartel Office, and U.S. Federal Trade Commission (“FTC”) are among the regulatory authorities that have investigated deals in the AI sector.

Recent investigations into AI acquihires demonstrate heightened regulatory sensitivity. Regulatory authorities have questioned whether acquihiring is designed to evade antitrust, competition, and merger review processes. Parties should consider the potential increased risk of regulatory review for acquihire transactions, particularly in the AI space. See the section titled “Acquihiring in the Changing Regulatory Framework” for additional information.

#### 2. Employment Matters

Acquihiring as a practice may create risk related to certain employment matters. Namely, when key founders and employees join the acquiring company, potential disputes with former investors or employees may arise with the employees that remain with the target company. Employees may receive stock options or other types of equity grants in traditional exits. Acquihiring instead offers attractive compensation packages for a few individuals instead of divided among the entire business. This dynamic may result in increased disputes or proceedings stemming from acquihires.

Further, legal issues may arise for the transferred employees. Acquihires generally involve equity grants, signing bonuses, extended vesting schedules, and noncompetition clauses to promote talent retention following the acquisition. If these incentives do not comply with prior obligations under any existing employment or investor contracts, parties may challenge these methods in litigation or introduce contract disputes.

#### 3. Intellectual Property Complications

Intellectual property complications in acquihiring transactions may arise in certain circumstances. The billion-dollar valuations in many acquihires grant the buyer a right to use the applicable intellectual property. However, issues arise when parties use improperly licensed open-source soft-

<sup>7</sup> Arlene Arin Hahn, Erin Hanson & Tali Sealman, “Magnificent Seven” Ride Again as AI Spurs Rise in US Tech M&A, M&A EXPLORER (JUNE 25, 2024), <https://mergers.whitecase.com/highlights/magnificent-seven-ride-again-as-ai-spurs-rise-in-us-tech-ma>.

ware. Parties should also consider the implications of co-ownership of intellectual property with universities, former employers, or contractors, which may lead to disputes if ownership is contested.

#### 4. Compliance With Laws

Acquihiring transactions must comply with labor and data privacy laws, visa sponsorship requirements, and other applicable laws. For instance, depending on the circumstances of the acquihire transaction, the buyer must grant employees compensation and benefits no less favorable than at their prior position.

## II. STRUCTURING CONSIDERATIONS FOR AI ACQUIHIRES

### A. *Intellectual Property Considerations*

Acquiring an AI company has overlaps with M&A of a technology company but introduces additional risks due to the nature of AI technology.<sup>8</sup> Among many considerations, we focus on the ownership of intellectual property, licensing, use of open source data, and the right to use the AI model's training data. These special considerations apply to acquihiring deals, as the technology generally moves with the key talent in these types of transactions.

#### 1. Ownership of Intellectual Property

Buyers in the AI industry must consider the target company's ownership of intellectual property rights and the proprietary value of the technology to be gained as a result of the transaction. There is a risk that the AI company does not own the intellectual property it purports to sell. Therefore, it is crucial to understand as part of the due diligence process what technology the target company actually owns since many of the acquiring companies further develop technology from pre-existing foundation models.

It is possible for a company's intellectual property or confidential data to be inputted into a third-party AI tool. However, in this scenario, the use of data and any outputs from the AI tool may be deemed a public disclosure of a trade secret or a patentable invention. As a result, the target company would no longer be able to claim any intellectual property rights in the underlying technology.

#### 2. Licensing

Parties engaging in an AI deal must understand whether the buyer would like to acquire or license the technology. AI models are more than the code that drive them; the model weightings (i.e., the numerical parameters assigned to individual features in a dataset to determine the importance of such features to the overall AI model) are key as well. For this reason, the AI model's learned parameters and settings must also be accessible or licensed, in addition to the AI model itself.

