Federal Trade Commission Request for Information on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies

Comments of NetChoice

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NetChoice,[1] a trade association of tech businesses committed to defending free expression and free enterprise online, submits the following comments in response to the Federal Trade Commission's Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies ("RFI"). As a national trade association of online businesses, NetChoice works to promote free enterprise and free expression online through advocacy, litigation, and regulatory filings.

We work to promote the integrity and availability of the global internet and are significantly engaged in issues in the states, in Washington, and in international internet governance organizations.

Executive Summary

The Federal Trade Commission's inquiry into serial acquisitions and roll-up strategies raises important questions about merger enforcement and antitrust policy. While NetChoice shares the Commission's goal of protecting competitive markets, we urge caution in expanding antitrust scrutiny of acquisition strategies that often benefit consumers and drive innovation. Our comments make the following key points:

1. The consumer welfare standard remains the appropriate lodestar for antitrust analysis. Any examination of serial acquisitions or roll-up strategies should focus on demonstrable harms to consumer welfare, not speculative theories of harm or protection of competitors.

2. Many serial acquisitions and roll-up strategies generate significant efficiencies and consumer benefits. They can accelerate innovation, improve products and services, and expand consumer choice. The vast majority of these transactions pose no competitive concerns.

3. Existing antitrust laws and merger review processes are generally sufficient to address any anticompetitive serial acquisitions. The agencies already have tools to examine the cumulative effects of a series of transactions.

4. Expanding merger review to routinely scrutinize smaller, non-reportable transactions would be unduly burdensome on businesses and agency resources. It could chill beneficial M&A activity and venture capital investment.

5. Digital markets remain dynamic and competitive, with new entrants constantly emerging to challenge incumbents. Concerns about entrenched "monopolies" in tech are often overstated.

[1] NetChoice is a trade association of e-Commerce and online businesses, at www.netchoice.org The views expressed here do not necessarily represent the views of every NetChoice member company.

6. Any new policies should be based on rigorous economic evidence, not anecdotes or preconceived notions about big tech. The agencies should avoid an overly European approach focused on "fairness" rather than economic effects.
7. Private equity and venture capital play an important and largely positive role in driving innovation and improving company performance. These investment models should not be uniquely targeted.

For these reasons, we encourage the Commission to maintain its focus on protecting consumers and economic efficiency, rather than adopting an expansive new approach to serial acquisitions. The existing merger review framework, properly applied, is sufficient to address any competitive concerns while preserving the benefits of procompetitive acquisitions and investment.

I. The Consumer Welfare Standard Should Remain the Lodestar of Antitrust Analysis

A. The Consumer Welfare Standard Has Served Antitrust Law Well

For the past several decades, the consumer welfare standard has been the guiding principle of U.S. antitrust law and enforcement. This approach, which focuses on the effects of business practices on consumers rather than competitors, has its roots in the work of legal and economic scholars like Robert Bork, Richard Posner, and others associated with the Chicago School of antitrust analysis.

The consumer welfare standard marked an important shift away from the earlier structural approach to antitrust, which often equated "bigness" with badness and sought to protect smaller competitors rather than competition itself. As Bork argued in The Antitrust Paradox,[2] this older approach led to inconsistent and often counterproductive results that harmed consumers by protecting inefficient firms and stifling innovation.

By refocusing antitrust on consumer welfare - typically measured through effects on price, quality, and innovation - the standard provided greater clarity and consistency to antitrust enforcement. It aligned antitrust with sound economic principles and recognized that many business practices that harm individual competitors may actually benefit consumers overall.

The Supreme Court has repeatedly affirmed the centrality of consumer welfare to antitrust analysis. In *Reiter v. Sonotone Corp.*,[3] the Court stated that the Sherman Act is a "consumer welfare prescription." In *NCAA v. Board of Regents*,[4] it held that "Congress designed the Sherman Act as a 'consumer welfare prescription.'" And in Atlantic Richfield Co. v. USA

[2] Robert H. Bork, The Antitrust Paradox: A Policy At War With Itself (1978).
[3] *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979).
[4] *NCAA v. Board of Regents*, 468 US 85 (1984).

Petroleum Co.,[5] the Court reiterated that "the antitrust laws were passed for 'the protection of competition, not competitors.'"

