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concentration has increased across labor markets, with a meaningful reduction in worker wages.<sup>3</sup> Informed by significant public input, the proposed guidelines identify how the Agencies will assess whether a merger may lessen competition for labor—including by looking at the merging firms’ power to cut or freeze pay, slash benefits, and degrade working conditions.

Reflecting the growth of platform intermediaries across markets, the proposed guidelines also identify how enforcers will assess acquisitions involving platforms. For example, we will consider not just competition between players offering similar services, but also competition from firms whose offerings could replace or disintermediate an existing platform. The proposed guidelines also lay out some different ways that platform acquisitions can risk lessening competition—including acquisitions that eliminate players that were enabling users to easily switch among platforms, or acquisitions that deprive rivals of the scale and network effects needed to fully compete. Especially as more individuals and businesses depend on platforms to access key services, preventing mergers that block competition and lock-in gatekeepers is critical.

Informed by recent enforcement experience, the proposed guidelines also address serial acquisitions. A variety of sectors have seen firms consolidate markets through roll-up strategies that rely on a series of smaller acquisitions.<sup>4</sup> The proposed draft clarifies that enforcers may evaluate an overall pattern of serial acquisitions or examine it as part of an industry trend.

The proposed guidelines take a functional approach to gauging competition. Rather than relying on a formalistic set of theories, they seek to understand the practical ways that firms compete, exert control, or block rivals. And reflecting the multitude of ways that mergers can lessen competition or tend to create a monopoly, they identify several ways to analyze transactions. Key to the proposed revisions is the idea that no single method or tool has primacy, and that the specific context will determine which methods and tools are most probative.

## **II. Promoting Rule of Law**

Our revisions seek to reinvigorate the full scope of the laws Congress passed to protect Americans from mergers that may lessen competition or tend to create a monopoly. Prior guidelines focused on theories and fact patterns that the FTC and the DOJ have historically been most likely to pursue. However, the most common scenarios are not the only ones covered by

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[https://www.ftc.gov/system/files/ftc\\_gov/pdf/public\\_statement\\_of\\_commr\\_slaughter\\_chair\\_khan\\_re\\_lifespan-cne\\_redacted.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/public_statement_of_commr_slaughter_chair_khan_re_lifespan-cne_redacted.pdf).

<sup>3</sup> See, e.g., *The State of Labor Market Competition*, U.S. DEP’T OF TREASURY 24-25 (Mar. 7, 2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf> (surveying empirical evidence on the wage impacts of labor market power and finding that in the current economy “we believe the best available empirical evidence suggests that labor market power reduces wages by at least 15 percent”).

<sup>4</sup> See, e.g., Press Release, Fed. Trade Comm’n, *FTC Takes Second Action Against JAB Consumer Partners to Protect Pet Owners from Private Equity Firm’s Rollup of Veterinary Services Clinics* (Jun. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-second-action-against-jab-consumer-partners-protect-pet-owners-private-equity-firms-rollup-of-veterinary-services-clinics>; Brendan Ballou, *Private Equity Is Killing Your Pets*, THE NATION (Apr. 25, 2013), <https://www.thenation.com/article/economy/private-equity-pets-veterinarian/>.

Section 7 of the Clayton Act or other antitrust laws.<sup>5</sup> Neglecting to explicitly consider these scenarios may inadvertently convey to businesses that certain mergers are permissible, when in fact the law prohibits them. The proposed guidelines thus seek to address the multitude of ways a transaction might raise competition concerns so that law-abiding businesses can plan accordingly.

The Clayton Act seeks to preserve future competition, as courts have long recognized. The proposed guidelines lay out some ways a merger may further spur consolidation or block future competition.<sup>6</sup> For example, Proposed Guideline 4, on potential entry, focuses on preserving the possibility of entry in concentrated markets. Such entry can boost competition, and a merger neutralizing or preventing that entry can violate the law.<sup>7</sup> Proposed Guideline 7 focuses on acquisitions involving dominant firms and lays out how enforcers will assess the risk of entrenching a dominant position.<sup>8</sup> And Proposed Guideline 8 addresses markets that are trending toward concentration. Because the Clayton Act seeks to halt concentration in its incipiency, enforcers must be vigilant early.<sup>9</sup>

The proposed guidelines also revise the thresholds for the structural presumption to more closely conform to the law and restore traditional figures.<sup>10</sup> While the 2010 guidelines adopted higher thresholds, enforcers did so to reflect contemporary agency practice rather than to suggest

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<sup>5</sup> See Statement of Comm'r Rebecca Kelly Slaughter Joined by Chair Lina M. Khan and Commissioner Alvaro M. Bedoya Regarding FTC-DOJ Proposed Merger Guidelines (July 19, 2023),

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