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The 2023 Merger Guidelines and High-Tech Merger Enforcement: A Null Result

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Abstract

Motivated by a widespread view that U.S. merger enforcement in the high-tech sector had permitted the development of extraordinarily powerful technology platforms, the Federal Trade Commission and the Department of Justice issued revised Merger Guidelines in 2023. These Guidelines introduced platform-specific theories of harm, broadened the range of cognizable anticompetitive effects from individual transactions, and provided a mechanism for challenging serial acquisitions. The agencies, therefore, were positioned to pursue a more aggressive approach to high-tech transactions.

My analysis of the subsequent enforcement record indicates, firstly, that the agencies filed no Clayton Act Section 7 cases to block any of the 41 transactions initiated by five major tech platforms – Alphabet, Amazon, Apple, Meta, and Microsoft – over the period January 2024 to June 2026. Secondly, applying the Guidelines to the factual predicates of proposed transactions, I find that the authorities could have used the novel theories in the Guidelines to challenge many of the individual transactions. Thirdly, I find that the agencies made no attempts to target serial acquisitions, even though the transactions initiated by the platforms provided clear opportunities to do so.

Having documented this null result in the two and one-half years following the issuance of the 2023 Merger Guidelines, I posit that the explanation is an evidentiary mismatch between the novel theories of harm in the Guidelines and the evidentiary requirements of high-tech merger enforcement. The post-Chicago industrial organization literature on which the Guidelines' novel provisions rest is theoretically rigorous but establishes conditional possibilities of harm rather than robust generalizations. The evidence available when high-tech transactions are proposed is insufficient to establish the conditional harms identified in the Guidelines. The evidentiary mismatch thesis is supported by a telling contrast: the same agencies have pursued Sherman Act Section 2 cases invoking the same post-Chicago theories, where adjudication proceeds on an established evidentiary record rather than on predictions about harms that have not yet materialized. Along with the evidentiary mismatch thesis, I identify three alternative explanations for the null result and assess the evidence bearing on each.

JEL Classifications: L1 – Market Structure, Firm Strategy, and Market Performance; L40 – Antitrust Issues and Policies; L86 – Information and Internet Services and Computer Software.

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1. Introduction

An impetus for the 2023 Merger Guidelines was the belief that major technology platforms had achieved durable market positions in large part by absorbing hundreds of smaller firms, including startups.¹ The revised Guidelines introduced distinct treatment of multi-sided platforms and expanded the range of theories of anticompetitive harm to include platform entrenchment, the elimination of nascent competitors, foreclosure of rivals from platform capabilities, and the cumulative effects of serial acquisitions. These new frameworks were intended to strengthen the agencies' ability to challenge not only individual transactions but also acquisition patterns that cumulatively reinforce platform market power.

In this article I examine whether the federal antitrust agencies have in fact applied these novel frameworks to the ongoing flow of high-tech transactions. The analysis proceeds in three steps. First, I examine the agencies' enforcement response to the 41 transactions initiated by the five major technology platforms — Alphabet, Amazon, Apple, Meta, and Microsoft — during the period January 2024 through June 2026. I find that the agencies did not challenge any of these transactions, either individually or serially. The first finding raises the question: did the agencies decline to act because the platforms avoided transactions that would have invited challenge? The second and third findings address this question. I find that the factual predicates for Clayton Act Section 7 actions were available for a substantial subset of the individual transactions, and that there were clear opportunities to challenge serial acquisitions, including a series of eight AI-related transactions initiated by Alphabet. The combination of these findings constitutes the null result: the novel frameworks in the Guidelines were available, applicable, and unused.

What explains the null Clayton Act Section 7 result? The explanation advanced here concerns the mismatch between what courts require to prove anticompetitive harm and the evidence available when acquisitions are proposed. The post-Chicago industrial organization literature on which the novel Guidelines provisions rest is theoretically coherent but establishes conditional possibilities of harm rather than robust theoretical and empirical generalizations.² Conditional possibilities,

¹ U.S. Department of Justice and Federal Trade Commission, *Merger Guidelines* (December 18, 2023). References to individual provisions follow the numbering in that document.

² The post-Chicago literature refutes Chicago School tenets by developing rigorous models demonstrating that monopolies and oligopolies can engage in anticompetitive behaviors that the Chicago School dismissed as irrational or self-correcting. Key contributions include Milgrom and Roberts (1982) on predatory pricing as rational entry deterrence; Katz and Shapiro (1985) on network externalities as barriers to entry; and Rochet and Tirole (2003) on multi-sided platforms. The Chicago School's principal objection — that models demonstrating conditional harm lack the empirical grounding needed to discipline enforcement — remains

however, do not satisfy what courts require: inferential chains based on evidence that can be observed, measured, and adjudicated. The agencies are thus required to establish the likelihood of conditions that, by the theory's own logic, may become apparent only after the acquisition has been consummated. The 2023 Guidelines embody theoretically coherent claims about conditional competitive harms from technology-related acquisitions, but those claims cannot be pleaded by agencies with the evidence available when mergers are proposed.

The null result documented here is limited in scope. It is a standstill in Clayton Act Section 7 enforcement against individual and serial high-tech transactions by the major platforms — not a general retreat from post-Chicago theories of competitive harm. The fact that the agencies have continued to file Sherman Act Section 2 monopolization claims invoking the same theoretical frameworks supports this evidentiary mismatch thesis that applies to high-tech merger enforcement.³ In *United States v. Google*, for example, the district court found liability based on a documented record of exclusive dealing contracts, measurable foreclosure of rival search engines from key distribution channels, and observable effects on competition.⁴ This is precisely the kind of evidence that Clayton Act Section 7 filings cannot assemble: Section 2 claims proceed on a substantial ex post evidentiary record, whereas Section 7 claims are typically filed near the time of announcement, before the transaction has been consummated and before its competitive effects can be observed.

I proceed as follows: Section 2 describes the Guidelines' novel provisions that are most relevant to high-tech platform acquisitions. Section 3 documents the null result across three dimensions: the full transaction record (Table 1), the potential applicability of novel theories to a subset of transactions (Table 2), and the evidence on serial acquisitions by Alphabet (Table 3) and by Apple (Table 4). Section 4 identifies the evidentiary mismatch as the primary explanation and considers three alternative explanations.⁵

salient (Easterbrook, 1984). The tension between theoretical rigor and evidentiary tractability is central to the analysis here.

³ *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. Aug. 5, 2024) (search); *United States v. Google LLC*, No. 1:23-cv-00108 (E.D. Va. Apr. 17, 2025) (ad tech); *United States v. Apple Inc.*, No. 2:24-cv-04055 (D.N.J. filed Mar. 21, 2024); *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590 (D.D.C. Nov. 18, 2025)

⁴ See Section V of Judge Mehta opinion summarizing the anticompetitive effects of Google's exclusive agreements. *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. Aug. 5, 2024), pp. 214-236.

⁵ My working paper, "Error Costs, Conditional Theories, and the Limits of High-Tech Merger Enforcement," explores other aspects of the evidentiary mismatch thesis, including that the 2023 Guidelines (a) treat future harms and future efficiencies asymmetrically, and (b) ignore the transactions-cost literature and the management literature on the role of senior executives in sensing and seizing opportunities for new markets.

If the evidentiary-mismatch thesis is correct, then the null result in Section 7 enforcement should not be attributed to failures by the U.S. antitrust Agencies or to its leadership. Nor should a different outcome be expected merely with the passage of time for the courts to better understand the post-Chicago literature. The fundamental problem is that the 2023 Guidelines rely on post-Chicago theories of harm that posit contingent competitive harms that cannot reliably be established using the evidence available when a merger is proposed. As discussed in Section 5, going forward monopolization cases should be regarded as the principal enforcement vehicle for post-Chicago theories in technology markets. However, I do offer two measures that agencies can take to expand the available evidentiary record when high-tech mergers are proposed.

2. The Novel Provisions of the 2023 Guidelines

The 2023 Merger Guidelines, which revised the 2010 Guidelines,⁶ include a consequential advance for high-tech markets, i.e., the recognition of technology platforms as a distinct and powerful organizational form.⁷ The Guidelines define a platform as an entity that facilitates interactions and transactions between two or more distinct user groups. The five firms included in my analysis – Alphabet, Amazon, Apple, Meta, and Microsoft – satisfy this definition.⁸

As a result of that designation, Guideline 9 applies to all transactions initiated by them. The stated objective of Guideline 9 is to protect “competition *between* platforms, competition *on* a platform, and competition to *displace* a platform.”⁹ The analyses that might be prompted by Guideline 9 incorporate “Guidelines 1-6 while accounting for market realities associated with platform competition.” Thus, the analyses of proposed transactions would assess their effects on (1) concentration, (2) competition between the merging parties, (3) the risk of coordination, (4) potential competition, (5) potential foreclosure of rivals from accessing products and services, and

⁶ U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* (August 19, 2010).

⁷ Congressional Research Service, *The 2023 Merger Guidelines: Analysis and Issues for Congress*, LSB11138 (Mar. 28, 2024). The Rochet-Tirole platform work (Rochet & Tirole, 2003, 2006) was cited by the committee, as was Gawer (2014).

⁸ Without attempting to be comprehensive, Alphabet connects advertisers to users through Search and YouTube; Amazon connects sellers to buyers through its eCommerce marketplace; Apple’s App Store connects developers to device users; Meta connects users to advertisers through Facebook and Instagram; and Microsoft’s LinkedIn connects professionals and potential employers. Of note, the platform characterization of Microsoft has evolved substantially since the 2010 Guidelines. For example, Microsoft’s Azure Marketplace connects cloud service developers to enterprise customers, and LinkedIn connects professionals and potential employers at scale.

⁹ The 2023 Merger Guidelines, p. 24.

(6) potential entrenchment of the platform. Also relevant to their transactions, Guideline 8 signals that the Agencies will assess the cumulative competitive effects of serial acquisitions.

My analysis treats Guidelines 4, 6, 8, and 9 as novel. These shift the focus away from static structural presumptions that underpin Guidelines 1 through 3. Each requires the Agencies to evaluate a future or counterfactual state of competition, and, in the case of Guideline 8, the cumulative effects of acquisitions over time. It follows directly from the shift away from current structural conditions that the Agencies are tasked with developing evidence about future market conditions and the adverse competitive effects of proposed transactions.

While preserving potential competition is not a novel objective, Guideline 4 concerning reductions to potential competition diverges sharply from the 2010 Merger Guidelines,¹⁰ and seeks to reinvigorate a doctrine that has not gained much traction with the courts.¹¹ It provides that the Agencies may challenge an acquisition absent a present market overlap or a documented plan of entry, provided that the target is a “reasonably probable future entrant” or exerts current competitive pressure as a “perceived potential entrant.”¹² Thus, Guideline 4 asks whether the target would have entered, or exerted competitive pressure through the prospect of entering, the acquirer’s market at some future date.¹³ One scenario would involve a firm that has an existing vertical relationship with a platform—as a licensor, supplier, or partner. Because of this relationship, the firm might be perceived to be a potential competitor and, therefore, may exert an influence on competition. Guideline 4 does not, however, offer criteria for distinguishing an acquisition that eliminates a competitive threat from one that would better integrate the technology into the platform’s ecosystem and advance the development of new products and services.