This consumer-focused approach has served antitrust law well over the past 40+ years. It has provided a coherent framework for distinguishing between procompetitive and anticompetitive conduct. And it has helped foster an economic environment that has produced tremendous innovation and consumer benefits, particularly in the technology sector.

B. Proposals to Abandon the Consumer Welfare Standard Are Misguided

In recent years, some have called for abandoning or significantly modifying the consumer welfare standard in favor of broader considerations like protecting small businesses, promoting economic fairness, or limiting corporate power. While these may be worthy policy goals, reshaping antitrust law to pursue them would be deeply misguided.

First, moving away from the consumer welfare standard would inject significant uncertainty into antitrust enforcement. The current approach provides relatively clear guidance to businesses and courts about what types of conduct and transactions are likely to raise antitrust concerns. Alternative approaches focused on amorphous concepts like fairness or corporate bigness would make antitrust far less predictable.

Second, broadening the goals of antitrust beyond consumer welfare would require courts and enforcers to make complex tradeoffs between competing social and economic objectives. Judges and regulators are poorly positioned to weigh these considerations or to pursue industrial policy through antitrust law.

Third, protecting competitors rather than competition often harms consumers by preserving inefficient market structures and impeding innovation. The history of antitrust enforcement prior to the consumer welfare standard included many examples of actions that ultimately hurt the consumers they were purportedly trying to protect.

Finally, there are more appropriate policy tools than antitrust to address concerns about corporate power, income inequality, or other broad social issues. Tax policy, labor law, campaign finance rules, and other regulatory approaches are better suited to tackle these complex problems.

C. The Consumer Welfare Standard Should Guide Analysis of Serial Acquisitions

As the Commission examines issues related to serial acquisitions and roll-up strategies, we urge it to maintain its focus on consumer welfare as the key consideration. The relevant question in

[5] *Atlantic Richfield v. USA Petroleum*, 495 U.S. 328 (1990).

evaluating these acquisition patterns should be whether they demonstrably harm consumers through higher prices, reduced quality or innovation, or foreclosed choice.

Many serial acquisitions and roll-ups generate significant consumer benefits by:

- Allowing firms to quickly scale up innovative products and services;
- Generating efficiencies through vertical integration;
- Providing needed capital and expertise to help smaller companies grow;
- Accelerating the development and commercialization of new technologies.

These benefits should be carefully weighed against any potential anticompetitive effects. Merely pointing to increased concentration or harm to individual competitors is not sufficient to justify antitrust intervention.

At the same time, the consumer welfare lens does allow for consideration of longer-term and less direct consumer harms that may result from certain patterns of acquisitions. For instance, a series of acquisitions that eliminates multiple nascent or potential competitors could harm consumers by reducing innovation and future competition, even if short-term price effects are limited. But these theories of harm must be supported by sound economic evidence, not mere speculation.

The existing antitrust framework, properly applied, is fully capable of addressing anticompetitive serial acquisitions while preserving beneficial ones. We urge the Commission to maintain this balanced, economics-based approach rather than adopting more interventionist policies that could chill procompetitive M&A activity.

II. The Existing Merger Review Framework Is Generally Sufficient to Address Competitive Concerns from Serial Acquisitions

A. Current Tools Allow for Examination of Cumulative Effects

The FTC and DOJ already have significant authority to examine and, where appropriate, challenge serial acquisitions that may substantially lessen competition. While individual smaller transactions may fall below HSR reporting thresholds, the agencies have several tools to scrutinize patterns of acquisitions:

1. Section 7 of the Clayton Act prohibits acquisitions whose effect “may be substantially to lessen competition, or to tend to create a monopoly.” This allows for consideration of the cumulative effects of multiple transactions, not just each deal in isolation.

2. The agencies can investigate non-reportable transactions, either before or after closing. The FTC's ongoing study of non-HSR reportable acquisitions by large technology companies demonstrates this authority.
3. In HSR reviews, the agencies routinely examine the acquired company's acquisition history. This allows for consideration of how a proposed deal fits into a broader pattern of acquisitions.
4. The agencies can challenge consummated mergers, without any time limitation. This provides a backstop to address anticompetitive outcomes that may only become apparent over time.
5. Section 5 of the FTC Act prohibits "unfair methods of competition." The Commission has indicated this authority could potentially reach a series of transactions that cumulatively harm competition.

