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Antitrust Division
950 Pennsylvania Avenue, N.W., Suite 3337
Washington, D.C. 20530

Federal Trade Commission
Bureau of Competition
Office of Policy and Coordination
600 Pennsylvania Avenue, N.W.
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Dear Mesdames/Sirs:

The American Investment Council (AIC) welcomes the opportunity to respond to the Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies (the RFI) that was issued by the Antitrust Division of the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) (collectively, the Agencies). AIC is an advocacy organization dedicated to developing and providing information to policymakers about the private investment industry, including its significant contributions to the long-term growth of the U.S. economy and to the retirement security of large numbers of American workers.

AIC submits this letter on behalf of our membership, which includes the world's leading private equity and private credit funds.[1] In service of its mission, AIC has engaged with the DOJ and FTC regarding recent rulemaking proposals and has submitted a number of detailed comment letters aimed at correcting misconceptions about the private equity industry.[2] This includes

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1 American Investment Council, *About the AIC – Our Members*, https://www.investmentcouncil.org/about-the-aic/#our-members.

2 American Investment Council, Comment Letter on Draft Merger Guidelines (Sept. 18, 2023), https://www.investmentcouncil.org/wp-content/uploads/2023/09/AIC-Merger-Guidlines-Commet-Letter.pdf; American Investment Council, Comment Letter on Proposed Revisions to Hart-Scott-Rodino Premerger Notification Requirements (Sept. 27, 2023), https://www.investmentcouncil.org/wp-content/uploads/2023/09/American-Investment-Council-Comments-re-Proposed-HSR-Amendments-9.27.2023.pdf.

commenting on the Agencies' recent Request for Information on Consolidation in Health Care Markets,[3] which the Agencies apparently view as closely related to the current RFI.[4]

Similar to the RFI on Consolidation in Health Care Markets, the current RFI makes sweeping statements about so-called "serial acquisitions."[5] Those statements reflect an incorrect view that such acquisitions are generally bad for competition and harmful to consumers. For example, the RFI states that "some companies use serial acquisitions of small firms as a business strategy that can harm competition to the detriment of consumers, workers, and innovation in an industry or business sector without detection by the Agencies."[6] The RFI also expressly calls for comments "related to serial acquisitions and anticompetitive conduct affecting any industry or business sector you have identified as having been subject to serial acquisition."[7] As a result, the RFI proceeds from the negative premise that serial acquisitions are "harm[ful]," "detriment[al]," and "anticompetitive,"[8] and expressly asks for comments that support that conclusion, rather than approaching the topic from a neutral, objective standpoint and encouraging the expression of all viewpoints, both pro and con.

AIC regards the current RFI as a continuation of what appears to be an animus towards private equity investment and merger activity more generally.[9] As set forth below, AIC does not

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3 American Investment Council, Comment Letter on Request for Information on Consolidation in Health Care Markets (June 5, 2024), https://www.investmentcouncil.org/wp-content/uploads/2024/06/American-Investment-Council-June-5-2024-Response-to-RFI-Dkt-No-ATR-102.pdf.

4 *See* RFI at 2 ("This RFI complements an FTC/DOJ/HHS initiative to understand how certain health care market transactions may increase consolidation while threatening patient health, worker safety, quality of care, and affordable health care for patients and taxpayers.").

5 Although the RFI states that "[s]erial acquisitions involve the same firm consolidating a fragmented market through a number of acquisitions, typically of many relatively small companies," RFI at 1, the Agencies do not provide a clear definition of the term "serial acquisitions." In addition, while the RFI asserts that the term "serial acquisition" is interchangeable with the terms "roll-up[]," "buy-and-build," and "platform add-on[]," RFI at 1 n.1, that is not necessarily correct, so AIC reserves comment on the potential interchangeability of those phrases until after the Agencies provide a clear definition of the term "serial acquisition." For purposes of this letter, AIC will use the phrase "buy-and-build" to discuss and highlight the many benefits that arise from a type of merger strategy that involves more than one acquisition within an industry.

6 *Id.* at 1.

7 *Id.* at 4.

8 *Id.* at 1, 4.