Guideline 6 raises two related inquiries: its first branch (6A) asks whether the acquisition forecloses a future challenge to the acquirer’s existing dominant position, and the second branch (6B) asks whether the acquisition will extend the acquirer’s dominance into a market that the

¹⁰ The 2010 Merger Guidelines include a single paragraph on the topic as part of Section 5.3 that deals with market shares and concentration.

¹¹ See, for example, *United States v. Marine Bancorporation* (1974) and *United States v. Sabre Corp.* (2020).

¹² The 2023 Merger Guidelines, p. 11.

¹³ U.S. Dep’t of Justice & Fed. Trade Comm’n, 2023 Merger Guidelines, Guideline 4: When a Merger Eliminates a Potential Entrant in a Concentrated Market, <https://www.justice.gov/atr/merger-guidelines/applying-merger-guidelines/guideline-4>

acquirer does not yet occupy.¹⁴ Regarding the first branch, Guideline 6 extends the analysis related to potential competition to a platform's acquisition of a *nascent* competitive threat: a firm that may grow into a significant rival, facilitate the growth of other rivals, or otherwise reduce the acquirer's power. This formulation can encompass a start-up with little or no current revenue whose technology could, over time, support competition with the dominant platform. Such a target could be characterized as a nascent competitor if its prospective innovation poses a serious competitive threat to the incumbent and if its competitive trajectory is sufficiently plausible.¹⁵ Evidentiary support must, therefore, come from assessments about future competitive conditions.

The second branch of Guideline 6 provides for distinct treatments of platform acquisitions that are unrelated to current competitive overlap based on concerns that a transaction will entrench the platform. For example, a transaction could be challenged because the target's technology would improve the platform's functionality for one or more user groups, even absent any horizontal overlap between acquirer and target. But the acquisition could reduce or eliminate the likelihood that the target's technology would become available to others who might attempt to displace the platform or compete with the platform in certain lines of business. In this respect, the novel Guideline 6 is distinct from Guideline 5, which concerns foreclosure in a relevant market by, for example, forcing rivals to invest in a related product. Factors such as the availability of substitutes in the related market and its competitive significance are evaluated as part of a traditional foreclosure claim. By contrast, underlying Guideline 6 is the theory that harms may result from ecosystem dynamics — the cumulative strengthening of a platform's competitive position relative to firms outside the ecosystem — rather than from immediate input or distribution channel foreclosure.¹⁶

Guideline 9 directs the Agencies to apply these forward-looking frameworks with particular attention to platform dynamics—network effects, multi-homing, and the potential for a dominant

¹⁴U.S. Dep't of Justice & Fed. Trade Comm'n, 2023 Merger Guidelines, Guideline 6: When a Merger Extends a Dominant Firm's Position or Otherwise Entrenches Its Dominance, <https://www.justice.gov/atr/merger-guidelines/applying-merger-guidelines/guideline-6>

¹⁵ Hemphill and Wu (2020); Kamepalli, Rajan, and Zingales (2020).

¹⁶ Guideline 6 is distinct from Guideline 5, which addresses more traditional foreclosure concerns that, for example, an acquisition of a supplier or distributor by a firm with a strong market position may force horizontal competitors to invest in related inputs and capabilities. Factors such as the availability of other input suppliers and distributors are evaluated as part of a traditional foreclosure claim.

platform to leverage its position into adjacent markets.¹⁷ Like the second branch of Guideline 6, this guideline places the alleged harm in market conditions that do not yet exist. Both Guidelines 6 and 9 thereby extend the horizon of cognizable competitive harm — both temporally and across product space — beyond observable markets at the time of an announced transaction. The conditional nature of the anticompetitive harms identified in Guidelines 6 and 9 connects to the post-Chicago industrial organization literature on dynamic competition—entrenchment, preemptive acquisition of nascent rivals, foreclosure, and platform envelopment. Acquisitions that expand the geographic reach of a platform, allow the platform to increase its products and services, and increase the platform’s user bases may make it difficult for rivals with a narrow range of services and smaller user bases to compete. This guideline specifically cites harms to competition that may result from acquisitions that accelerate the accumulation of network effects or data advantages.

The underlying theory of Guideline 9 is, therefore, that acquisitions that add capabilities can strengthen the platform’s network and secure durable market power.¹⁸ However, given that increasing the scope and density of networks is understood to generate potential benefits to users, one cannot know that an acquisition will generate anticompetitive harms at the time of acquisition. In principle, such an assessment could be made after the combined enterprise has operated for a substantial period of time. In a similar vein, an acquisition that allowed the acquiring platform to offer bundles of product and services could be judged to be efficiency-enhancing or anticompetitive based on an accumulation of evidence.¹⁹

¹⁷U.S. Dep’t of Justice & Fed. Trade Comm’n, 2023 Merger Guidelines, Guideline 9: When a Merger Involves a Multi-Sided Platform, the Agencies Examine Competition Between Platforms, on a Platform, or to Displace a Platform, <https://www.justice.gov/atr/merger-guidelines/applying-merger-guidelines/guideline-9>

¹⁸ Condorelli and Padilla (2020) model the so-called platform envelopment by a platform with a dominant position in a data-rich market. The platform enters an adjacent market through conditioning its services on the user’s consent to combine data across both markets: privacy policy tying. Whether this forecloses rivals depends on the assumptions adopted. If the pooled data confers an advantage competitors cannot replicate, then the enveloper can subsidize the target market below what any standalone rival can sustain. When rivals can obtain equivalent data elsewhere, or portability and consent frictions blunt the advantage the tie provides, the same conduct merely yields a more integrated product without driving anyone out. The model thus predicts that either anticompetitive foreclosure or greater efficiency can result. Applied to dominant digital platforms, envelopment allows a firm to monetize the data and user relationships acquired in its origin market to fund entry into — and ultimately monopolize — an adjacent market, while simultaneously entrenching its position in the origin market; the anticompetitive effects of this strategy are notoriously difficult to disentangle from the efficiencies that more comprehensive, conglomerate platforms generate (Condorelli & Padilla, 2020).

¹⁹ For analysis, see Eisenmann et al., 2011.

Guideline 8 is clearly novel in that rather than addressing the competitive effects of an individual transaction, it focuses on the cumulative competitive effect of a firm's serial acquisitions. This guideline provides that the agencies may challenge a series of individual transactions "in the same or related business lines" based on their cumulative competitive effect. Consistent with Clayton Section 7 enforcement generally, the agencies may include individual transactions that are below the Hart Scott Rodino notification thresholds.²⁰ Guideline 8 does not specify the criteria by which a series would be defined, how the beginning and end of a series would be established, or what standard would govern the inclusion of individual transactions. It is the most procedurally novel provision in the Guidelines: there is no established judicial template for a Section 7 challenge based on the cumulative effects of individual transactions. It may be, however, viewed as highly relevant given that the major platforms continue to initiate large numbers of transactions, often with startups that are developing technologies that may enhance the platforms' abilities to develop new products and services.

This combination of a future predicate and a theoretical grounding in probabilistic, dynamic-competition reasoning makes Guidelines 4, 6, 8, and 9 the natural focus of my inquiries into whether the Guidelines' novel and revived theories of harm can be matched to evidence available at the time a transaction is proposed. As a threshold matter, the 2023 Merger Guidelines furnish the agencies with multiple frameworks for challenging a proposed transaction, while affording platform firms correspondingly few 'safe harbors' against such a challenge. The optionality derives from the fact that the individual guidelines are not mutually exclusive. A single transaction—or a single series of transactions—could satisfy the predicates of more than one guideline. For example, an incumbent platform's acquisition of an adjacent start-up may be actionable under the first branch of Guideline 6 as the elimination of a nascent competitive threat and, independently, under Guideline 9 if either party operates a multi-sided platform. A sequence of such deals may separately trigger Guideline 8's treatment of serial acquisitions, layering a cumulative-effects theory on top of whatever transaction-specific theory applies under Guideline 4

²⁰ If a transaction is above a given threshold, it must be reported to the FTC. As of this writing the threshold is 133.9 million dollars. Standard waiting period is 30 days, or 15 days for cash tender offers and bankruptcy sales, after a complete filing by both parties. If the agencies require more information they can extend the waiting period by 30 days via a "second request". Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (codifying Section 7A of the Clayton Act); id. § 18a(b)(1)

or Guideline 6. The practical consequence is that the same factual predicate can be matched to multiple paths leading to a Section 7 violation.²¹

The optionality embedded in the Guidelines should not, however, obscure a unifying theme of the novel provisions: they identify categories of anticompetitive harm that may occur in an existing market if conditions are met,²² or in markets that are prospective rather than retrospective. To challenge a proposed transaction under them, the Agencies must establish the competitive significance of the target — as a nascent rival, an ecosystem complement, a resource that may entrench the platform, a data accumulation vehicle, or a link in a serial acquisition pattern — at the time of announcement and before the predicted competitive dynamics have materialized.

Regarding the lack of safe harbors, Guidelines 6, 8, and 9 contain no reference to HHI or "highly concentrated" anywhere in their text. They operate entirely on dominance, durable market power, patterns of acquisition, and network effects — concepts that are unrelated to Guideline 1's HHI screen. Guideline 4 uses a lower, more permissive threshold that can be waived entirely for markets that may be in development and, therefore, whose structures are not amenable to measurement. The bottom-line point is that the structural presumption Guideline 1 supplies no comparable insulation from challenge under the individual Guidelines that this Article identifies as novel.

3. A Null Result

²¹ Herbert Hovenkamp describes "the labyrinth" created by "eight substantive 'Guidelines' and five interpretive ones," such that "a merger can be challenged for violating any one of them." Competitive Harm and the 2023 Draft Merger Guidelines, ProMarket (July 27, 2023), <https://www.promarket.org/2023/07/27/herbert-hovenkamp-competitive-harm-and-the-2023-draft-merger-guidelines/> In a similar vein, Snyder, Simmons, and Zaslavsky (2024) conclude from their counterfactual analysis of Amazon's acquisitions that many individual transactions can be characterized, without contradiction, as matching the predicates of more than one guideline; the redundancy is a structural feature of the guidelines whereby harms are additive rather than organized around an integrated theory of harm. Carl Shapiro's main criticism is broader; that the abandonment of market power as the organizing concept means that the 2023 Guidelines become "disconnected from the central harm that merger control seeks to prevent". Carl Shapiro, Why Dropping Market Power from the Merger Guidelines Matters, ProMarket (Aug. 7, 2023),

<https://www.promarket.org/2023/08/07/carl-shapiro-why-dropping-market-power-from-the-merger-guidelines-matters/> Dennis Carlton's summary point is that the 2023 Merger Guidelines are not likely to survive as a "durable statement of economic thinking about evidence in merger cases" (Carlton, 2024).

²² Shapiro (2019) discusses factors such as the likelihood that the target would become a rival to the platform, the importance of the inputs supplied by the target, and the likelihood that the target's trajectory would have resulted in deconcentration. Regarding the first factor, he posits that Instagram and WhatsApp might have developed into rivals of Facebook.