These existing tools provide ample basis to address genuinely anticompetitive serial acquisition strategies. For instance, in 2017 the FTC challenged a series of acquisitions by Mallinckrodt ARD Inc. (formerly Questcor)[6] in the market for adrenocorticotropic hormone (ACTH) drugs. The Commission alleged that Questcor's acquisition of the U.S. rights to Synacthen Depot, a potential competitor to its H.P. Acthar Gel, was part of a broader pattern of acquisitions to maintain its monopoly.

More recently, the FTC's challenge to Facebook's acquisitions of Instagram and WhatsApp demonstrates the agencies' ability to scrutinize past transactions as part of a alleged pattern of anticompetitive conduct. While NetChoice has concerns about the merits of this particular case, it illustrates that the current framework allows for examination of serial acquisitions.

B. Proposals for Expanded Merger Review Are Unnecessary and Potentially Harmful

Some have called for dramatically expanding antitrust scrutiny of mergers and acquisitions, particularly in the technology sector. These proposals include:

- Mandatory review of all transactions by tech platforms, regardless of size.
- Presumptions of illegality for acquisitions by successful firms.
- Shifting the burden of proof to companies to show acquisitions are not anticompetitive
- Consideration of "potential competition" effects for all acquisitions in adjacent markets

[6] *See*, https://www.ftc.gov/legal-library/browse/cases-proceedings/1310172-mallinckrodt-ard-inc-questcor-pharmaceuticals.

While well-intentioned, these approaches would likely do more harm than good. They would impose significant burdens on companies and the antitrust agencies, chill beneficial M&A activity, and potentially slow innovation - all without clear benefits to consumers or competition.

Dramatically expanding merger review would strain the agencies' limited resources and likely lead to cursory reviews of many competitively benign transactions. This could paradoxically make it harder to identify and challenge truly anticompetitive deals.

Presumptions against acquisitions by large firms or in adjacent markets would deter many procompetitive transactions that allow for rapid scaling of innovative products and services. They would also reduce incentives for startup formation and venture capital investment by limiting exit opportunities.

Shifting the burden of proof in merger reviews would be particularly problematic. It is often difficult to conclusively prove the future effects of a merger in dynamic markets. Requiring definitive proof of no anticompetitive effects, rather than allowing reasonable predictive judgments, would effectively block many beneficial deals.

Rather than adopting these blunt new tools, we urge the Commission to focus on effectively using its existing authority. This could include:

- Providing updated guidance on how the agencies analyze serial acquisitions and potential competition issues.
- Devoting additional resources to retrospective studies of consummated mergers to inform future enforcement.
- Making greater use of the agencies' authority to challenge anticompetitive non-reportable and consummated mergers where appropriate.

These measured steps would enhance merger enforcement without unduly burdening beneficial M&A activity or agency resources.

III. Serial Acquisitions Often Benefit Consumers and Drive Innovation

A. Acquisitions Play a Vital Role in the Innovation Ecosystem

While some have raised concerns about patterns of acquisitions in the technology sector and other industries, it's critical to recognize the vital role that M&A plays in driving innovation and economic growth. Acquisitions, including sequential acquisitions in related markets, are often key to:

1. Scaling innovative products and services: Many startups develop promising technologies or business models, but lack the resources and capabilities to rapidly expand. Acquisition by larger firms with complementary assets can accelerate growth and allow innovations to reach a much wider market.

2. Improving products through integration: Combining complementary technologies or datasets through acquisition can lead to significantly improved products and services. This is particularly true in the technology sector, where integrating AI, cloud computing, mobile, and other capabilities can unlock new functionality.

3. Providing liquidity and returns to fuel further innovation: The prospect of being acquired incentivizes entrepreneurs and investors to take risks on new ventures. Acquisition proceeds are often recycled into new startups, creating a virtuous cycle of innovation.

4. Salvaging value from struggling companies: Some serial acquisitions involve purchasing and turning around underperforming businesses. This can preserve jobs and productive assets that might otherwise be lost.

5. Allowing larger firms to quickly enter new markets: Acquisitions can enable established companies to rapidly build capabilities in adjacent markets, increasing competition and consumer choice.