9 *See, e.g.*, *id.* at 2 ("Both public reports and investigations by the Agencies suggest that corporate actors including private equity firms have engaged in serial acquisition strategies across a wide array of markets and industries."); Request for Information on Consolidation in Health Care Markets, Dkt. No. ATR 102, at 5 (Feb. 29, 2024) (expressing "concerns" that private equity investments in healthcare providers "may harm health care quality, access, and/or costs"); *FTC to Host Virtual Workshop on Private Equity in Health Care* (Feb. 14, 2024) (press release stating that the FTC has "become increasingly concerned about the effects of private equity investment in [the healthcare] sector"), https://www.ftc.gov/news-events/events/2024/03/private-capital-public-impact-ftc-workshop-private-equity-health-care.

believe that animus is justified, and is concerned that the Agencies are overlooking the important procompetitive benefits that private equity investment provides to industries and consumers—which are supported by academic research and real world examples.

AIC remains deeply concerned that the Agencies are unfairly targeting private equity investment while overlooking the many ways in which such investment fosters competition, improves products and services, and benefits the U.S. economy as a whole. Contrary to the criticism being leveled by the Agencies, the private equity industry is an essential pillar of the modern U.S. economy, a catalyst of competition and innovation, and a critical partner to small- and medium-sized businesses. According to a recent, detailed study conducted by Ernst & Young, in 2022, the private equity industry was responsible for approximately 6.5% of U.S. gross domestic product.[10] The private equity industry employed 12 million people who earned a collective $1 trillion in wages and benefits across all types of American communities, both rural and urban.[11] The average employee of U.S. private equity firms and private equity-backed companies earned $80,000 in wages and benefits, equating to roughly $41 per hour for a full-time worker—well above the national average wage.[12] The capital provided by private equity firms helps companies grow, hire, build, innovate, improve productivity, become more sustainable, and, ultimately, compete against entrenched incumbents and foreign businesses.[13] Contrary to the notion that private equity-backed companies are all behemoths, 85% of such businesses had fewer than 500 employees in 2022.[14] Many were emerging technology companies at the cutting edge of fields critical to the U.S. economy such as cybersecurity and life sciences.[15] As a result of the private equity industry's success, 89% of U.S. public pension funds (out of 176 that were surveyed in a recent study), serving 34 million public sector workers and retirees, have enjoyed returns that far exceed those of other asset classes.[16] Indeed, much of the capital private equity invests comes

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10 *See* Ernst & Young, *Economic Contribution of the US Private Equity Sector in 2022* (Apr. 2023), at 5, https://www.investmentcouncil.org/wp-content/uploads/2023/04/EY-AIC-PE-economic-contribution-report-FINAL-04-20-2023.pdf.

11 *Id*. at 5, 9-10.

12 *Id*. at 4-5, 11.

13 Greg Brown, Robert Harris & Shawn Munday, *Capital Structure and Leverage in Private Equity Buyouts*, 33 J. Applied Corporate Finance 42, 52 (2021), https://uncipc.org/wp-content/uploads/2021/11/JACF-Summer-2021-Capital-Structure-and-Leverage-in-Buyouts-Brown-Harris-Munday.pdf; *Operational Consequences of Private Equity Buyouts: Evidence from the Restaurant Industry*, 29 Rev. Financial Studies 2387 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2336672.

14 Ernst & Young, *supra* n.10, at 9.

15 *See* American Investment Council, *Financing American Innovation: Private Equity's Role in the Innovation Economy* (Feb. 2022), at 6, https://www.investmentcouncil.org/wp-content/uploads/2022/02/aic_tech_investments_final.pdf; American Investment Council, *Improving Medical Technologies: Private Equity's Role in Life Sciences* (Mar. 2022), at 2 https://www.investmentcouncil.org/wp-content/uploads/2022/04/aic-life-sciences-report2-1.pdf.

16 *See* American Investment Council, *2022 Public Pension Study* (July 2022), at 2, https://www.investmentcouncil.org/wp-content/uploads/2022/07/22AIC002_2022-Report_SA-2226.pdf; Hal S. Scott & John Gulliver, *Expanding Opportunities for Investors and Retirees: Private Equity* (Nov. 2018), at 13 (citing numerous studies that "consistently find that private equity buyout

from state and municipal pension funds that have chosen to invest in private equity because of its above-market performance. The failure to recognize the contributions that the private investment industry can offer a given market sector is deeply troubling.

