ARE PRIVATE EQUITY FUNDS LIABLE FOR ANTICOMPETITIVE ACQUISITIONS?

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May 31, 2025

ABSTRACT

Acquisitions that were backed by private equity (PE) and escaped antitrust scrutiny in their incipiency face mounting litigation risk. For instance, the FTC recently challenged a series of PE-backed transactions in the anesthesia sector that stretch back more than a decade, amounting to the first "rollup"-based antitrust case in US history. In this paper, we address three main issues about these developments. First, we produce novel empirical evidence that shows PE-backed consolidation extends far beyond the anesthesia industry, which suggests that courts could face a wave of merger litigation. Second, we present an economic model that implies the damages arising from anticompetitive harm will often exceed the portfolio companies' ability to pay. In these cases, whether plaintiffs are made whole depends on whether the funds that financed and directed these transactions compensate victims. Finally, we introduce a doctrinal framework for assessing the liability of PE funds for anticompetitive acquisitions. Our analysis identifies five distinct theories of liability that draw from antitrust and business organization law.

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INTRODUCTION

Acquisitions backed by private equity (PE) exhibited extraordinary growth over the past two to three decades.[1] Most measures even indicate that privately backed transactions have surpassed those involving publicly traded acquirers.[2] During the same period, PE investment strategies have also shifted dramatically.[3] Historically, the industry specialized in financially engineering large, highly leveraged transactions usually unrelated to each other. Recently, however, its capital has poured into "rollups." In a rollup, a PE-backed fund makes an initial acquisition (typically referred to as the "platform") and then injects capital into the platform to acquire competing businesses (commonly known as "add-ons").[4]

These transactions are rarely reported to antitrust authorities in their incipiency. Although add-ons account for nearly $300 billion in U.S. acquisitions annually and can significantly reshape market structure in economically important industries, individual deals are often small enough to evade premerger notification thresholds.[5] In theory, federal antitrust authorities could detect nonreportable transactions through other means. In practice, however, as our recent research shows, these acquisitions often escape scrutiny entirely—creating what we term the "stealth consolidation" problem.[6] Furthermore, as out other recent work demonstrates, procedural loopholes exacerbate this issue in the context of PE-backed deals.[7]

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[1] *See* Section I Subsection B.

[2] *See* Aslihan Asil, John Barrios & Thomas G. Wollmann, *Misaligned Measures of Control: Private Equity's Antitrust Loophole*, VA. L. & BUS. REV. (2023).

[3] Matthew Wansley & Samuel Weinstein, *Antitrust, Private Equity & Venture Capital*, in RESEARCH HANDBOOK ON THE STRUCTURE OF PRIVATE EQUITY AND VENTURE CAPITAL (2024).

[4] Our definition of a rollup aligns with common usage. For example, *Mergers & Acquisitions from A to Z,* which is among the best-selling practitioner-oriented guides on transacting businesses, defines the rollup by stating that "the buyer is a holding company" and the strategy "typically involves aggressive acquisition of competitors in a given market." However, some use the term more loosely, applying it to any acquisition in which the target operates in the same industry (but not necessarily the same market) as the acquirer. *See* ANDREW SHERMAN, MERGERS AND ACQUISITIONS FROM A TO Z (4th ed. 2023).

[5] *See* Section II Subsection A.

[6] Thomas G. Wollmann, Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act, 1 AM. ECON. REV.: INSIGHTS 77, 79 (2019); Thomas G. Wollmann, *How to Get Away with Merger: Stealth Consolidation and Its Effects on US Healthcare* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27274, 2024).

[7] Aslihan Asil, John Barrios & Thomas G. Wollmann, *Misaligned Measures of Control: Private Equity's Antitrust Loophole*, VA. L. & BUS. REV. (2023).

After we uncovered the problem, scrutiny of these deals rose sharply. In recent years, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) jointly launched a public inquiry into whether rollups have harmed consumers.[8] Soon after, the FTC issued new rules expanding reporting requirements for PE-backed acquisitions.[9] Then, in late 2023, the FTC filed the first rollup-based antitrust case in U.S. history, charging a private equity firm and its portfolio company with illegally monopolizing and consolidating anesthesia markets in Texas.[10]

These developments raise three important questions. First, is anesthesia unique, or have rollups consolidated other economically important markets? Second, will portfolio companies have enough unencumbered assets to pay damages? Third, if recovery from these companies is insufficient, can the PE funds that financed and directed the transactions be held liable?

In this paper, we address these questions. First, we produce novel empirical evidence that shows PE-backed consolidation extends far beyond the anesthesia industry, which suggests that courts could face a wave of merger litigation. Second, we present an economic model that implies the damages arising from anticompetitive harm will often exceed the portfolio companies' ability to pay. In these cases, whether plaintiffs are made whole depends on whether the funds that financed and directed these transactions compensate victims. Finally, we introduce a doctrinal framework for assessing the liability of PE funds for anticompetitive acquisitions.

We begin the paper by identifying rollups in other medical specialties such as radiology, gastroenterology, and urology. In nine markets not subject to any litigation at the time of writing, we find that rollups produced substantial consolidation. In many cases, the Herfindahl-Hirschman Index

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[8] Press Release, Fed. Trade Comm'n, FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy (May 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-doj-seek-info-serial-acquisitions-roll-strategies-across-us-economy.

[9] Premerger Notification; Reporting and Waiting Period Requirements, 88 Fed. Reg. 42178 (June 29, 2023), available at https://www.govinfo.gov/content/pkg/FR-2023-06-29/pdf/2023-13511.pdf.

[10] Complaint at 16, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024). At various points, we use information reported in this complaint to draw inferences about how rollups operate. In doing so, we use words such as "anticompetitive," which could be misinterpreted to imply that the defendants violated antitrust laws. We use these terms to characterize certain transactions and behavior, not reflect the findings of the court. Our language represents a subjective interpretation that is informed, in part, by facts presented in the complaint. The case against USAP is ongoing at the time of writing, so claims that the defendant violated laws are allegations. The status of charges against WCAS are described in Section II.B.

(HHI) increased by more than 1,000 points as a result of these acquisitions.[11] To put this change in perspective, the *2023 Merger Guidelines*, jointly issued by the DOJ and the FTC, deem a merger presumptively unlawful if it increases HHI by as little as 100 points.[12]

In prior work, we have estimated that rollups in the anesthesia industry lead to significant, persistent price increases by add-ons—on the order of 30%.[13] Assuming that these newly identified rollups produce similar price effects, they pose a significant threat to consumer welfare, with patients paying supracompetitive prices for medical services. Under U.S. antitrust law, individuals harmed by these transactions, as well as state attorneys general acting as *parens patriae*, have standing to seek treble damages.[14] When sharp price increases persist for many years and induce damages that are statutorily tripled, plaintiffs risk being only partially compensated for the harm they suffered.

Motivated by this concern, we develop an economic model that captures the salient features of a rollup and produces intuitive expressions for solvency. Crucially, it accounts for the fact that antitrust damages are typically treated as unsecured claims, giving plaintiffs access only to the portfolio company's assets not pledged as collateral for other debt. Since portfolio companies are typically saddled with debt whose proceeds are stripped out by way of special dividends, the likelihood of recovery may be low. Indeed, calibrating the model with real-world parameters reveals that a typical portfolio company is unlikely to hold sufficient unencumbered assets to satisfy potential damage awards. This finding highlights the need to extend liability to the PE-fund to ensure full compensation for harmed consumers.

Finally, we develop a doctrinal framework to assess the PE fund's liability for rollups and present five distinct legal theories. First, PE funds are often deeply involved in the operations of their portfolio companies. In particular, they may use their ownership in their portfolio companies to

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[11] The Herfindahl-Hirschman Index (HHI) is a widely used measure of market concentration that quantifies the distribution of market shares among firms to assess how competitive or monopolistic a market is.

[12] Under the 2023 Merger Guidelines "Markets with an HHI greater than 1,800 are highly concentrated, and a change of more than 100 points is a significant increase." Every market studied in this paper satisfies the HHI-level threshold.
U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

[13] Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).

[14] 15 U.S.C. §15 & 15c.

finance and direct the rollup strategies—strategies that give rise to anticompetitive effects. However, Section 7 of the Clayton Act prohibits acquisitions where the use of an ownership may substantially lessen competition. Accordingly, Section 7 provides a basis for imposing antitrust liability on the PE fund itself, enabling plaintiffs to seek compensation from the fund's assets.

Second, a rollup can be conceptualized as the PE fund's direct acquisition of the platform, and through that ownership, its indirect acquisition of the add-ons. However, Section 7 prohibits indirect acquisitions where the effect may be substantially to reduce competition. Accordingly, the PE fund's indirect acquisition of the add-ons creates antitrust liability. Moreover, PE funds are unlikely to qualify for the statute's passive investor exemption, as they typically play an active role in managing and formulating investment strategies on behalf of their portfolio companies.

Third, PE funds typically own a substantial portion of their portfolio companies. Under the Supreme Court's *Copperweld* decision and its progeny, a parent and its majority-owned subsidiary are considered a "single economic unit" for the purposes of determining when they might collude. To ensure consistency across antitrust statutes, the logic of *Copperweld* must extend from Section 1 of the Sherman Act to Section 7 of the Clayton Act. Accordingly, the anticompetitive effects of a rollup should be attributed to the unified entity, creating liability for the fund. Extending the *Copperweld* doctrine in this way closes a loophole in antitrust law—without it, a fund could invoke unity under Section 1 to avoid conspiracy liability, while simultaneously being treated as a separate entity under Section 7 to escape acquisition liability.

Fourth, under the widely accepted view that anticompetitive acquisitions constitute unreasonable restraints of trade, acquisitions of add-ons violate Section 1 of the Sherman Act. If the fund holds a majority interest in the platform company, then under our aforementioned extension of the *Copperweld* doctrine, it is effectively a constituent of the acquirer and thus liable for a violation of Section 1. Alternatively, if the fund holds only a minority stake but plays a central role in financing and directing the platform's acquisitions, it can be deemed a participant in an unlawful conspiracy in restraint of trade. In either case, the PE fund would be liable for antitrust damages.

Fifth, PE funds can misuse the corporate form of their portfolio companies through undercapitalization, domination, or disregard of formalities. When such misuse occurs, courts will pierce the veil between the fund and the company, allowing plaintiffs to access the fund's assets to satisfy damage awards.

This Article is organized as follows. Section I provides background on the rise of PE and the discovery of stealth consolidation—two developments that produced rollup litigation. Section II examines rollups in detail, quantifying their growing prevalence, outlining the first rollup-based litigation under U.S. antitrust laws, reviewing existing research on the price and consumer welfare effects of anesthesia rollups, and presenting novel empirical evidence of rollups in other industries. Section III introduces our economic model of damages. Section IV sets out the first four legal theories of PE-fund liability, each based on fund's role in the rollup and principles of antitrust laws. Section IV presents the fifth legal theory of liability, grounded in the fund's investment in the portfolio company and doctrines of business organization law. Section VI concludes.

I. ORIGINS OF LIABILITY

A. *Stealth Consolidation*

Most federal governments require firms that are interested in merging to notify competition authorities in advance. The U.S. is no exception. The Hart-Scott-Rodino (HSR) Antitrust Improvements Act established the Premerger Notification Program, which requires that merging parties notify the FTC and the DOJ prior to closing a transaction. However, the HSR Act provides exemptions. Most commonly, transactions that fall below the size thresholds set forth in the Act are not subject to reporting. At the time of writing, transactions valued at less than $126.4 million are exempt from reporting requirements.[15]

Size-based exemptions effectively create a loophole in antitrust law. The conceptual problem is straightforward. In highly segmented industries, even relatively low-value deals can profoundly affect market structure, firm behavior, and consumer welfare. To fix ideas, one can imagine the competitive consequences of a merger to monopoly by rural healthcare providers that previously competed with each other for patients. Although these deals are subject to the exact same substantive legal standard as high-value transactions, they may nonetheless effectively escape antitrust enforcement simply because they fly below the agencies' radar. Recent research reports the severity of the problem.[16] Namely, in Wollmann (2019,

[15] Fed. Trade Comm'n, New HSR Threshold and Filing Fees for 2025 (Feb. 6, 2025), https://www.ftc.gov/enforcement/competition-matters/2025/02/new-hsr-thresholds-filing-fees-2025.

