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Acquisitions to Enter New Markets

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The Merger Guidelines issued in December 2023 break new ground by announcing that the US Department of Justice and the Federal Trade Commission (2023) will challenge mergers and acquisitions that "could enable the merged firm to extend a dominant position from one market into a related market." In this article, I refer to these as "cross-market acquisitions" or in some cases as "conglomerate mergers." Specifically, the antitrust agencies seek to prevent acquisitions that could "extend a dominant position through exclusionary conduct, weakening competitive constraints, or otherwise harming the competitive process."

This expansion opens a vast new front, because almost all of the mergers reported to the antitrust agencies involve firms that do not compete directly against each other: only 4.6 percent of the deals reported during Fiscal Year 2023 (79 out of 1,735) involved firms that operated even in the same broad three-digit NAICS sector of the economy.[1] Many deals not previously covered by the agencies' merger guidelines now face the risk of an antitrust challenge.

With this major change in merger enforcement, the US antitrust agencies are in danger of putting forward an approach to cross-market acquisitions that echoes in many respects the approach taken 50–60 years ago, which was widely

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[1] See Table XI from the Hart-Scott-Rodino Annual Report, Fiscal Year 2023. These three-digit NAICS sectors encompass broad categories such as "Mining (except Oil and Gas)" (212), "Food Manufacturing" (311), and "Telecommunications" (517). These categories include many products that are not substitutes, so the number of reported horizontal mergers must be less than 79, the number of deals involving firms in the same three-digit code.

rejected by scholars, practitioners, and the courts; differs sharply from how the US antitrust agencies have evaluated these acquisitions for at least 40 years; and is inconsistent with how the European Union evaluates them. That approach was abandoned for good reason: acquisitions to enter new markets have long been a central force of economic dynamism, not a category of deals that should be broadly suppressed.

To see what is at stake, consider two examples of cross-market acquisitions, loosely based on real-world examples. First, suppose that a major pharmaceutical company with blockbuster Drug A seeks to acquire Drug B, the leading drug in a different therapeutic category. The stated goal of the acquisition is to deploy the acquiring firm's extensive sales and distribution capabilities to more efficiently market and distribute the acquired Drug B. This acquisition may now be challenged based on the theory that the merged firm might offer bundled discounts to customers who purchase both Drug A and Drug B, thereby placing rivals that only offer Drug B at a competitive disadvantage that will discourage them from investing.

As a second example, suppose that the market leader in operating systems for desktop computers seeks to acquire one of several firms that are developing operating systems for mobile devices. The stated goal of the acquisition is to combine the expertise and intellectual property of the two companies to speed up the development of an innovative new operating system for mobile devices that will disrupt the market for mobile devices. This acquisition may now be challenged based on the theory that it will allow the merged firm to obtain a leading position in the provision of operating systems for mobile devices, causing rival developers of those operating systems to cut back their investments.

In this essay, I begin with brief discussion of the empirical evidence regarding how acquisitions are used to enter new markets. Throughout American economic history, successful firms have diversified and grown their operations by expanding into new markets, including adjacent markets and markets they created with their own innovative new products and services. These expansions have played an important role in fueling economic growth. The challenge for antitrust is to avoid discouraging those deals, while preventing others that harm competition.

I then explain how such acquisitions are treated under the 2023 Merger Guidelines, contrasting that with their prior treatment in the United States and with their treatment in Europe. Ultimately, the 2023 Merger Guidelines are not clear or specific about how the antitrust agencies will analyze cross-market acquisitions that enable firms dominant in one market to enter a new market. This is just one example of their general ambiguity and lack of clarity (as discussed by Francis in this symposium). Thus, I see this portion of the 2023 Merger Guidelines not as offering a finished analysis, but rather as having planted a seed. Prior guidelines have planted some seeds that have grown into mighty trees; for example, the 1992 and 2010 versions of the merger guidelines described what are now widely used methods for assessing whether a horizontal merger is likely to lead to higher prices due to the elimination of price competition between the merging firms.

Will the skepticism about cross-market acquisitions expressed in the 2023 Merger Guidelines primarily promote competition by preventing powerful firms from expanding their empires into new markets? Or will it primarily hinder economic growth by deterring acquisitions that allow successful firms to exploit economies of scale and scope to inject greater competition into new markets—not only those just emerging but also those with entrenched incumbents? I work through how economic evidence and theory can help to distinguish "bad" cross-market acquisitions (those likely to enable the acquiring firm to weaken competition and harm customers in the market it is entering) from "good" ones (those likely to promote competition and benefit customers by enabling a firm that has been successful in one market to more rapidly or more effectively enter a new market). My hope is to offer an instruction manual, complete with health and safety warnings, for nurturing this latest seed so it can grow into a beneficial plant rather than a noxious weed.

Acquisitions to Enter New Markets and Economic Growth

Throughout American economic history, successful firms have diversified and grown their operations by expanding into new markets. These expansions have played a vital role in accelerating the adoption and diffusion of new technologies, in promoting competition, in enhancing efficiency by exploiting economies of scope, and in creating new products and industries. Chandler (1992, p. 96) put it this way: "The ability of large established firms to use learned routines and integrated capabilities to enter related product markets helps to explain a significant change in the ways in which major new industries are coming to be created."

Many acquisitions to enter new markets are neither horizontal nor vertical. They are often referred to as "conglomerate mergers" (for an outstanding, detailed discussion of many aspects of conglomerate mergers, see Church 2008). That genus includes three species, which differ based on whether the products sold by the merging firms are complements, independent on the demand side but purchased by the same group of customers, or unrelated on the demand side.

Cross-market mergers that combine complements create an inherent and beneficial incentive for the merged firm to charge lower prices and provide better products to customers because the merged firm internalizes the profits from all of the complements it owns. Google offers Android free of charge to cell phone manufacturers because Google earns substantial search advertising revenue from those devices. The internalization of profits among complements is typically referred to as "Cournot complements" in honor of Antoine Cournot who identified this effect back in 1838 (for a modern treatment, see Shapiro 2001, pp. 149–50). Cournot complements are common. Moreover, the same economic logic applies to *vertical* mergers, which internalize the profits from the upstream input and the downstream finished good. In that context, internalization is referred to as the "elimination of double marginalization." Mergers involving complements and vertical mergers both

tend to benefit customers because they give the merged firm a built-in incentive to lower prices and improve product quality.[2]

Moreover, whether or not the products sold by the merging firms are related on the demand side, firms making acquisitions to enter new markets typically hope and expect to achieve some type of economy of scope on the supply side. In his magisterial studies of the rise of the modern industrial enterprise throughout the twentieth century, Chandler's (1977, 1990) central conclusion is that those enterprises played a fundamental role in bringing about "the most rapid economic growth in the history of mankind" (1990, p. 3). The ability of these firms to diversify their operations and exploit economies of scope by expanding into new areas was critical to their success. Chandler (1990, p. 169) concludes, "Such diversification certainly increased competition within American industry."