Empirical research has demonstrated the importance of acquisitions in driving innovation and economic growth. A 2020 study by Cunningham, Ederer, and Ma[7] found that the prospect of being acquired accounted for a significant portion of the total economic value created by venture-capital backed startups. They estimated that eliminating this "acquisition channel" would reduce the number of startups by 50% and substantially decrease overall innovation.

B. Case Studies Demonstrate Consumer Benefits from Serial Acquisitions

To illustrate the potential consumer benefits of serial acquisitions, it's instructive to examine a few case studies:

1. Amazon's Expansion into New Markets

Amazon's growth from an online bookstore to a diversified technology and retail competitor (they hate any term that makes them seem successful) involved numerous acquisitions. Key examples include:

- Zappos (2009) - Expanded Amazon's footprint in shoes and apparel
- Kiva Systems (2012) - Improved warehouse automation

[7] *Killer Acquisitions*, Journal of Political Economy, Vol. 129, No. 3, pp. 649–702, March 2021.

- Twitch (2014) - Entered game streaming market
- Ring (2018) - Expanded smart home offerings
- PillPack (2018) - Entered prescription drug market

These acquisitions allowed Amazon to quickly enter new markets and improve its logistics capabilities. The result has been expanded consumer choice, often at lower prices.

For instance, the PillPack acquisition helped Amazon launch Amazon Pharmacy, increasing competition in the prescription drug market.

2. Thoma Bravo's Software Roll-ups

Private equity firm Thoma Bravo has pursued a strategy of acquiring and consolidating companies in fragmented software markets. Examples include:

- Merger of Intuit's financial services division with Digital Insight
- Acquisition and merger of Hyland Software with Lexmark's software division
- Serial acquisitions in cybersecurity, including SonicWall, Barracuda Networks, and Proofpoint

While some have raised concerns about private equity roll-ups, Thoma Bravo's approach has often improved the acquired companies' products and competitiveness. For instance, the consolidation of enterprise content management software providers has allowed for increased R&D investment and improved products for customers.

These examples illustrate how serial acquisitions and roll-up strategies can drive innovation, improve products, and ultimately benefit consumers. While each transaction and industry is unique, it's critical that antitrust policy preserve the ability of companies to pursue beneficial acquisition strategies.

IV. Digital Markets Remain Dynamic and Competitive

A. New Entrants Constantly Challenge Incumbents

One of the key justifications offered for expanding scrutiny of tech acquisitions is the notion that leading digital platforms have become entrenched monopolies, able to buy up any potential competitors. This narrative, however, fails to account for the continued dynamism and competitiveness of digital markets.

Despite the strong market positions of companies like Google, Amazon, and Facebook, new entrants constantly emerge to challenge them in various market segments. Recent examples include:

1. TikTok's rapid rise in social media, competing directly with Instagram and YouTube
2. Shopify's growth as an e-commerce platform, providing an alternative to Amazon for many retailers
3. DuckDuckGo's expansion in search, targeting privacy-conscious users
4. Zoom's explosive growth in video conferencing, surpassing established players
5. Stripe and Square's disruption of the payments industry

The success of these companies demonstrates that barriers to entry in digital markets are often lower than assumed. Factors like cloud computing, open-source software, and digital distribution have made it easier for startups to rapidly scale and challenge incumbents.

Moreover, the history of the technology industry is filled with examples of seemingly dominant companies being overtaken by new innovations. From AOL to MySpace to BlackBerry, supposed "monopolies" have frequently proven fleeting in the face of technological change and evolving consumer preferences.

B. Large Tech Platforms Face Robust Competition

It's also important to recognize that even the largest technology companies face significant competition in their core markets:

1. Search: While Google is the overall leader in search, it faces competition from Microsoft's Bing, privacy-focused alternatives like DuckDuckGo, and specialized search engines like Opentable for restaurant searches or Yelp for local business information. Even TikTok is a major competitor now, being used as a primary search tool for young people.
2. Social Media: Facebook competes with a range of platforms including Twitter, Snapchat, TikTok, and LinkedIn. Each of these serves somewhat different use cases and user demographics, creating a diverse and competitive landscape.
3. E-commerce: Amazon faces robust competition from large incumbent retailers like Walmart and Target, which have invested heavily in their online capabilities. It also competes with specialized e-commerce players like Wayfair, Etsy, and Chewy in various product categories.
4. Cloud Computing: Amazon Web Services (AWS), Microsoft Azure and Google Cloud, IBM, Oracle, and Alibaba all compete in this rapidly growing market.