[16] Furthermore, Barrios and Wollmann highlight the regulatory deterrence of public disclosure requirements and their limitations. *See* John M. Barrios & Thomas G. Wollmann, *A New Era of Midnight Mergers: Antitrust Risk and Investor Disclosures* (Nat'l

2024), we find that premerger notification exemptions reduce enforcement by 90%, and we coin the term "stealth consolidation" to describe anticompetitive transactions that escape scrutiny by avoiding detection.[17]

In Asil et al. (2023), we find that stealth consolidation may be more pronounced in PE-backed acquisitions.[18] We show that when the HSR Act's exemptions are applied to the typical PE investment structure—which employs a network of intermediate special purpose vehicles to minimize taxes, share risks, and allocate fees, PE-backed acquisitions that would otherwise be reportable may qualify for exemptions.[19] Using merger and filing data, we show that PE-backed acquisitions are reported at significantly lower rates than comparable public equity transactions, even after controlling for the transaction size.[20]

The response to the discovery of stealth consolidation was swift. *The Wall Street Journal*, citing Wollmann (2019), noted that "stealth consolidation may be as harmful, if not more so, than the much publicized and criticized practices."[21] In 2020, the FTC issued special orders expressing concern about stealth consolidation and required major technology firms to disclose previously nonreportable acquisitions.[22] Around the same time, several state legislatures established targeted notification programs designed to detect anticompetitive merger activity that falls outside federal reporting requirements. In early 2024, the DOJ and the FTC jointly launched a public inquiry into potentially anticompetitive rollups. In announcing the initiative, FTC Chair Lina Khan emphasized the agency's heightened focus on stealth consolidation, stating that the FTC "will continue to scrutinize and challenge … stealth consolidation schemes

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Bureau of Econ. Rsch., Working Paper No. 29655, 2022). The authors find that regulators' reliance on public data to identify such deals creates incentives for managers of publicly traded firms to withhold merger announcements—particularly when acquiring a competitor. *Id.* at 3.

[17] Thomas G. Wollmann, Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act, 1 AM. ECON. REV.: INSIGHTS 77, 79 (2019); Thomas G. Wollmann, *How to Get Away with Merger: Stealth Consolidation and Its Effects on US Healthcare* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27274, 2024).

[18] Aslihan Asil, John Barrios & Thomas G. Wollmann, *Misaligned Measures of Control: Private Equity's Antitrust Loophole*, VA. L. & BUS. REV. (2023).

[19] *Id.*

[20] *Id.* at 80.

[21] Greg Ip, *How "Stealth" Consolidation is Undermining Competition*, WALL ST. J. (June 19, 2019), https://www.wsj.com/articles/how-stealth-consolidation-is-undermining-competition-11560954936.

[22] Press Release, Fed. Trade Comm'n, Statement from Commissioner Christine S. Wilson, Joined by Commissioner Rohit Chopra (Feb. 10, 2020), https://www.ftc.gov/system/files/documents/public_statements/1566385/statement_by_commissioners_wilson_and_chopra_re_hsr_6b.pdf.

that unlawfully undermine fair competition and harm the American public."[23]

One likely implication of the recent focus on stealth consolidation is that, for the first time in fifty years, courts may see a surge in litigation of consummated deals. Courts will be required to consider not only structural remedies sought by government enforcers but also treble damages pursued by private plaintiffs. As a result, the issue of remedies in consummated deals—historically overlooked due to the relative rarity of post-acquisition litigation—is likely to receive greater attention.

B. *Private Equity*

Private equity is an investment model in which firms use pooled capital to acquire and control privately held companies or to take public companies private. PE firms raise capital for their funds from institutional investors—such as pension funds, endowments, and sovereign wealth funds—as well as from high-net-worth individuals, who serve as limited partners. The PE firm acts as the general partner, managing the pooled capital and overseeing the investments of their funds.

PE gained widespread prominence in the 1980s, entering popular culture through high-profile deals like the buyout of RJR Nabisco.[24] Since that time, two key developments heightened the significance of PE-backed acquisitions for antitrust regulators and scholars. First, PE became a major source of capital. As we report in Asil et al. (2023), PE has grown more than ten-fold in the past two decades.[25] PE deal value, standing at approximately $100 billion in 2001, reached $1.25 trillion in 2021.[26] During the same period, the share of all U.S. deals that are backed by PE has grown from 10% to around 60%.[27]

Second, private equity firms have dramatically transformed their investment strategies. Initially, they focused on financial engineering, engaging in leveraged buyouts (LBOs) of targets across a wide range of sectors. The core thesis of an LBO was to optimize the firm's capital

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[23] Reed Abelson & Margot Sanger-Katz, *F.T.C. Sues Anesthesia Group Backed by Private-Equity Firm*, N.Y. TIMES (Sept. 21, 2023), https://www.nytimes.com/2023/09/21/health/ftc-antitrust-healthcare.html.

[24] John Steele Gordon, *A Short (Sometimes Profitable) History of Private Equity*, WALL ST. J. (Jan 17, 2012), https://www.wsj.com/articles/SB10001424052970204468004577166850222785654.

[25] Aslihan Asil, John Barrios & Thomas G. Wollmann, *Misaligned Measures of Control: Private Equity's Antitrust Loophole*, 18 VA. BUS. & L. REV. 51, 57 (2023).

[26] *Id*.

[27] *Id*.

structure through leverage, with minimal operational involvement beyond the discipline imposed by debt. During the 1980s, an alternative strategy began to emerge. We describe it in detail in the next section.

II. ROLLUPS: RECENT DEVELOPMENTS AND NEW FINDINGS

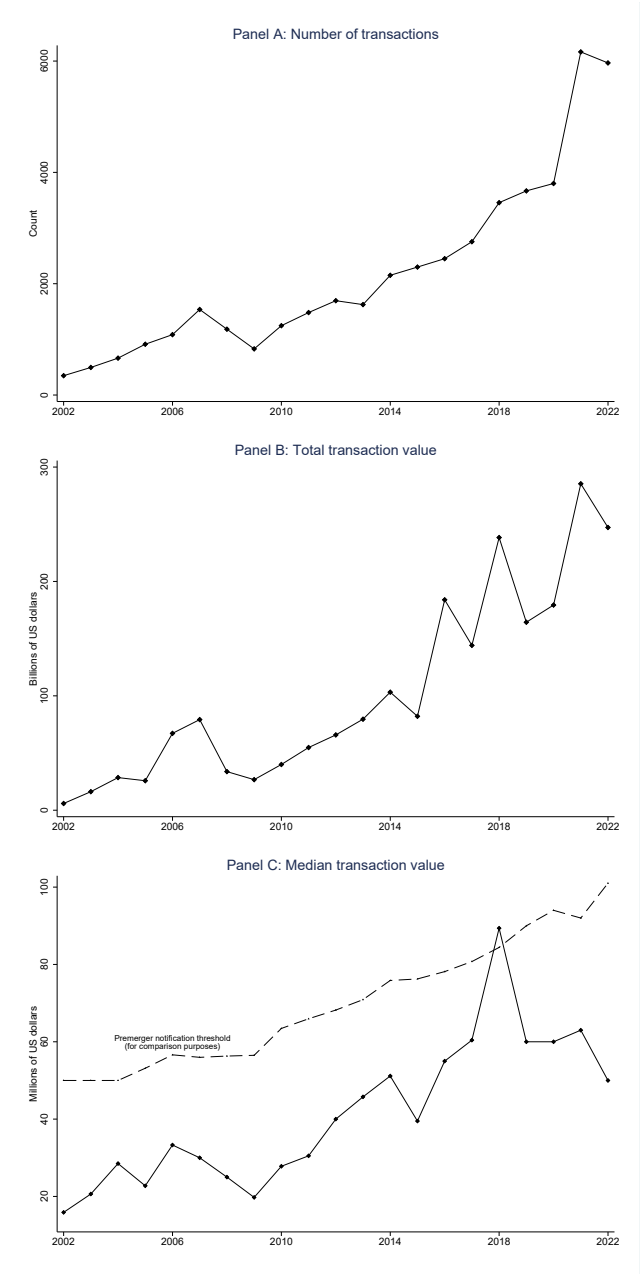
A. *Definition and Recent Trends*

The rollup, or buy-and-build, strategy was pioneered by Carl Thoma and his partners in the 1980s. It is easy to characterize. It refers to the consolidation of a market through a series of acquisitions devised and backed by an investment fund, typically a PE fund. The strategy is easy to characterize. A PE-backed fund makes an initial acquisition, known as the "platform," and subsequently acquires one or more competitors, referred to as "add-ons." Add-on acquisitions are typically small enough to fall below premerger notification thresholds, allowing them to avoid antitrust scrutiny at their inception. Thus, rollups represent the intersection of PE and stealth consolidation.

Over the past two decades, add-on acquisitions have surged to historically high levels, both in terms of transaction value and deal count. As shown in Panel A of Figure 1, there were fewer than 500 add-ons in 2002, a number that rose to approximately 5,000 by 2022. Panel B reveals a similarly dramatic increase in total transaction value, rising from around $6 billion in 2002 to $250 billion in 2022.

Add-ons have also grown in size, although the vast majority still fall below the premerger notification threshold. Panel C underscores the gravity of stealth consolidation in add-on acquisitions. In nearly every year between 2002 and 2022, the median transaction value of add-ons remained below the reporting threshold, making it highly unlikely that the agencies would be alerted to these deals in their incipiency. This persistent pattern raises the question of whether courts will soon encounter a wave of litigation over PE-backed consummated acquisitions. As the next subsection explains, such litigation has already begun.

Figure 1. Number and value of add-on acquisitions over time



Note: This figure reports how PE-backed add-on acquisitions grew between 2002 and 2022. Panels A and B plot the number and value of these transactions, respectively, which have reached $300 billion annually. In Panel C, the solid line tracks their median value, while the dashed line tracks the threshold below which transactions are exempt from premerger notification. The vast majority of add-ons are not reported to US antitrust authorities in their incipiency.

B. *FTC v. USAP*

In October 2023, the FTC filed the first rollup-based antitrust lawsuit in the U.S. history.[28] The agency challenged the acquisitions made by the platform company U.S. Anesthesia Partners and backed by the PE firm Welsh, Carson, Anderson & Stowe in the anesthesia markets of Houston, Dallas, and Austin, Texas.[29] The complaint alleged that the defendants executed a rollups buying up nearly every large anesthesia practice in Texas to create a single dominant provider.

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[28] The FTC's lawsuit against U.S. Anesthesia Partners and its private equity sponsor Welsh, Carson, Anderson & Stowe marks a groundbreaking development in federal antitrust enforcement, as it is the first to directly challenge a consummated rollup under the Clayton Act. Past landmark cases—such as *American Tobacco*, *Standard Oil*, and *Grinnell*—were brought under the Sherman Act and focused on monopolization and restraints of trade rather than mergers. In contrast, *USAP* is brought under the Clayton Act and challenges a series of consummated acquisitions. United States v. American Tobacco, 221 U.S. 106 (1911); Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911); United States v. Grinnell, 384 U.S. 563 (1966). Although the FTC challenged the series of completed acquisitions of competing dairy companies under Section 7 in *Beatrice*, the acquirer in this case was itself a dairy company not backed by a financial sponsor. In the Matter of Beatrice Foods Co., 67 F.T.C. 473 (1965), https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-86/ftc_volume_decision_86_july_-_december_1975pages_1-102.pdf.
While prior enforcement actions—such as those involving Dean Foods, Dairy Farmers of America, and JAB Consumer Partners—imposed pre-acquisition notification requirements to prevent future serial acquisitions, none directly challenged to a completed rollup. *See* Press Release, Department of Justice, *Justice Department Reaches Settlement with Dean Foods Company* (Mar. 29, 2011), https://www.justice.gov/opa/pr/justice-department-reaches-settlement-dean-foods-company; Press Release, Department of Justice, *Justice Department Requires Divestitures as Dean Foods Sells Fluid Milk Processing Plants to DFA out of Bankruptcy* (May 1, 2020), https://www.justice.gov/opa/pr/justice-department-requires-divestitures-dean-foods-sells-fluid-milk-processing-plants-dfa; *See* Press Release, Fed. Trade Comm'n, *FTC Acts to Protect Pet Owners from Private Equity Firm's Anticompetitive Acquisition of Veterinary Services Clinics* (June 13, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-acts-protect-pet-owners-private-equity-firms-anticompetitive-acquisition-veterinary-services;
Press Release, Fed. Trade Comm'n, *FTC Takes Second Action Against JAB Consumer Partners to Protect Owners from Private Equity Firm's Rollup of Veterinary Services Clinics*, (June 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.