If a license is required, the general scope of license issues apply (e.g. term of use, exclusivity, and geographic limitation). The parties must assess whether the license from the target company to gain access to the intellectual property rights is sufficient, or whether any additional licenses from third parties are necessary to use the technology. Further, for in-licensed data, parties must review the underlying licenses to confirm that the scope of the license includes the technology the buyer purports to purchase through the licensing rights in the acquihire transaction. Otherwise, if the target company uses data not covered by the scope of the license, the buyer may be subject to third party infringement or misappropriation claims.

#### 3. Open Source

Many AI models and tools are partially released as open source. As a result, it is important to assess whether the target company's technology is built on, or released as open source, such that there is less proprietary value than for wholly proprietary technology. AI models may use generative AI to develop code based on underlying training that uses open source code subject to copyleft licenses. Any derivative works might then be subject to copyleft terms. In such cases, the target company would be required to publicly release its intellectual property. This may dramatically reduce the proprietary value of the intellectual property the buyer seeks to acquire or license.

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<sup>8</sup> Dario Martino & Mara Goodman, *AI M&A: Current Trends and Unique Legal and Regulatory Considerations*, PLI PLUS (Dec. 5, 2024), [https://plus.pli.edu/Details/Details?fq=id:\(414204-CH20\)](https://plus.pli.edu/Details/Details?fq=id:(414204-CH20)).

#### 4. Model Training

To generate useful output, AI models generally depend on training from a large quantity of data. Buyers will need to evaluate this issue before acquiring an AI company to avoid using AI models trained on third party content without permission. Parties risk both intellectual property infringement and challenges to ownership of intellectual property if this issue is not properly analyzed.

#### ***B. Employee Considerations***

A key consideration of AI deals is retention of the transferred employees after the transition. If the acquired talent remains with the buyer for only a short period of time after the acquisition, the buyer will not realize the value of hiring such key employees. This risk exists whether parties are using the traditional hiring model or acquihiring. As a result, payment of earnouts or retention bonuses to the acquired employees may be necessary to retain talent. The parties can consider negotiating lockup periods, non-competes, or non-solicitation periods for the transferring employees to protect the value of the deal.

Further, transferring employees in the context of AI M&A may trigger various contracts, compensation and benefits, labor, and privacy law issues, especially in a cross-border transaction where parties are dealing with multiple jurisdictions.

#### ***C. Tax Considerations***

For hiring or acquihiring deals, tax outcomes for all parties can vary substantially depending on deal structure and the allocation of consideration among the transaction's various elements.

In a straightforward hiring model, where a company pays a large compensation package to a newly hired employee, the compensation generally is treated as ordinary income to the newly hired employee and as deductible compensation to the employer. Compensation exceeding \$1 million paid to employees of publicly traded companies may, however, be subject to deductibility limitations under U.S. federal income tax law. In addition, if portions of the compensation package are deferred, Section 409A of the Internal Revenue Code may apply.

Tax considerations for acquihire transactions can be even more complex. The allocation of value among employee compensation, acquisition of stock or assets, and licenses for intellectual property can produce materially different tax results for the parties involved. For example, compensation is generally deductible by the employer but constitutes ordinary income to the employee (and incurs payroll and similar taxes). By contrast, gain from the sale of corporate stock or other capital assets may qualify for long-term capital gains treatment, which is generally taxed at preferential rates for individual taxpayers who satisfy certain holding period requirements. For the buyer, amounts paid to acquire a capital asset are typically not currently deductible and may only generate tax benefits over time through amortization (for amortizable assets) or upon a later sale (in the case of stock or other non-depreciable, non-amortizable assets).

Given these differing tax treatments, buyers, sellers, and employees often have conflicting interests in determining how consideration is allocated among components of the transaction. Any agreed allocation, or the methodology used to determine it, is frequently a heavily negotiated point. Moreover, in situations where an individual both sells a capital asset (e.g. corporate stock), and receives compensation as an employee on an ongoing basis, careful structuring is needed to ensure that the value allocated to the capital asset is respected by tax authorities and not recast as compensatory.