As discussed in more detail below, many private equity firms have successfully utilized merger strategies, including a "buy-and-build" model in highly fragmented markets, and, in doing so, have produced benefits for the companies in which they invest, those companies' customers—including by virtue of offering superior products and services—their employees, suppliers, and distributors, as well as fostering competition and benefiting the larger U.S. economy.[17]

I. Disregarding Merger-Generated Efficiencies Contradicts Well-Established Precedent and Is Misguided.

As an initial matter, although not specific to private equity investment, the RFI disregards the efficiencies and other procompetitive benefits that are often created by mergers. That disregard is consistent with the Agencies' overarching view, as articulated in the 2023 Merger Guidelines, that such efficiencies can be ignored when analyzing the effects of an acquisition. For example, Question (4) of the RFI refers to "*claimed efficiencies* from scale" as a type of "*claimed business goal[] and objective[]* of the serial acquisition strategy."[18] This overt skepticism about merger-generated efficiencies marks a significant departure from decades of precedent from the Agencies, the judicial branch, and academia.

Historically, the Agencies recognized the existence of merger-generated efficiencies and took them into consideration in evaluating the competitive effects of a merger. For example, the 2010 Merger Guidelines explained that:

> a primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products. For example, merger-generated efficiencies may enhance competition by permitting two ineffective competitors to form a more effective competitor.[19]

This recognition of merger-generated efficiencies—particularly the notion that merging two ineffective competitors can produce a more effective competitor—is supported by five decades of precedent at the Agencies. As one leading scholar of the merger review process noted in 2022,

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funds outperform public market alternatives . . . *net* of fees") (emphasis in original), https://ssrn.com/abstract=3661572.

[17] Empirical studies attest to substantial productivity gains and enhanced employment resulting from the capital infusion, managerial expertise, and synergies realized by private equity investment. *See, e.g.*, Steven J. Davis, et al., *The (Heterogeneous) Economic Effects of Private Equity Buyouts*, NBER (Apr. 2024), https://www.nber.org/system/files/working_papers/w26371/w26371.pdf; Joshua Cox & Bronwyn Bailey, *Private Equity Investment and Local Employment Growth: A County-Level Analysis*, 22(3) J. Alternative Investments 42 (2020), https://www.pm-research.com/content/iijaltinv/22/3/42.

[18] RFI at 7 (emphasis added).

[19] 2010 Merger Guidelines § 10.

“[w]ithout exception, every one of the Agencies’ merger guidelines has accepted a proper role for efficiencies in merger analysis, stretching back . . . to the original 1968 Merger Guidelines.”[20] Indeed, prior versions of the guidelines stated that the Agencies “will not challenge a merger if cognizable efficiencies are of a character and magnitude such that the merger is not likely to be anticompetitive in any relevant market.”[21] That long history of the Agencies taking account of merger-generated efficiencies should not be tossed aside.

In an abrupt departure from the Agencies’ prior merger guidelines, the 2023 Merger Guidelines expressly disregard merger-generated efficiencies. Notably, the 2023 Merger Guidelines omit the affirmative statement about the Agencies not challenging a merger with cognizable efficiencies and instead state that “possible economies [from a merger] cannot be used as a defense to illegality.”[22] The 2023 Merger Guidelines also state that the Agencies will not “credit efficiencies if they reflect or require a decrease in competition in a separate market,” will reject any efficiencies that “merely benefit the merging firms,” and will consider “[a]lternative ways of achieving the claimed benefits” such as “mergers with [other firms]” or “organic growth of one of the merging firms.”[23]