[29] Press Release, Fed. Trade Comm'n, *FTC Takes Second Action Against JAB Consumer Partners to Protect Owners from Private Equity Firm's Rollup of Veterinary Services Clinics*, (June 29, 2022), https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across.

According to the complaint, Welsh Carson established USAP in 2012 "for the purpose of rolling up anesthesia practices in Texas" through "an aggressive strategy to consolidate practices with high market share in a few key markets."[30] "At USAP's founding in 2012, Welsh Carson owned 50.2% of the company."[31] Although it sold about half of its stake in late 2017 to another PE fund, the complaint states that Welsh Carson "in its own words—maintained control over USAP 'in all practical respects' because it held the voting rights of almost all of the company's other shareholders."[32]

The complaint further asserts that USAP's rollup substantially consolidated ownership in large metropolitan areas, with significant consequences for patients. Following these acquisitions, USAP controlled around half of the market for hospital-only anesthesia in Houston, Dallas, and Austin.[33]

The FTC invoked multiple antitrust statutes to challenge these rollups. The agency alleged that the acquisitions substantially lessened competition or tended to create a monopoly in violation of Section 7 of the Clayton Act.[34] The complaint further asserted that USAP, controlled and directed by Welsh Carson, acquired and maintained monopoly power, and that USAP and Welsh Carson conspired to monopolize the market, in violation of Section 2 of the Sherman Act.[35] Finally, the agency alleged that the rollups constituted an unfair method of competition in violation of Section 5(a) of the FTC Act.[36] The FTC brought the case in federal district court under its Section 13(b) authority, which permits the agency to seek injunctive relief directly in federal court when the Commission "has reason to believe" that an entity "is violating or is about to violate" the antitrust laws.[37]

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[30] Complaint at 15, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).
[31] *Id.*
[32] *Id.* at 16.
[33] *Id.* at 37, 44 & 82.
[34] *Id.* at 96, 99 & 101. *See also* 15 U.S.C. §18.
[35] Complaint at 95, 97-98 & 100, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).
[36] Complaint at 99 & 101-102, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024). See also 15 U.S.C. §45(a). The agency further challenged USAP's fixed price billing and market division agreements under Section 1 of the Sherman Act. See Complaint at 103-104, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).
[37] 15 U.S.C. §53(b).

The agency's case against USAP remains pending.[38] However, the district court dismissed FTC's complaint against the PE firm, reasoning that Section 13(b) does not authorize an action against Welsh Carson directly brought in federal court "based on long-past conduct without some evidence that the defendant 'is' committing or 'is about' to commit another violation."[39] The court held that holding a minority stake in a company that reduces competition does not constitute actionable conduct.[40]

In early 2025, the FTC was rumored to bring a new lawsuit against Welsh Carson. Before that could happen, the agency reached a settlement agreement the PE firm. Under the content decree, Welsh Carson must curtail its involvement with USAP and provide advance notice to the FTC of certain future investments in anesthesia and other physician practices.[41]

Court documents redact information about market outcomes (e.g. price, quality, and quantity) and restrict attention to USAP and Texas. To provide a more comprehensive understanding of the scope and effects of rollups in anesthesia, we assembled nationwide data on market structure, price, quantity, and quality for research described in the following subsection.

C. *Existing Research*

In Asil et al. (2024), we study the competitive effects of anesthesia rollups nationwide between 2012 and 2021.[42] First, we provide empirical support for the consolidation in the three Texas markets included in the FTC complaint and identify fifteen additional geographic markets in the anesthesia sector where rollups led to substantial concentration.[43] These markets include major metropolitan areas such as Phoenix, Las Vegas, and Denver, as well as smaller ones like Trenton-Ewing and Syracuse.[44] We show that the rollups are the primary force shaping market structure in these areas, driving sharp increases in concentration across all markets. HHI

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[38] *Id*.
[39] Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).
[40] *Id*. at 11.
[41] Press Release, Fed. Trade Comm'n, FTC Secures Settlement with Private Equity Firm in Antitrust Roll-Up Scheme Case (Jan. 17, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-secures-settlement-private-equity-firm-antitrust-roll-scheme-case.
[42] Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).
[43] *Id*.
[44] *Id*. at 11.

levels rise by more than 1,000 points in several cases and exceed 2,500 points in some.[45]

Second, we find that the anesthesia service prices in these markets rise dramatically following the rollups. Specifically, while prices are stable in the quarters leading up to the add-on acquisitions, they increase sharply by approximately 25-35% thereafter.[46] In contrast, prices do not rise following the initial platform acquisitions, indicating that the observed price effects are attributable to market consolidation.[47] Moreover, we find no evidence of changes in the quality of anesthesia services after these transactions.[48]

Third, informed by our findings, we develop a structural model of payor-provider bargaining and use the estimated parameters to evaluate potential remedies typically employed in antitrust litigation.[49] Our analysis shows that unwinding these acquisitions through divestitures and the deterrent effect of such litigation on future rollups would generate significant savings.[50]

These findings naturally raise the question of whether rollups are similarly impacting other markets. To provide a precise answer to this question, we extend our analysis in this paper to observationally similar rollups across other specialties within the U.S. healthcare sector—the largest sector of the U.S. economy.[51]

D. *New Evidence*

We present novel empirical evidence showing that the problem identified by Asil et al. (2024) and litigated in *FTC v. USAP* is not confined to anesthesia sector—it is more widespread than previously recognized. We

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[45] The Herfindahl-Hirschman Index (HHI) is a widely used measure of market concentration that quantifies the distribution of market shares among firms to assess how competitive or monopolistic a market is. Under the 2023 Merger Guidelines, a merger in a highly concentrated market that results in an increase of 100 points increase is presumptively illegal. U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

[46] Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups*, 15-17 (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).

[47] *Id*.

[48] *Id*. at 16 & Appendix Figure C.2.

[49] *Id*. at 19-32.

[50] *Id*. at 27-29.

[51] *See* BIGGEST INDUSTRIES BY REVENUE IN THE US IN 2025, IBISWORLD (2025), https://www.ibisworld.com/united-states/industry-trends/biggest-industries-by-revenue/?utm_source=chatgpt.com.

identify markets across multiple specialties where rollups have substantially consolidated ownership, focusing on those specialties in which at least three distinct geographic markets experienced rollups.

To do so, we use a dataset of U.S. clinicians and their organizational affiliations to identify rollups. This dataset allows us to document the platforms, the add-on acquisitions, relevant geographic and product markets, the timing of each rollup by year and month, and other practices operating in the same market.[52] We then link these acquisitions to specific PE firms and funds using data on financial sponsors and firm disclosures.[53] Our analysis focuses on specialties in which rollups occurred across at least three clearly identifiable geographic markets.

To evaluate how rollups affected market structure, we compare two time series within each market. The first series, represented by the blue solid line in Figure 2, reflects the actual evolution of market concentration. The second series, shown by the red dashed line, estimates how concentration would have changed solely due to the add-on acquisitions. To construct the first series, we calculate HHI for each year-market and show the change relative to the initial year shown in each figure. For the second series, we rely on the principle that, all else equal, a merger mechanically increases HHI by twice the product of the preacquisition market shares of the target and the acquirer. We apply this formula to each add-on acquisition and compute the cumulative impact over time for each market.

Two striking patterns emerge in graphs presented in Figure 2. First, each of these markets exhibits exceptional consolidation. For example, we

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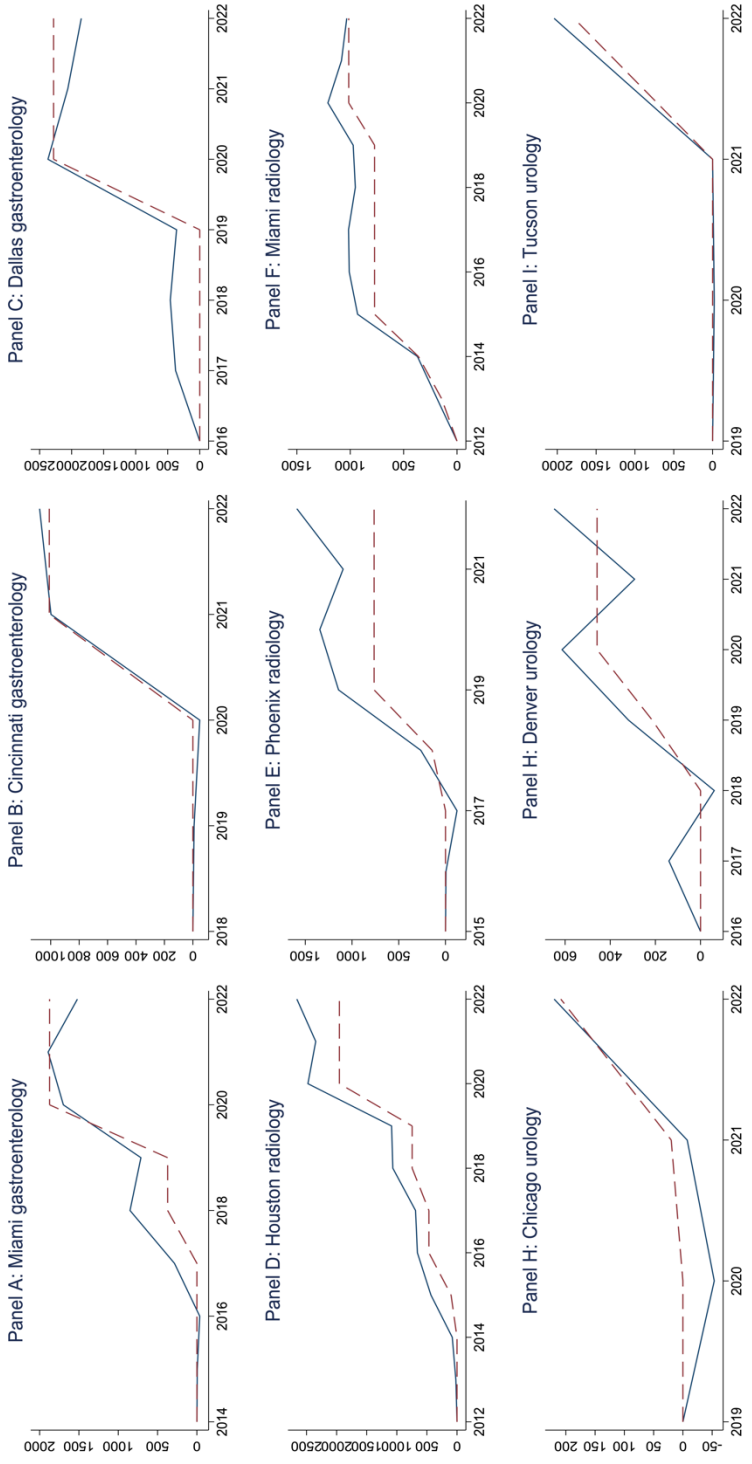
[52] To investigate this broader pattern, we obtain a dataset of U.S. clinicians and their organizational affiliations from the Doctors and Clinicians National File ("Physician Compare"), published by Centers for Medicare & Medicaid Services (CMS). This dataset includes each clinician's unique identifier (i.e., their National Provider Identifier, or "NPI"), associated group practice, and affiliated facilities. We use annual snapshot of the file from 2012 through 2022. Practices may change their names and identifiers. For instance, "Anesthesia Consultants LLC" changed its name to "Anesthesia Consulting Group LLC" in 2015. As evidence that they are one and the same, all 20 clinicians associated with "Anesthesia Consultants LLC" in 2014 were associated with "Anesthesia Consulting Group LLC" in 2015. To account for this, we construct constant identifiers by assuming that if at least 80% of a practice's clinicians appear under a different practice in the following year, then we carry forward the preceding practice's identifier. Critically, doing so does not obscure acquisitions, since we track firms and practices separately. For example, when we observe Greater Houston Anesthesiology acquirer North Houston, we carry North Houston's constant identifier forward but change the firm identifier.

[53] To track ownership changes, we rely on four primary data sources. Platform acquisitions are identified though *Pitchbook*, while add-on acquisitions are recorded using *Pitchbook*, *Becker's Hospital Review, Refinitiv*, and press releases issued by the PE firms and their platform companies.