### **III. ACQUIHIRING IN THE CHANGING REGULATORY FRAMEWORK**

#### ***A. Regulatory Landscape for AI Deals: Regulators' Increased Focus on Acquihring***

As acquihiring becomes more prevalent in M&A for the AI industry, regulatory scrutiny on such deals are likely to increase, despite that such transactions have not historically been a focus of regulatory review. Governmental agencies assess the factual circumstances of each deal to determine whether a regulatory filing is required, including associated deal value, related revenues, and relationships between stakeholders. Although the traditional employee hiring model often bypasses antitrust merger review requirements, a buyer's acquisition of all employees of a target company, along with financing agreements and intellectual property rights, may result in a regulatory filing if relevant jurisdictional thresholds are met.

Government agencies in the United States, such as the U.S. Department of Justice and the FTC, can, and frequently actually do, review closed transactions, as well as deals that were not otherwise reportable under the Hart-Scott-Rodino Act. This means that these authorities may

investigate (and potentially seek to unwind) certain transactions, including acquihire transactions, even if the transaction value does not surpass the applicable thresholds triggering antitrust review. Regulatory authorities' investigations into recent acquihiring deals, particularly the multibillion-dollar deals led by big tech firms, is evidence that review of acquihires may become more frequent for high value AI M&A deals.

## ***B. Key Competition Law Issues***

Antitrust law in the context of M&A transactions primarily focuses on whether a transaction substantially lessens competition (e.g. whether competing firms merging will result in anticompetitive outcomes such as higher prices, lower quality, and reduced innovation). While acquihires generally do not technically result in fewer competing entities — and in many cases may spur an enhanced ability to accelerate innovation, scale technologies and serve more customers — regulators may nevertheless question whether certain acquihires functionally reduce competition by absorbing talent from a potential competitor. As demand for AI talent and intellectual property continues to grow and well-resourced companies seeking an edge in AI offer large compensation packages (sometimes valued at M&A-type levels), it is increasingly likely that regulators will carefully scrutinize these transactions for any potential impacts on AI competition.

Indeed, certain regulators are already moving forward, signaling that acquihiring may be classified as a merger for competition purposes, even if a full acquisition has not taken place.<sup>9</sup> For example, the European Commission antitrust unit has stated that “acqui-hires can be considered a merger as staff are part of a company's assets.”<sup>10</sup>

## ***C. Future Developments***

As demonstrated by the regulatory response to acquihiring, the regulatory regime will continue to evolve along with new structures. The broader policy environment is that regulatory authorities are increasingly wary of big tech's market position in AI M&A through acquisitions of key talent and intellectual property developed by startups and other successful AI companies that would otherwise be competitors. As the AI industry continues to grow, regulatory authorities are paying closer attention to how deals are structured to qualify such transactions for regulatory review, even if such deals fall below traditional reporting thresholds. This is proof that regulatory authorities will continue to examine M&A structuring alternatives that bypass traditional antitrust review processes to ensure open and fair access to AI in an ever evolving competitive landscape.

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<sup>9</sup> See Paul Sawers, *UK Regulator Greenlights Microsoft's Inflection Acqui-hire, But Also Designates It a Merger*, TECHCRUNCH (SEPT. 4, 2024), <https://techcrunch.com/2024/09/04/uk-regulator-greenlights-microsofts-inflection-acqui-hire-but-also-designates-it-a-merger/>.

<sup>10</sup> Foo Yun Chee, *Big Tech's Acqui-hire Deals Face Regulatory Scrutiny, Outgoing EU Antitrust Official Says*, THOMSON REUTERS (AUG. 1, 2025), <https://www.investing.com/news/stock-market-news/big-techs-acqui-hire-deals-face-regulatory-scrutiny-outgoing-eu-antitrust-official-says-4164915>.





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