5. Digital Advertising: Google, Facebook, Microsoft, Twitter, Snapchat, and various demand-side and supply-side platforms all compete in digital advertising and face increasing competition from new rapidly growing ad businesses.

This competitive landscape belies the notion that these companies are unassailable monopolies. It also underscores the risks of overly restrictive merger policies that might prevent these firms from competing effectively in adjacent markets.

C. Market Definition is Critical and Often Misunderstood

Many assertions about market power in the tech sector stem from overly narrow market definitions that fail to capture the full competitive landscape. For instance:

- Treating "social media" as a single market ignores the significant differences between platforms like LinkedIn (professional networking), Snapchat (ephemeral messaging), and TikTok (short-form video).
- Focusing solely on "general search engines" may miss the competitive constraint imposed by specialized search tools and apps that users increasingly turn to for specific queries.
- Defining smartphone operating systems as a separate market overlooks the intense competition between iOS and Android at the device level, where consumers make their purchasing decisions.

Proper market definition is critical in assessing the competitive effects of acquisitions. The agencies should resist calls to adopt presumptions based on simplistic market share thresholds, especially in dynamic technology markets where traditional market definition exercises may be particularly challenging.

V. The Importance of Economic Evidence and Avoiding a European Approach

A. Antitrust Enforcement Should Be Grounded in Sound Economic Analysis

As the Commission considers potential policy changes regarding serial acquisitions and roll-up strategies, we urge a continued commitment to grounding antitrust enforcement in rigorous economic analysis. This means:

1. Relying on empirical evidence rather than anecdotes or preconceived notions about certain industries or business models.
2. Carefully defining relevant markets and measuring market power, recognizing the complexities of multi-sided platforms and rapidly evolving technology markets.

3. Considering both the potential anticompetitive effects and procompetitive benefits of acquisition patterns, including efficiencies and innovation incentives.
4. Avoiding presumptions of harm based solely on market structure or the size of the acquiring firm.
5. Recognizing the limits of economic models and the challenges of predicting future competitive effects, particularly for acquisitions of nascent competitors.

The agencies have a strong tradition of economic rigor in antitrust analysis. This should be maintained and strengthened, not abandoned in favor of more interventionist approaches untethered from evidence of consumer harm.

B. The Risks of an Overly European Approach

We are concerned by suggestions that U.S. antitrust enforcement should move in a more European direction, particularly regarding acquisitions by large technology companies. While there are certainly valuable lessons to be learned from other jurisdictions, wholesale adoption of a European-style approach would be misguided for several reasons:

1. Different legal frameworks: U.S. antitrust law, with its focus on consumer welfare, differs significantly from EU competition law's broader concerns with market structure and competitor fairness. Grafting European-style presumptions or analytical frameworks onto the U.S. system would create significant legal uncertainty.
2. Innovation concerns: Europe's more restrictive approach to mergers and acquisitions, particularly in the tech sector, may have contributed to its relative lack of homegrown tech success. The U.S. should be cautious about adopting policies that could similarly chill innovation and investment.
3. Burden on agency resources: The European Commission's more expansive merger review process, including examination of many smaller and non-horizontal transactions, requires significant agency resources. This level of review would be challenging to implement in the U.S. without dramatically expanding the FTC and DOJ's budgets.
4. Focus on "fairness" over efficiency: European competition policy often emphasizes abstract notions of fairness or "competition on the merits" over more concrete and measurable concepts like efficiency and consumer welfare. This approach can lead to inconsistent enforcement and potentially harm consumers by protecting competitors rather than competition.
5. Slower and more bureaucratic processes: The EU's merger review process is often criticized as slower and more bureaucratic than the U.S. system. Adopting a similar approach could delay procompetitive transactions and impose significant compliance costs on businesses.

The Commission should resist pressure to fundamentally reshape U.S. antitrust law along European lines and instead focus on promoting consumer welfare over competitor comfort.

