

“GAFAM” Acquisition Activity: Does It Merit Special Merger Rules?

Dr. Julie Carlson
Assoc. Dir., Schumpeter Project

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@julieinannap

Overview

- “GAFAM” acquisitions do NOT require special merger rules
- Acquisition is an important exit strategy for start-ups
- Evidence of “killer acquisitions” is limited
- Legislative proposals are likely to be ineffective and harmful

Start-Up Acquisitions and Innovation

- Cabral (2018) shows option to be acquired increases *incremental* innovation
- Radical vs. incremental innovation:
 - Radical displaces an incumbent (e.g., Amazon in retailing)
 - Incremental builds on prior innovation (e.g., Waze in navigation)
- Acquisitions promote virtuous cycle of innovation by recycling venture capital into next generation of start-ups

Limited Evidence of “Killer Acquisitions”

- Cunningham et al. (2021) study acquisitions in pharma
- Killer acquisition: When an acquirer with a substitute drug ceases development of the acquired drug
- Focus is on radical innovation (i.e., substitute drugs)
- Only 5-7 percent of those studied are killer acquisitions
- Most killer acquisitions are below the HSR reporting threshold

GAFAM Killer Acquisitions Unlikely

- Analysis of pharma acquisitions is not applicable to GAFAM acquisitions
- Many technology innovations are incremental, not radical
- Cannot have killer acquisitions w/o the displacement threat of radical innovation
- Jin, Leccese, and Wagman (2022) show that most GAFAM acquisitions are adjacent to their core business (i.e., not a displacement threat)

Legislative Proposals

- Platform Competition and Opportunity Act (S.3197/H.R.3826)
 - “Covered Platform” designation targets GAFAM, but excludes other large firms such as Walmart
 - Covered Platform must show it is not: (1) acquiring a direct, nascent, or potential competitor; (2) enhancing a market position; or (3) enhancing its ability to maintain a market position
 - Senate bill exempts acquisitions valued at or below \$50 million

Senate Bill Will Not Achieve Goal—But Will Cause Harm

- FTC (2021) study shows 93 percent of GAFAM non-reportable acquisitions were valued at less than \$50 million
- Senate proposal will only capture 7 percent of GAFAM acquisitions not already captured by HSR
- Burden-shifting acts as a per se ban on *all* GAFAM acquisitions
 - Consumers denied benefits of pro-competitive synergies
 - Vital source of funding for start-up innovation eliminated

Conclusion

- Theory and evidence suggest GAFAM is not engaged in killer acquisitions
- Proposed legislation is likely to be ineffective, but harmful to competition and innovation
- Congress should maintain rule-of-reason approach to mergers and consider reduced HSR thresholds instead

Thank You!

Dr. Julie Carlson | jcarlson@itif.org | [@julieinannap](https://twitter.com/julieinannap)