After reviewing the methodology and data, in this section I present empirical findings which indicate – contrary to initial expectations – that the Guidelines have not altered merger enforcement in the high-tech sector. First, even though the five most significant U.S. tech platforms have continued to pursue a substantial flow of mergers and related acquisitions, the Guidelines have not prompted any enforcement actions by the Agencies against the 41 individual transactions initiated by them over the period January 2024 – June 2026. Second, an analysis of a sample of 10 of these transactions indicates that the Agencies could have made credible claims that they were anticompetitive based on specific guidelines, e.g., that the transactions would entrench the platforms or foreclose future rivals. Third, while the Guidelines provided the agencies with the mechanism to investigate and block series of acquisitions, they have taken no actions even though the transaction record presents two opportunities for doing so.

Before proceeding, institutional considerations related to HSR filings require discussion. For many of the 41 transactions studied here, the acquirers would not have been expected to make a pre-merger notification filing.²³ As discussed further in Section 4, this fact suggests an alternative explanation for the observed standstill in merger enforcement as applied to high-tech: the acquirers structured many of the transactions to avoid pre-merger notification requirements.²⁴ In cases where there is no HSR filing, an Agency challenge proceeds without the procedural benefit of a mandatory waiting period and without access to the information contained in an HSR submission. Moreover, pre-merger notifications have been the primary mechanism through which the agencies identify and investigate potentially anticompetitive mergers.²⁵

The lack of a mandatory waiting period and the loss of information in HSR filings do not, however, represent anything close to a strict constraint on enforcement. It is well established that an HSR filing is not a prerequisite for a Clayton Act Section 7 challenge.²⁶ In addition, while the

²³ This expectation is based on (a) indications that the value of many individual transactions was below the HSR threshold, and (b) how deals were structured to avoid equity transfers.

²⁴ One such mechanism is for the acquirer to pay a fee for a non-exclusive license to the target's technology rather than to pay to acquire its equity.

²⁵ FTC & U.S. Dep't of Justice, Hart-Scott-Rodino Annual Report, Fiscal Year 2024 (2025), available at [ftc.gov \(FY24-HSR-Annual-Report-For-Transmittal-to-Congress.pdf\)](https://www.ftc.gov/fy24-hsr-annual-report-for-transmittal-to-congress.pdf). The FTC stated that in 2025, it challenged eight transactions, seven of which were "reported pursuant to the HSR Act." <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-doj-issue-fiscal-year-2025-hart-scott-rodino-annual-report>.

²⁶ The underlying reason is that the HSR Act added a separate notification provision, Section 7A of the Clayton Act (15 U.S.C. § 18a), without amending the substantive prohibition in Section 7 itself (15 U.S.C. § 18). Section 7A is a procedural filing-and-waiting-period requirement triggered only above specified thresholds. Section 7 enforcement actions need not be based on any such threshold or filing precondition. The most recent Congressional review of HSR procedures makes the same point: "A transaction that the

absence of an HSR filing deprives the Agencies of a standard information source, the high-profile nature and economic significance of the transactions initiated by major platforms meant that essential information about them was publicly available.²⁷ Subsequent to the issuance of the Guidelines that were specifically designed to restrict high-tech acquisitions, the Agencies would be expected to overcome these minor hurdles.

A second and related institutional factor is that so-called *pseudo-acquisitions* – deals to hire talent rather than to transfer equity – may not constitute mergers cognizable under Section 7.²⁸ The FTC and DOJ investigated this question but did not reach the conclusion that the United Kingdom's Competition and Markets Authority reached, i.e., that certain pseudo-acquisitions are *de facto* mergers subject to review.²⁹ As a result, an institutional barrier to challenges by the U.S. Agencies remains in place. However, if the Agencies were prepared to challenge a pseudo acquisition, e.g., the Alphabet – Character.AI transaction valued at \$2.7B, then they would have been motivated to at least attempt to resolve the legal issue in their favor.

3.1 Data

The study period is from January 2024 (the first full month after the Guidelines were issued) to June 2026. Using HSR filings and other publicly available data,³⁰ I identified 41 transactions initiated by five major platforms: Alphabet, Amazon, Apple, Meta, and Microsoft. The financial terms for most of these deals were not publicly disclosed, but the acquisition costs incurred by the five platforms for the transactions for which data are available exceed \$45B. The transactions are

Agencies do not attempt to block is not immunized from future Clayton Act scrutiny." ([Congressional Research Service, Recent Developments in Hart-Scott-Rodino Merger Review](#)).

²⁷ Reuters, CNBC, Yahoo Finance, and others follow these transactions. The parent companies themselves publish announcements and press releases. Pitchbook collects systematic data on prior transactions as well as funding rounds by startups and their ownership structures.

²⁸ Currently, if the equity acquired is above \$133.9M, then an HSR filing is required.

²⁹ Competition and Markets Authority (UK), anticipated acquisition by Microsoft Corporation of parts of Inflection AI Inc, Final Report (Aug. 2024) — found a “relevant merger situation” based on the transfer of substantially all Inflection staff and a technology license, notwithstanding the absence of a share or asset acquisition, though it ultimately cleared the transaction on competitive-effects grounds.

³⁰ The FTC provides information on transactions that either received second requests or were cleared. Each agency makes announcements about merger reviews and enforcement decisions. SEC filings, e.g. 10-Ks, by the five platforms include required disclosures of material acquisitions. I used the Wall Street Journal, the Financial Times, Bloomberg, Reuters, and TechCrunch to confirm transactions and deal terms. The primary source of data for deals involving start-ups and for sub-threshold deals is PitchBook. In prior research (Snyder et al., 2024) on Amazon, I discovered that using a broad-based approach identified substantially more transactions than what the U.S. House Committee found. I identified these transactions using HSR filings (for above-threshold deals), public announcements cross-referenced with contemporaneous press reporting (for sub-threshold formal acquisitions), and documented deal structures (for pseudo-acquisitions).

grouped by the acquiring platform and then ordered by the announcement date. Along with the name of the target, the column labeled Description provides thumbnail information about the target. The transactions are classified as either acquisitions (involving equity transfers) or pseudo acquisitions. The last column indicates whether, based on publicly available information, the value of the individual transaction was above the HSR threshold.³¹

3.2 First Finding

The antitrust agencies did not challenge any of the acquisitions and transactions identified in Table 1. Thus, the agencies did not challenge any of the six above-threshold acquisitions that would be expected to require an HSR filing.³² Nor did the agencies attempt to challenge three other transactions whose values exceeded HSR thresholds but were structured without equity being transferred. As a result, at least seven transactions with values above \$1B were not challenged. It also means that the agencies did not attempt to challenge any of the other thirty-two transactions by pleading that the below-threshold transactions, either individually or as a series, would lessen competition. Given the widely held view that merger enforcement against the major platforms had been too weak, and the new provisions the 2023 Guidelines that were introduced for challenging platform acquisitions, it is surprising that the Agencies did not find a basis under the Guidelines to challenge any of the 41 transactions initiated by the five major platforms.

[Due to its length, **Table 1** appears after the References]

It is worth noting that during the study period, the agencies did file two Section 7 cases to block acquisitions by other high-tech acquirers: (i) the \$14 billion acquisition of Juniper Networks by Hewlett Packard Enterprise, which was completed in July 2025 after the parties agreed to divest overlapping assets; and (ii) the \$35 billion acquisition of Ansys by Synopsys, which was also completed in July 2025 after the parties agreed to divest competing product lines.³³ These Section

³¹ Thresholds were \$119.5M in 2024 and \$126.4M in 2025. 15 U.S.C. § 18a(a)(2); 89 Fed. Reg. 7708 (Feb. 5, 2024) (2024 threshold, \$119.5 million); 90 Fed. Reg. 7697 (Jan. 22, 2025) (2025 threshold, \$126.4 million).

³² The six above-threshold acquisitions are: Alphabet (Google) - Wiz with an acquisition cost of \$32B; Apple - Q.ai with an acquisition cost of \$2B; Alphabet (Google) - Intersect with an acquisition cost of \$4.75B; Alphabet (Google) - HTC Vive XR with an acquisition cost of \$250M; Meta - Manus AI with an acquisition cost of \$2-2.5B; and Meta - Rivos whose terms were not disclosed Yahoo Finance reported that prior to the acquisition Rivos was seeking funding based on a valuation of \$2B. Of note, China's National Development and Reform Commission blocked the acquisition of Manus AI by Meta.

³³ The DOJ's complaint in the Hewlett Packard - Juniper Networks transaction stated that the transaction would, in effect, create a duopoly and lessen competition in the U.S. market for wireless local area network (WLAN) solutions.

<https://www.justice.gov/opa/pr/justice-department-sues-block-hewlett-packard-enterprises-proposed-14->

7 challenges proceeded on traditional grounds, i.e., in both cases the acquirer and the target were direct competitors in an existing market.³⁴ The DOJ complaint in the Juniper Networks – Hewlett Packard transaction cited Guideline 1 and includes language directly related to Guideline 2.³⁵ The FTC complaint in the Ansys – Synopsys transaction codes directly to Guideline 2 (the elimination of head-to-head competition and resulting unilateral effects), and also cites an increased risk of coordination (Guideline 3).³⁶ These acquisitions, therefore, do not bear on the question of whether the novel provisions of the 2023 Guidelines were applied to high-tech mergers.

3.3 Second Finding

The lack of challenges by the Agencies to any of the 41 individual transactions does not constitute proof that the Agencies decided *against* leveraging the novel components of the Guidelines. To reach such a conclusion requires further analysis to establish whether the set of transactions afforded the Agencies with opportunities to take enforcement actions based on the novel frameworks. Recognizing that this inquiry requires deeper examinations, I created a sample of 10 transactions for more detailed review. I constructed the sample based on four considerations. First, the sample would include at least one transaction initiated by each platform. Doing so guards against the possibility that the null result depends on the behavior of some, but not all, of the five major platforms. Second, the sample would include transactions that span the Biden and Trump administrations. This guards against the possibility that the null result is an artifact of either administration. Third, the sample would include both acquisitions and pseudo-acquisitions to untether the analysis from a particular category of transaction. Fourth, the sample would include at

[billion-acquisition](#). The FTC's complaint in the Synopsys – Ansys alleged that, without intervention, the combination would eliminate direct, head-to-head competition and lead to higher prices for device manufacturers and consumers. The proposed market included optical and photonic software tools. [Synopsys/Ansys Complaint](#)

³⁴ Hewlett Packard Enterprise and Juniper Networks were direct and leading competitors in wireless local area networks; Synopsys and Ansys were head-to-head competitors in photonic software, optical software tools, and power consumption tools. Because the parties were actual competitors in defined markets, both challenges would have been brought under the 2010 Guidelines. This assessment is reinforced by the fact that competition authorities in the United Kingdom, European Union, Japan, Korea, and China independently challenged the Synopsys/Ansys transaction — reflecting conventional horizontal overlap analysis applied consistently across jurisdictions. See, for example, <https://www.gov.uk/cma-cases/synopsys-slash-ansys-merger-inquiry>.

³⁵ Complaint: Hewlett Packard Enterprise Co. and Juniper Networks, Inc., p. 14, pp. 15-22. <https://www.justice.gov/atr/media/1406591/dl?inline>

³⁶ Complaint: Synopsys/Ansys., para. 41 – 43. The Complaint also cites an increased risk of coordination (Guideline 3), para. 49 – 51. <https://www.justice.gov/atr/media/1406591/dl?inline>.

least two candidate transactions for each of the individual Guidelines 4, 6, and 9, a step that ensures that the analyses would engage the novel theories in the Guidelines.