VI. The Positive Role of Private Equity and Venture Capital

A. Private Equity Contributions to Efficiency and Innovation

The RFI specifically mentions private equity firms as potentially pursuing problematic serial acquisition or roll-up strategies. While certain private equity practices may merit scrutiny in specific cases, it's important to recognize the generally positive role that PE firms play in the economy. Private equity can:

1. Improve operational efficiency: PE firms often bring management expertise and operational discipline to underperforming companies, improving their competitiveness.
2. Provide growth capital: For many middle-market companies, private equity investment is a crucial source of capital for expansion and innovation.
3. Facilitate industry consolidation: In fragmented industries, PE-backed roll-ups can create more efficient scaled competitors, potentially increasing competition with larger incumbents.
4. Drive digital transformation: Many PE firms focus on helping traditional businesses adopt new technologies and business models, enhancing their long-term viability.
5. Enable corporate carve-outs: PE firms often acquire non-core divisions of larger companies, allowing those assets to receive focused investment and management attention.

Empirical research has generally found positive effects from private equity ownership. For instance, a 2019 study by Bernstein, Lerner, and Mezzanotti[8] found that PE-owned companies were more resilient during the financial crisis than their peers, with stronger productivity and capital investment.

B. Venture Capital's Critical Role in the Innovation Ecosystem

Venture capital plays a vital and well-recognized role in funding innovative startups and driving technological progress. Any changes to merger enforcement policy must carefully consider the potential impact on the VC ecosystem. Key considerations include:

[8] *Private Equity and Financial Fragility during the Crisis Get access Arrow*, Shai Bernstein, Josh Lerner, Filippo Mezzanotti, The Review of Financial Studies, Volume 32, Issue 4, April 2019, Pages 1309–1373.

1. Acquisition as an exit strategy: The prospect of being acquired is a key exit strategy for many VC-backed companies. Overly restrictive merger policies could reduce VC investment, particularly in areas where IPOs are less feasible.
2. Funding for nascent competitors: VC firms often fund startups that compete with or disrupt incumbent players. Acquisition can be an important path for these innovations to reach larger scale.
3. Serial acquisitions by VC-backed companies: Many successful VC-backed companies grow through acquisition as they scale. Presumptions against serial acquisitions could disadvantage these emerging competitors relative to incumbents.
4. Incentives for corporate VC: Restrictions on acquisitions by large tech companies could reduce their incentives to operate corporate VC arms, which play an important role in funding early-stage innovation.

The U.S. venture capital industry is the envy of the world and has been crucial to America's technology leadership. Antitrust policy should seek to preserve the dynamism of this model.

VII. Responses to Specific RFI Questions

1. Examples of Serial Acquisitions

NetChoice does not have specific non-public information about companies' serial acquisition strategies. However, we would note that many of the most prominent examples, particularly in the technology sector, have been well-documented in public sources and prior government investigations. We urge the Commission to rely on concrete evidence rather than speculation in evaluating these strategies.

2. Effects of Serial Acquisitions

a. Impact on competition:

The competitive effects of serial acquisitions vary widely depending on the specific industry and circumstances. In many cases, particularly in fragmented industries, roll-up strategies can create more effective competitors to larger incumbents, enhancing overall competition. In other cases, serial acquisitions of nascent competitors could potentially reduce future competition.

It's critical to evaluate these effects using a rigorous economic framework focused on consumer welfare, rather than simple structural presumptions. Factors to consider include:

- Whether the acquisitions are primarily horizontal (consolidating direct competitors) or vertical/conglomerate (expanding into related markets)

- The state of competition in the relevant markets before and after the acquisitions
- Barriers to entry and the potential for new competitors to emerge
- Efficiencies and innovations resulting from the combined entities

i. Changes in competitor numbers:

The number of nominal competitors in a market is not necessarily indicative of the level of competition. A smaller number of more efficient and innovative firms may provide more meaningful competition than a larger number of subscale players. Additionally, in digital markets, the global nature of competition means focusing solely on U.S. competitor numbers may be misleading.

ii. Competitive responses:

It's natural and often procompetitive for firms to respond to acquisition activity by competitors with their own acquisitions or internal expansion. This can lead to a more dynamic competitive environment as firms race to build new capabilities.