The opportunities to exploit economies of scope shifted as the twentieth century progressed. Chandler (1990, p. 188) distinguishes economies of scope within functional operating units from those within the enterprise as a whole. As technology evolved, "economies of scope within the enterprise as a whole provided an even stronger dynamic for growth. One division was able to use intermediate products produced or developed in others, to exploit research and development information and techniques perfected in other divisions, or to apply knowledge acquired in other divisions that used comparable production technologies or served similar markets."

Similar patterns have continued into the twenty-first century. For example, today's leaders in cloud computing—Amazon, Google, and Microsoft—launched this rapidly growing market by exploiting economies of scope with their other lines of business. As another example, Amazon and Apple exploited economies of scope to enter the market for video streaming services, which had been inhabited by powerful incumbents. Lee and Lieberman (2024) describe the diverse ways in which Amazon and Alphabet have used internal growth versus acquisition to enter new lines of business within and beyond their primary domains.

Firms seeking to expand into new areas often compare internal growth with acquisition. Both methods are common—and they are not as distinct as one might think. For example, when a large pharmaceutical company purchases a biotech startup with a promising drug in the pipeline, it may also consider the alternative choice of licensing the intellectual property rights to that drug for its own internal development. More generally, expansion by "internal growth" typically involves the purchase of various assets, and the US merger statutes have covered asset purchases as well as stock purchases since 1950. Even if one restricts attention to stock purchases, so-called "foothold acquisitions" are a common intermediate case.

[2] To gain some intuition on the isomorphism between vertical mergers and mergers involving complements, consider a vertical merger between Firm A, which sells Input A, and Firm B, which sells finished Good B to Customer C. If Firm B has been buying Input A from Firm A, this is a vertical merger. However, if Customer C instead has been buying Input A itself directly from Firm A and combining it with Good B to produce the finished good, this same merger combines complements. Both patterns arose in the GE/Honeywell case discussed below.

These transactions arise when a large firm acquires a relatively small firm, perhaps a startup, in another market and then makes substantial investments to grow its business in that market. Foothold acquisitions can disrupt the target market and threaten incumbents in that market. Google's acquisitions of YouTube and Android are good examples of foothold acquisitions.

The choice between expanding via internal growth versus acquisition has much in common with firms' traditional "make versus buy" decisions, which have been extensively analyzed, most famously by Williamson (1975). Expanding into a new market via an acquisition is typically more expensive than doing so via internal growth, but also faster and less risky. If a firm prioritizes speed and lower risk, the most effective way to enter a new market will often involve acquiring an established firm, either one already operating in the new market or one with the components or capabilities required to compete in that market.

Chandler (1990) provides numerous historical examples of what he calls "diversification through merger," by which he means modern industrial enterprises that achieved economies of scope by acquiring existing firms in new markets. In the food and chemicals sector, most of the large enterprises producing branded packaged products "combined large integrated firms whose complementary product lines permitted a more intensive use of their joint facilities and skills" (p. 165). For example, several firms acquired new products so they could better utilize their own distribution networks that delivered perishable goods on a daily basis. In other cases, acquisitions enabled firms to leverage their organizational capabilities to enter new markets.

A prominent early study argued that firms tend to enter new markets via internal growth if synergies are likely based on proximity, whereas they tend to enter new markets via acquisition if entry barriers are high (Yip 1982). The subsequent literature is more nuanced. For example, in the telecommunications industry between 1989 and 2003, Lee and Lieberman (2010) find that "inside a firm's primary business domain, acquisitions are used to fill persistent gaps near the firm's existing products, whereas outside that domain, acquisitions are used to extend the enterprise in new directions."

Empirical studies have found a variety of effects associated with cross-market acquisitions in the manufacturing sector made by publicly-traded companies during the late twentieth century. Such acquisitions can promote the efficient intra-firm transfer of intangible inputs (Atalay, Hortaçsu, and Syverson 2014; Bet 2024) and improve the productivity of the acquired facility (Schoar 2002; Bet 2024). However, they also may reduce the productivity of previously owned facilities by diverting management attention away from them, in what Schoar (2002) calls a "new toy" effect. One should not be surprised that some of these acquisitions enhance efficiency and are successful while others are failures, some of which are later unwound. Variety is the norm in business, and experimentation often promotes competition and economic growth.

In the twenty-first century, acquisitions remain an important way for firms to enter new markets and exploit economies of scope, as acquiring firms seek synergies

by combining their own capabilities with the assets they are acquiring. This dynamic is of great practical importance because firms differ very widely and persistently in their efficiency, as explained and documented in convincing detail by Bloom and Van Reenen (2007, 2010), Syverson (2011), and De Loecker and Syverson (2021). Such acquisitions can enable the assets of the acquired firm to be utilized more efficiently, and they can allow successful and innovative firms to challenge powerful incumbents by entering new markets. There are good reasons, both theoretically and empirically, to expect that internal growth often will be inferior to acquisition in serving both of these functions. In the tech sector, the majority of acquisitions during 2010–2020 fell outside the acquiring company's core area of business (Jin, Leccese, and Wagman 2023).

In short, many acquisitions to enter new markets over the past century have been beneficial, and many future acquisitions of this type are likely to promote competition and economic growth. But what about the exceptions: acquisitions that harm customers by leading to a monopoly in the newly entered market? Chandler (1990, p. 189) did find that "occasionally" the firm diversifying into a new market would obtain a near monopoly, "such as Du Pont acquired in moisture-proof cellophane, nylon, and tetraethyllead." In some of those cases, such as cellophane, the firm *created* the new market by innovating. In any event, Chandler found that more often multiple firms "responded to the same market opportunity or quickly followed the pioneer into the new product market." Chandler thus concluded that these "new strategies of diversification, then, not only intensified competition in existing industries but helped ensure competition in new ones."