Figure 2. PE-backed add-on acquisitions consolidate healthcare markets



Note: Each of the nine panels in this figure corresponds to a different US healthcare market. Panels A-C correspond to gastroenterology markets, while Panels D-F and H-I correspond to radiology and urology markets, respectively. Along each solid blue line, we plot how HHI evolved over time relative to a base period. Along each dashed red line, we plot how HHI would have evolved due solely to PE-backed add-on acquisitions, i.e. in the absence of all other changes in the market. To summarize the data patterns, the rising, solid blue lines indicate increasing market concentration, while the close correspondence between the solid blue and dashed red lines indicates that PE-backed add-on acquisitions were the primary determinant of these market structure changes.

observe increases in HHI on the order of 2,000 points. For context, the *Merger Guidelines* consider acquisitions that produce a 100-point increase in HHI to be presumptively anticompetitive.[54] The changes observed here are twenty times that threshold.

Second, there is a close correspondence between the actual HHI changes and those predicted based solely on the rollups. This indicates that, in all markets studied, the rollups are unambiguously the primary drivers of increased concentration. Yet, as of this writing, none of these markets has been the subject of federal antitrust enforcement.

IV. Economic Model for Damages

In this section, we present a concise economic model that captures the key features of a rollup. The model produces intuitive expressions for total antitrust damages and for the assets unencumbered by the platform's debt that are available to satisfy those damages. By extension, we derive conditions under which the platform becomes insolvent. We then calibrate the model using real-world parameters. It predicts that many platform companies are unlikely to possess sufficient unencumbered assets to cover damages. This finding underscores the importance of reaching the fund's assets to fully compensate antitrust plaintiffs.

A. *Model Description*

Consider the acquisition of a platform and a single add-on. To ease exposition, we assume all firms are symmetric, i.e. they have identical costs and face identical demand from consumers.[55] Prior to a rollup, each firm sets a price to maximize its individual profit. Profit, denoted by π, is the product of per unit markup and quantity sold. This relationship is expressed as $\pi = (p - c)q$, where p, c, and q to represent price, marginal cost, and quantity sold, respectively. Each firm's prerollup profit margin, denoted by μ, is the per unit markup divided by price. This relationship is expressed as $\mu = (p - c)/p$. We can rewrite price and profit in terms of premerger

[54] Under the 2023 Merger Guidelines "Markets with an HHI greater than 1,800 are highly concentrated, and a change of more than 100 points is a significant increase." Every market studied in this paper satisfies the HHI-level threshold.
U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

[55] Entry, exit, participation, and positioning complicate the model without providing important additional insights, so we assume that market structure is fixed and that sunk costs, fixed costs, and scrap values are zero.

profit margins. We arrive at $p = c/(1-\mu)$ and $\pi = cq\mu/(1-\mu)$, respectively. We express the value of the firm, denoted by V, as the product of its profit and a multiplier, denoted by η. This relationship is expressed as $V = \pi\eta$.[56]

In the rollup, the platform acquires the add-on. Prices will rise following the rollup, harming consumers. To see why, consider a price increase by the add-on, which causes some of its consumers to substitute towards other firms in the market, including the platform. Prior to the rollup, the platform and add-ons are separately owned, so the profit earned on those consumers is lost. After the rollup, however, that profit is recaptured, as the platform and add-on are now jointly owned. In other words, all else equal, the incentive to increase the price charged by the add-on rises following the rollup. (Moreover, the same is true for a price increase contemplated by the platform.)

We denote the percentage increase in prices by λ. Postrollup prices equal to prerollup prices multiplied by the change in prices following the acquisition. Accordingly, postrollup prices equal $c(1+\lambda)/(1-\mu)$. Based on the existing research described above, we abstract away from merger-related synergies—such as efficiency gains that reduce marginal costs— as well as from healthcare-specific institutional details.[57] For simplicity, we also assume, at least for the time being, that the quantity sold does not change.

Given these assumptions, the rollup increases profit—perhaps very sharply. Specifically, the ratio of the postrollup to prerollup profits is given by $(\mu+\lambda)/\mu$.[58] Just as sharply, the rollup reduces consumer welfare. For each year the firms operate as a merged entity, consumers pay higher prices on all of their purchases. The per year reduction in consumer welfare equals $qc\lambda/(1-\mu)$.[59]

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[56] The value of a firm equals the present value of the sum of its expected future free (i.e. unencumbered) cash flow. This multiplicative form is an exact representation of firm value when the discount rate is constant, free cash flow equals profit, and when the current profit recurs forever. It is also a very commonly employed approximation to firm value. In public markets, η is akin to the price-earnings ratio, while for private equity, it is akin to the EV-EBITDA ratio.

[57] Asil et al (2024) document 30% or more price increases. Given this price increase, it is safe to assume that synergies are extremely limited.
See Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).

[58] Prerollup profit equals $\pi = cq\mu/(1-\mu)$, while postrollup profit equals $\pi^{post} = cq(\mu+\lambda)/(1-\mu)$. Therefore, the ratio equals $(\mu+\lambda)/\mu$.

[59] The change in price after the rollup is given by
$\Delta p = c(1+\lambda)/(1-\mu) - c/(1-\mu) = c\lambda/(1-\mu)$.

Recall that the value of the merged entity is a multiple of its profit. Since it earns $qc(1+\lambda)/(1-\mu)$ in profits after the rollup, the postrollup value of the merged entity equals $2\eta cq(\mu+\lambda)/(1-\mu)$. To finance the transaction, the sponsor arranges for the merged entity to take on debt. It employs a leverage ratio of l. Hence, the merged entity's total debt equals $2l\eta cq(\mu+\lambda)/(1-\mu)$.

B. *Litigation, Remedies, and Insolvency*

Following our earlier discussion, most add-ons effectively escape antitrust scrutiny in their incipiency. As a result, such transactions are often identified by antitrust authorities and private plaintiffs only after a delay, with litigation most likely arising years after the deals have closed. In such cases, authorities initially seek a structural remedy, and the court orders unwinding—requiring the platform to divest the add-ons. The firms divested then resume independent operations. Since firms would no longer be able to internalize business stealing externalities, prices and profit return to their prerollup levels. Private plaintiffs then seek damages, and the court awards them a multiple, θ, of the harm incurred over the preceding T years.

The problem now becomes apparent. Following the structural remedy, each firm's value equals $\eta cq\mu/(1-\mu)$, but its pro-rata portion of the debt outstanding equals $l\eta cq(\mu+\lambda)/(1-\mu)$. Hence, the value left over to pay damages equals $[\mu - l(\mu+\lambda)](\eta cq)/(1-\mu)$.[60] Meanwhile, damages are awarded in the sum $T\theta\lambda cq/(1-\mu)$. Thus, insolvency occurs if and only if damages exceed unencumbered assets. Simply put, solvency happens when

$$T\theta\lambda > \eta[\mu - l(\mu+\lambda)].$$

In words, this equation is equivalent to the following condition:

Statute of Limitations x *Damages Multiple* x *Price Increase*
>
Value to Profit Ratio x
[Prerollup Margin – Leverage x *(Prerollup Margin + Price Increase)]*

Under the simplifying assumption that the quantity sold remains unchanged after the rollup, consumer harm is calculated by multiplying quantity sold by the change in price, yielding $qc\lambda/(1-\mu)$.

[60] The value left over to pay damages is found by subtracting pro-rata portion of the debt outstanding from each firm's value.

This equation provides a concise characterization that aligns with our intuition. To understand how each factor affects insolvency, we examine them sequentially while holding all other factors constant. First, insolvency increases with a longer statute of limitations, as damages accrue over a longer period. Second, it increases with a higher damages multiple. Third, insolvency increases with larger postrollup price increases: higher postrollup prices raise damages and inflate firm value, which—under a fixed leverage ratio—leads to greater borrowing. After divestiture, the firm's value returns to prerollup levels, but the elevated debt remains, reducing unencumbered assets available to pay damages. Fourth, insolvency decreases with a higher prerollup profit margin, as it raises both prerollup and post-divestiture value, improving the firm's ability to pay damages. Fifth, insolvency increases with the leverage ratio, as more borrowing erodes unencumbered assets. Sixth, insolvency decreases with the value-to-profit ratio, since a higher initial value—holding profits constant—leaves a larger asset base to cover damages after divestiture.

C. *Model Calibration*

We calibrate the model to parameter values informed by existing research and under U.S. antitrust law. Under Section 4b of the Clayton Act, and setting aside extenuating circumstances, the statute of limitations for a private antitrust damages action is four years from the date the cause of action accrues.[61] Accordingly, we set T equal 4. Under Section 4 of the Clayton Act, private plaintiffs injured by antitrust violations may sue for treble damages, i.e., three times the amount of actual damages sustained.[62] Hence, we set θ equal to 3. The next two parameter values are drawn from Asil et al. (2024), who find that firms have an average prerollup profit

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[61] Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

15 U.S.C. §15b. However, the statute of limitations is tolled when a government agency brings a related antitrust enforcement action, both during the pendency of that action and for one year thereafter. 15 U.S.C. §16(i). Moreover, the plaintiff's fraudulent concealment or continuing violations can also toll the statute of limitations. *See* Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946); Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321,338 (1971).

[62] 15 U.S.C. §15(a) ("any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue [...] and shall recover threefold the damages by him sustained [...]").

margins of 40%.[63] Thus, we set μ equal to 0.40. Likewise, the postrollup price increase, λ, is approximately 30%.[64] Based on Pitchbook's *2023 U.S. Middle Market Private Equity Report*, we use a leverage ratio of 44% and a value-to-profit ratio of 11.[65]

We normalize marginal cost to $1 per unit and, for the purposes of this illustration, assume each firm sells 100,000 units prior to the rollup.[66] At these parameter values, the value of damages amounts to $3.6 million, but unencumbered assets are only $1 million. The firm's insolvency is therefore severe, as it falls far short of covering the damages.[67] This calibration exercise highlights the gravity of the problem: many portfolio companies may not have sufficient unencumbered assets to satisfy the judgment. In other words, whether plaintiffs are mode whole depends on whether PE funds are held liable for these damages.

V. PARTICIPATORY LIABILITY

A PE fund may be held liable for its role in an anticompetitive rollup—a concept we refer to here as "participatory liability." This form of liability can arise under four distinct statutory avenues, which we examine in detail below.

A. *Use of Ownership*

In a rollup, the fund conceptually uses its ownership in the platform to reduce competition in the platform's market. However, Section 7 states that

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[63] Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).

[64] *Id.*

[65] Pitchbook, U.S. MIDDLE MARKET PRIVATE EQUITY REPORT (2023) ("The average debt/value ratio for new jumbo loans backing LBOs and financed in the broadly syndicated market plunged to 44.1% in 2023, down from 50.8% in 2022.").

[66] Readers can freely change the scale to fit the specific market under consideration.

[67] In our model, we assumed symmetry between firms. In reality, however, platform companies are typically larger than add-on targets. Suppose the platform is large and the add-ons are small. Further assume that the price change after the rollup for the platform is modest, while the add-ons experience substantial price increases. This reflects the intuition that, in asymmetric mergers, the smaller entity is more affected. Because add-ons face significant price increases but are smaller in size—and therefore sell lower quantities of goods or services—the resulting damages will be smaller than in a symmetric setting. Thus, asymmetry between the platform and add-on targets may reduce the magnitude of damages, which could partially, though likely not fully, mitigate the insolvency problem.

> No person shall acquire, directly or indirectly, the whole *or any part of the stock* [...] where [...] the effect of such acquisition [...] or *of the use of such stock* by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.[68]

Accordingly, the statute prohibits an entity from "using its ownership" stake in another to restrict competition. As a result, Section 7 of the Clayton Act imposes antitrust liability on a fund that initiates and finances a rollup.

This interpretation of the "use of ownership" language in Section 7 is further reinforced by the Supreme Court's broad reading of the statute in *Du Pont*.[69] In that case, the Department of Justice accused Du Pont, a supplier of automotive finishes and fabrics, of acquiring and employing its 23% ownership in General Motors (GM), a major automobile manufacturer, to exclude other GM suppliers. The defendants argued that the "Government could not maintain this action [...] because §7 is applicable only to the acquisition of stock and not to the holding or subsequent use of the stock."[70] The Supreme Court rejected this argument, stating that "this argument misconceives the objective toward which §7 is directed."[71] It held that DuPont violated Section 7 by using its ownership stake in GM to insulate a large portion of GM's market from free competition, creating a significant likelihood of monopolization.