The Agencies’ dismissive attitude toward merger-generated efficiencies also contradicts established judicial precedent. Indeed, as the DOJ has observed, the majority of federal courts of appeals have recognized that “efficiencies are an essential part of rule of reason analysis under section 1 of the Sherman Act.”[24] For example, in *FTC v. Tenet Health Care Corp.*, the Eighth Circuit reversed a preliminary injunction blocking a merger because the lower court had failed to consider “evidence of enhanced efficiency in the context of the competitive effects of the merger.”[25] Along these same lines, in *FTC v. H.J. Heinz Co.*, the D.C. Circuit acknowledged a merged firm’s ability to lower its costs as a result of efficiencies generated by the merger.[26] And in *FTC v. Hackensack Meridian Health, Inc.*, the Third Circuit explained that the merging parties could attempt to rebut a prima facie showing that a proposed merger might substantially lessen competition by demonstrating efficiencies that “(1) ‘offset the anticompetitive concerns in highly concentrated markets’; (2) ‘[are] merger-specific’ (i.e., the efficiencies cannot be achieved by

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20 Alexander Raskovich, et al., *Efficiencies in Merger Review: Global Antitrust Institute Comment on the DOJ-FTC Request for Information on Merger Enforcement* (George Mason U. L. & Econ. Rsch. Paper Series, Paper No. 22-18, 2022), at 11, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4089959.

21 2010 Merger Guidelines § 10; 1997 Merger Guidelines § 4.

22 2023 Merger Guidelines § 3.3.

23 *Id.*

24 William J. Kolasky & Andrew R. Dick, *The Merger Guidelines and the Integration of Efficiencies into Antitrust Review of Horizontal Mergers*, 71 Antitrust Law J. 207, 208 (2003).

25 186 F.3d 1045, 1054 (8th Cir. 1999).

26 246 F.3d 708, 720 (D.C. Cir. 2001).

either party alone); (3) '[are] verifiable, not speculative'; and (4) '[do] not arise from anticompetitive reductions in output or service.'"[27] Federal district courts have followed suit.[28]

Against this backdrop, one scholar has noted that "it is hornbook antitrust law that efficiencies can rebut a prima facie showing of anticompetitive effects."[29] Further, there is "[widespread acceptance] in U.S. scholarship that there is a strong case for introducing efficiency considerations into merger review."[30] Numerous scholarly papers describe how merger-generated efficiencies can benefit consumers and consequently must be weighed in a merger analysis.[31]

Although the Agencies seem to no longer be willing to recognize these benefits, other countries still do. For example, the European Commission—"historically skeptical…of the role of efficiencies"—has "codified [a] willingness to assess and accept efficiencies in a defense of otherwise problematic mergers."[32] Article 2(1)(b) of the European Community Merger Regulation (ECMR) states that the Commission must consider "the development of technical and economic progress provided that it is to consumers' advantage."[33] Further, Recital 29 of the ECMR states that "[i]t is possible that the efficiencies brought about by the concentration counteract the effects

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27 30 F.4th 160, 176 (3rd Cir. 2022) (quoting *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 348-49 (3rd Cir. 2016)); *see also Illumina, Inc. v. FTC*, 88 F.4th 1036, 1059 (5th Cir. 2023); *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 790-91 (9th Cir. 2015); *Promedica Health Sys., Inc. v. FTC*, 749 F.3d 559, 571 (6th Cir. 2014); *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1222 (11th Cir. 1991).

28 *See, e.g.*, *United States v. JetBlue Airways Corp.*, No. CV 23-10511-WGY, 2024 WL 162876, *35 (D. Mass. 2024); *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 208 (S.D.N.Y. 2020); *FTC v. Peabody Energy Corp.*, 492 F. Supp. 3d 865, 913 (E.D. Mo. 2020); *United States v. Anthem, Inc.*, 236 F. Supp. 3d 171, 235 (D.D.C. 2017); *FTC v. OSF Healthcare Sys.*, 852 F. Supp. 2d 1069, 1088 (N.D. Ill. 2012).

29 Tyler J. Kubik, *The Efficiencies Defense After Anthem: Asymmetric Burdens and Strict Scrutiny of Merger Efficiencies*, 26 Geo. Mason L. Rev. 1365, 1365 (2019).

30 Robert Pitofsky, *Efficiency Consideration and Merger Enforcement: Comparison of U.S. and EU Approaches*, 30 Fordham Int'l L.J. 1413, 1414 (2006).