The resulting sample of 10 transactions listed in Table 2 are ordered by the individual guideline that would appear to match best to a potential challenge to the proposed transaction. Information is provided by date, the target, the acquirer, deal type, and whether the transaction would require an HSR filing. The sample includes four pseudo-acquisitions — transactions that are structured as talent acquisitions plus non-exclusive technology licenses. These four involved financial considerations far above the HSR notification threshold but fell outside the statute's definition of a reportable transaction because no equity was transferred. The other six transactions include three for which the parties would have been expected to make an HSR filing.³⁷ Consistent with earlier discussion, this matching of individual transactions to a single novel provision should not be interpreted to mean that other provisions were inapplicable.³⁸

Table 2: Potential Applicability of Novel Theories

#	Date	Target	Acquirer	Guideline	Deal Type	Value / Threshold Status
1	March 2024	Inflection AI	Microsoft	4	Pseudo-acquisition *	Approximately \$650M; above HSR threshold value; outside HSR statute.

³⁷ The Agencies report annually the total number of HSR filings, but individual filings are not reported. Of the three acquisitions that exceed the HSR financial threshold – Apple's acquisition of Q.ai; Alphabet's acquisition of Wiz; and Meta's acquisition of Rivos – the public record includes a reference to a pre-merger notification filing for the Alphabet – Wiz transaction.

<https://www.ftc.gov/legal-library/browse/early-termination-notices/20251149s>.

³⁸ The Apple - Q.ai transaction illustrates the point. Had Q.ai, a technology firm at the forefront of imaging and machine learning, remained independent, its silent-speech and intent-recognition technology might have matured into a competitive capability that eroded Apple's advantages in wearables and device-native AI. The transaction matches well to the nascent competition framework (Guideline 4), but it could also be characterized as entrenching Apple's wearables ecosystem against rivals who might otherwise have obtained the technology (Guideline 6), or as accelerating Apple's accumulation of proprietary sensing data that reinforces its device platform advantages (Guideline 9).

2	June 2024	Adept AI	Amazon	4	Pseudo-acquisition*	\$25M licensing agreement; outside HSR statute.
3	August 2024	Character.AI	Alphabet	6	Pseudo-acquisition*	Approximately \$2.7B; above HSR threshold value; outside HSR statute.
4	January 2026	Q.ai	Apple	6	Acquisition	Approximately \$2B; below HSR sales threshold.
5	March 2025	Wiz	Alphabet	6	Acquisition	Approximately \$32B; above HSR threshold; HSR filed.
6	July 2025	Windsurf	Alphabet	6	Pseudo-acquisition*	Approximately \$2.4B; above HSR threshold value; outside HSR statute.
7	September 2025	Rivos	Meta	6	Acquisition	Undisclosed; likely above HSR threshold.
8	March 2024	Darwin AI	Apple	9	Acquisition	Undisclosed terms; likely below HSR threshold.
9	December 2024	MutableAI	Alphabet	9	Acquisition	Undisclosed terms; likely below HSR threshold.
10	September 2024	Axio	Amazon	9	Acquisition	Undisclosed — sub-threshold

* The four pseudo-acquisitions are designated "above the HSR threshold," but were structured to sit outside the statute's perimeter.

The analyses below indicate that the Agencies would have had a basis to challenge all ten of the sample transactions using Guidelines 4, 6, and 9. This analysis does not suggest that such challenges would have succeeded. The point is narrower: the five major technology platforms

initiated these transactions, the theories articulated in the Guidelines were available to the Agencies at the time, but the Agencies chose not to invoke the underlying theories.

Guideline 4 — Perceived Potential Competition

Guideline 4 extends potential competition doctrine to acquisition targets that are perceived to be future competitive threats, even absent current market overlap or a documented plan by the target to enter the acquirer's market.³⁹ The first two transactions in Table 2 satisfy this predicate.

Microsoft – Inflection AI. In March 2024, Microsoft paid \$650M in a pseudo-acquisition to hire Inflection AI's principal talent.⁴⁰ At the time of the transaction, Inflection AI was not an actual competitor to Microsoft in offering enterprises the ability to create and deploy AI agents to make work flows more efficient. Nor, with its conversational chatbot for consumers, would it have necessarily been viewed as a potential competitor with a plan to provide services that would improve workflows. Inflection AI, however, had deployed its AI platforms and attracted some customers. Inflection AI, therefore, could have been characterized as a perceived potential competitor that represented a competitive constraint on Microsoft. Even though Inflection AI was earning only modest revenues and was struggling financially,⁴¹ with additional outside investment it could have taken steps to develop on its own an enterprise API model and compete with Microsoft's Copilot product.⁴² Support for treating Inflection AI as a perceived potential competitor is found in (a) Microsoft's decision, subsequent to the acquisition, to host Inflection AI's models on its cloud computing platform, Azure, where the models would be available to enterprises,⁴³ and (b) the decision to lower Inflection AI lowered trajectory and its abandonment of efforts to compete in the development of next generation large language models.⁴⁴ As of mid-2026,

³⁹ In developing this concept, Hemphill and Wu (2020) emphasize that the nascent competitor needs to represent a serious threat to entrenched firms. They emphasize that mergers might unlawfully maintain a monopoly in the case, for example, the nascent competitor has innovation that would make it an effective competitor.

⁴⁰ (Ghaffary & Metz, 2024) and to gain non-exclusive access to Inflection's intellectual property. While the U.S. authorities did not view the transaction as an outright acquisition, the United Kingdom's CMA treated it as such because Microsoft has acquired "the team's collective know-how" (TechCrunch, 2024c).

⁴¹ Inflection AI revenue, valuation, and funding data (Latka, 2024).

⁴² An internal email hints at the messy aftermath of Microsoft's hires from AI startup Inflection," Business Insider, April 4, 2026,

<https://www.businessinsider.com/inflection-hire-spooked-microsoft-poaching-cofounders-greylock-reid-hoffman-2024-4>.)

⁴³ (Bamford, 2024).

⁴⁴ AI's successor CEO Sean White explained this decision. "Inflection AI CEO says it's done trying to make next-generation AI models" November 26, 2024,

Inflection AI continues to operate, albeit in a diminished form. The Pi consumer chatbot continues to be offered, but with less attractive terms.

Amazon – Adept AI. This July 2024 pseudo transaction included a \$25M fee for a non-exclusive license, over \$300M in payments to prior investors in the target, and the hiring by Amazon of Adept AI's co-founders and principal staff.⁴⁵ Adept, a well-funded startup,⁴⁶ was an operational agentic AI platform for enterprise workflow automation. Adept specialized in *action-oriented AI* (computer-use agents) that might disrupt enterprise software and assistant ecosystems that Amazon and its major rivals sought to develop. The ambitious objective of the founders was to build an AI model capable of performing actions on any software tool using natural language.⁴⁷ Hence, Adept AI could have been perceived to be a future competitive threat to Amazon's own enterprise AI services. Guideline 4 specifies that acquiring companies early in their development to prevent them from becoming a tangible threat is anticompetitive. Adept's scale of funding, blue-chip technical pedigree, and reported acquisition interest from Microsoft and Meta made it a firm that industry participants — including Amazon — could reasonably regard as a credible potential entrant capable of independently commercializing frontier agent technology at scale, exerting pressure on incumbents.⁴⁸

Guideline 6 —Nascent Competition and Platform Entrenchment

Guideline 6 reaches acquisitions that either eliminate a nascent competitor or entrench a platform's competitive position through ecosystem dynamics rather than conventional horizontal or vertical market overlap. Four transactions in Table 2 appear to satisfy at least one of these predicates.

Alphabet – Character.AI. With this \$2.7B transaction in August 2024 Alphabet gained a non-exclusive license of the target's large language model, provided more funding to the target, and hired the startup's co-founders and other top talent.⁴⁹ At the time of the transaction, Character.AI, which had previously raised \$193M from investors and was reportedly in talks to

<https://techcrunch.com/2024/11/26/inflection-ceo-says-its-done-competing-to-make-next-generation-ai-models/>).

⁴⁵ (TechCrunch, 2024a).

⁴⁶ (Soper, 2024).

⁴⁷ (AI Business, 2024).

⁴⁸ This is consistent with commentary on the agentic AI market, e.g., <https://www.linkedin.com/pulse/analysis-amazons-adept-ai-deal-sramana-mitra-pc3uc/>.

⁴⁹ (Reuters, 2024).

raise additional funds from Alphabet,⁵⁰ was the leading independent consumer-facing AI chatbot, with over ten million active users. While one might view Character.AI's chatbot as only a complement to future search technologies, it could also be viewed as a future potential competitor to Alphabet and other search engines. If the latter, Character.AI could become directly competitive with the AI-assistant integrations that Alphabet was simultaneously building into its search-related ecosystem.⁵¹ The factual predicate for a Section 7 challenge would have been that Character.AI had a demonstrated competitive trajectory, a successful chatbot, and a direct relationship to the acquirer's core platform — the three elements that, under the first branch of Guideline 6, establish nascent competition.⁵² The DOJ conducted an investigation into the transaction, both its structure and its competitive effects, that spanned the Biden and Trump administrations.⁵³ The public record does not provide an official statement explaining the reasons for not pursuing a challenge.⁵⁴

Apple – Q.ai. The conventionally structured \$2B acquisition transferred Q.ai's equity to Apple. The acquisition fell outside the HSR framework because Q.ai had little or no revenues and did not satisfy the HSR annual net sales threshold.⁵⁵ The target, a well-funded Israeli startup with backing from high-profile investors – including Alphabet, specialized in silent-speech recognition and on-device intelligence.⁵⁶ At the time of the acquisition, Q.ai's narrow focus on specialized human-computer interactions and its minimal revenues means that it would be difficult to characterize Q.ai as an actual potential competitor. However, given Apple's focus on wearables such as its AirPods and its on-device AI strategy, this acquisition could be characterized either as eliminating a nascent competitor or as entrenching Apple's competitive advantages over rivals, especially through improving Apple's capabilities in speech recognition and tracing facial movements.⁵⁷ The acquisition could also be viewed as advancing Apple's overall AI strategy.⁵⁸

⁵⁰ Krystal Hu, "Google in talks to invest in AI startup Character.AI," November 10, 2023, Reuters. <https://www.reuters.com/technology/google-talks-invest-ai-startup-characterai-sources-2023-11-10/>.

⁵¹ (Sisco, 2025; Sophia, 2025).

⁵² (Kazimirov, 2025).

⁵³ (Sisco, 2025; Sophia, 2025).

⁵⁴ The CMA cited the fact that Character.AI would continue as an independent entity in its decision to clear the transaction.

⁵⁵ Currently, the target's net sales must exceed \$26.8M.

<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/steps-determining-whether-hsr-filing>

⁵⁶ (CNBC, 2026).

⁵⁷ (SiliconANGLE, 2026).

⁵⁸ (Nellis, 2026).

Prior to this particular acquisition, Apple CEO Tim Cook stated that “we’re very open to M&A that accelerates our roadmap.”⁵⁹

Alphabet – Wiz. This \$32B acquisition, which closed in March 2026, matches well to the entrenchment branch of Guideline 6. Wiz was the leading independent multi-cloud security platform, with deep integrations across AWS, Azure, and Google Cloud. Its independence was competitively significant: it provided security services to enterprises regardless of which cloud provider they used, and its relationships with rival cloud providers — particularly AWS and Azure — depended on its platform-agnostic status. The acquisition converted that platform-agnostic asset into a Google ecosystem property. Consistent with Guideline 6, by acquiring Wiz, Google gained the ability to calibrate the terms on which enterprise customers of rival cloud platforms access security services, with implications for the competitive dynamics of the cloud infrastructure market. The DOJ conducted a substantive pre-merger review but cleared the transaction without invoking Guideline 6 or any other provision.