The Court's reasoning established four key determinations regarding the scope of Section 7. First, the *DuPont* Court held that partial acquisitions fall within the scope of Section 7. Specifically, the Supreme Court decided that Du Pont's use of its 23% ownership stake in GM to restrain trade in GM's input market violated Section 7. The Court reaffirmed this principle in *Rio Grande*.[72] There, the Interstate Commerce Commission had deferred consideration of the Clayton Act implications of an agreement between a railway express agency and an express bus company for the purchase of 40% of the railway's outstanding stock. In relevant part, the Court held that "[a] company need not acquire control of another to violate [Section 7 of the] Clayton Act."[73]

A fund's ownership of a portfolio company may be partial, as other investors may also hold stakes. For example, in *USAP*, "Welsh Carson initially owned 50.2% of USAP, and saw itself as USAP's 'control

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[68] 15 U.S.C. §18 (emphasis added).
[69] U.S. v. E. I. Du Pont de Nemours & Co., 353 U.S. 586 (1957).
[70] *Id.* at 598.
[71] *Id.* at 597.
[72] Denver & R. G. W. R. Co. v. United States, 387 U.S. 485 (1967).
[73] *Id.* at 501.

investors.'"[74] "In 2017, Welsh Carson sold about half its stake in USAP … This left Fund XII, a Welsh Carson entity, with 23% ownership of USAP."[75] Partial ownership, however, does not preclude Section 7 liability. Under *DuPont*, partial owners are still be liable if they use their stake to substantially lessen competition. Hence, a fund would face liability even with a minority stake in a portfolio company when it uses that stake to facilitate anticompetitive acquisitions.

Second, the *DuPont* Court held that an acquirer incurs Section 7 liability for the anticompetitive use of ownership, even if that use occurs after the acquisition. The Court explained, "[The] aim [of §7] was primarily to arrest apprehended consequences of inter corporate relationships before those relationships could work their evil, which may be at or *any time after* the acquisition, depending upon the circumstances of the particular case."[76] In their treatise, Areeda and Hovenkamp further explain that the "continued holding of stock violates §7 if a current acquisition would do so. This conclusion is clearest when the anticompetitive threat results from subsequent active use of the acquired stock."[77]

A fund's ownership and influence over a platform harms competition when, under the fund's direction, the platform makes add-on acquisitions. This harm arises because the acquisition internalizes business stealing externalities—meaning the platform considers the negative impact of its actions on the add-ons, and vice versa, when making business decisions. As a result, competition between the platform and its add-ons diminishes.

To illustrate, consider the FTC's lawsuit against Welsh Carson. According to the government's complaint, a Welsh Carson partner described USAP's founding purpose as "to build a platform with national scale by consolidating practices with high market share in a few key markets."[78] In other words, Welsh Carson planned to use and used its ownership in USAP to consolidate the anesthesia market. This consolidation harmed consumer through higher prices. "As one insurance executive summarized, USAP and Welsh Carson used acquisitions to 'take the highest rate of all … and then peanut butter spread that across the entire state of

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[74] Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024, at *2 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

[75] *Id.* at 3.

[76] United States v. E. I. du Pont de Nemours & Co., 353 U.S. 586, 597 (1957).

[77] PHILLIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION §1204 (3d ed. 2012).

[78] Complaint at 27, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

Texas."[79] "USAP [became] one of the most expensive [anesthesia group], with reimbursement rates that are double the median rate of other anesthesia providers in Texas. The [...] effect [...] cost Texans tens of millions of dollars more each year than they did before USAP was created."[80] Summarizing this price effect, a USAP executive exclaimed "Cha-ching!" after an acquisition.[81]

Third, the *DuPont* Court held that the absence of competition between the acquirer and the target did not preclude a Section 7 violation. The Supreme Court clarified the statute's scope, stating:

> [Section] 7 [...] plainly is framed to reach not only the corporate acquisition of stock of a competing corporation, [...], but also the corporate acquisition of stock *of any corporation, competitor or not*, where the effect may be either (1) to restrain commerce in any section or community, or (2) tend to create a monopoly in any line of commerce.[82]

Indeed, this expansion of Section 7's scope was a key change introduced by the Celler-Kefauver Act. Before the amendment, Section 7 applied only to acquisitions between competitors; after the amendment, it prohibited any acquisition that harms competition, regardless of whether the parties compete.[83] Applied to rollups, this reasoning implies that a PE fund's lack

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[79] *Id.* at 3.
[80] *Id.* at 4-5.
[81] *Id.* at 3.
[82] U.S. v. E. I. Du Pont De Nemours & Co., 353 U.S. 566, 590 (1957).
[83] Section 7 of the Clayton Act as passed in 1914 bans acquisitions "that may [...] substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition." 28. Stat. 731 (1914). In their report on Celler-Kefauver Act, the House Committee states, "Because section 7, as passed in 1914, prohibited, among other things, acquisitions which substantially lessened competition between acquiring and the acquired firms, it has been thought by some that this legislation applies only to the so-called horizontal mergers. But in the proposed bill [...] the test of the effect on competition between the acquiring and the acquired firm has been eliminated. [A] reason [for the bill] [...] is to make it clear that the bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal, which have the specified effects of substantially lessening competition or tending to create a monopoly." H. R. Rep. No. 1191, 81st Cong., 1st Sess. (1949). As Gordon Hampton states, "[I]n the first thirty-five years of the administration of the Act, not once did the Government, either through the Federal Trade Commission or the Department of Justice, urge the application of Section 7 in a vertical or a conglomerate context. Indeed, as late as 1955, the FTC specifically declared that the original version of Section 7 applied only to horizontal acquisitions, although it then asserted that the Celler-Kefauver amendment had broadened the Act's application to both verticals and conglomerates." Gordon F. Hampton, *The Merger*

of direct operational presence in the platform's or the add-ons' market does not shield it from Section 7 liability.

Fourth, the *DuPont* Court narrowly interpreted the "investment-only" exemption in Section 7. Section 7 of the Clayton Act exempts acquisitions made solely for investment purposes.[84] To qualify for this exemption, the acquirer must refrain from "using the [stock] by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."[85] Thus, the statute's "investment-only" exemption protects passive investors from antitrust liability, as they do not contribute to the conduct with anticompetitive effects.

However, as the *DuPont* Court held, this exemption does not extend to investors who use their ownership to harm to competition. Even if an acquirer initially purchases an ownership stake solely as an investment, any subsequent use of that stake that produces an anticompetitive effect brings the original acquisition within the statute's purview. On this point, the *DuPont* Court stated, "Even when the purchase is solely for investment, the plain language of §7 contemplates an action at any time the stock is used to bring about, or in attempting to bring about, the substantial lessening of competition."[86] In other words, any use of the stock beyond passive investment at any time falls within the statute's scope and can result in liability. Examples of active investor involvement include seeking board representation, influencing purchasing decisions or management, acquiring—or attempting to acquire—control of the target company, and fostering a close post-acquisition relationship between the acquirer and the target.[87] Courts have recognized these actions as indicative of active participation.

Movement in Historic Perspective: A Lawyer's View, 25 Bus. L. 653, 655 (1970) (citing *F.T.C. Report on Corporate Mergers and Acquisitions*, H.R. Doc. No. 169, 84th Cong., 1st Sess. 168 (1955)).

[84] "This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition." *Id*. *See also* United States v. Tracinda Inv. Corp., 477 F. Supp. 1093, 1102 (C.D. Cal. 1979) (allowing partial acquisition because it was "squarely within the investment exemption and thus no violation of Section 7 of the Clayton Act can be shown"); Anaconda Co. v. Crane Co., 411 F. Supp. 1210, 1216, 1218–19 (S.D.N.Y. 1975) (granting the passive investor exemption to the acquisition, as the acquirer agreed abstain from voting its shares for anticompetitive purposes).

[85] U.S. v. E. I. DuPont de Nemours & Co., 353 U.S. 586, 590 (1957).

[86] *Id*. at 597-598.

[87] *See* Swift & Co. v. FTC, 8 F.2d 595, 599 (7th Cir. 1925), rev'd on other grounds, 272 U.S. 554 (1926) (it would be "difficult to conceive of any case where one corporation purchased all of the stock of its competitor solely for investment"). Crane Co. v. Harsco Corp., 509 F. Supp. 115, 123 (D. Del. 1981) ("The issue controlling the applicability of the investment exemption, then, is the likelihood that the acquisition would allow the

The fund is rarely a passive investor in a rollup. Instead, it actively participates in the platform's operational decisions to maximize returns. For example, according to the FTC complaint, "Welsh Carson created USAP to execute [a] consolidation strategy."[88] Furthermore, a "Welsh Carson partner [...] acted as USAP's chief negotiator [in a] market allocation agreement" with a competitor.[89] In USAP's early stages, a Welsh Carson partner stated that the firm would "commit $1-$2 million to set-up shop, develop a market roadmap, and diligence acquisition candidates."[90] Welsh Carson subsequently hired a consulting firm "to develop a methodology for identifying attractive regions for acquisitions and practice groups in each region."[91] It was Welsh Carson, along with USAP's precursor New Day, that "submitted a formal Letter of Intent to acquire [the largest anesthesia physician practice group in greater Houston]."[92] After the first acquisition in Houston, USAP's CEO and a Welsh Carson director on USAP's board met with a Welsh Carson team "to develop an acquisition strategy and discuss potential targets."[93]

More broadly, between 2012 and 2017, "Welsh Carson had the right to appoint the majority of USAP's board of directors, including its chair."[94] Even when Welsh Carson's ownership stake in USAP fell below 50%, "Welsh Carson—in its own words—maintained control over USAP 'in all practical respects' because it held the voting right of almost all of the

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offeror to influence significantly or control management of the target firm. In the instant case, Crane's interest in Harsco will be slightly larger than 20%. The Court holds that there is a substantial likelihood that with a 20% interest, Crane may have significant influence over Harsco."); United States v. Wilson Sporting Goods Co., 288 F. Supp. 543, 556 (N.D. Ill. 1968) ("The merger cannot be defended as a mere 'investment; once it appears that the acquiring company intends to vote its stock and exercise control."). Moreover, some scholars contend that certain market structures warrant even a narrower construal of the investment-only exemption. For example, Professors Areeda and Hovenkamp in their eminent treatise say, "[investment-only exemption] must be qualified by evidence indicating that structural cross-ownership, where a small number of investors own significant stock in competing corporations, can lead to higher prices even if the shareholders behave passively." PHILLIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION §1204 (3d ed. 2012).

[88] Complaint at 2, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

[89] *Id.* at 4.

[90] *Id.* at 27.

[91] *Id.*

[92] *Id.* at 29.

[93] *Id.* at 31.

[94] *Id.* at 16.

company's other shareholders." [95] Moreover, "USAP's Business Development Playbook [...] described how USAP's acquisitions 'will typically involve multiple memos/presentation decks and discussions with [Welsh Carson]. Indeed, the Playbook explained, before USAP could send a letter of intent proposing an acquisition, 'the deal must be reviewed and approved by Welsh Carson.'"[96]

Welsh Carson is by no means unique in its involvement in the operations of its portfolio companies. Most large PE firms emphasize their active role in managing their companies. *Private Equity International*, a global provider of insights and data for the PE industry, lists largest PE firms, all of which highlight their hands-on involvement.[97] At the top of the list is Blackstone, which states on its website, "As partners to our portfolio companies, we provide both empathy and experience as we help our companies create and accelerate value." [98] The second largest firm, Kohlberg, Kravis, Roberts (KKR), similarly asserts, "The companies we invest in benefit from more than just our capital. As trusted partners, we aim to help them achieve operational excellence and provide expertise across a variety of industries and markets."[99] The third largest firm, EQT, states: "EQT invests in good companies across the world with a mission to help them develop into even greater companies. By providing access to ownership skills and operational expertise, EQT can help portfolio companies grow and prosper, both under EQT's ownership and with future owners." [100] Similarly, Carlyle says that they "have an experienced investment team that brings the full resources of Carlyle's global platform *to each of our portfolio companies*, supporting their growth through bespoke value creation plans that leverage our global network and deep industry expertise." [101] Meanwhile, Thoma Bravo, states, "Our investment philosophy is centered around working collaboratively with existing management teams [...] we execute through a partnership-driven approach supported by a set of management principles, operating metrics and business processes. We support our companies by investing in growth initiatives and strategic acquisitions."[102] Lastly, Vista Equity Partners highlight that they

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[95] *Id*.
[96] *Id*. at 32.
[97] *PEI 300: The World's Largest Private Equity Firms*, PRIVATE EQUITY INTERNATIONAL (June 3, 2024), https://www.privateequityinternational.com/pei-300/.
[98] Blackstone, https://www.blackstone.com/our-businesses/portfolio-operations/ (last visited Mar. 25, 2025).
[99] KKR, https://www.kkr.com/about (last visited Mar. 25, 2025).
[100] EQT Group, https://eqtgroup.com/about/playbook (last visited Mar. 25, 2025).
[101] Carlyle, https://www.carlyle.com/our-firm/global-private-equity (last visited Mar. 25, 2025).
[102] Thoma Bravo, https://www.thomabravo.com/about-us (last visited Mar. 25, 2025).

