

## Benefits of Tech Mergers and Acquisitions

November 2021

tl;dr

**Background:** Policymakers in the United States, the United Kingdom, and the European Union recently have pursued legislative and regulatory changes to make it more difficult for large companies, especially digital platforms, to acquire other firms.

Most recently, Sens. Amy Klobuchar (D-Minn.) and Tom Cotton (R-Ark.) have introduced [S. 3197](#), which would virtually outlaw all acquisitions by the largest online platforms.

**But...** Startup formation and venture capital investment are extremely sensitive to the availability of exits, most of which occur through acquisitions. Making it more difficult (or impossible) for start-ups to be acquired by the world's largest tech firms would imperil the incentive for investors to fund innovative new products and services, and limit competition between digital platforms. The measure also raises significant constitutional questions, due both to the extremely small number of firms it would target and to changes it would make to judicial review that imperil separation of powers.

### KEY TAKEAWAYS

#### S. 3197 REPRESENTS A RADICAL CHANGE TO COMPETITION LAW

The Klobuchar-Cotton bill targets online platforms with market capitalizations of more

than \$600 billion and 50 million active monthly U.S. users or 100,000 business users. Mergers by these companies would be permitted only if they can prove they do not compete with companies they seek to acquire, that they are not nascent competitors, *and* that the acquisition would not increase or help maintain the platform's market position.

The bill would apply only to Facebook, Apple, Amazon, Google, and Microsoft; major competitors such as Walmart—based in Cotton's home state of Arkansas—are excluded. And the designation would apply only to firms that meet this definition when the bill is enacted; even if Walmart eventually grows big enough to meet the bill's definition, it will remain excluded. As a result, the legislation may be an unconstitutional Bill of Attainder, even under the Court's extremely narrow jurisprudence on the topic.

The legislation would also severely limit judicial review. It proposes that findings by the Federal Trade Commission or the DOJ Antitrust Division in administrative adjudication under the bill "shall be conclusive" and are thus essentially un-reviewable, upending the Constitution's allocation of powers between the judicial and executive branches.

#### ENTREPRENEURS WANT TO BE ACQUIRED

Acquisition is the way most startup founders succeed. The U.S. National Venture Capital

Association [cites polling](#) that shows that more than half (58%) of startup founders expect to be acquired at some point, and [90% of US start-up exits from 2008 to 2018](#) happened through acquisitions.

Some entrepreneurs prefer to set up businesses and sell them before they reach their full scale, so that they can go on to found new ones. Smaller firms may be good at research and innovation but struggle to bring their products to scale. Larger incumbents often enjoy comparative advantage in marketing and distribution, or in navigating regulatory-approval processes. In some cases, businesses that possess some kind of valuable intellectual property may lack the managerial skills that other companies have to commercialize those assets.

---

### ACQUISITIONS LIMIT UNCERTAINTY FOR INVESTORS

Tech is a highly uncertain industry, with as many as 90% of tech start-ups [destined for failure](#). Given that uncertainty, tech firms typically prefer (and may find it easier to get) equity financing to debt financing.

While equity-funded startups represent only a small percentage of all firms, they have an outsized impact on employment, investment, and productivity. Only one in 600 U.S. businesses will receive venture capital investment, but these businesses [represent 10% of private sector employment](#) and half of all companies that float on the stock market.

Many VC-funded businesses will likely fail, but the returns from a single successful exit can be large enough to offset these failures. Unsurprisingly, this means that exit considerations are the [most important factor](#) for VCs when valuing a company.

Cross-country studies show that restrictions on takeovers can have strong negative effects on VC activity. [One paper](#) analyzing M&A in

48 countries found that those that passed pro-takeover laws saw 40-50% more growth in VC activity.

---

### MERGERS OFTEN INCREASE CONSUMER WELFARE

Acquisitions can accelerate inter-platform competition. Instead of starting from scratch, platforms can use mergers to gain a foothold in new markets, and do so more rapidly and effectively than if the products had to be developed in-house.

M&A can also help to reduce transaction costs among complementary products, facilitating successful product development in markets where it otherwise might not succeed in direct competition with incumbents. Vertical integration can also reduce prices by preventing double marginalization where costs are inflated by multiple markups throughout the supply chain.

---

For more on this issue, see [“Technology Mergers and the Market for Corporate Control.”](#) and [“Better Together: The Procompetitive Effects of Mergers in Tech.”](#)

## CONTACT US



**Sam Bowman**  
Director of Competition Policy  
[sbowman@laweconcenter.org](mailto:sbowman@laweconcenter.org)



**Geoffrey A. Manne**  
President & Founder  
[gmanne@laweconcenter.org](mailto:gmanne@laweconcenter.org)

ICLE



International Center  
for Law & Economics