31 *See* Raskovich, et al., *supra* n.20, at 2 ("[E]fficiencies are integral to an assessment of the competitive effects of a horizontal merger, and…efficiencies evidence should . . . be accorded equal consideration to other factors."); Kubik, *supra* n.29, at 1382 ("The main reason to accept an efficiencies defense in mergers . . . is that efficiencies can benefit consumers: 'Society benefits from lower costs, innovation, and higher quality.'"); Jamie Henikoff Moffitt, *Merging in the Shadow of the Law: The Case for Consistent Judicial Efficiency Analysis*, 63 Vand. L. Rev. 1697, 1746 (2010) ("Although not all mergers create significant efficiencies, it is imperative that those that do are truly recognized and weighed in Section 7 competitive effects balancing analyses."); Paul Rogers, *The Limited Case for an Efficiency Defense in Horizontal Mergers*, 58 Tul. L. Rev. 503, 547 (1983) ("Although efficiency gains are likely to be decisive in few merger cases, that does not support their automatic exclusion in an area in which anticompetitive effects . . . must be analyzed on a case-by-case basis.").

32 David Cardwell, *The Role of the Efficiency Defense in EU Merger Control Proceedings Following UPS/TNT, FedEx/TNT and UPS v. Commission*, 8 JECLAP 551, 551, 553 (2017).

33 Council Regulation (EC) No. 139/2004 of 20 January 2004 on the Control of Concentrations Between Undertakings, art. 2(1)(b), 2004 O.J. L/24/1.

on competition, and in particular the potential harm to consumers, that it might otherwise have and that, as a consequence, the concentration would not significantly impede effective competition."[34] Canada also "has a strong track record of crediting efficiencies in merger reviews," with Section 96 of the Canada Competition Act "provid[ing] a defense to mergers that are otherwise likely to be greater than and offset the merger's anticompetitive effects."[35]

The Agencies' newfound rejection of the benefits of merger-generated efficiencies is the premise for the RFI's incorrect assumption that a private equity firm's acquisition of multiple companies in an industry must be motivated by a desire to reduce competition. Quite to the contrary, merger-generated efficiencies are real, they provide benefits to consumers through (among other things) cost savings and the creation of new product offerings, and are a compelling reason for a private equity firm to acquire multiple companies in the same line of business when executing a buy-and-build strategy.

II. Private Equity's Buy-and-Build Model Benefits Competition and the Economy as a Whole.

The buy-and-build model employed by some private equity firms in certain investments can offer significant procompetitive benefits—such as helping cost-intensive companies become more efficient and lower their costs, with some or all of those savings ultimately being passed on to customers—as well as benefiting the larger economy. A buy-and-build strategy typically becomes possible when a market matures and growth begins to slow down. At that point, existing management may not have the skills required to operate the business effectively; career opportunities for employees may be more limited or be put in jeopardy; compensation programs based on revenue or sales growth or stock value may no longer be sufficient to retain key personnel; and corporate boards may feel increasing pressure to "do something." That "something" often means acquiring similar businesses to maintain growth and improve efficiency by capturing the benefits of scale or scope. In such situations, acquisitions can preserve jobs that would be lost if the business were sold or if it eventually failed, and customers can benefit from uninterrupted supply relationships and oftentimes improved products and services that are provided by the larger business.

The buy-and-build model, in particular, is geared toward highly fragmented industries, in which participants lack any market power, let alone market power that would enable them to raise prices. Highly fragmented markets have many participants, often operating in distinct geographic regions. For example, there are industries with more than 100,000 market participants, including insurance, landscaping, management consulting, IT consulting, manufacturing, construction and engineering, HVAC services, property management, and wholesale distributions. There are also

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[34] *Id.*, recital 29; *see also Merger Analysis and the Role of Efficiencies in the EU*, FTC and U.S. DOJ Merger Enforcement Workshop (Feb. 2004) (explaining that EU's review process led to "compelling reasons to give more explicit consideration to efficiencies in merger control, from the understanding that efficiencies may bring more competition to the market"), https://www.justice.gov/archives/atr/merger-analysis-and-role-efficiencies-eu#:~:text=Further%3A%20Article%202(1%20)(,an%20obstacle%20to%20competition.%22.