"provide financial capital and *operational strategies* to build better businesses, drive digital innovation, and deliver high and consistent returns to our investors."[103]

B. *Indirect Acquisition*

A rollup can also be conceptualized as the fund's direct acquisition of the platform and its indirect acquisition of the add-ons, which compete directly with the platform—that is, the company the fund already owns. As previously established, the combination of these transactions consolidates ownership in the market and substantially lessens competition. However, in relevant part, Section 7 of the Clayton Act prohibits any entity "engaged in commerce … [from] acquir[ing], directly or *indirectly*, … where … the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."[104]

The House Committee Report on the Celler-Kefauver Act of 1950—which amended Section 7—clarified the meaning of an "indirect acquisition," stating that Section 7 prohibits "not only direct acquisitions but also indirect acquisitions, whether through a subsidiary or an affiliate or otherwise."[105] The Supreme Court later cited this language in *Philadelphia National Bank*.[106] Accordingly, in a rollup, the fund incurs Section 7 liability for acquiring indirectly the competitors of its platform.

This interpretation is further supported by *Community Publishers v. Donrey*, the most instructive case on indirect acquisitions.[107] In that case, Donrey, a business entity, owned a local newspaper in Arkansas. Its investors formed a separate entity, NAT, to acquire a competing newspaper.

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[103] Vista Equity Partners, https://www.vistaequitypartners.com/strategies/ (last visited Mar. 25, 2025).

[104] 15 U.S.C. §18.

[105] Indirect acquisitions were addressed in the original Section 7 of the Clayton Act of 1914, which states,

> That no corporation engaged in commerce shall acquire, directly or *indirectly*, the whole or any part of the stock or other share of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

38 Stat. 731 (1914).

However, the House Committee Report on Celler-Kefauver Act of 1950 further clarifies the scope of the statute. *See* H. R. Rep. No. 1191, 81st Cong., 1st Sess. (1949). *See also*, United States v. Philadelphia Nat. Bank, 374 U.S. 321, 346 (1963).

[106] United States v. Philadelphia Nat. Bank, 374 U.S. 321, 346 (1963).

[107] Community Publishers, Inc. v. Donrey Corp., 882 F. Supp. 138 (W.D. Ark. 1995).

According to the decision, one reason for creating a new business entity was that Donrey's Chairman, Assistant Chairman, President, CFO, and COO "were all aware of the possibility that antitrust laws might apply to a Donrey acquisition of the *Times* [the competing newspaper], including the possibility that they might have to file a notice with the Federal Trade Commission under the Hart-Scott-Rodino Act to get a transaction approved under the antitrust laws."[108]

Donrey moved to dismiss the case, arguing that the complaint failed to state a claim against it. The central issue before the court was whether Donrey had indirectly acquired the competing newspaper. Acknowledging the novelty of the issue, the court observed, "the court can find no precedent with identical facts."[109] It then held that the plaintiff had stated a valid claim under Section 7 concerning Donrey's alleged indirect acquisition of the competing newspaper. Referring to the House Committee Report discussed above, the District Court explained,

> The inclusion of the catch-all phrase "or otherwise" in the legislative history is very telling, as it indicates that the term "indirectly" must be broadly interpreted, lest persons and firms manipulate corporate structures in order to avoid the appearance of direct acquisition. This case provides a perfect example of the fluidity of corporate forms and the potential dangers they present […] [T]he term "directly or indirectly" should be interpreted as broadly as necessary to accomplish the purposes of antitrust laws.[110]

In other words, consistent with our reasoning, the District Court interpreted "indirect acquisitions" broadly.

In a rollup, because the fund holds an ownership stake in the platform, the company qualifies as its subsidiary or affiliate.[111] Given Congress's broad definition—including "a subsidiary or an affiliate or otherwise"—this relationship falls within the scope of Section 7. As a result, an acquisition by the platform can be attributed to the fund as an indirect acquisition. Under our maintained assumption that the rollup is anticompetitive, the fund's indirect acquisition of add-ons would likewise harm competition, making the fund liable for violating Section 7.

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[108] *Id.* at 140.

[109] *Id.*

[110] *Id* at 140-142.

[111] As detailed in the next subsection, partial acquisitions violate Section 7 if they are anticompetitive. Therefore, we disregard the percentage of ownership in this subsection, as it does not affect the legal conclusions.

In *USAP*, the court held that Welsh Carson's fund did not incur Section 7 liability as an indirect acquirer. However, we respectfully disagree with the court's reasoning on four grounds. First, the *USAP* court incorrectly held that partial indirect acquisitions fall outside the scope of Section 7:

> The FTC has not cited a case in which a minority, noncontrolling investor—however hands-on—is liable under Section 13(b) because the company it partially owned made anticompetitive acquisitions. Such construal of Sections 7 and 13(b) would expand [...] liability to minority investors whose subsidiaries reduce competition. This Court will not adopt this novel interpretation.[112]

In doing so, the *USAP* court limited *Du Pont* to direct acquisitions and deemed it inapplicable due to differences in ownership structures: "The differences between *Du Pont* and the present case, though, are that *Du Pont* involved a direct acquisition, [...] and *Du Pont* did not involve a defendant with a minority, noncontrolling stake in the purchasing entity."[113] However, nothing in the language of Section 7 supports a distinction between direct and indirect acquisitions or suggests that ownership percentage determines applicability. Consistent with this broad statutory language, the Supreme Court in *Du Pont* found Section 7 liability for partial owners without restricting its reasoning to direct acquirers. The Court explained,

> Section 7 is designed [...] to arrest in their incipiency restraints or monopolies in a relevant market which, as a reasonable probability, appear at the time of suit likely to

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[112] United States v. E. I. du Pont de Nemours & Co., 353 U.S. 586, 589 (1957). The *USAP* court noted that the Federal Trade Commission had filed the case under its Section 13(b) authority, which allows the agency to seek an injunction in district court for ongoing or imminent antitrust violations without a concurrent administrative proceeding.
Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024, at *3 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024). As the scope of the FTC's Section 13(b) authority is beyond the purview of this article and was addressed in the Supreme Court's unanimous *AMG Capital Management* decision in 2021, we do not address that issue. AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n, 593 U.S. 67 (2021).

[113] Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024, at *4 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

> result from the acquisition by one corporation of *all or any part* of the stock of any other corporation."[114]

Notably, the Supreme Court did not confine its reasoning to direct acquisitions or exclude indirect acquisitions from its holding. This is particularly significant given that the statute—cited and extensively analyzed by the *Du Pont* Court—has explicitly recognized the potential for anticompetitive *indirect* acquisitions since its enactment in 1914.

Second, the *USAP* court's concern about overreach regarding minority investors conflicts with the text of the statute. As previously discussed, the statute explicitly exempts passive investors: "[Section 7] shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."[115] This exemption adequately protects minority investors who do not engage in the anticompetitive conduct of their companies. Moreover, the narrow scope of the investment-only exemption underscores Congress's intent regarding Section 7's reach. Since the statute exempts only acquisitions made solely for investment, any ownership stake that does not meet this criterion necessarily falls within Section 7's purview. Thus, the *USAP* court's concern for minority investors is misplaced, and its reluctance to apply the statute's broad language conflicts with the statute itself.

Third, the *USAP* court misinterpreted material facts of *Donrey*. The *USAP* court summarized *Donrey* as follows: "[In *Donrey*] the court determined that Section 7 applied to a parent company that acquired stock through its subsidiarity [sic]. The key difference, though, is that the parent and subsidiary had 'substantially overlapping ownership.'"[116] Yet, in *Donrey*, the indirect acquirer held no ownership stake in the direct acquirer. As a result, no parent-subsidiary relationship existed between them. Rather, the two entities were separate businesses connected only through common investors.

The *USAP* court further described *Donrey*'s ownership structure as follows: "Indeed, 99% of the parent stock was owned by an entity called "SGI," which was owned entirely by *a family trust*. The subsidiary, meanwhile, was owned 95.5% by the very same *family trusts*."[117] This

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[114] U.S. v. E. I. Du Pont De Nemours & Co., 353 U.S. 566, 590 (1957).
[115] 15 U.S.C. 18.
[116] Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024, at *5 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).
[117] *Id.*

characterization is inaccurate. *Donrey* did not involve a single-family trust. Instead, the overlapping ownership consisted of distinct trusts established for different family members. The *Donrey* court itself emphasized this point: "Although there is no common parent in the sense of a single legal entity that owns both subsidiaries, there is certainly a claim concerning whether or not Donrey and NAT are affiliated corporations."[118]

This distinction is significant. At the time of the *USAP* decision, *Donrey* was the only case addressing partial indirect acquisitions. The *USAP* court declined to apply it based on perceived differences in ownership structure. However, contrary to that interpretation, *Donrey* did not involve a single investor with complete ownership of the operating company. In fact, the individual investors in *Donrey* held smaller ownership stakes than Welsh Carson did in USAP. Moreover, the indirect acquirer in *Donrey* had *no* ownership in the direct acquirer. Accordingly, *Donrey* supports a broader reading of Section 7 to include partial indirect acquisitions. The *USAP* court's attempt to distinguish it is unpersuasive.

Fourth, the *USAP* court misapplied the reasoning in *Donrey*. It relied on formalistic distinctions in investment structures to distinguish *Donrey* and *USAP*, placing undue emphasis on the percentage of ownership held in the operating companies. However, *Donrey* prioritizes substance over form. The decision looks beyond corporate formalities and focuses on whether the acquisition eliminated independent economic units. In doing so, the *Donrey* court affirms the primary objective of antitrust law: protecting the competitive process. As the *Donrey* court explained, "In varying contexts, the courts have refused to take a formalistic approach to corporate structures in order to effectively implement the antitrust laws […] [F]ormal corporate structures should not be used as a tool to flout the antitrust laws."[119] In contrast, the *USAP* court adopted precisely the formalistic approach that *Donrey* rejected—thereby undermining the effectiveness of Section 7.

C. *Section 7 Liability under Copperweld*

Funds also incur liability through a novel yet logical extension of the *Copperweld* doctrine. This doctrine determines whether two related firms constitute a single economic unit for the purposes of Section 1 of the Sherman Act.

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[118] Community Publishers, Inc. v. Donrey Corp., 882 F. Supp. 138, 140 (W.D. Ark. 1995).
[119] *Id* at 140-142.

The *Copperweld* doctrine originated from the Supreme Court's 1984 decision in *Copperweld Corp. v. Independence Tube Corp*. The case involved a parent company and its wholly-owned subsidiary accused of conspiring to restrict a competitor's access to a buyer in violation of Section 1. The key question before the Court was whether a parent and its wholly-owned subsidiary could conspire in breach of Section 1. The Court held that they form a "single entity" with unified economic interests, and therefore, cannot conspire as separate firms.[120] As a result, the Court ruled that their interactions constituted intra-firm exchanges within a single economic unit rather than a conspiracy between distinct entities, placing them outside the scope of Section 1.[121] Subsequent case law extended this principle to parent companies with majority ownership of a subsidiary, though courts differ on the precise ownership threshold required for *Copperweld* protection.[122]

The *Copperweld* doctrine originally served as a defense, shielding parent companies from antitrust liability in their dealings with subsidiaries. However, a consistent interpretation of antitrust laws arguably requires its offensive application to impose liability on all entities within the single economic unit.[123] Specifically, if two firms are exempt from Section 1 liability in their dealings with each other because they are deemed a single economic unit, antitrust liability should extend to both entities when one

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[120] Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984) ("A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one [...] If a parent and a wholly owned subsidiary do "agree" to a course of action, there is no sudden joining of economic resources that had previously served different interests.")