So far as I am aware, specific examples of proven deleterious cross-market mergers are few and far between. Identifying such cases and their characteristics is difficult but would be very valuable. As one prominent category of candidates, several recent studies have shown that cross-market mergers involving hospitals in different geographic areas have led to higher prices.[3] In these cases, the merging hospitals were too far apart to be substitutes for patients. However, they may have been substitutes from the perspective of the health insurers that negotiate with hospitals for inclusion in their covered networks. Some of these deals may therefore actually have been horizontal mergers.

This evidence highlights an important lesson for antitrust rules about acquisitions to enter new markets: as the antitrust agencies raise the costs and risks of expanding into new markets via acquisition, would-be acquiring firms will either

[3] Lewis and Pflum (2017) show that the prices at hospitals acquired by out-of-market hospital systems during 2000–2010 rose by about 17 percent more than unacquired, stand-alone hospitals. They attribute these higher prices to increased bargaining power for the acquired hospitals in their negotiations with managed care organizations. Similarly, Dafny, Ho, and Lee (2019) find that cross-market, within-state hospital mergers during the 1996–2012 period raised prices by 7 percent to 9 percent, while similar out-of-state acquisitions did not lead to significant price increases. Arnold et al. (2024) obtain similar results for the 2009–2017 time period. Peters (2014) shows in a bargaining model how cross-market mergers can raise prices. Vistnes (2024) provides a thoughtful, recent antitrust analysis of cross-market hospital mergers.

scale back their expansion plans or resort instead to internal growth, even in cases where that route is slower or less likely to succeed. In many cases, that would put less pressure on incumbents in the target market, thereby harming customers and weakening competition.

The challenge is to identify acquisitions to enter new markets that do *not* promote competition so interventions can be targeted at them. Do the 2023 Merger Guidelines explain how the antitrust agencies will do that?

Acquisitions to Enter New Markets under the 2023 Merger Guidelines

Section 2.6.B of the 2023 Merger Guidelines is entitled "Extending a Dominant Position into Another Market." That section begins:

> The Agencies also examine the risk that a merger could enable the merged firm to extend a dominant position from one market into a related market, thereby substantially lessening competition or tending to create a monopoly in the related market. For example, the merger might lead the merged firm to leverage its position by tying, bundling, conditioning, or otherwise linking sales of two products.

I refer to the market in which the acquiring firm has a dominant position as the "core" market, and the market in which the acquired firm operates as the "new" market.

As authority for its policy toward acquisitions to enter new markets, the 2023 Merger Guidelines cite a 1972 Supreme Court case involving Ford Motor Company's 1961 acquisition of Autolite, a manufacturer of spark plugs (*Ford Motor Co. v. United States*, 405 US 562 [1972]). However, the Ford/Autolite case is uninformative regarding the evaluation of mergers that are neither horizontal nor vertical, because (as the Supreme Court recognized) it was *both*. Ford's acquisition of Autolite was *horizontal* because Ford was a potential entrant into the market for spark plugs. Ford's threat of entry into spark plugs was found to have disciplined the existing suppliers of spark plugs. The loss of Ford as a potential entrant into spark plugs provided one reason why the Supreme Court found Ford's acquisition of Autolite to be illegal. This is a traditional horizontal (potential competition) theory of harm. Ford's acquisition of Autolite also was *vertical* because Ford was the largest purchaser of spark plugs from independent suppliers. The loss of Ford as a potential customer for independent suppliers of spark plugs provided the second reason why the Supreme Court found the acquisition to be illegal. This is a traditional vertical (customer foreclosure) theory of harm.

Moreover, the single nonhorizontal, nonvertical acquisition cited in the 2023 Merger Guidelines is worrisome. That case involved Procter & Gamble's 1957 acquisition of Clorox (*Federal Trade Commission v. Procter & Gamble Co.,* 386

US 568 [1967]). Clorox was the leading manufacturer of household liquid bleach, with a market share of 49 percent, and Procter & Gamble was a large, diversified manufacturer of other household products. The Supreme Court ruled in 1967 that this acquisition had harmed competition in the market for household liquid bleach because "the substitution of the powerful acquiring firm [Procter & Gamble] for the smaller, but already dominant, firm [Clorox] may substantially reduce the competitive structure of the industry by raising entry barriers and by dissuading the smaller firms from aggressively competing." The Court was specifically concerned that "Procter would be able to use its volume discounts to advantage in advertising Clorox. Thus, a new entrant would be much more reluctant to face the giant Procter than it would have been to face the smaller Clorox." In other words, the merger was found to be illegal because it lowered the costs of the market leader, Clorox, making it an even more formidable competitor. This acquisition may well have harmed Clorox's rivals, but it does not appear to have harmed consumers who purchased household liquid bleach.

The *Procter & Gamble* decision was representative of the jurisprudence of the 1960s, but that jurisprudence shifted sharply during the 1970s. Bauer (1978) reports that were eleven successful challenges to conglomerate mergers between 1964 and 1974. He also reports that none of the twelve challenges to conglomerate mergers between 1974 and 1977 were successful. Bauer (1983) updates this analysis, reporting (p. 350) that "the continued failure of court challenges against conglomerate mergers [after 1977] has been dramatic."

As we seek to understand the new policy toward cross-market acquisitions in the 2023 Merger Guidelines, three key questions arise. First, which acquiring firms will be seen by the antitrust agencies as possessing a "dominant position" in their core market, so their acquisitions might run afoul of the new policy? Second, what potential post-merger conduct will be regarded as "exclusionary"? Third, which cross-market acquisitions will be challenged based on the *horizontal* theory that the acquiring firm is a potential entrant into the new market?

What Constitutes a "Dominant Position"?