[35] Brian Facey, et al., *Mind the Gap: Merger Efficiencies in the United States and Canada*, 32 Antitrust 64, 65 (2018).

industries with more than 10,000 market participants, including advertising and marketing, pest control, carwashes, dry cleaners, elevator installation and maintenance, business products and services, software development, and public relations.

In many cases, private equity firms are looking to combine a number of local companies (often not operating in the same locality) into a larger regional or national company, creating a more efficient business that can better serve its customers. Buy-and-build strategies can generate economies of scale, which help drive down costs.[36] Buy-and-build strategies also often mean that new and better products and services are developed and those products and services can reach a wider audience of customers. When successful, the buy-and-build strategy can produce companies that: (1) are more competitive and better organized for their employees, including the ability to offer greater benefits and professional growth opportunities; (2) provide better goods and services at lower prices for their customers; (3) create additional growth opportunities for the companies; and (4) generate meaningful returns for long-term investors, such as public pension plans. In the end, the whole is greater than the sum of the parts.[37]

Buy-and-build strategies can also keep small companies in business. Highly fragmented industries often include many family- or founder-owned companies, nearly half of which struggle to find successors when their owners decide to retire.[38] As it stands, retiring owners can sell their family-owned company to a private equity firm that will not only provide for business continuity, but have the capability to grow and improve the company. Without a private equity buyer, the company may close its doors, substantially impairing the value of the company's assets, putting the company's employees out of a job, and negatively impacting the communities that the company served. This can be especially damaging for family-owned companies that have many employees, such as service industries like landscaping or catering.

One industry in which buy-and-build is common is insurance, where more than 400,000 brokers and agencies compete for customers in the United States.[39] Indeed, the insurance industry is among the most fragmented industries in the United States, with the largest brokerage, State Farm, accounting for just under 10% of the market, and more than 400,000 other brokerages

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[36] *See, e.g.*, Bansraj, et al., *Private Equity as Strategic Buyers* (2022), https://ssrn.com/abstract=3651411 (explaining that private equity add-on acquisitions can lead to fewer, stronger competitors and more efficient market structures, benefiting both the portfolio companies and the broader market).

[37] *See, e.g.*, Hammer, et al., *Pricing and Value Creation in Private Equity-Backed Buy-and-Build Strategies*, J. Corp. Fin. (2022), https://ssrn.com/abstract=3244189 (finding that private equity firms that implement robust buy-and-build strategies benefit from significant value creation through operational improvements and strategic acquisitions and highlighting the importance of detailed planning, execution, and ongoing management to maximize the benefits of add-on acquisitions).

[38] *See* Vivian Akosua Dwumor Amanquah, *Succession Planning Strategies in Family Businesses*, Walden Dissertations and Doctoral Studies (2021), at 23, https://scholarworks.waldenu.edu/dissertations/11150/.

[39] *Insurance Brokers & Agencies in the US—Number of Businesses: 2003-2028*, IBISWorld (updated July 14, 2024).

competing for the other 90%, according to the National Association of Insurance Commissioners.[40] Insurance brokers and agencies cover the spectrum in terms of size, from national firms like State Farm to much smaller regional and local operations. Regional consolidation helps generate economies of scale and reduce operating costs—savings that can be passed on to customers or reinvested into better products and services.

The success of Confie Seguros, the country's first Hispanic-focused insurance company, is a great example of the positive impact that the buy-and-build model has had on the insurance industry. In 2007, Confie Seguros (which was operating in California under a different name at the time) became a private equity backed-company.[41] Confie Seguros began acquiring small insurance brokerages where Hispanic customers were underserved.[42] Existing staff were retrained or new staff were hired to provide bilingual services to Hispanic customers, enabling them to have face-to-face meetings and insurance policies translated into Spanish.[43] More than a decade later, Confie Seguros had grown into the leading Hispanic insurance brokerage, while ranking first in every relevant category between 2016 and 2021, according to Insurance Journal.[44]