Alphabet – Windsurf. Alphabet’s \$2.4B acquisition of Windsurf in July 2025 presents a Guideline 6 predicate related to nascent competition and platform entrenchment. Windsurf was the leading independent AI coding assistant, with a large developer user base and a product directly competitive with Microsoft’s GitHub Copilot and other platform-integrated developer tools. Windsurf annual recurring revenue — mostly from large enterprise customers — doubled from roughly \$40 million to over \$100 million in less than a year before the transaction.⁶⁰ Windsurf — platform agnostic — was viewed as a rising star in the intense competition related to AI. Its growing enterprise and technology were significant enough that OpenAI attempted to acquire it outright, but only to lose out to the pseudo-transaction with Alphabet.⁶¹ The transaction converted the leading platform-agnostic coding assistant into a Google ecosystem asset, with direct implications for developer workflow dependence on Google’s development infrastructure. Except for its structure as a pseudo-acquisition the \$2.4B transaction matches well to the language in the second branch of Guideline 6: an anticompetitive “merger may involve a dominant firm acquiring

⁵⁹ (CNBC, 2025).

⁶⁰ According to one report, “Windsurf had grown fast — earning \$82 million per year, with over 350 enterprise clients like JPMorgan Chase and Dell, and more than 1 million developers using it.”

<https://elephas.app/blog/windsurf-ai-3-billion-collapse-72-hours>;

⁶¹ (Medium, 2025).

a nascent competitive threat—namely, a firm that could grow into a significant rival, facilitate other rivals' growth, or otherwise lead to a reduction in its power."⁶²

Meta – Rivos. While exact terms of the September 2025 acquisition were not disclosed, Rivos had been seeking funding based on a \$2B valuation, far above the HSR threshold.⁶³ At the time of the acquisition, Rivos was developing custom AI and mobile chips for AI infrastructure. Meta had been "one of Rivos' primary clients" and had collaborated with it on Meta's in-house Training and Inference Accelerator (MTIA) chips. The acquisition converted the partnership relationship into full ownership, a transaction Meta framed as accelerating its custom-silicon roadmap and reducing its reliance on Nvidia. Bringing its capabilities inside Meta provided it with a competitive advantage, lessened its dependence on third-party semiconductor suppliers – especially Nvidia – and reduced the availability of Rivos' chip designs and expertise to other platforms, including Microsoft, Alphabet, and Amazon. Hence, the acquisition could be viewed as an ecosystem entrenchment intended to benefit Meta.

Guideline 9 – Network Effects and Data Acquisition.

Guideline 9, which embodies the other novel guidelines, is capacious: Transactions may be viewed as anticompetitive if they allow the platform to add products and services, increase user bases, provide data advantages, or strengthen its network effects. The last three transactions in Table 2 appear to offer a predicate that matches Guideline 9.

Apple – DarwinAI.

The competitive vitality of Apple's iOS and App Store platform depends on the ability of both Apple and third parties to develop privacy-preserving AI features without cloud dependency. DarwinAI was an AI model optimization firm whose technology Apple integrated into its on-device AI stack, deepening the performance advantage of Apple's proprietary products. DarwinAI supplied an important enabling input through its "Generative Synthesis" technology for compressing and accelerating deep neural networks that run on-devices rather than in the cloud.⁶⁴ With the acquisition in early 2024, Apple absorbed dozens of its employees — including its lead researcher, Alexander Wong — into Apple's internal AI /Machine Learning division. This

⁶² 2023 Merger Guidelines, pp 20-21.

⁶³ (Dastin et al., 2025).

⁶⁴ (Gurman, 2024).

accelerated Apple's own on-device generative-AI push for iOS 18;⁶⁵ folding it exclusively into Apple's internal stack, it also ended the availability of DarwinAI's technology to other developers and device makers via arms-length agreements.⁶⁶ That fact pattern appears to match well to Guideline 9's platform-specific concern that "dominant platforms can lessen competition and entrench their position by systematically acquiring firms competing with one or more sides of a multi-sided platform while they are in their infancy."⁶⁷

Alphabet – MutableAI.

As Alphabet is the dominant platform on both Android/Google Cloud developer ecosystem and, increasingly, the AI-coding-assistant stack for Gemini Code Assist and related tools. As such Alphabet competes with Microsoft's GitHub Copilot for developers. In this context, the acquisition of Mutable AI in December 2024 matches Guideline 9's statement that "dominant platforms can lessen competition and entrench their position by systematically acquiring firms competing with one or more sides of a multi-sided platform while they are in their infancy."⁶⁸ MutableAI offered a cross-platform AI coding assistant that was explicitly positioned as an alternative to Microsoft's GitHub Copilot. MutableAI's technology could also be integrated into other ecosystems.⁶⁹ Alphabet completed the acquisition in November 2024, absorbing MutableAI's team and technology into Google's own AI/developer-tools business rather than continuing to make the tool available as an independent, platform-agnostic offering. The transaction was significant enough that Alphabet reported it to EU regulators under the Digital Markets Act requirement to report acquisitions related to core platform services,⁷⁰ indicating that the transaction affected platform competition.

Amazon – Axio. This September 2024 acquisition related to Amazon's Indian Marketplace, a platform connecting buyers, third-party sellers, and complementary service providers across India. With this platform, Amazon supports Indian entrepreneurs who export "Made in India"

⁶⁵ (TechCrunch, 2024b).

⁶⁶ (TechCrunch, 2024b).

⁶⁷ 2023 Merger Guidelines, p. 26.

⁶⁸ 2023 Merger Guidelines, p. 26.

⁶⁹ (Y Combinator, n.d.).

⁷⁰ <https://www.mlex.com/mlex/articles/2313963/alphabet-reports-acquisition>; Article 14(2) of the European Union's Digital Markets Act (DMA).

goods—such as textiles, home decor, and handicrafts—into the U.S.⁷¹⁷² Axio participated on the platform by providing financial support to participants in Amazon Pay’s Buy Now Pay Later offering and for other platforms, including MakeMyTrip.⁷³ With the acquisition and related approvals, Amazon became a non-banking financial company with direct-lending capabilities. The acquisition thereby increased Amazon’s user bases and expanded its network effects related to users who operated in India and the U.S.⁷⁴ The acquisition also internalized a financial-services input, potentially foreclosing other platforms from accessing an independent credit-provider.

These inquiries into the ten transactions in the sample listed in Table 2 and the factual predicates they present indicate that the Agencies could have challenged all of the transactions using the novel guidelines. The inquiries also confirm that the novel guidelines provide options to the Agencies for doing so. Some of the optionality is due to overlap between the “perceived potential competitor” language in Guideline 4 and the “nascent competitor” language in the second branch of Guideline 6. Optionality also results from the statement in Guideline 9 that other individual guidelines are relevant to the analysis. Lastly, the inquiries underscore the relevance of transactional structures to the HSR reporting requirements. For example, if OpenAI succeeded with its plan to acquire Windsurf, the acquisition would have prompted an HSR filing. Alphabet’s decision to structure the transaction as a pseudo-acquisition negated that requirement. Four of the transactions were structured as pseudo-acquisitions and thereby were outside the statute’s perimeter.

3.4 Third Finding

The large volume of acquisitions of startups and more mature firms by the major platforms over the decades preceding the 2023 Guidelines motivated the provision whereby the agencies could challenge serial acquisitions.⁷⁵ The logic underlying Guideline 8 was that while no individual

⁷¹ (MMF Infotech, n.d.).

⁷² Axio’s operations complement Amazon’s investments in global cloud and artificial intelligence infrastructure, including data centers in Mumbai and Hyderabad.

<https://www.aboutamazon.in/news/aws/aws-data-centre-hyderabad>.

⁷³ (TechCrunch, 2025).

⁷⁴ 2023 Merger Guidelines, p. 26.

⁷⁵ The House Judiciary Committee’s Subcommittee on Antitrust, Commercial, and Administrative Law found that the four platforms it investigated — Alphabet, Amazon, Apple, and Facebook — had collectively acquired hundreds of companies in the preceding ten years, with the antitrust agencies requesting additional information in very few cases. *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*, House Judiciary Committee (October 2020), pp. 6, 376–393. The FTC’s 2021 study of non-HSR reported acquisitions by the same five platforms (adding Microsoft) identified 616

acquisition might cause anticompetitive harm, a series of acquisitions might collectively entrench the platform, foreclose rivals, or eliminate nascent competitors — including by securing rights to promising technologies before those technologies could mature into independent competitive threats.⁷⁶ Guideline 8 thus gave the agencies a mechanism to address the cumulative dimension of platform acquisition behavior that individual transaction review might fail to capture.

The 41 transactions during the study period provided two opportunities for the Agencies to use Guideline 8 to challenge a series of eight acquisitions. As summarized in Table 3, the first concerns eight transactions by Alphabet between June 2024 and March 2026 – a span of twenty-one months. Based on publicly available information for four of the eight transactions, Alphabet’s aggregate acquisition costs for the series exceeded \$40B, with the \$32B Wiz acquisition and the \$2.7B Character.AI pseudo-acquisition accounting for most of that figure. Within the series, the acquisition of Wiz is the only transaction that prompted an HSR filing, which was followed by a DOJ pre-merger review.

Table 3: Alphabet AI Acquisition Series

#	Date	Target	AI Capability Domain	Deal Type	Consideration
1	June, 2024	Cameyo	Virtual app delivery	Acquisition	Undisclosed

transactions valued above \$1 million that were not reported to the agencies between 2010 and 2019. *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study*, Federal Trade Commission (September 2021). The Stigler Center’s Committee on Digital Platforms similarly documented the high volume of platform acquisitions and called for enhanced merger review. *Stigler Committee on Digital Platforms: Final Report*, George J. Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business (September 2019). Snyder, E. A., Simmons, I., & Zaslavsky, S. (2024) found that the House Report and the Stigler Center Report undercounted the number of acquisitions by Amazon.

⁷⁶ The theory that serial acquisitions of nascent or complementary technologies can foreclose competition is developed in Shapiro (2010, 2023) and Hovenkamp (2021). The House Judiciary Report specifically identified instances in which dominant platforms acquired smaller companies to “neutralize a competitive threat or to maintain and expand the firm’s dominance.” *Investigation of Competition in Digital Markets*, supra, p. 6.

2	Aug, 2024	Character.AI	Model development	Pseudo-acquisition	\$2.7B (above HSR threshold but outside HSR statute)
3	Sep, 2024	Evaluable AI	Model infrastructure	Acquisition	Undisclosed
4	Nov, 2024	MutableAI	Workflow integration	Acquisition	Undisclosed
5	Nov, 2024 May, 2025	Galileo AI	Developer tooling	Two-step Acquisition	Undisclosed
6	July, 2025	Windsurf	Workflow integration	Pseudo-acquisition	\$2.4B (above HSR threshold but outside HSR statute)
7	Oct, 2025	Atlantic Quantum	Computation infrastructure	Formal acquisition	Undisclosed
8	Mar, 2026	Wiz	Platform security	Formal acquisition	\$32B (HSR filing)

The series satisfies the definitional criterion in Guideline 8 in that Alphabets' unifying strategic objective was to strengthen its AI capabilities across model development, testing, infrastructure, and security. The Character.AI and Evaluable AI acquisitions relate to developer tooling, i.e., the infrastructure to build, train, and test applications; the MutableAI, Galileo AI, and Windsurf acquisitions relate to workflow integration; the Atlantic Quantum acquisition concerns hardware infrastructure, i.e., the computing resources required to develop and train AI models; and the acquisition of Wiz, as discussed above, provided Alphabet with enhanced platform security capabilities.