The 2023 Merger Guidelines state that the antitrust agencies will assess whether a firm has a dominant position "based on direct evidence or market shares showing durable market power." They do not provide concrete examples or market share thresholds. However, the Guidelines do cite the *Ford/Autolite* case, in which Ford was the second largest manufacturer of automobiles (General Motors was the leader) with a share of about 30 percent. That strongly suggests that the enforcement agencies will view a share of 30 percent in the core market as sufficient to establish dominance, even if another firm has a larger share.[4]

[4] The early draft of the Merger Guidelines released for public comment in June 2023 (available at https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf) explicitly stated that a firm with a market share of at least 30 percent had a dominant position, but that language was not retained in the final version. Ultimately, the question is whether the *courts* will accept a market share as low as

The 2023 Merger Guidelines apply the same approach to dominance in the new market: an acquisition may be seen as extending a dominant position into the new market even if there is no prospect that the merged firm will obtain a majority share of that market. They explicitly refer to deals that allow the acquiring firm "to obtain a foothold in another market." Notably, in the *Ford/Autolite* case, Autolite's market share of spark plugs when it was acquired by Ford was only 15 percent, the leading suppliers of spark plugs were Champion, with 50 percent of the market, followed by General Motors (with its AC brand) with 30 percent, and there was no real prospect that Ford would capture more than about 30 percent of the market for spark plugs.[5]

The 2023 Guidelines do not differentiate between the merged firm gaining a dominant position in an existing market versus a newly created one. Thus, the text suggests that an acquisition may be seen extending a dominant position into a new market even if the merged firm *creates* the new market by offering a novel product or service. Likewise, the 2023 Guidelines can be read to suggest that if disruption of the new market will be so substantial as to make the merged firm a major competitive force, that success itself might make the merger illegal.

What Post-Acquisition Conduct Will be Regarded as Exclusionary?

The 2023 Merger Guidelines say very little about the types of evidence that will trigger a challenge based on the fear that the merged firm will engage in exclusionary conduct. "Exclusionary conduct" is not defined, and the Guidelines do not say if or how the antitrust agencies will distinguish between acquisitions that harm *rivals* in the new market and those that harm *competition* in that market. That is unfortunate, because any acquisition that injects competition into the new market can be expected to harm rivals, possibly even causing them to exit. The reader cannot tell if or how the 2023 Merger Guidelines adopt and apply the core principle that antitrust law protects competition, not competitors (as discussed by Francis in this symposium).

Here is the entirety of the guidance found in Section 2.6.B of the 2023 Merger Guidelines:

> For example, the merger might lead the merged firm to leverage its position by tying, bundling, conditioning, or otherwise linking sales of two products. A merger may also raise barriers to entry or competition in the related market, or eliminate a nascent competitive threat as describe above. For example, prior to a merger, a related market may be characterized by scale economies but still experience moderate levels of competition. If the merged firm takes

30 percent as evidence of a dominant position. In the past, significantly higher shares have been needed to establish monopoly power.

[5] The Supreme Court was concerned that Ford would shift its purchases of spark plugs from Champion and other independents to Autolite—even though this would *reduce* concentration in the market for spark plugs. Indeed, by 1966, five years after the merger, Champion's share had fallen from 50 percent to 33 percent.

> actions to induce customers of the dominant firm's product to also buy the related product from the merged firm, the merged firm may be able to gain dominance in the related market, which may be supported by increased barriers to entry or competition that result from the merger.

The Guidelines do not indicate whether "tying, bundling, conditioning, or otherwise linking sales of two products" will always be seen as exclusionary. Nor do they identify circumstances under which such conduct will *not* be seen as exclusionary. In any event, a wide variety of conduct is covered by the guidance given above: what merged firm would *not* try to induce its established customers to also buy the related product from it?

The general idea seems to be that the merged firm might adopt tactics to induce customers who purchase its dominant product to also purchase the product it has acquired in the new market. The central concern is that by using such tactics the merged firm will achieve at least a 30 percent share in the new market and thereby weaken its rivals in that market by depriving them of scale economies.

The 2023 Merger Guidelines warn: "A merger can result in durable market power and long-term harm to competition even when it initially provides short-term benefits to some market participants." This language suggests that the antitrust agencies may challenge a cross-market acquisition that provides near-term benefits to customers in the new market based on the fear that the acquisition might weaken rivals in that market over time by taking business away from them, thus reducing their incentive to make investments. The Guidelines implicitly discount, without mentioning, the possibility that rivals will instead redouble their efforts in response to increased competitive pressure by offering better deals to customers and investing more. Moreover, they do not address a central reason why cross-market acquisitions take business from rivals in the new market—because the acquired firm offers improved products or lower prices, just the sort of competitive pressure the antitrust laws seek to encourage.

How will how the antitrust agencies determine what conduct (exclusionary or not) is likely to occur after the merger? The traditional approach taken by the antitrust agencies when assessing post-merger conduct for horizontal and vertical mergers is to focus on conduct that the merged firm will have both the ability and the incentive to pursue. In some cases, this sensible and workable "ability and incentive" approach will rely on specific evidence about the merged firm's post-merger plans. In others, it will be based on economic expert analysis informed by the acquiring firm's pre-merger conduct and market realities.

Will the Acquisition Be Seen as Eliminating a Potential Entrant?

Blocking mergers that eliminate future competition is very important. In Rose and Shapiro (2022), we suggested updating the 2010 Horizontal Merger Guidelines to say more about dynamic competition, including acquisitions of potential competitors. However, the 2023 Guidelines express an unqualified preference for entry via internal growth rather than via acquisition. Guideline 4, which involves

acquisitions of potential competitors, states: "In general, expansion into a concentrated market via internal growth rather than via acquisition benefits competition. Merging a current and a potential market participant eliminates the possibility that the potential entrant would have entered on its own—entry that, had it occurred, would have provided a new source of competition in a concentrated market." That view is unsupported by economic evidence or theory, as elaborated above.

The antitrust agencies will challenge a cross-market acquisition in a concentrated market based on the loss of potential competition if two prongs are satisfied: (1) the acquiring firm "had a reasonable probability of entering" the target firm's market without the acquisition; and (2) entry in that manner "offered a substantial likelihood of ultimately producing deconcentration."[6]

To see some of the pitfalls here, consider the common situation in which the acquiring firm is seeking enter a new market to take advantage of economies of scope with its core operations. Suppose the new market is "concentrated" as defined by the 2023 Merger Guidelines, meaning that the Herfindahl-Hirschman Index is greater than 1000. For the first prong, the antitrust agencies look at "objective evidence regarding the firm's available feasible means of entry, including its capabilities and incentives." They also state that "[s]ubjective evidence that the company considered organic entry as an alternative to merging generally suggests that, absent the merger, entry would be reasonably probable." If the firm studied organic entry but rejected it as infeasible, or simply too slow and risky to justify the required investment, the first prong will evidently be satisfied. That is baffling. The second prong will be satisfied if the acquiring firm would "ultimately" have gained any meaningful market share in the new market.