Buy-and-build is also common in outpatient care and urgent care. Specialty outpatient health care—such as dermatology, cardiology, oncology, radiology, dentistry and orthodontics, orthopedics, and mental and behavioral health—are often small providers that operate on a local basis and employ five or fewer doctors. In many cases, specialized clinics only have one doctor after whom the practice is named. Doctors in small practices must perform their medical duties while also dealing with a wide range of administrative matters. Private equity firms can help such providers—and ultimately their patients. Importantly, when doctors can focus on their patients, and the organizations that employ those doctors become more efficient, that both improves patient care and generates cost savings that can be passed on to patients.[45] Greater scale at the provider level also leads to improved relationships with third-party payors, further reducing costs for patients. It also makes life easier for new doctors, who can join existing regional providers without having to build a practice from scratch.

BayMark Health Services is an example of how the buy-and-build model is benefiting providers and patients. BayMark, based in Lewisville, Texas, specializes in treating opioid addiction.[46] It was acquired by Webster Capital Management in 2015 and set about expanding into different parts of the country.[47] In addition to geographic expansion, Webster's buy-and-build

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40 *Id.*; *Property and Casualty Insurance Industry 2023 Top 25 Groups and Companies by Countrywide Premium*, National Association of Insurance Commissioners, 2024.

41 Susan R.A. Honeyman, *Storefront Marketer Grows by Acquisition: Confie Seguros Reaches $200 Million in Revenues Catering to the Hispanic Market*, Rough Notes (Apr. 2012).

42 *Id.*

43 *Id.*

44 *Closer Look: Personal Lines Leaders*, Insurance Journal (Sept. 6, 2021).

45 *See also* Comment Letter on Request for Information on Consolidation in Health Care Markets, *supra* n.3, at 11.

46 *Webster Capital-Backed BayMark Health Services Makes Two Acquisitions*, Citybuzz, (Feb. 6, 2017).

47 *Id.*

strategy included the addition of new services for BayMark's patients.[48] In 2017, BayMark acquired a Louisiana-based provider called AppleGate, which offers office-based buprenorphine treatments.[49] "With the state of opioid abuse in the country, BayMark is focused on providing care through multiple approaches in as many areas as possible to address the epidemic."[50]

In addition, private equity investment is having demonstrably positive impacts in the urgent care industry. According to the Urgent Care Association, only 1% of urgent care centers operate in rural communities. Metropolitan areas, by contrast, account for 86.2% of urgent care centers.[51] For many patients without access to urgent care, the closest "local" hospital is their only option, and emergency room bills can be stratospheric. Urgent care centers help lighten the load for local hospital emergency rooms and "lead[] to a substitution to a lower cost option" for patients.[52]

Urgent care centers are natural candidates for the buy-and-build model. Private equity sponsors start by investing in urgent care providers with a business model that has been successful in their community. Armed with capital from a private equity sponsor, these urgent care providers can open new locations in underserved areas. And having multiple urgent care centers under a single corporate umbrella can reduce overhead costs and, ultimately, patient bills.

According to The Journal of Urgent Care Medicine, there is "the potential for another 1,500 urgent care centers in rural/secondary markets" across the country,[53] and satisfying that pent-up demand would be welcomed by local communities. To meet that demand, private equity firms are working with entrepreneurial doctors who have created sustainable business models and want to see their companies expand into underserved markets. As they often do, private equity firms also bring managerial experience that helps urgent care providers operate more efficiently. Sverica Capital, for example, acquired Med First in Jacksonville, North Carolina, in 2016.[54] As part of that transaction, two former CEOs of major hospitals joined the Med First board of directors.[55] Sverica has deployed Med First's successful business model into other rural markets in the

48 *Id.*

49 *Id.*

50 *Id.*

51 American Investment Council, *Building Competition: How Buy-and-Build Helps the American Economy* 8 (Feb. 2023) (citing *Benchmarking Report*, Urgent Care Association, 2022), https://www.investmentcouncil.org/wp-content/uploads/2023/02/2022_AIC_BB_report_V3.pdf.

52 Joshua C. Hall and Amir B. Ferreira Neto, *The Effect of Health Care Entrepreneurship on Local Health: The Case of MedExpress in Appalachia,* 48 JRAP 23, 30 (July 24, 2018); *see also* Comment Letter on Request for Information on Consolidation in Health Care Markets, *supra* n.3, at 10.