Within this series, the Cameyo acquisition in June 2024 illustrates potential ecosystem entrenchment. Cameyo delivered Windows application virtualization across multiple device platforms, with the result that customers could run locally a Windows application on a non-Windows device. Prior to the acquisition, Alphabet was a customer of Cameyo and a commercial partner. Following the acquisition, Alphabet relaunched the product as *Cameyo by Google* and integrated it exclusively into ChromeOS, making it available only to Chrome device users. Following the acquisition, the contracts with legacy Cameyo customers carry a maximum term of 36 months and do not auto-renew.⁷⁷ As those contracts expire, therefore, customers face a

⁷⁷ Cameyo Master Service Agreement, Section 6 ('Orders will not auto renew'), available at cameyo.google/terms/master-service-agreement/; Cameyo by Google Terms of Service, Section 8 ('Google reserves the right to change the fees or applicable charges... at the end of the Order Term'), available at cameyo.google/terms/terms-of-service/. Contract terms of 12, 24, or 36 months are documented in Google Support, 'Understand your Cameyo payment plan,' available at support.google.com/cameyo.

choice between adopting the ChromeOS-integrated product — and with it, dependence on Alphabet's device ecosystem — or migrating to a competing virtual app delivery provider.

The antitrust concern is that Alphabet's acquisition of Cameyo thereby converted a platform-neutral virtualization capability into a ChromeOS-exclusive asset, a structural feature that favors Alphabet's platform at the expense of competing device alternatives. Other acquisitions in the series, e.g., the enhanced security capabilities that Alphabet gained from the Wiz acquisition, would serve to entrench Alphabet by raising switching costs for Alphabet's customers. The Alphabet series was not, however, challenged under Guideline 8 or any other provision. This finding — that the most economically significant serial acquisition pattern in the transaction record, by the platform with the largest market capitalization, was not challenged — is a stark illustration of the null result.

A second opportunity to apply Guideline 8 concerns four sub-threshold acquisitions by Meta. As reported in Table 4, the transactions span nine months. Given that no financial information was made public for any of these four transactions, there is no lower-bound aggregate acquisition cost figure to report.

Table 4: Meta Superintelligence Labs Acquisition Series

#	Date	Target	AI Capability Domain	Deal Type	Consideration
1	July, 2025	Play AI	AI voice synthesis	Acquisition	Undisclosed; sub-threshold
2	Aug, 2025	WaveForms	Expressive AI audio	Formal acquisition	Undisclosed; sub-threshold
3	Dec, 2025	Limitless	Ambient conversation recording	Formal acquisition	Undisclosed; sub-threshold
4	Mar, 2026	Moltbook	Platform for AI agent communication	Formal acquisition	Undisclosed; sub-threshold

The four transactions are unified by their destination — Meta's recently established Superintelligence Labs. Meta's CEO Mark Zuckerberg articulated the strategic importance of building its capabilities related to AI-powered voice recognition and interaction.⁷⁸ The Play AI

⁷⁸ CEO Mark Zuckerberg described Meta's strategic rationale for the Superintelligence Labs acquisition program in a Facebook post, 'Building the Future of AI at Meta,' July 2025. The connection between the Limitless acquisition and Meta's AI wearables strategy is documented in Cara Lombardo, 'Meta Platforms Buys AI Device Maker Limitless,' *Wall Street Journal*, December 5, 2025, and in Sacra, 'Why Meta Bought Limitless,' December 12, 2025, available at sacra.com.

acquisition enhanced Meta’s capabilities in voice synthesis and voice generation; the WaveForms acquisition brought capabilities related to speech generation; the Limitless AI acquisition transferred to Meta rights to a wearable pendant for ambient conversation capture; and the Moltbook acquisition provided capabilities related to AI agent communication. Together the acquisitions served to build Meta’s AI capabilities across voice, ambient audio capture, and agent interaction infrastructure. They took place in a competitive context characterized by rivalry among the platforms to build their capabilities in voice synthesis and recognition. Hence, they constitute a coherent acquisition program of the kind Guideline 8 was designed to reach: same acquirer, defined capability domain, compressed time horizon, collectively significant competitive effect on the independent supply of AI audio and agent infrastructure. The agencies did not, however, challenge the series.

4. Explanations for the Null Result

In this section I first develop the thesis that evidentiary mismatches constitute the primary explanation for the null result documented above, i.e., that the Agencies did not find a basis in the 2023 Merger Guidelines' novel provisions to challenge any of the 41 transactions initiated by the five major platforms during the period January 2024 through June 2026. This thesis rests on the absence of evidence sufficient to support, before a court, claims of conditional harms that may materialize under future market conditions. I then consider three alternative explanations for the null result: (i) deterrence, (ii) loopholes in HSR filing requirements, and (iii) shifts in enforcement priorities.

4.1 The Evidentiary Mismatch Thesis

Traditional claims of anticompetitive harm from horizontal mergers rest on well-accepted IO principles and are supported by a substantial literature developed over decades. Accordingly, Section 7 Challenges applying Guidelines 1 through 3 center on a familiar set of questions: how to define the relevant market, how to measure shares and concentration within it, what entry conditions would constrain the merged firm, and whether efficiencies may offset any competitive harm. The parties may litigate these questions vigorously and how to characterize the evidence, but they typically have the evidence to calculate HHIs, GUPPI estimates, diversion ratios, and the other frameworks that operationalize Guidelines 1 through 3. This evidence is drawn from observable features of the current state of the world: prices, sales, shares, and product

characteristics. While theories of anticompetitive harm from vertical mergers are less well-accepted, claims of foreclosure (Guideline 5) are similarly made with evidence concerning the importance of the relevant inputs and the availability of substitutes. Again, such evidence is available when transactions are proposed.

By contrast, applications of the novel Guidelines 4, 6, and 9 require proof about a state of the world that does not yet exist and, under some transactions, never will: what a firm would have done absent the merger, whether a nascent rival would have grown into a significant competitor, or how platform dynamics and network effects would have evolved over time. Guideline 4's *perceived potential competition* theory compounds this problem by requiring evidence not just about a counterfactual future, but about the present, conditional effect that a firm's existence has on the conduct of its rivals.

Among the novel provisions, Guideline 8 occupies an intermediate position. Establishing the factual predicate for a serial-acquisition claim requires the acquirer's history of completed deals and the unifying purposes of the transactions. Additional evidentiary work is then required to deploy that established series in support of a prospective theory of harm — that the pattern, left unchecked, will produce anticompetitive effects the Agencies have not yet observed. Guideline 8 thus combines a backward-looking evidentiary predicate with a forward-looking theory of harm, occupying a middle ground between the standard evidentiary apparatus for Guidelines 1 through 3 and the prospective evidentiary demands of Guidelines 4, 6, and 9.

According to the evidentiary mismatch thesis, Section 7 claims based on the novel guidelines cannot be supported by available evidence. The underlying problem lies not with the post-Chicago industrial organization literature itself, but with its demonstrability in litigation. The literature is theoretically rigorous and establishes that under specific conditions — multi-sided markets, powerful network effects, platform control over access to complementary assets — a leading platform can foreclose rivals, tip markets toward durable dominance, and acquire nascent competitors before their competitive significance is observable. The critically important point, however, is that the predicted harms are both prospective and conditional: they hold under specific model assumptions and with specific market structures and parameter values. The post-Chicago literature does not yield model-invariant presumptions; under different parameter values, the same models predict no harm at all or benefits to competition. Nor are the models supported by a robust

empirical literature. Moreover, once potential dynamic efficiencies — which are central to high-tech industries — are considered, the same transactions can be understood to benefit competition. Established and well-resourced firms gain control over promising technologies that can be applied to advance development of new products and services. More generally, an acquisition may transfer a complementary input that advances the acquirer's own product development, rather than eliminate a competitive threat.

Support for the evidentiary mismatch thesis comes from Section 2 monopolization claims and recently established legal standards. As discussed above, the Agencies have proceeded with Section 2 monopolization claims based on the same or similar novel frameworks.⁷⁹ These are adjudicated on an ex-post record: conduct has occurred, competitive effects have materialized, and the Agency can document what happened. Section 7 claims must be filed prospectively, when maximum uncertainty prevails. The theories are the same; the evidentiary foundation available to support them is not.

The courts applying these very theories have confirmed as much: In *FTC v. Meta/Within*,⁸⁰ the court held that a nascent competition claim requires a market with definable boundaries and a target trajectory that is demonstrable rather than speculative. Judge Davila accepted that potential-competition theories are legally viable but denied the FTC's motion for preliminary injunction because the agency had not shown that Meta would have entered the dedicated virtual-reality-fitness market independently absent the acquisition.⁸¹ In the *Microsoft - Activision Blizzard* litigation: Judge Corley denied the FTC's preliminary injunction, holding that the FTC had not shown a likelihood of success on its vertical foreclosure theory. More specifically, the FTC would have had to establish that Microsoft would have both the ability and incentive to withhold the highly popular *Call of Duty* from rival platforms. The evidence concerning Microsoft's ten-year licensing commitments was pivotal. Of note, the evidentiary standards in these Section 2 decisions were established before the 2023 Guidelines were issued, which raises the question of whether the lack of Section 7 challenges to high-tech merger cases might have been expected.

4.2 Alternative Explanations

⁷⁹ See footnote 3.

⁸⁰ Davila, J., preliminary injunction denied February 1, 2023.

⁸¹ *FTC v. Meta Platforms, Inc.*, 654 F. Supp. 3d 892 (N.D. Cal. 2023).

I now turn to three alternative explanations for the null result.

Deterrence. The release of the draft Merger Guidelines in July 2023 and the issuance of the final Guidelines in December 2023 may have deterred platforms from proposing transactions that would be challenged under novel theories, producing an apparent null result in filings while reflecting genuine enforcement impact. This alternative explanation, therefore, focuses on possible reductions in the supply of transactions that could be challenged by the Agencies. The deterrence hypothesis rests on the notion that the Guidelines, together with the expectation that courts would rule in the Agencies' favor on Section 7 challenges based on the novel guidelines (4, 6, 8, and 9), would deter the platforms from proceeding with transactions. This proposition is somewhat dubious given that (i) the Guidelines are policy statements and are not legally binding, and (ii) the courts did not uphold a challenge to a high-tech transaction based on the novel theories.

As in most settings, however, it is difficult to identify deterrent effects. The question of which transactions were considered but not pursued cannot be answered using publicly available information. Hence, the hypothesis cannot be ruled out as an influence during the study period. The findings here indicate, however, that deterrence was far from complete. The analysis of sampled transactions in Section 3.3 indicates that all of the ten sampled transactions presented factual predicates which could be matched to the novel guidelines, including four transactions whose values ranged from \$2B to \$32B. In addition, the two series of transactions include individual transactions which present factual predicates that match to the novel guidelines.