The bottom line is that many cross-market mergers now face the risk of being challenged by the antitrust agencies, either because the acquiring firm will be seen as a potential entrant into the new market or because they will be seen as extending a dominant position from the firm's core market into a new market (or both). The latter risk is accentuated because the 2023 Merger Guidelines define a "dominant position" broadly and because they provide so little guidance about what post-merger conduct will be regarded as exclusionary.

Case Study: Amgen's Acquisition of Horizon Therapeutics

For an informative case study of how the antitrust agencies are currently approaching cross-market acquisitions, consider the 2023 challenge by the Federal Trade Commission to Amgen's $27.8 billion acquisition of Horizon Therapeutics. (The FTC Complaint is here: https://www.ftc.gov/system/files/ftc_gov/pdf/2310037amgenhorizoncomplainttropi.pdf.)

[6] The discussion here follows Section 2.4.A of the 2023 Merger Guidelines, which explains how the antitrust agencies will determine whether the acquiring firm is an "actual potential entrant" into the target market. Section 2.4.B states that they also may challenge a transaction if they conclude that the acquiring firm is a "perceived potential entrant." They may reach that conclusion if another market participant could reasonably *consider* the firm to be a potential entrant, even if the firm itself decided against entry via internal growth.

The Federal Trade Commission asserted that Amgen had a practice of providing greater rebates to its customers (pharmaceutical benefit managers, health plans, and plan sponsors) on its blockbuster drugs in exchange for their giving favorable formulary placement to other Amgen medications in unrelated product markets. The FTC alleged that Amgen would offer rebates to its customers on its blockbuster drugs in exchange for their providing favorable treatment to two specific Horizon drugs, which would suppress emerging competition for those drugs. The FTC alleged: "Cross-market rebating and bundling can also block smaller rivals from being able to compete on the merits. . . . If permitted to acquire Horizon, Amgen would have the ability and incentive to sustain and entrench the monopolies of Horizon's drugs using similar multi-product contracting strategies." The FTC Complaint did not point to any specific evidence that Amgen actually planned to offer such cross-market rebates.

The Federal Trade Commission focused on how Amgen's possible cross-market rebates would reduce the incentives of actual and potential rivals to develop drugs that compete against Horizon's drugs, not on how these rebates would affect *patients*. The FTC thus appeared to view any near-term benefits that customers would get from such rebates as outweighed by the harms associated with the possible perpetuation of Horizon's monopoly over those two drugs. To add a final twist, Amgen (2023) promised not to offer bundles involving the Horizon drugs. The FTC initially declined that offer and sued Amgen, but ultimately accepted it as a remedy to settle its case against Amgen (Federal Trade Commission 2023).

Earlier US and EU Policies toward Cross-Market Acquisitions

For decades, the US antitrust agencies have not challenged any nonhorizontal, nonvertical mergers based on the theory that the merged firm will extend a dominant position from its core market into a new market by linking the sales of the acquired product with those of its core product. However, they did challenge some conglomerate mergers back in the 1960s and 1970s. Now that those theories have been revived in the 2023 Merger Guidelines, it is important to understand why they were abandoned decades ago.

The Evolution of US Merger Guidelines on Conglomerate Mergers

Between 1965 and 1975, the United States experienced a wave of conglomerate mergers. On the whole, those mergers were unsuccessful strictly from a *business* perspective (Ravenscraft and Scherer 1987, 1989). But our interest here is to understand how the antitrust agencies and the courts responded to that passing fad of conglomerate mergers.

The first Merger Guidelines, issued in 1968, provide a good starting point. They state that the US Department of Justice may challenge "a merger of firms producing related products which may induce purchasers, concerned about the merged firm's possible use of leverage, to buy products of the merged firm rather than those

of competitors." The term "leverage" was never defined in the 1968 Guidelines, but it likely referred to what the 2023 Merger Guidelines call "linking sales of two products." The 1968 Guidelines explain why they are not more specific: "Generally speaking, the conglomerate merger area involves novel problems that have not yet been subjected to as extensive or sustained analysis as those presented by horizontal and vertical mergers. It is for this reason that the Department's enforcement policy regarding the foregoing category of conglomerate mergers cannot be set forth with greater specificity."

The late 1960s was a time of considerable hostility toward all acquisitions by large firms. Coincident with the 1968 Merger Guidelines, a Task Force on Antitrust Policy appointed by President Lyndon Johnson recommended a new merger act "that would prohibit any 'large firm' from acquiring or merging with any 'leading' firm." The Task Force gave this rationale: "If large firms are prevented from acquiring leading firms in concentrated industries, they will seek other outlets for expansion which may be more likely to increase competition and decrease concentration." The Task Force defined a "large firm" as one with assets of at least $250 million or sales of at least $500 million. A "leading firm" was defined as one with a market share of at least 10 percent (and among the four largest firms) in a market with sales of at least $100 million and with a four-firm concentration ratio of at least 50 percent (Neal et al. 1968, p. 13).[7] This proposal did not move forward.

During the 1960s and 1970s, the antitrust agencies challenged a number of conglomerate mergers, but this line of merger enforcement soon came to be widely seen as poorly conceived (for example, Areeda and Turner 1978). The fundamental problem was that the government was challenging mergers based principally on the harm they might cause to *rivals*, not to customers. The poster child for this approach is the 1967 *Procter & Gamble* case described above. In any event, the antitrust authorities suffered a string of defeats in conglomerate merger cases, especially after 1974 (Bauer 1983).

Regarding the species of conglomerate mergers that combines complements, we can learn a lot from how the agencies and the courts have treated *vertical* mergers. As noted above, the same economic logic by which vertical mergers tend to lead to lower prices and improved products applies to mergers that combine complements. The 2020 Vertical Merger Guidelines emphasize the "elimination of double marginalization" as a pro-competitive benefit commonly associated with vertical mergers (US Department of Justice and Federal Trade Commission 2020). The effect is automatic but may not be merger-specific. Shapiro (2021) provides a real-world application of the elimination of double marginalization and a discussion of how to determine whether it is merger-specific.