53 Alan A. Ayers, *Rural and Tertiary Markets: The Next Urgent Care Frontier*, JUCM (Dec. 2, 2019).

54 *Sverica Capital Management Acquires RMS Healthcare Management*, Private Equity Wire (Aug. 10, 2016).

55 *Id.*

Southeastern United States, almost doubling the number of Med First clinics in the span of five years.[56]

III. The Agencies Should Avoid Making Categorical Conclusions About "Serial Acquisitions."

As the foregoing examples show, an assumption that all serial acquisitions by private equity firms harm competition is unsupportable.[57] Rather, the buy-and-build model utilized by some private equity sponsors tends to generate procompetitive benefits in a broad array of industries. The buy-and-build model can also help small businesses that find themselves unable to meet the rising cost of adapting to and complying with a broad array of regulatory requirements. Indeed, recent research demonstrates that the buy-and-build model can produce significant procompetitive benefits from improved efficiency, accelerated innovation, increased scale, and synergies. For example, a recent study analyzed private equity buyouts from 1980 to 2013 to better understand how such buyouts create value.[58] The research found that private equity firms that undertake add-on acquisitions experience significantly higher growth rates compared to those that do not, and expansion through add-on acquisitions helps scale up operations rapidly, with attendant cost savings.[59] The research also found that add-on acquisitions help private equity firms leverage synergies, optimize operational efficiencies, and expand their market reach.[60] In addition, the research found that add-on acquisitions facilitate consolidating administrative functions, sharing resources, and integrating complementary businesses, all of which help reduce costs and improve efficiency.[61] The research acknowledged that not all add-on acquisitions are successful, but if private equity firms acquire companies with the right strategic fit and then properly integrate those companies, they can generate significant value, not only for themselves but for other relevant constituencies.[62]

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[56] *Compare id., with* Alan A. Ayers, *Private Equity Ownership in Urgent Care by Number of Centers*, 18 JUCM 33, 34 (2024).

[57] Research supports the view that the Agencies should avoid making sweeping, categorical conclusions about the impact of private equity-sponsored acquisitions. *See* Davis, et al., *supra* n.17 (analyzing approximately 6,000 private equity buyouts in the United States from 1980 to 2013 and concluding that the effects of buyouts are highly heterogeneous and are influenced by factors such as the initial conditions of the target firm and macroeconomic conditions at the time of the acquisition); Committee on Capital Markets Regulation, *The Impact of Private Equity Buyouts on Productivity and Jobs* 3 (Aug. 2020) (analyzing "five U.S. studies and two global studies (including the U.S.) that measure the impact of private equity buyouts on job growth at target firms, as well as the positive externalities that are bestowed on entire industries" and noting that "[t]he most comprehensive U.S. study finds that the most prevalent types of private equity transaction – buyouts of private firms – are associated with a positive impact on job growth").

[58] *See* Cohn, et al., *Sources of Value Creation in Private Equity Buyouts of Private Firms* (2022), https://ssrn.com/abstract=2318916.

[59] *Id*. at 2-5, 21-24.

[60] *See id*. at 6-8, 22.

[61] *See id*. at 7, 14-15.

[62] *See id*. at 16-17, 19.

While private equity has become a target of the Agencies, the facts demonstrate that private equity firms are actually solving problems in the U.S. economy, not creating them. Indeed, private equity provides a critical source of capital that allows businesses to grow and develop better and more accessible products and services, which benefits the U.S. economy and consumers. Rather than singling out private equity investment or the buy-and-build model for criticism and potentially disruptive regulation, the Agencies should recognize that interfering with the ability of private equity firms to acquire multiple companies in the same industry may in fact hinder competition and stifle innovation, harm businesses, and negatively impact communities. Given the important contributions of private equity investment, a predisposition against the private equity model should not get in the way of reasoned and fair-minded competition policy.

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AIC appreciates the opportunity to comment and is available to answer any questions you may have about the matters addressed in this letter.

Sincerely,

/s/ Rebekah Goshorn Jurata

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Rebekah Goshorn Jurata
General Counsel
American Investment Council