Technology Mergers and the Market for Corporate Control
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Abstract

A growing number of policymakers and scholars are calling for tougher rules to curb corporate acquisitions. But these appeals are premature. There is currently little evidence to suggest that mergers systematically harm consumer welfare. More importantly, scholars fail to identify alternative institutional arrangements that would capture the anticompetitive mergers that evade prosecution without disproportionate false positives and administrative costs. Their proposals thus fail to meet the requirements of the error-cost framework.

Several high-profile academic articles and reports claim to have identified important gaps in current merger enforcement rules, particularly with respect to tech and pharma acquisitions involving nascent and potential competitors—so-called “killer acquisitions” and “kill zones.” As a result of these perceived deficiencies, scholars and enforcers have called for tougher rules, including the introduction of lower merger filing thresholds and substantive changes, such as the inversion of the burden of proof when authorities review mergers and acquisitions in the digital platform industry. Meanwhile, and seemingly in response to the increased political and advocacy pressures around the issue, U.S. antitrust enforcers have recently undertaken several enforcement actions directly targeting such acquisitions.

As this paper discusses, however, these proposals tend to overlook the important tradeoffs that would ensue from attempts to decrease the number of false positives under existing merger rules and thresholds. While merger enforcement ought to be mindful of these possible theories of harm, the theories and evidence are not nearly as robust as many proponents suggest. Most importantly, there is insufficient basis to conclude that the costs of permitting the behavior they identify is greater than the costs would be of increasing enforcement to prohibit it.

Our work draws from two key strands of economic literature that are routinely overlooked (or summarily dismissed) by critics of the status quo. For a start, as Frank Easterbrook argued in his pioneering work on The Limits of Antitrust, antitrust enforcement is anything but costless. In the case of merger enforcement, not only is it expensive for agencies to detect anticompetitive deals, but overbearing rules may deter beneficial merger activity that creates value for consumers. Indeed, not only are most mergers welfare-enhancing, but barriers to merger activity have been shown to significantly, and negatively, affect early company investment.

Second, critics mistake the nature of causality. Scholars routinely surmise that incumbents use mergers to shield themselves from competition. Acquisitions are thus seen as a means of eliminating competition. But this overlooks an important alternative: It is at least plausible that incumbents' superior managerial or other capabilities make them the ideal purchasers for entrepreneurs and startup investors who are looking to sell. This dynamic is likely to be amplified where the acquirer and acquiree operate in overlapping lines of business. In other words, competitive advantage, and the ability to profitably acquire other firms, might be caused by business acumen rather than anticompetitive behavior.

Thus, significant and high-profile M&A activity involving would-be competitors may be the procompetitive byproduct of a well-managed business, rather than anticompetitive efforts to stifle competition. Critics systematically overlook this possibility. Indeed, Henry Manne's seminal work on Mergers and Market for Corporate Control—the first to argue that mergers are a means of applying superior management practices to new assets—is almost never cited by contemporary researchers in this space. Our paper attempts to set the record straight.

Read the full white paper here.

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