Prior to the 2023 Merger Guidelines, the most recent policy statement by the US Department of Justice and the Federal Trade Commission specifically about

[7] Yip (1982, p 344) questioned this rationale based on his empirical findings about entry by internal growth versus acquisition. "Current policy may merely preclude the enhanced market competitiveness sometimes caused by acquisition entry, without gaining new competitors via direct entry."

conglomerate mergers and cross-market acquisitions was United States (2020), a submission by the US government to the OECD. That submission is stunningly different from the 2023 Merger Guidelines, stating: "Conglomerate mergers that raise neither vertical nor horizontal concerns are unlikely to be problematic under U.S. merger law." This submission also emphasizes that conglomerate mergers can enable economies of scope:

> Mergers that combine unrelated products can result in procompetitive benefits if their production or distribution uses the same assets, inputs, or know-how. For instance, when suppliers combine their assets to jointly produce multiple final products for customers, a merger can eliminate contracting frictions and allow for profit maximization over a larger set of products. A single firm able to coordinate how these assets are used may be able to streamline production, inventory management, or distribution . . . A key lesson learned from prior U.S. experience is that, in the absence of evidence of consumer harm in a relevant market, the presence of these sorts of efficiencies benefits competition and consumers, even if the merged firm will become a more effective competitor or gain share.

In 2020, the antitrust agencies noted that they had not challenged any conglomerate mergers in decades. "The Agencies have not brought in modern times any challenges to mergers of unrelated products that rely on 'conglomerate' theories outside the horizontal and vertical frameworks." While the absence of these kinds of enforcement actions could in theory represent a decades-long, bipartisan blind spot, a more plausible hypothesis is that it reflects a well-developed understanding based on economic evidence that cross-market acquisitions often promote competition and only rarely have been shown to harm competition.

Acquisitions to Enter New Markets under the European Merger Guidelines

The European Union has its own guidelines regarding cross-market acquisitions: the Non-Horizontal Merger Guidelines issued by the European Commission in 2008. Like the 2023 US Merger Guidelines, the 2008 EC Guidelines are primarily concerned that the merged firm will harm competition by engaging in tying or bundling to gain business in the new market. Like the 2023 Merger Guidelines, the 2008 EC Guidelines ask whether the merged firm will have the ability and incentive to engage in such tying or bundling.

Despite these similarities, the 2008 EC Guidelines are far less skeptical of cross-market acquisitions than are the 2023 US Merger Guidelines, as illustrated by these passages:

> [I]t is acknowledged that conglomerate mergers in the majority of circumstances will not lead to any competition problems . . . Tying and bundling as such are common practices that often have no anticompetitive consequences. Companies engage in tying and bundling in order to provide their customers

> with better products or offerings in cost-effective ways. . . . Customers may have a strong incentive to buy the range of products concerned from a single source (one-stop-shopping) rather than from many suppliers, e.g. because it saves on transaction costs. The fact that the merged entity will have a broad range or portfolio of products does not, as such, raise competition concerns.

Critically, the 2008 EC Guidelines ask "whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers." The need to show harm to consumers is thus an explicit part of the EC Guidelines, while the 2023 US Merger Guidelines state that the antitrust agencies do *not* require near-term harm to customers. More generally, they leave ambiguous whether harm to customers is necessary at all.

Furthermore, the 2008 EC Guidelines apply well-established economic principles to provide far more specific guidance about how cross-market acquisitions will be analyzed than do the 2023 US Merger Guidelines:

> The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant alternatives for that product.

> The more customers tend to buy both products (instead of only one of the products), the more demand for the individual products may be affected through bundling and tying.

> [T]he scope for foreclosure tends to be smaller where the merging parties cannot commit to making their tying or bundling strategy a lasting one, for example through technical tying or bundling which is costly to reverse.

> [T]he Commission considers, on the basis of the information available, whether there are effective and timely counter-strategies that the rival firms may deploy. One such example is when a strategy of bundling would be defeated by single-product companies combining their offers so as to make them more attractive to customers.

> In addition, rivals may decide to price more aggressively to maintain market share, mitigating the effect of foreclosure.

The 2008 EC Guidelines also helpfully discuss several real-world examples of cross-market acquisitions that were investigated by the European Commission, including some in which no enforcement action was taken. In a highly visible case, General Electric (GE), the leading supplier of jet engines for large commercial aircraft, sought to acquire Honeywell, a major supplier of avionics equipment for those aircraft. The European Commission (2001) blocked that acquisition based on its concern that GE would extend its dominant position in jet engines into

avionics equipment.[8] This caused a rift between the European Commission and the United States, which had not been concerned about GE adding avionics to its line of products and took umbrage at the EC intervention (Kolasky 2002). On appeal, the European Court of First Instance (2005) ruled that the European Commission had not proven that the acquisition would harm competition by extending GE's dominant position from jet engines into avionics.

In recent years, the European Commission has investigated a number of cross-market acquisitions to determine whether they would enable the merged firm to extend a dominant position from one market into another. These cases provide rich detail on how the 2008 EC Guidelines are applied. For example, when Essilor sought to acquire Luxottica, the EC investigated whether that acquisition would allow Essilor to extend its position in the sale of eyeglass lenses into the sale of frames and sunglasses, and whether it would allow Essilor to extend its position in the sale of ophthalmic machines into the sale of eyewear. Ultimately, the European Commission (2018) did not challenge that acquisition.

The 2008 EC Guidelines state that "conglomerate mergers in the majority of circumstances will not lead to any competition problems." They also spell out specific factors that will be considered when evaluating such mergers and offer concrete examples of how these standards will be applied. These features reduce the risk that pro-competitive mergers will be deterred due to antitrust risk, and they allow companies considering such mergers to better assess whether they are likely to be challenged by the antitrust authorities. The 2023 US Merger Guidelines do not share these features.

Economic Principles to Guide the Evaluation of Cross-Market Acquisitions

The 2023 US Merger Guidelines as written are potentially a major step backward regarding the treatment of cross-market acquisitions. Two major problems stand out: ambiguity and lack of balance. Ambiguity arises because they lack specificity and analytical rigor regarding how the antitrust agencies will analyze cross-market acquisitions. Lack of balance arises because the 2023 Merger Guidelines never acknowledge that cross-market acquisitions often benefit customers in the market the acquiring firm is entering by enabling economies of scope. As a result, the US antitrust agencies are now threatening to challenge cross-market acquisitions that would provide near-term benefits to customers in the new market based on a concern that the merged firm will take business from rivals in that market by linking sales of the two products. That stance risks blocking mergers that would inject more competition into the new market.

[8] Patterson and Shapiro (2001) summarize the issues involved and the sources of the trans-Atlantic divergence. I consulted for General Electric in this case.

