

**Senator Thom Tillis**

**Questions for the Record**

**Senate Judiciary Competition Policy Subcommittee Hearing**

**“The Impact of Consolidation and Monopoly Power on  
American Innovation.”**

**Dec. 15, 2021**

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1. Does concentration always harm consumers? Is it always a symptom of an underlying anticompetitive behavior?

No. However, concentration often is a sign of a market or enforcement failure and puts dominant firms in a position to take actions for the benefit of the firm that directly or indirectly harm consumers. One such action is limiting the viability of technological innovations that could reduce the dominant position of the firm or displace it altogether. Less choice for consumers is a harm. Further, a firm in a highly concentrated sector may create a vertically integrated supply chain that is highly susceptible to disruption (see e.g. baby formula<sup>1</sup>) which certainly can harm consumers.

2. Would shifting the focus to concentration rather than consumers deter future innovation or at the very least discourage or chill business practices that benefit consumers?

No. What deters future innovation is high barriers to entry created by dominant firms in highly concentrated sectors. A dominant firm is committed to the status quo in a way that puts the firm’s interests above those of consumers because the lack of meaningful competition insulates the firm from needing to innovate.<sup>2</sup>

3. I have heard diverging opinions as to whether “growth by acquisition” is stimulating or stifling for innovation. On the one hand, acquisitions are seen as an “exit strategy” for entrepreneurs, and an incentive for venture capitalists to invest in start-ups. On the other, acquisitions may be seen as internalizing technology that otherwise would be available in the

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<sup>1</sup> Onque, Rene, “The baby formula shortage isn’t over and ending it may ‘take a while’ — here’s a timeline,” CNBC. Aug. 2 2022.

<https://www.cnbc.com/2022/08/02/what-you-need-to-know-about-the-us-baby-formula-shortage.html>.

<sup>2</sup> Federico, Giulio, Fiona Scott Morton, and Carl Shapiro, “Antitrust and Innovation: Welcoming and Protecting Disruption,” Innovation Policy and the Economy Vol. 20. 2020.

<https://www.law.berkeley.edu/wp-content/uploads/2020/08/Shapiro-Carl-Antitrust-and-Innovation-Welcoming-and-Protecting-Disruption.pdf>.

marketplace. Your written testimony mentions the “kill zone” around acquisitions. How should antitrust enforcers and policy makers assess these perspectives?

While the prospect that a dominant firm may acquire a startup could be a driving force behind venture capitalist investment, that investment behavior is a reaction to the current reality that such an “exit strategy” has become a goal.<sup>3</sup> An IPO could be, and once was, a viable alternative exit strategy. Similarly, an exit strategy for an early investor could simply be success and growth that drives more private investment into the startup. The problem that we are faced with today is the potential for a buyout exit strategy presented by large firms (particularly Big Tech firms) is driving the investment and innovation decisions at the front end thereby causing startups to develop products and services to the perceived desires of Big Tech companies rather than based on founder imagination and market opportunities. Ideally, a startup should be able to look at the world and see what is not there or what could be done better. Unfortunately, if those ideas or innovations pose a threat (real or perceived) to one of these dominant companies the startup may never even try. This then leads to a startup environment that is less innovative, less creative, and holds everyone back.

4. Do you have any concerns about the unintended consequences of over-regulation on innovation or competition? If so, how can Congress address such concerns?

After decades of light touch enforcement and almost no regulation, particularly in the tech space, it is hard to imagine what over-regulation would even mean.<sup>4</sup> I have seen no proposal that could be described as over-regulation. In fact, in nearly every case where government intervention to address a market failure in competition has occurred, the relevant industry has screamed about the threat to innovation, and yet, the result was a huge wave of innovation in the wake of the enforcement action. This is pretty strong evidence that the factor holding back innovation tends to be the lack of fair competition, not any government action.<sup>5</sup>

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<sup>3</sup> see Blank, Steve, “How to Build a Startup That Gets Acquired,” Thinkgrowth.org. Aug. 7, 2017. <https://thinkgrowth.org/how-to-build-a-startup-that-gets-acquired-85ada592bfd7>.

<sup>4</sup> Kang, Cecilia, “As Europe Approves New Tech Laws, the U.S. Falls Further Behind,” The New York Times. Apr. 22, 2022. <https://www.nytimes.com/2022/04/22/technology/tech-regulation-europe-us.html>.

<sup>5</sup> see e.g. Fackler, Thomas, Markus Nagler, Monika Schnitzer, and Martin Watzinger, “How antitrust enforcement can spur innovation: Bell Labs and the 1956 Consent Decree,” CEPR. Feb. 19, 2017.

<https://cepr.org/voxeu/columns/how-antitrust-enforcement-can-spur-innovation-bell-labs-and-1956-consent-decree>; Blumenthal, Richard, and Tim Wu, “What the Microsoft Antitrust Case Taught Us,”

The New York Times. May 18, 2018.

<https://www.nytimes.com/2018/05/18/opinion/microsoft-antitrust-case.html>.