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CAPITAL ACCOUNT | By Greg Ip

'Stealth' Consolidation Erodes Competition

With the Trump administration heightening its scrutiny of big tech companies and several states trying to stop the third- and fourth-largest wireless carriers from merging, you might think the tide is turning against corporate concentration.

Think again.

Big tech and big mergers get the headlines, but the real monopoly problem is beneath the surface. In numerous industries and regions, competition has declined and corporate concentration risen through acquisitions often too small to draw the scrutiny of antitrust watchdogs.

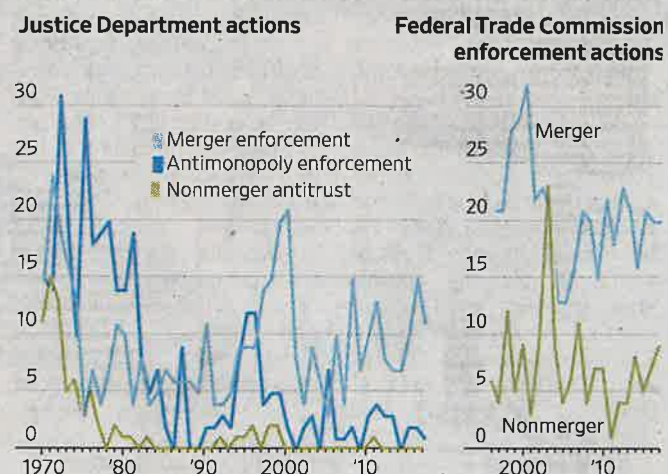
This stealth consolidation may be as harmful, if not more so, than the much publicized and criticized practices of **Alphabet** Inc.'s Google, **Apple** Inc., **Facebook** Inc. and **Amazon.com** Inc.

The number of enforcement cases brought by the Justice Department's antitrust division against alleged anticompetitive agreements and monopolistic behavior has plummeted in the past decade, according to data compiled by the Washington Center for Equitable Growth, a left-leaning think tank.

At both the Justice Department and the Federal Trade Commission, antimerger enforcement has been largely stable. But the authorities may be more permissive than this data suggest. John Kwoka at Northeastern University has documented that the FTC, while continuing to challenge mergers resulting in just two to four competitors, has since the mid-2000s been less likely to challenge mergers that result in five to eight competitors.

Enforcement Actions

Federal antitrust and antimonopoly enforcement has been stable to lower in the last decade.



Source: Center for Equitable Growth

Meanwhile, a great deal of concentration is coming via small mergers that escape federal scrutiny. Until 2001, deals of more than $15 million had to be reported to the antitrust authorities. That year, the threshold was raised and indexed to economic growth, and is now $90 million. For transactions involving few tangible assets such as in technology and pharmaceutical startups, the threshold is $360 million.

A study by Thomas Wollmann of the University of Chicago found that after the 2001 changes, the number of merger notifications dropped 70% and the number of mergers that didn't require notification jumped nearly 50%. Before the change, around a third of merger investigations involved deals of less than $50 million. After the change, the number of such deals investigated fell to close to zero.

In new research, Mr. Wollmann found that between 1997 and 2017 more than 4,000 acquisitions of kidney dialysis centers were proposed. About half were above the reporting threshold, and in 265 cases, the FTC required divestitures to resolve competition concerns. Among the half below the threshold, the FTC required just three divestitures. Two companies controlled about 31% of facilities in 1997. By 2016, two companies, **DaVita** Inc. and **Fresenius Medical Care**, controlled 77% of facilities, he concluded.

Mr. Wollmann hasn't documented the impact on patient health, but his preliminary results suggest the numbers of nurses per technician declined and patients per hemodialysis machine rose at facilities acquired in mergers below the reporting threshold. That, he said, could be evidence of reduced quality of care, though he acknowledged it could also reflect increased efficiency.

A spokeswoman for DaVita, citing federal data, said that as the industry has consolidated over the past 15 years, dialysis patient mortality has decreased by 30%. Meanwhile, she added, the percentage of patients immunized and the percentage of patients safely dialyzing at home have improved, "the result of large scale clinical investments." A Fresenius spokesman also cited the federal data showing declining dialysis patient mortality.

Stealth consolidation is under way in other industries, too. Physician practice groups have been merging, often as part of larger hospital groups via numerous small deals. According to a 2017 study in Health Affairs, 22% of markets for physicians are highly concentrated (under federal guidelines), and they got that way mostly via acquisitions too small to be reported.

Another study by Florian Ederer at Yale University and two co-authors found that pharmaceutical companies often halt development of competing drugs at startups they acquire, especially when the deal is just small enough to escape antitrust reporting requirements.

This doesn't prove antitrust enforcers have been negligent; they can't investigate mergers they don't know about.

Nonetheless, it suggests the Trump administration's newfound interest in competition policy is too narrow. Its scrutiny of big tech is being driven by concerns, shared in both parties, that the firms quash competition, have too much influence on what is said on social media, and exploit users' private information. Yet outside technology, it has been more relaxed, suing (unsuccessfully) to stop only one major deal—**AT&T** Inc.'s acquisition of Time Warner Inc.

The Justice Department is now weighing whether to let **T-Mobile US** Inc. and **Sprint** Corp. combine, leaving just three national wireless carriers. That will rest in part on whether they can preserve competition by forcing the combined company to sell assets. There is just one problem: to whom? Several buyers are circling but none are established cellphone competitors. In part, that is because after years of deal making, almost all of their smaller competitors have been acquired.

Utility Retires Power Line Behind Deadly Wildfire