These problems can be addressed if US antitrust agencies flesh out the relatively brief language found in the 2023 Merger Guidelines. That could be done through speeches, enforcement actions, competitive advocacy, or explicit updates. The key is to ground the treatment of cross-market acquisitions in what we know about their effects, both empirically and theoretically. New modes of analysis announced in prior guidelines have been most influential and durable when they reflect robust advances in economic learning based on real-world cases and research findings.

Evaluation Should Be Based on How Customers Are Affected, Not Rivals

The starting point is to be clear about the goal—to identify and block mergers that harm *customers* as a result of diminished competitive constraints, not those that harm competitors. This distinction is fundamental: after all, if the merged firm offers greater value to customers, rivals will typically be harmed. If protecting rivals is the focus, many acquisitions that would benefit customers by injecting more competition into the new market will be blocked.

To crystallize the issue, consider the acquisition of a perishable branded product by a firm that has innovated by developing a logistical network capable of delivering many perishable products at scale on a daily basis. Suppose that other brands of that product are likely to lose substantial sales after the acquisition because they are currently only capable of making deliveries every few days. Moreover, the acquisition arguably raises entry barriers into the sale of this perishable product, because the bar for success has been raised. Under the 2023 Merger Guidelines, these facts could be seen as sufficient to condemn the merger as illegal.

More generally, consider an acquisition that enables the merged firm to exploit economies of scope, making its costs of providing the product in the new market lower than those of the acquired firm. Suppose the merged firm would pass through some portion of those lower costs to customers in the form of lower prices for the new product by offering multi-product bundles. The direct effect of this acquisition would be to enhance competition and benefit customers in the new market. Rivals in the new market would be harmed by the increased competition (in the form of lower prices) coming from the merged firm. They might well lose sales, making it harder for them to cover their fixed costs, including research and development costs. In this sense, the multi-product bundles may be seen as "exclusionary." Based on this fact pattern alone, blocking this transaction on the ground that it "may substantially lessen competition" in the new market because it harms rivals in that market would be perverse.

While it might seem odd that an acquisition could be illegal because it allows the merged firm to exploit economies of scope to better serve customers, that was precisely the outcome in the 1967 *Procter & Gamble* case, which is discussed above and is cited by the 2023 Merger Guidelines. Unfortunately, the 2023 Guidelines are not clear on this issue. As noted earlier, their focus on rivals, together with the absence of any clear statement that the ultimate concern is about harm to customers, is troubling. The US antitrust agencies could readily issue a statement that a cross-market acquisition will only be challenged if it is expected to harm

customers as a result of diminished competitive constraints. That would solve this particular problem and focus the analysis. The 2008 EC Guidelines and United States (2020) are both clear on this key point.

Many Acquisitions to Enter New Markets Increase Competition

Economies of scope have been a powerful force in the American economy for more than a century. Any reasonable policy needs to take care not to impede cross-market acquisitions that enable acquiring firms to extend their skills and capabilities into new markets by combining complementary assets and products within a single firm. The prospect that the merged firm will gain considerable share in the new market should in general be seen as a *plus*, not a minus, and especially so if the acquisition is likely to disrupt a market that is initially highly concentrated. Likewise, the prospect that the merged firm will gain a dominant position by *creating* a new market should be seen as a plus, not a minus, even if that dominance might last for some time.

The 2023 Merger Guidelines do not mention that a cross-market merger that combines complements creates an inherent incentive for the merged firm to lower prices and/or increase product quality. That omission is stunning, given the great emphasis that the Guidelines place on how bringing *substitutes* under common ownership creates an inherent and harmful incentive for the merged firm to raise prices and/or reduce product quality. The economic logic of combining complements within the same firm is precisely the same, but with the opposite sign.[9]

Efficiencies in Cross-Market Acquisitions

The antitrust agencies and the courts have long been highly skeptical of efficiency claims put forward by major rivals seeking to merge. Such skepticism makes good sense. In virtually any model of oligopoly, a horizontal merger will increase the joint profits of the merging firms, even without any cost savings or other synergies. Moreover, when the agencies challenge a merger between two major rivals, the inherent anticompetitive effects are likely to be substantial, so it would take significant efficiencies to counter them (Nocke and Whinston 2022). Plus, if economies of scale are sizeable, they often can be achieved as firms compete to expand through internal growth, yielding a better outcome for customers than a merger that short-circuits that process. For all of these reasons, the agencies and the courts have for decades imposed strict requirements on efficiency claims in horizontal mergers: to redeem a merger, they must be merger-specific, carefully verified, and of a character and magnitude sufficient to prevent a lessening of competition.

[9] As a separate point, the case of substitutes diverges from the case of complements when one considers whether the effects are merger-specific. In the case of substitutes, without the merger it would be *per se* illegal under antitrust law for the two merging firms (rivals) to agree to raise their prices. In the case of complements, without the merger there would be no comparable prohibition preventing the two merging firms (not rivals) from agreeing to offer a lower price for a customer purchasing both products. Whether internalization is merger-specific is a key question in vertical and cross-market mergers. Shapiro (2021) discusses this issue in depth for vertical mergers.

The same degree of skepticism is not warranted for efficiency claims associated with cross-market acquisitions. As emphasized above, an acquisition that combines complements gives the merged firm an inherent incentive to provide better value to customers—the opposite of the inherent incentive associated with a horizontal merger. Moreover, the historical record shows that acquisitions to enter new markets often promote competition and spur economic growth. Yet the 2023 Merger Guidelines make no distinction between how efficiency claims associated with horizontal mergers are assessed and how those associated with cross-market acquisitions are assessed. No reason is given for treating these two very different creatures identically, an approach that fails to reflect the historical evidence and is at odds with economic theory. Fixing this error by explaining specifically how efficiencies associated with cross-market acquisitions will be treated would reduce the danger of deterring beneficial transactions of that type.

The Effects of Tying and Bundling Are Complex and Fact-Specific

Under the 2023 Merger Guidelines, the antitrust agencies will examine the risk that a cross-market acquisition "might lead the merged firm to leverage its position by tying, bundling, conditioning, or otherwise linking the sales of the two products." No other specific tactics are identified, and no guidance is given about the market conditions more or less likely to trigger a challenge from the antitrust enforcement agencies. This lack of guidance is unfortunate, especially given the useful guidance provided 15 years earlier in the 2008 EC Guidelines.

