



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan  
Regarding Non-HSR Reported Acquisitions by Select Technology Platforms  
Commission File No. P201201**

**September 15, 2021**

In recent years, the significance of acquisitions by large technology platforms has emerged as a key area of interest for policymakers and scholars, but the analysis has suffered from a major blind spot. The FTC staff's study of over 800 unreported acquisitions by the most significant players in digital markets—Alphabet, Amazon, Apple, Facebook, and Microsoft—sheds light on key trends and patterns. Thank you to former Chair Joe Simons for initiating this critical study, to Acting Chairwoman Slaughter for helping steward it, and to agency staff for their careful and comprehensive work analyzing this data and gathering these results.

While the Commission's enforcement actions have already focused on how digital platforms can buy their way out of competing, this study highlights the systemic nature of their acquisition strategies. It captures the extent to which these firms have devoted tremendous resources to acquiring start-ups, patent portfolios, and entire teams of technologists—and how they were able to do so largely outside of our purview. In my view, these findings should focus our attention on a few critical policy areas.

First, this study underscores the need for us to closely examine reporting requirements under the Hart-Scott-Rodino Act and to identify areas where the FTC may have created loopholes that are unjustifiably enabling deals to fly under the radar.<sup>1</sup> While broader reforms to HSR may be overdue, the antitrust agencies must also guard against unduly permissive interpretations that handicap us. The Bureau of Competition has recently taken useful steps to start closing certain loopholes, and we must continue this important work.<sup>2</sup>

Second, it is notable that less than two-thirds of the non-reported transactions involved the acquisition of domestic assets or firms. This figure underscores the importance of close collaboration and cooperation with our international counterparts, several of whom have developed significant expertise in scrutinizing digital markets. I am especially keen to ensure that

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<sup>1</sup> See, e.g., FED. TRADE COMM'N, NON-HSR REPORTED ACQUISITIONS BY SELECT TECHNOLOGY PLATFORMS, 2010-2019: AN FTC STUDY, at 20 (2021) (“[N]ine additional transactions would have exceeded the HSR SOT threshold (i.e., in addition to the 94 transactions already above the HSR SOT threshold) at the time of their consummation when adding the deferred or contingent compensation (that is separate, and in addition to their purchase price) to their purchase price.”).

<sup>2</sup> *The Treatment of Debt as Consideration*, FED. TRADE COMM'N (Aug. 26, 2021), <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/treatment-debt-consideration>.

the FTC is learning from partners who have excelled at institutionalizing a broader range of tools and skillsets, helping mitigate information asymmetries and ensuring greater analytical rigor.

Third, the data show that non-competes played a significant role in how firms designed transactions, with over 76% of the acquisitions captured including non-compete clauses for founders and key employees of the acquired entities.<sup>3</sup> As the Commission considers the use and misuse of non-compete clauses across the economy, further scrutinizing the use of non-competes in merger agreements will aid this broader work. Exploring how firms in digital markets may be using acquisitions to lock-up key assets along with talent will be a worthy area of study.

While the Commission should ensure that we use these findings to plug gaps in our existing work, I hope this study also proves useful to lawmakers as they consider reforms to the antitrust statutes. While the existing law uses deal size as a rough proxy for the potential competitive significance of an acquisition, digital markets in particular reveal how even smaller transactions invite vigilance.

Thank you again to the agency staff for their terrific work on this project, which I hope can serve as a model for future 6(b) studies.

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<sup>3</sup> See FED. TRADE COMM'N, NON-HSR REPORTED ACQUISITIONS BY SELECT TECHNOLOGY PLATFORMS, 2010-2019: AN FTC STUDY, at 11.