Meta's acquisition of Rivos for a reported \$2B is a particularly poor fit for the deterrence hypothesis. Substantively, it fits both Guidelines 6 and 9: Meta acquired a firm providing an important input — an AI chip technology explicitly aimed at cutting Meta's reliance on Nvidia. The acquisition's stated purpose was to substantially reduce Meta's chip dependence on third-party supplier rivals.⁸² In one prospective scenario, Meta would gain an advantage over rival platforms that also wanted to reduce their dependence on Nvidia. Despite matching a novel-Guideline fact pattern, nothing in the public record indicates a HSR Second Request, litigation threat, or any deal restructuring around antitrust risk.

⁸² (Dastin et al., 2025).

HSR Threshold Loopholes: The premise of this thesis is that the substantive HSR requirements are an important complement to Section 7 challenges, providing the Agencies with notices of proposed transactions, information, and time to review transactions before they are executed. The thesis, which focuses on the ability and readiness of the Agencies to bring Section 7 challenges, is that actual HSR requirements constitute an imperfect and oftentimes lacking complement to potential Section 7 challenges. Related to this thesis, Agency reforms that would have increased reporting requirements and lengthened the waiting period went into effect in February 2026 but were vacated following a legal challenge by the U.S. Chamber of Commerce.⁸³

The evidence developed here provides some support for this hypothesis. Many, if not most, of the transactions listed in Table 1 resulted in no HSR filings.⁸⁴ Many transactions were structured as pseudo-acquisitions involving the transfers of key employees from the target to the acquiring platform and no transfers of equity. Thus, according to this thesis, the agencies were denied relevant information and the benefit of mandatory waiting periods for important transactions, many of which involved values far above the HSR thresholds. Especially in high-tech settings where human capital is central to innovations, structuring transactions as pseudo-acquisitions was an especially important loophole.

The limitations to the deterrence thesis are significant. First, the Agencies retain independent Clayton Act Section 7 jurisdiction to challenge non-reportable transactions in the absence of HSR filings. Second, the public announcements of all transactions in the record mean that the Agencies were aware of proposed transactions, including those that proceeded without an HSR filing. The same public sources provide ample information about the purposes of announced transactions and the market contexts. Third, the timing of the vacatur does not support this explanation. The null result covers the period January 2024 through June 2026, and the agencies' existing second-request authority under the HSR Act was available throughout that period.

⁸³ The Agencies announced reforms that would increase reporting requirements and lengthen the waiting period in November 2024. *Rf. Premerger Notification; Reporting and Waiting Period Requirements*, 89 Fed. Reg. 89,216. These reforms took effect February 10, 2025. But litigation followed and led to the vacatur of the reforms. *Rf. Chamber of Commerce v. FTC*, No. 6:25-cv-9-JDK (E.D. Tex. Feb. 12, 2026) (order vacating and setting aside 89 Fed. Reg. 89,216 (Nov. 12, 2024)), *stay denied*, No. 26-40094 (5th Cir. Mar. 19, 2026), *appeal pending*.

⁸⁴ The uncertainty derives from the fact that the Agencies only report aggregate annual data on HSR filings.

The notion that the agencies might have been waiting for a large HSR-reportable transaction to serve as the vehicle for a novel-theory challenge ignores the analysis in Section 3.3 demonstrating that the transactions with HSR filings provided ample predicate for enforcement actions. Within that set lies the striking example of Alphabet's \$32B acquisition of Wiz. If the agencies intended to deploy novel Guidelines theories against a high-profile above-threshold platform acquisition, Wiz provided the opportunity. A factual predicate for applying Guideline 6 was available; the parties made an HSR filing; and the DOJ conducted a substantive review, but cleared the transaction.

Changes in enforcement priorities: With the shift from the Biden administration to the Trump administration, merger enforcement in high-tech industries could have been de-prioritized relative to other types of enforcement. The factual predicate for this hypothesis should be clarified. The Trump administration did not rescind the 2023 Merger Guidelines nor any of the individual guidelines. To the contrary, the incoming FTC Chairman Andrew Ferguson announced that the joint 2023 Merger Guidelines "are in effect and are the framework for this agency's merger-review analysis," citing the value of "[s]tability across administrations of both parties."⁸⁵ The Antitrust Division's Acting Assistant Attorney General issued a parallel memorandum committing to continued use of the Guidelines, quoting incoming Assistant Attorney General Gail Slater's confirmation testimony that she would "follow the legal and economic framework described in" them.⁸⁶ The relevant predicate regarding the change in administrations is, therefore, that notwithstanding the stated continuity, the Agencies' actual enforcement priorities changed. That divergence then would explain a null result produced not because building a record for a novel-Guideline claim was infeasible, but because the Agencies chose not to pursue claims against the major platforms even where a record might have been developed.

The evidence against this alternative hypothesis is the continued allocation of resources for Section 2 monopolization cases against the major platforms. Both administrations filed Section 2 monopolization cases against the major platforms — Alphabet (search and advertising), Meta (social networking), and Apple (smartphone markets) — invoking post-Chicago theories of competitive harm that are conceptually continuous with the novel Guidelines. An Agency that had abandoned these theories would not have simultaneously prosecuted Section 2 cases relying on

⁸⁵ FTC press release, February 18, 2025.

⁸⁶ https://www.judiciary.senate.gov/imo/media/doc/2025-02-12_-_qfr_responses_-_slater.pdf

them. The FTC's Section 2 monopolization case against Meta, arising from the Instagram and WhatsApp acquisitions, is particularly clear evidence against the shift-priorities thesis. The case proceeded to a six-week trial beginning in April 2025 — squarely within the current Administration. The trial, of course, required continued allocation of resources by the Trump administration. Even if the Biden administration's commitment to stricter merger enforcement was stronger than the Trump administration's commitment, this hypothesis would not explain why the Biden-era Agencies did not pursue Section 7 claims against individual transactions or serial transactions. For example, the Alphabet – Character.AI transaction in 2024 presented a strong factual predicate for a challenge based on Guideline 6 provided that the Agencies were willing to argue that the transaction was, in fact, a merger. More generally, given the issuance of Guidelines in December 2023, the Biden administration had thirteen months — January 2024 through January 2025 — to bring novel-theory Section 7 cases against the ongoing flow of platform transactions. It did not do so; hence, the null result predates the administration change and cannot be attributed to it.

Taking the 30-month time period as a whole, a shift away from merger enforcement applied to high-tech industries is not a genuine rival to the evidentiary-mismatch thesis so much as evidence of it. As discussed above, Section 2 claims are backward-looking and can marshal a long chain of inferential evidence – in contrast to Section 7 claims. In the wake of Judge Boasberg's November 2025 ruling for Meta, the FTC has appealed – reflecting its continued commitment and resource allocation to enforcement actions that are based, at least in part, on theories that support the novel Guidelines.

Two further factors might explain why novel-Guideline claims may have been deprioritized. First, the treatment of potential-competition and vertical-foreclosure theories in the Meta -Within litigation and the Microsoft - Activision Blizzard litigation, discussed above in Section 4.1, likely confirmed for the Agencies that such claims carry a demanding case-specific evidentiary burden. Applying Guideline 8's serial-acquisition framework in particular would require the kind of resource-intensive analysis that resource-constrained Agencies might reasonably decline to undertake. The legal standards established by the courts in these cases should not, however, be viewed independently of the evidentiary-mismatch thesis. They should be viewed as indicators of its relevance.

Second, it is possible that the Trump Administration's commitment to preserving U.S. leadership in AI has reduced the Agency's interest in challenging the transfers of new technologies to the major platforms. The January 23, 2025 executive order "Removing Barriers to American Leadership in Artificial Intelligence"⁸⁷ and the subsequent "America's AI Action Plan"⁸⁸ frame AI competitiveness with China as a matter of national security and call for removing regulatory barriers to AI innovation. The possible disinterest in applying antitrust policy to the major platforms would not explain the lack of enforcement beginning in January 2024, but the emphasis on the China-U.S. rivalry in AI could influence antitrust enforcement as applied to major platforms going forward.

5. Implications

The null result here is narrow and time-limited, but its implications for antitrust enforcement and academic research are far-reaching.

Regarding antitrust policy, the evidentiary mismatch thesis implies that the primary means of applying post-Chicago theories to high-tech industries should be monopolization cases. Correspondingly, the difficulty in applying novel theories of prospective harm with requisite evidence indicates that the Agencies should not use novel claims in merger challenges of high-tech acquisitions.⁸⁹ According to the evidentiary mismatch thesis, the null result concerning Section 7 enforcement reflects a specific structural problem rather than a failure of antitrust enforcement broadly. Evidentiary issues in Section 2 enforcement are less challenging because allegedly anticompetitive conduct has occurred, effects have materialized, and the Agencies can develop an inferential chain from conduct to harm. The major platform monopolization cases brought in recent years— against Alphabet (Google) in search and advertising, Meta in social networking, and Apple in smartphone distribution — demonstrate that post-Chicago theories of competitive harm are operationalizable in the Section 2 context.⁹⁰

⁸⁷ White House, EO 14179; America's AI Action Plan.

<https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>

⁸⁸ <https://www.whitehouse.gov/releases/2025/07/white-house-unveils-americas-ai-action-plan/>

⁸⁹The difficulty of market definition in platform markets is documented extensively in the platform economics literature. See Rochet and Tirole (2003); Evans and Schmalensee (2016). The courts' consistent insistence on definable market boundaries — most recently in *FTC v. Meta/Within* (Davila, J., 2023) — creates a threshold barrier for novel-theory claims in nascent markets.

⁹⁰The major Section 2 cases during the study period include: *United States v. Google LLC* (search and advertising, liability found August 2024; remedies ordered September 2025, now on appeal); *FTC v. Meta*

Two qualifications should be noted. First, the serial acquisition provision in the 2023 Merger Guidelines warrants operationalization. A challenge based on the purpose and effect of a series of acquisitions by a platform will necessarily entail marshaling evidence that accumulates over time concerning the competitive trajectory of the targets, the acquirer's strategic rationale, the acquirer's post-acquisition conduct, and the effects of prior acquisitions. Thus, Guideline 8 is capable of overcoming the evidentiary mismatch. The Alphabet AI acquisition series documented in Table 3 — eight transactions over twenty-one months, an aggregate value exceeding \$40 billion, and a unified strategic purpose — illustrates the evidentiary foundation for such an effort.

Second, in a similar vein, the Agencies should invest in ongoing analyses of the major platforms, the purpose of which would be to track their conduct and the effects on competition, including the development of new markets. Doing so would strengthen the evidentiary basis for potential Section 7 challenges. The Agencies could establish dedicated teams — combining agency economists and lawyers with outside IO economists — to track the major platforms' current markets, technology investments, acquisition patterns, equity relationships, and partnerships. Such ongoing market surveillance would position the Agencies to recognize a developing competitive problem and to establish an analytical foundation for action. The FTC's Section 6(b) study authority provides the legal basis for much of this information gathering.⁹¹ Using it systematically would reduce evidentiary gaps compared to announcement-triggered reviews.