[121] *Id.*

[122] *See* Lenox MacLaren Surgical Corp. v. Medtronic, Inc., 847 F.3d 1221, 1239 (10th Cir. 2017) ("The question of what must be shown in order to hold a particular affiliated corporation liable as part of an inter-corporate scheme appears to be uncharted territory at the federal circuit level."); Arandell Corp. v. Centerpoint Energy Servs., Inc., 900 F.3d 623, 630 (9th Cir. 2018) ("Although the Plaintiffs' application of the principles laid out in *Copperweld* is novel, we must agree."); Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1133 & n.7 (3d Cir. 1995) (99.2% control was de minimis difference) (citing cases holding that as much as 80% control was considered a de minimis deviation from 100%). *See also* Harry S. Davis, Michael E. Swartz & Matthew S. Wild, *Private Equity Groups under Common Legal Control Constitute a Single Enterprise under the Antitrust Laws*, 3 N.Y.U. J.L. & BUS. 231 (Fall 2006).

[123] Lenox MacLaren Surgical Corporation v. Medtronic Inc., 847 F.3d 1221 (2017) ("Parent and subsidiary companies [...] were single enterprise, and thus while they could not engage in concerted action with one another as required for Sherman Act liability for conspiracy to restrain trade or conspiracy to monopolize, they could be held liable under Sherman Act for monopolization or attempted monopolization based on their collective conduct, without proof that specific companies independently satisfied each necessary element of non-conspiracy monopolization and attempted monopolization.")

violates the Sherman Act. Failing to apply the *Copperweld* doctrine offensively while permitting its defensive use creates a potential loophole.

To illustrate this loophole, consider two entities, A and B, where A holds a majority ownership stake in B. Under *Copperweld*, they are deemed a single economic unity, and A is therefore exempt from antitrust liability for any anticompetitive effects arising from its interactions with B. Now suppose B, while under A's ownership, engages in anticompetitive conduct. If *Copperweld* cannot be applied offensively, A would again be exempt from liability.[124] As a result, A is shielded both from antitrust claims based on its dealings with B and from liability for B's conduct carried out under its control.

Indeed, the Ninth Circuit reached the same conclusion in its 2018 *Arandell* decision:

> Defendants cannot have the *Copperweld* doctrine both ways. It would be inconsistent to insist both (1) that two affiliates are incapable of conspiring with each other for purposes of Section 1 of the Sherman Act because they "always" share a "unity of purpose," and (2) that one affiliate may escape liability for its own conduct—conduct necessary to accomplish the illegal goals of the scheme—by disavowing the anticompetitive intent of the other, even where the two acted together.[125]

Applying this reasoning, the Ninth Circuit held that a wholly owned subsidiary shared its parent's anticompetitive intent: "*Copperweld* supports the following rule: A wholly owned subsidiary that engages in coordinated activity in furtherance of the anticompetitive conduct of its parent and/or commonly owned affiliates is deemed to engage in such coordinated activity with the purposes of the single 'economic unit' of which it is a part."[126]

To maintain consistency across antitrust statutes and avoid doctrinal conflicts, the *Copperweld* doctrine should not be confined to Section 1 of the Sherman Act. Indeed, the Tenth Circuit took this approach in its 2017 *Medtronic* decision, holding that entities deemed a single enterprise under *Copperweld* for Section 1 purposes should also be treated as such under Section 2. The court then evaluated the conduct of the unified entity as a

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[124] The exempt entity is referred to as A, without loss of generality. Similarly, the exempt entity could just as well be B. More broadly, at least one entity will almost always be exempt from antitrust liability in all of its dealings as part of the single unit.

[125] Arandell Corp. v. Centerpoint Energy Servs., Inc., 900 F.3d 623, 632 (9th Cir. 2018).

[126] *Id*.

whole—rather than isolating the actions of its individual components—to determine whether monopolization or attempted monopolization had occurred. Specifically, the court stated:

> [T]he related entities' coordinated conduct must be treated as the unitary conduct of the single enterprise which together they form, and it is that aggregated conduct which must be scrutinized under § 2. To hold otherwise—to require that each affiliated defendant independently satisfy every element in order to be held liable—would be difficult to justify.[127]

In other words, the court applied the doctrine offensively to each constituent of the unified entity under Section 2. However, the Tenth Circuit also clarified that an entity cannot not be held liable as part of a single enterprise without evidence of its involvement. As the court explained: "*Copperweld* Court held only that the 'coordinated activity' of a parent and subsidiary must be viewed as that of a single enterprise."[128]

The *Copperweld* doctrine can similarly be extended to Section 7 of the Clayton Act to support liability for a PE fund involved in a rollup. Under our maintained assumption that a rollup substantially lessens competition, the series of acquisitions it comprises would violate Section 7. Whether the fund is liable for this violation turns on two factors. First, the fund must hold a majority ownership in the platform company, such that it and the company can be treated as a single entity. Second, consistent with the Tenth Circuit's decision in *Medtronic*, there must be evidence that the fund participated in the anticompetitive conduct—that is in the rollup. PE funds are typically deeply involved in the planning and financing of these acquisitions. For example, as previously discussed, Welsh Carson established USAP "to pursue an aggressive strategy to consolidate practices with high market share in a few key markets."[129] According to the FTC's complaint, "Welsh Carson—in its own words—maintained control over USAP 'in all practical respects' because it held the voting rights of almost

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[127] Lenox MacLaren Surgical Corp. v. Medtronic, Inc., 847 F.3d 1221, 1236 (10th Cir. 2017).

[128] Lenox MacLaren Surgical Corp. v. Medtronic, Inc., 847 F.3d 1221, 1237 (10th Cir. 2017) (citing Mitchael v. Intracorp, Inc., 179 F.3d 847 (10th Cir. 1999)). *See also*, Directory Sales Mgmt. Corp. v. Ohio Bell Tel. Co., 833 F.2d 606, 611–14 (6th Cir. 1987).

[129] Complaint at 2, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

all of the company's other shareholders."[130] Other PE firms also publicly share their active role in managing their portfolio companies.[131]

When both conditions are met, our proposed extension of the *Copperweld* doctrine will treat the fund and its portfolio company as a unified acquirer of the add-ons. Accordingly, the fund, as part of this unit, would be liable for violating Section 7.

If the fund holds a minority stake, the *Copperweld* doctrine alone does not support a Section 7 liability. However, the absence of majority ownership does not immunize the fund from antitrust liability, as discussed in the preceding and following subsections.

D. *Section 1 Liability*

The fund also incurs liability under Section 1 of the Sherman Act. Recall that Section 1 bans cartels. In particular, it prohibits "contracts, combinations, or conspiracies in restraint of trade." For a rollup to create Section 1 liability for the fund, three criteria must be met.

First, the court must determine whether a rollup constitutes "a contract, combination, or conspiracy." In other words, there must be an agreement between the involved entities. In a rollup, this agreement takes the form of merger agreements between the company and its competitors through add-ons. Notably, Section 1 of the Sherman Act has been applied to mergers and acquisitions.

For example, the Supreme Court decided that a merger between two banks violated Section 1 in its 1964 *Lexington Bank* decision, stating:

> [I]t [is] clear that the elimination of significant competition between [merging parties] constitutes an unreasonable restraint of trade in violation of § 1 of the Sherman Act …. It [can be] enough that the two … compete, that their competition [is] not insubstantial and that the combination [would] put an end to it.[132]

Similarly, Judge Posner of the Seventh Circuit held that the proposed merger between two nonprofit hospitals violated Section 1 of the Sherman Act, stating:

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[130] *Id.* at 16.

[131] *See* Section V Subsection A.

[132] United States v. First Nat'l Bank & Trust Co. of Lexington, 376 U.S. 665, 669-70 (1964) (per curiam).

> [T]he current understanding of section 7 is that it forbids mergers that are likely to "hurt consumers, as by making it easier for the firms in the market to collude, expressly or tacitly, and thereby force price above or father above the competitive level." A merger with such effects would also violate section 1.[133]

In practice, Section 1 of the Sherman Act is less frequently invoked than Section 7 of the Clayton Act to challenge anticompetitive acquisitions. This preference, however, does not reflect any limitation on Section 1's applicability to such transactions. While Section 7 may be preferred because it allows enforcers to block acquisitions in their incipiency—before they give rise to a Sherman Act—even this distinction in statutory scope is not universally accepted. As Judge Posner states,

> We doubt whether there is a substantive difference today between the standard for judging the lawfulness of a merger challenged under section 1 of the Sherman Act and the standard for judging the same merger challenged under section 7 of the Clayton Act. It is true that the operative language of the two provisions is different and that some of the old decisions (old by antitrust standards anyway) speak as if that should make a difference […] A transaction violates section 1 of the Sherman Act if it restrains trade; it violates the Clayton Act if its effect may be substantially lessen competition. But both statutory formulas require, and have received, judicial interpretation and the interpretations have, after three quarters of a century converged… The defendants' argument that section 7 prevents *probable* restraints and section 1 *actual* ones is word play. Both statutes as currently understood prevent transactions likely to reduce competition substantially.[134]

As a result, the Sherman Act provides an equally robust legal framework for addressing anticompetitive acquisitions, including rollups. In other words, the merger agreements in a rollup satisfy the first criterion for establishing liability under Section 1.

Second, the court must determine whether the rollup unreasonably restrains trade. Both economic theory and empirical evidence suggest that

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[133] U.S. v. Rockford Memorial Corp., 898 F.2d 1278, 1282-83 (7th Cir. 1990).
[134] *Id.*

rollups typically reduce competition, increase prices and harm consumers. For example, Asil et al. (2024) find that rollups in the anesthesia industry substantially increase market concentration and lead to price increases of approximately 30%.[135] The rollups identified in this paper—in the radiology, gastroenterology, and urology—similarly resulted in significant consolidation of ownership.[136]

Third, the court must determine whether the fund participated in the rollup for the purposes of Section 1. This inquiry requires applying the *Copperweld* doctrine, which is pivotal to assessing the fund's liability. Recall from the previous subsection that if the fund holds a majority ownership in the company, then the two are deemed a single economic unit under *Copperweld*. When this is the case, the doctrine's traditional, defensive application allows the fund avoid liability for bilateral interactions with its portfolio company.

However, a consistent application of *Copperweld* also reveals its offensive implications. Specifically, the unified entity formed by the fund and its company may itself participate in the anticompetitive rollup. Under this framework, the fund becomes liable by virtue of its role within the single economic unit responsible for the rollup. To the extent that a court adopts the Tenth Circuit approach in *Medtronic* and requires evidence of the fund's participation in the rollup, that standard is typically met, as PE funds are often actively engaged in planning and financing such transactions.

On the other hand, if the fund holds a minority stake in the platform, the *Copperweld* doctrine treats the two as separate entities. In this context, the fund's management and financing arrangements with the portfolio company in furtherance of the rollup can be viewed as an agreement in restraint of trade or participation in a conspiracy to restraint trade, in violation of Section 1. Notably, the same evidence used to satisfy the Tenth Circuit's participation requirement in *Medtronic* can also support a finding that the fund's acted as a co-conspirator in the rollup.

Lastly, the legal theory outlined in this subsection can establish liability for the fund regardless of the nature of the underlying anticompetitive conduct. For consistency, our discussion has focused on anticompetitive acquisitions of the platform's competitors. However, the same legal theory would apply if the challenged conduct involved price fixing, market allocation, exclusive dealing, or other restraints of trade—so long as the

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[135] Aslihan Asil, Paulo Ramos, Amanda Starc & Thomas G. Wollmann, *Painful Bargaining: Evidence from Anesthesia Rollups* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33217, 2024).

[136] *See* Section II Subsection D.

fund participated in these actions in its role as a manager and financier of the platform. For example, in the USAP case, the FTC charged the portfolio company with entering into "a market allocation agreement to avoid a head-to-head rivalry with another large anesthesia provider."[137] A market allocation agreement constitutes a per se violation of Section 1 of the Sherman Act, and if the fund's involvement is established, it would give rise to antitrust liability for the fund as well.

VI. RELATIONAL LIABILITY

The second type of liability, known as "relational liability," arises from the PE fund's relationship with the platform rather than from the fund's involvement in the anticompetitive conduct as defined by relevant antitrust statutes. The primary legal theory underpinning relational liability is the doctrine of piercing the corporate veil under business organization law.