iii. Exit of competitors:

Some exit of less efficient competitors is a normal part of the competitive process. The key question is whether serial acquisitions are preventing equally or more efficient rivals from competing effectively.

iv. Impact on small businesses:

Serial acquisitions have beneficial effects on small businesses. They create opportunities for small businesses that supply or partner with the merged entities. Additionally, many serial acquirers are themselves relatively small or mid-sized firms pursuing roll-up strategies.

v. Impact on innovation:

The relationship between market structure and innovation is complex. While some argue that increased concentration may reduce innovation incentives, there's also evidence that larger firms resulting from serial acquisitions may be better positioned to fund R&D and commercialize innovations. The impact likely varies by industry and type of innovation.

b. Effects on customers:

Again, the effects on customers can vary widely, but are often beneficial. In many cases, serial acquisitions lead to improved products, better integration of services, and economies of scale that can be passed on as lower prices.

c. Coordination or collusion:

NetChoice is not aware of specific examples of increased coordination or collusion resulting from serial acquisitions. We would note that existing antitrust laws clearly prohibit collusive behavior, regardless of the industry's structure.

d. Effects on workers:

The impact of serial acquisitions on workers can also be beneficial. Potential benefits include:

- New job opportunities as merged entities expand
- Changes in wages and benefits (which could increase due to new efficiencies)
- Opportunities for workers to move to new roles within larger organizations

Any analysis of labor market effects should consider the relevant geographic and skills-based market, not just individual firms.

e. Effects on actual or potential competitors:

Serial acquisitions can create opportunities for firms to specialize or differentiate themselves. The key question is whether equally efficient competitors are being foreclosed from competing effectively.

f. Effects on suppliers:

Impacts on suppliers vary based on the nature of the acquisitions and resulting market structure.

3. Serial Acquisition Business Practices:

The business practices listed in this question are not inherently tied to serial acquisitions and are already subject to antitrust scrutiny under existing law where they harm competition. Many of these practices (e.g., exclusive dealing, tying, price discrimination) can have procompetitive justifications and effects in many circumstances. They should be evaluated on a case-by-case basis using a rule of reason framework, not subject to per se prohibition.

4. Claimed Business Objectives:

Common claimed objectives for serial acquisition strategies include:

- Economies of scale and scope
- Expansion into new geographic or product markets

- Acquisition of complementary technologies or capabilities
- Consolidation of fragmented industries to improve efficiency
- Application of superior management practices across multiple assets

Whether these objectives are realized varies by situation. Post-merger retrospectives can be valuable in assessing the actual effects, but must avoid drawing broad conclusions from individual cases.

5. Ownership and Control:

The role of private equity and other investors in serial acquisitions varies widely. In general, PE firms are active in driving acquisition strategies, but the level of control and operational involvement differs based on the specific firm and deal structure. NetChoice urges the Commission to avoid generalizations about PE ownership models and to instead focus on the specific competitive effects of individual transactions or patterns of transactions.

VIII. Conclusion

NetChoice appreciates the opportunity to provide these comments on the important topics of serial acquisitions and roll-up strategies. We share the Commission's goal of protecting competition and consumers. However, we urge caution in dramatically expanding merger enforcement in ways that could chill procompetitive M&A activity and harm innovation.

The existing antitrust framework, centered on the consumer welfare standard and grounded in sound economic analysis, provides the necessary tools to address genuinely anticompetitive acquisition patterns. At the same time, it preserves the tremendous benefits that flow from allowing firms to grow through acquisition and provide liquidity to entrepreneurs and investors.

We encourage the Commission to:

1. Maintain a focus on demonstrable consumer harm rather than abstract structural concerns or protection of competitors.
2. Recognize the often procompetitive nature of serial acquisitions and roll-up strategies, particularly in driving innovation and efficiencies.
3. Avoid adopting restrictive presumptions or sweeping new review requirements that could deter beneficial transactions.
4. Return to grounded analysis in rigorous economic evidence rather than anecdotes or political considerations.

5. Consider the broader innovation ecosystem, including the vital roles of venture capital and private equity, in formulating merger policy.

Thank you for your consideration of these comments. NetChoice stands ready to provide any additional information or perspective that may be helpful to the Commission in its important work.

Respectfully submitted,

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