These two recommended actions by the Agencies to lengthen the evidentiary chains might yield successful Section 7 challenges against the major tech platforms. However, close observation of high-tech industries over the last two decades counsels strong caution due to the importance of dynamic efficiencies. Tim Cook, former CEO of Apple, stated that the core of Apple's acquisition strategy has been to buy companies, including startups, that accelerate product roadmaps, add vital

Platforms (social networking; judgment entered for Meta in November 2025 on market-definition and current-monopoly-power grounds, without reaching the acquisition-specific theory; FTC notice of appeal filed January 2026); and *United States v. Apple Inc.* (smartphone distribution, ongoing, with the parties reportedly engaged in settlement discussions as of mid-2026). Each invokes post-Chicago theories of exclusionary conduct.

⁹¹Section 6(b) of the FTC Act (15 U.S.C. § 46(b)) authorizes the Commission to require submission of annual or special reports and answers in writing to specific questions. The Commission has used this authority for industry-wide studies, including its 2020 study of acquisitions by large technology companies. Federal Trade Commission, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study* (2021).

technologies, and absorb talent.⁹² This synthesis raises the fundamental question of whether the high volumes of acquisitions by major platforms benefits or harms competition. While the traditional IO literature yields potential insights about the purposes and effects of mergers on markets that exist, it cannot discern whether consumers will be better off as a result of acquisitions of AI startups that may both accelerate the development of new markets and adversely affect competition. Even the basic question of whether the null result found here is good or bad has no clear answer.

This debate harkens back to fundamental enforcement principles. As articulated by Easterbrook (1984),⁹³ enforcement agencies have budget constraints, are often at an information disadvantage, and must present credible cases to the courts. Potential applications of the novel guidelines in Section 7 challenges increases the “knowledge problem” insofar as courts and enforcers cannot reliably distinguish procompetitive from anticompetitive conduct. Given the potential for errors, the instruments of enforcement need to be matched to what they can feasibly do and where they will clearly benefit competition. The 2023 Merger Guidelines, featuring the novel guidelines positing conditional harms without providing screening mechanisms, diverge from the error-cost-minimizing approach.

The implications of this article for academic research are threefold. First, IO theorists would increase the usefulness of their research if they identified how their models match various industry contexts. When models predict anticompetitive harm under some conditions, the research should clarify where those conditions are likely to hold and not hold. These efforts to connect IO research to industry contexts are especially important if the intention of the researchers is to contribute to merger policy.

Second, post-acquisition studies of platform mergers — assessing whether the competitive dynamics the Guidelines predict (ecosystem entrenchment, nascent competition foreclosure, serial acquisition effects) actually materialized — would provide the evidentiary foundation that the enforcement framework currently lacks.⁹⁴ Such studies face genuine analytical challenges: the speed of product development in high-tech settings, the difficulty of constructing counterfactuals,

⁹² (CNBC, 2019; Davis, 2025).

⁹³ Easterbrook (1984) is already cited in note 2 *supra*.

⁹⁴ Shapiro (2018) reviews the post-merger studies.

the near-constant flow of transactions, and the problem of determining whether a "non-exclusive" technology license continued to be available to other firms. If those challenges prove insurmountable — that is, if the effects of high-tech mergers are too difficult to measure — that conclusion would be informative: it would reinforce the conclusion that novel-theory merger enforcement applied to high-tech acquisitions is operating in a domain without a disciplining empirical feedback loop.

Third, most IO literature provides no framework for the role of management in sensing and developing competitive opportunities — a gap that is directly relevant to acquisitions in evolving technology markets.⁹⁵ For example, Amazon, having collected massive amounts of data about its e-commerce customers and invested in internal capabilities to store and analyze that data, recognized that cloud computing would emerge as an important market. In such contexts, most IO literature does not consider the effects of various antitrust policies on the incentives of first movers and on new markets.

Stepping back, the policy and research implications of the standstill in merger enforcement applied to high-tech acquisitions should be evaluated with the following consideration in mind. The U.S. has the most productive technology ecosystem in the world. The five platforms at the center of this analysis — Alphabet, Amazon, Apple, Meta, and Microsoft — are among the most valuable firms in history, and the startup ecosystem that supplies them with acquisition targets is a major engine of U.S. innovation and employment.⁹⁶ The acquisition pathway is not incidental to that ecosystem; for many founders and investors, it is an anticipated outcome that justifies the risk of starting a company in the first place.⁹⁷ Antitrust enforcement that systematically blocked platforms from acquiring startups would reduce the expected returns to startup investment and, accordingly, the rate of startup formation. Whether aggressive enforcement against platform acquisitions would be good policy requires evidence that academic literature does not provide.

⁹⁵The dynamic capabilities literature initiated by Teece, Pisano, and Shuen (1997) and developed in Teece (2007) directly addresses the sensing-seizing-transforming capacities that determine competitive outcomes in technology-intensive industries. That framework, and its implications for the evaluation of capability acquisitions, is developed in the companion article.

⁹⁶ (The Information, 2026).

⁹⁷Gans and Stern (2003), who model the "market for ideas" in which startups are formed with the expectation of licensing or selling to incumbents. Joshua Gans and Scott Stern, "The Product Market and the Market for 'Ideas': Commercialization Strategies for Technology Entrepreneurs," *Research Policy*, 32(2) (2003), 333–350.

For this reason, this article is not based on a presumption that platform acquisition activity during the study period was, on net, beneficial or harmful to competition and innovation. The claim is narrower: the novel theories in the 2023 Merger Guidelines, whatever their merits, could not be operationalized against the transaction record of the study period. If the evidentiary mismatch thesis is correct, the novel guidelines will not be used in high-tech merger enforcement going forward.

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Table 1: High-Tech Acquisitions and Deals by Major Platforms, January 2024 – June 2026

#	Date	Target	Description	Deal Type	Value / Threshold Status
Alphabet / Google					
1	June 2024	Cameyo	Virtual app delivery; enables Windows apps to run on ChromeOS	Acquisition	Sub-threshold (undisclosed)
2	August 2024	Character.AI	Large language model and consumer AI chatbot	Pseudo-acquisition	~\$2.7B total value (talent and license)
3	September 2024	Evaluable AI	LLM testing and head-to-head model comparison tooling	Acquisition	Sub-threshold (undisclosed)
4	November 2024	MutableAI	AI-assisted code documentation and repository intelligence	Acquisition	Sub-threshold (undisclosed)
5	November 2024	Galileo AI	Text-to-UI and image-to-UI generative design tool	Acquisition	Sub-threshold (undisclosed)
6	November 2024	Specs	Automated code testing and natural-language specification	Acquisition	Sub-threshold (undisclosed)
7	January 2025	HTC Vive XR Team	VR/AR hardware engineering team and IP from HTC	Acquisition	Above threshold (\$250M)
8	March 2025	AdHawk Microsystems	Eye-tracking sensors and smart-glasses hardware	Acquisition	Sub-threshold (undisclosed)
9	March 2025	Wiz	Cloud-native cybersecurity platform; multi-cloud threat detection and posture management	Acquisition	Above threshold (\$32B);
10	May 2025	Galileo AI	AI product design assistant (follow-on / separate entity)	Acquisition	Sub-threshold (undisclosed)
11	July 2025	Windsurf (Codeium)	Agentic AI coding assistant; no equity transfer	Pseudo-acquisition	~\$2.4B total value (talent + license)
12	October 2025	Atlantic Quantum	Superconducting qubit hardware for quantum computing	Acquisition	Sub-threshold (undisclosed)
13	December 2025	Intersect	Data center and energy infrastructure development	Acquisition	Above threshold (\$4.75B)
Amazon					
14	June 2024	Adept AI	Agentic AI and workflow automation; no equity transfer	Pseudo-acquisition	~\$25M license + investor restitution (talent + license)
15	August 2024	Perceive	AI edge inference chip design and neural network model compression	Acquisition	Sub-threshold (\$80M)

16	October 2024	MX Player	Video streaming platform, India; integrated into Prime Video	Acquisition	Sub-threshold (undisclosed)
17	July 2025	Bluush (Bee)	Social and mobile application	Acquisition	Sub-threshold (undisclosed)
18	September 2025	Axio	Cybersecurity risk quantification and digital lending, India	Acquisition	Sub-threshold (undisclosed)
19	September 2025	Pixwise	Visual AI and imaging technology, UK	Acquisition	Sub-threshold (undisclosed)
20	November 2025	Feenix.ai	AI platform (sector undisclosed)	Acquisition	Sub-threshold (undisclosed)
Apple					
21	March 2024	DarwinAI	AI-based manufacturing visual inspection and edge AI inference	Acquisition	Sub-threshold (undisclosed)
22	November 2024	Pixelmator Team	Digital photo and art editing software, Lithuania	Acquisition	Sub-threshold (undisclosed)
23	May 2025	RAC7	Video game development studio, Canada	Acquisition	Sub-threshold (undisclosed)
24	May 2025	IC Mask Design	Analog integrated circuit design	Acquisition	Sub-threshold (undisclosed)
25	October 2025	Kuzu	Graph database and knowledge graph technology, Canada	Acquisition	Sub-threshold (undisclosed)
26	January 2026	Q.ai	AI-driven investment platform and portfolio management	Acquisition	Above threshold (~\$2B)
27	March 2026	MotionVFX	Video editing software and professional plugins, Poland	Acquisition	Sub-threshold (undisclosed)
28	March 2026	invrs.io	Financial data and AI micro-startup	Acquisition	Sub-threshold (undisclosed)
Meta					
29	June 2025	Scale AI	AI data labeling and training data; 49% stake	Equity investment	\$14.3B valuation for 49% stake; equity investment, not a full acquisition
30	July 2025	Play AI	AI voice and speech synthesis; integrated into Meta Superintelligence Labs	Acquisition	Sub-threshold (undisclosed)
31	August 2025	WaveForms	AI audio and waveform technology; integrated into Meta Superintelligence Labs	Acquisition	Sub-threshold (undisclosed)

32	(month n/d) 2025	Rivos	RISC-V AI chip design and GPU development (pre-deal valuation ~\$1.5–2B)	Acquisition	Undisclosed / likely above threshold
33	December 2025	Limitless	AI wearables and ambient conversation recording (total funding ~\$33M; sub-threshold virtually certain)	Acquisition	Sub-threshold (undisclosed)
34	December 2025	Manus AI (Butterfly Effect)	Autonomous AI agent, Singapore; blocked by China's NDRC, April 2026 — deal did not close	Acquisition	Above threshold (~\$2–2.5B)
35	March 2026	Moltbook	AI platform (sector undisclosed); integrated into Meta Superintelligence Labs	Acquisition	Sub-threshold (undisclosed)
Microsoft					
36	March 2024	Inflection AI	Consumer large language model and Pi chatbot	Pseudo-acquisition	Above threshold ~\$650M total value (talent + license)
37	April 2025	Mahi Labs	Natural-language web browsing and AI interface layer	Acquisition	Sub-threshold (undisclosed)
38	April 2025	GetCurious	Consumer research platform and survey-based AI insights	Acquisition	Sub-threshold (undisclosed)
39	April 2025	TouchCast	Enterprise AI video production and immersive meeting experiences	Acquisition	Sub-threshold (undisclosed)
40	November 2025	Pi Labs	AI development tools and infrastructure	Acquisition	Sub-threshold (undisclosed)
41	January 2026	Osmos	Agentic AI data engineering; integrated into Microsoft Fabric	Acquisition	Sub-threshold (undisclosed)