Piercing the corporate veil is an exception to the general principle that a business entity is a separate legal person, distinct from its owners. Ordinarily, this separation—commonly referred to as the corporate veil—shields owners from liability for the entity's actions or debts. At the same time, it limits a potential plaintiff's recovery to the entity's assets, which may be confined to those necessary for its operation. However, when this separation is abused, courts may pierce the veil and hold the owners liable. In doing so, courts can hold those who control or benefit from the entity accountable for its obligations. The doctrine thus serves both to prevent misuse of the corporate form and to provide an effective remedy to parties harmed by misconduct carried out through the entity under the owners' direction and control, granting access to the owners' assets that would otherwise remain shielded.

Recall that in a typical rollup, the fund owns, finances, and directs the platform that acquires its competitors. In return, it receives dividend payments drawn from the company's profits. Because the platform is a legally distinct entity, a corporate veil separates it from the fund. If, however, the court decides to pierce the veil, that separation may be disregarded. Piercing the veil would allow antitrust plaintiffs to seek compensation from the fund's assets. Because veil piercing is a fact-intensive inquiry, it may also permit plaintiffs to obtain discovery of parent-level materials—such as internal corporate documents, board records, and depositions of fund officers and directors—which may assist them in proving

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[137] Complaint at 51, Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024).

the underlying antitrust violation. To succeed, plaintiffs must satisfy the requirements of the veil-piercing doctrine, which remains relatively stringent in many, if not most, jurisdictions.

Depending on the jurisdiction, courts apply one or both of two general doctrines to pierce the veil between affiliated business entities. The first, often referred to as the "alter ego" or "identity" theory, allows plaintiffs to disregard the corporate separation when there is a "unity of interest" between the parent and the subsidiary that the latter no longer operates as a distinct entity, and when maintaining that separation would lead to injustice or to some other inequitable outcome. To establish a unity of interest, plaintiffs must demonstrate that the subsidiary operated primarily for the benefit of the parent and functioned more as an extension than as an independent entity. Courts evaluate this prong by looking at factors such as undercapitalization, disregard of corporate formalities, shared officers and directors, transactions not conducted at arm's length, the parent's role in financing or forming the subsidiary, regular dividend payments by the subsidiary to the parent, personnel decisions made by the parent on the subsidiary's behalf, and the transfer of assets from the subsidiary to the parent, effectively shifting liabilities downward while concentrating assets at the top.[138]

In a rollup, such unity of interest between the fund and the portfolio company may arise from the fund's active involvement in the company's acquisitions. For example, the FTC's complaint in *USAP* stated that,

> Welsh Carson directors on USAP's board […] retained duties to and interests in Welsh Carson. At least one Welsh Carson director on USAP's board […] acted in his Welsh Carson capacity when formulating, directing, and participating in USAP's […] conduct […] [H]e facilitated USA's roll-up scheme by […] signing deal documents for several challenged acquisitions—an *doing so expressly on behalf of Welsh*

[138] Iceland Telecom, 268 F. Supp. 2d at 590-91; Agai v. Diontech Consulting Inc., 975 N.Y.S.2d 707, at *2-3 (N.Y. Supp. Ct. 2013); Sonora Diamond Corp. v. Super. Ct. Tuolumne Cty. 83 Cal. App. 4th 523, 538-39 (Cal. Ct. App. 5th Dist. 200); Associated Vendors, 210 Cal. App. 2d at 838-40; Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 811-12 (Cal. Dist. Ct. App. 2010); DER Travel Servs. v. Dream Tours & Adventures, Inc., 2005 U.S. Dist. LEXIS 25861 (S.D.N.Y. 2005); Millenium Constr., LLC v. Loupolover, 44 A.D.3d 1016, 1016-17 (N.Y. App. Div. 2007); Alpha Bytes Computer Corp. v. Slaton, 307 A.D.2d 725 (N.Y. App. Div. 2003); Eitzen Chem. (Sing.) PTE, Ltd. v. Carib. Petroleum, 749 Fed. Appx. 765, 771 (11th Cir. 2018); Pearson v. Component Tech. Corp., 247 F.3d 471, 484-485 (3d Cir. 2001); Mobil Oil Corp. v. Linear Films, Inc. 718 F. Supp. 260 (D. Del. 1989); U.S. v. Toyota Motor Corp., 561 F. Supp. 354, 359 (C.D. Cal. 1983).

> *Carson*. He also helped strike deals integral to USAP's consolidation strategy, such as by leading negotiations for its market allocation agreement [...] with the help of a confidentiality agreement he signed *on Welsh Carson's behalf*.[139]

To satisfy the second prong—showing injustice or unfairness—the plaintiff must point to inequitable conduct or a misuse of the corporate form that would result in harm if the corporate veil remained intact. In some jurisdictions, such as Delaware and Maryland, courts impose a higher threshold, requiring proof that the corporate structure was used to commit fraud on the plaintiffs.[140] Although courts have not always provided clear guidance on what constitutes and inequity or injustice, a parent's direction of the subsidiary to take the action that caused the plaintiff's loss, such as an anticompetitive acquisition, could satisfy this prong.[141]

The second doctrine, known as the "agency" or "instrumentality" theory, permits veil piercing when the subsidiary acts as an agent of the parent. To meet this criterion, the plaintiff must show that the parent authorized the subsidiary to act on its behalf and that the subsidiary agreed to do so. Such authority may be express or implied, and can be inferred from the parent's words, conduct, or pattern of control that indicates an intent to grant the subsidiary the power to act on its behalf.[142]

The plaintiff must also show that the parent company exercised substantial control over the subsidiary. This element may be satisfied by evidence of the parent's direct involvement in the subsidiary's operations or its significant influence over key decisions related to the conduct in question.[143] In certain cases, the plaintiff must further demonstrate a sufficiently close connection between the asserted claims and the alleged agency relationship. Specifically, in the context of a rollup, the fund's role

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[139] Complaint at 16 Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., No. 4:23-CV-03560, 2024 (S.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-20270, 2024 (5th Cir. Aug. 15, 2024) (emphasis added).

[140] Outokumbu Eng'g Enters, Inc. v. Kvaerner EnviroPower, Inc., 685 A.2d 724, 729 & n.2 (Del. Super. Ct. 1996); In re Sunstates Corp. S'holder Litig., 788 A.2d 530, 534 (Del. Ch. 2001); Antonio v. Sec. Servs. Of Am., LLC, 701 F.Supp.2d 749, 759-60 (D. Md. 2010); Iceland Telecom, Ltd. v. Info. Sys. & Networks Corp. 268 F. Supp. 2d 585, 589 (D. Md. 2003).

[141] Sandra Feldman, *How to Avoid Piercing the Corporate Veil Between Parent Corporations and Their Subsidiaries*, WOLTERS KLUWER (Mar. 25, 2022), *https*://www.wolterskluwer.com/en/expert-insights/how-to-avoid-piercing-the-corporate-veil-between-parent-corporations-and-their-subsidiaries#3

[142] In re Parmalat Sec. Litig., 594 F. Supp. 2d 444, 451-52 (S.D.N.Y. 2009).

[143] *Id.*

in formulating the company's acquisition strategy and its managerial authority over the company can satisfy this requirement.

A doctrine increasingly recognized by courts may also be available to antitrust plaintiffs, depending on the jurisdiction. Known as the "single entity" theory, this doctrine permits plaintiffs to pierce the corporate veil between affiliated entities—including horizontal piercing, which allows them to reach the assets of companies with common ownership or a shared administrative structure.[144] Broadly speaking, courts applying the single entity doctrine disregard the corporate separateness when affiliated entities operate as unified economic enterprise or represent the same singular interest. Jurisdictions that have recognized this theory include California, New York, Texas, New Jersey, Louisiana, Massachusetts, North Carolina, Virginia, and Washington.[145] While the exact contours of the doctrine remain unsettled, courts generally evaluate factors similar to those considered under the alter ego theory. These include common management and interlocking directorates, among others.[146] Some jurisdictions—such as the Fifth Circuit in *Gardemal v. Westin Hotel Co.,* North Carolina in *Glenn v. Wagner,* and Texas in *Paramount Petroleum Corp. v. Taylor Rental Ctr.*—further require a showing of abuse of the corporate form.[147] Examples

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[144] Mortimer v. McCool, Nos. 37 MAP 2020, 38 MAP 2020 (Pa. July 21, 2021). *See also* Stephen B. Presser, *The Bogalusa Explosion, Single Business Enterprise, Alter Ego, and Other Errors: Academics, Economics, Democracy, and Shareholder Limited Liability: Back towards a Unitary Abuse Theory of Piercing the Corporate Veil*, 100 NW. U. L. REV. 405 (2006).

[145] *See, e.g.* Las Palmas Assocs. v. Las Palmas Ctr. Assocs., 1 Cal. Rptr. 2d 301, 318 (Ct. App. 1991); Dorfman v. Marriot Int'l Hotels, Inc., 99 Civ. 10496 (CSH), 2002 U.S. Dist. LEXIS 72 (S.D.N.Y. Jan. 3, 2002); Jack LaLanne Fitness Centers, Inc. v. Jimlar, Inc. 884 F. Supp. 162 (D.N.J. 1995); My Bread Baking Co. v. Cumberland Farms, Inc. 233 N.E.2d 748, 752 (Mass. 1968); Regal Ware, Inc. v. Fidelity Corp., 550 F.2d 934 (4th Cir. 1977); Morgan Bros., Inc. v. Haskell Corp. 604 P.2d 1294, 1997 (Wash. Ct. App. 1979).

[146] Grayson v. R. B. Ammon & Assocs., 778 So. 2d 1 (La. Ct. App. 2000) ("Courts have been unwilling to allow affiliated corporations that are not directly involved to escape liability simply because of business fragmentation. Thus, where a single corporation has been fragmented into branches that are separately incorporated and are managed by a dominant or parent entity, or have interlocking directorates, the courts have held the dominant or parent corporation liable for the obligations of its branches whenever justice requires protection of the rights of third persons.")

[147] Gardemal v. Westin Hotel Co., 186 F.3d 588, 593 (5th Cir. 1999) ("Like the alter-ego doctrine, the single business enterprise doctrine is an equitable remedy which applies when the corporate form is used as part of an unfair device to achieve inequitable result."); Glenn v. Wagner, 313 S.E.2d 832, 844 (N.C. Ct. App. 184) *rev'd on other grounds*, 329 S.E.2d 326, 330 (N.C. 19845) ("Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a

of such abuse include siphoning of funds and instances where officials of one entity make representations on behalf of another.[148]

In a rollup, the fund may own and control the operations of multiple platform companies. These companies may share directors and management teams affiliated with the private equity firm that manages the fund. Accordingly, application of the single entity doctrine would allow plaintiffs to reach not only the fund's assets but also the assets of other platform companies under the fund's ownership.

VI. CONCLUSION

The rapid growth of rollups, combined with their ability to escape premerger review, poses a significant challenge for antitrust enforcement. These transactions can reshape market structure without oversight, giving rise to the problem of stealth consolidation. Recent regulatory responses—including expanded reporting rules and the FTC's first rollup-based lawsuit in anesthesia industry—signal growing recognition of this threat. Our empirical analysis shows that rollups extend well beyond anesthesia, diving substantial consolidation across a range of medical specialties and geographic markets. These findings suggest that courts may soon confront a wave of challenges to consummated transactions. Assuming price effects similar to those documented in prior work, such transactions have harmed consumers. Yet, our economic model shows that portfolio companies, due to high leverage and limited unencumbered assets, are unlikely to fully satisfy damage awards. To ensure effective enforcement and full compensation for harm, legal accountability must extend beyond the portfolio company to the PE fund itself, which directs and finances the acquisitions. This Article offers a comprehensive doctrinal framework identifying five legal pathways to PE fund liability, grounded in both antitrust and corporate law. As litigation over completed rollups intensifies, these doctrines will be essential to closing the enforcement gap and restoring the deterrent force of antitrust law.

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dishonest and unjust act in contravention of plaintiff's legal rights."); Paramount Petroleum Corp. v. Taylor Rental Ctr., 712 S.W.2d 534, 536 (Tx. Ct. App. 1886).

[148] Paramount Petroleum Corp. v. Taylor Rental Ctr., 712 S.W.2d 534, 536 (Tx. Ct. App. 1886).