Ideally, merger enforcers would identify specific market features that tend to indicate that the tying and bundling made possible by an acquisition are likely to harm customers by weakening competition in the new market rather than benefit them due to cost savings or beneficial incentive effects. That goal is challenging. There have been many antitrust cases involving tying and bundling, but determining how those practices affect competition and customers has proven difficult, even for longstanding practices. Assessing the likely effects on competition and customers of *possible future* tying and bundling is even more difficult.

Economists do have a number of well-crafted theories about the incentive to engage in tying and bundling. These theories offer predictions about the effects of these practices in different settings. We understand that bundling and tying can be profitable based on a number of distinct mechanisms, including offering efficient packages (technical or economic) to customers, saving on transaction costs, assuring product quality, enhancing price discrimination, and excluding rivals. Reflecting the complexity of the real world, the various models of bundling and tying differ greatly in their structure and assumptions. Moreover, these models generate nuanced and varied predictions.[10] While more research on these practices

[10] See, for example, Whinston (1990), Church and Gandal (2000), Denicolò (2000), and Nalebuff (2004). Rey and Tirole (2007) survey the literature on vertical foreclosure. For a recent analysis, see Chen and Rey (2023).

would be useful to help guide antitrust policy, robust and general results do not seem to be available.

Practical Approaches to Evaluating Cross-Market Acquisitions

Given these complexities, how should the antitrust agencies handle a cross-market acquisition that may allow the merged firm to gain a sizeable share in a new market? Four possible approaches come to mind.

First, the antitrust agencies could announce that they will challenge a cross-market acquisition only in cases where they can show that the bundling or tying enabled by the acquisition is likely to take place and to harm customers due to diminished competition. The 2023 Merger Guidelines do not appear to adopt this approach, although it is hard to tell based on the text. The European Commission, following this approach since 2008, has challenged very few cross-market acquisitions. The key policy question is whether that result reflects accurate enforcement or underenforcement. I am not aware of evidence showing significant harm to customers from cross-market mergers in Europe, but such harms would be difficult to detect even if they had arisen.

Second, the antitrust agencies could adopt a wait-and-see approach by letting an acquisition proceed if they are uncertain about whether the anticipated bundling or tying will occur and, if so, whether it will harm customers. Later, they could bring an enforcement action against the merged firm if it actually engaged in anticompetitive conduct that harmed customers, either to stop that practice or unwind the acquisition. Under this approach, the agencies would not have to predict post-merger conduct and its effects on competition and customers; instead, they would use post-merger evidence to challenge bundling or tying that harmed competition and injured customers. Perhaps the main drawback of this approach is that detecting potentially subtle changes in business practices and isolating the effects of these practices from other changes taking place over time can be very difficult. Thus, with a wait-and-see approach, antitrust agencies might not be able to detect and challenge harmful post-merger conduct even when it occurs.[11]

Under a third approach, the antitrust agencies could allow the cross-market merger to proceed subject to a commitment by the merged firm not to engage in certain bundling, tying, or other related conduct. This practice is known as a "behavioral remedy." For decades, the antitrust agencies have not accepted behavioral remedies for *horizontal* mergers. Instead, as a condition for approving certain horizontal mergers, they have insisted on divestitures, preferably of an entire line of

[11] The contrast here with horizontal mergers is instructive. Following a horizontal merger, a post-merger price increase by the merged firm is not itself prohibited under antitrust law unless done in concert with rivals. Moreover, illegal post-merger collusion might be very difficult to detect. For these reasons, the antitrust agencies do not permit horizontal mergers to proceed and plan to sue later if the merged firm raises price.

business rather than piecemeal assets. That policy is warranted because behavioral remedies—which might better be called ongoing regulatory rules—cannot deliver the broad and often unpredictable benefits of competition. By way of contrast, the antitrust agencies often *have* accepted behavioral remedies to resolve concerns for vertical mergers. However, the current leaders of the antitrust agencies have expressed deep skepticism about "fixing" mergers using remedies of any type, especially behavioral remedies (as opposed to "structural remedies" that involve asset divestitures).[12] The extent to which behavioral remedies for cross-market acquisitions can be effective in protecting and preserving competition is an open question.

A fourth approach to cross-market acquisitions would be for the antitrust agencies to just say "no" to many such proposed deals. Under this aggressive approach, the antitrust authorities would challenge cross-market acquisitions that risked extending a dominant position from one market into another, even without any showing of harm to customers in the new market. The agencies also would not accept behavioral remedies. This approach seems unwarranted, given the reasons noted above to expect that many cross-market acquisitions will benefit consumers and spur competition.[13]

Conclusion

With the 2023 Merger Guidelines, the US Department of Justice and Federal Trade Commission have announced an intention to go beyond horizontal and vertical mergers by scrutinizing cross-market acquisitions more closely. That expansion vastly increases the number of transactions that might be challenged by the antitrust agencies. We know that cross-market acquisitions have historically played a major role in contributing to the dynamism of the American economy by helping to create new markets and by disrupting powerful incumbents in established markets. Yet the 2023 Merger Guidelines say surprisingly little about such pro-competitive effects or how the antitrust agencies will actually analyze cross-market acquisitions.

The risk of counterproductive outcomes can be reduced if the antitrust agencies supplement the 2023 Merger Guidelines by acknowledging the benefits associated

[12] For example, Jonathan Kanter (2022), the leader of the Antitrust Division at the US Department of Justice, has stated: "I am concerned that merger remedies short of blocking a transaction too often miss the mark. Complex settlements, whether behavioral or structural, suffer from significant deficiencies. Therefore, in my view, when the division concludes that a merger is likely to lessen competition, in most situations we should seek a simple injunction to block the transaction. It is the surest way to preserve competition." Moss (2024) shows that the antitrust agencies have entered into far fewer settlements to resolve merger challenges during the Biden Administration than in previous administrations.

[13] Legislation recently introduced in the US Senate, the Competition and Law Enforcement Reform Act of 2024 (S.4308) would mandate an aggressive approach to cross-market acquisitions. That proposed law would stop large firms from making acquisitions by establishing a presumption that any acquisition of at least $50 million by a firm with assets, net annual sales, or market capitalization of at least $100 billion is illegal.

with cross-market acquisitions and by bringing the insights of economic research to bear to explain more fully how cross-market acquisitions will be analyzed.

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