When corporate acquisitions mean fewer ventilators

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Research by Yale SOM's Florian Ederer and Song Ma has shown that companies often purchase competitors, not to acquire their ideas and products, but to shut them down—a phenomenon that they have dubbed

"killer acquisitions." We asked them to shed light on a recent report suggesting that such an acquisition may be partially responsible for a shortage of ventilators in the United States.

Your research shows that larger pharmaceutical companies sometimes buy smaller ones in order to shut them down. Has that trend meant fewer new drugs for patients?

In "Killer Acquisitions," our research paper with Colleen Cunningham at London Business School, we document that in the pharmaceutical industry, there are as many as 50 "killer acquisitions" every year in which incumbent firms acquire innovative targets solely to discontinue the target's innovation projects and to preempt future competition. Such killer acquisitions potentially pose a significant health policy problem because they lessen competition, increase prices, and reduce available treatments for patients.

Have killer acquisitions made the U.S. less well prepared for the COVID-19 epidemic?

We do not think that killer acquisitions have held back vaccines for COVID-19, but there are some concerns that Covidien's $108 million acquisition of Newport in 2012 was a killer acquisition that reduced the availability of ventilators, the most effective treatment against some of the most severe COVID-19 symptoms.

The *New York Times* reported that the U.S. Department of Health and Human Services awarded a contract to Newport in 2010 to manufacture ventilators to handle a potential shortfall during a pandemic. It also reported that government officials and executives at rival ventilator companies suspected that Covidien had acquired the rival startup Newport to prevent it from building a cheaper product that would

undermine Covidien's profits from its existing ventilator business. (On March 29, Covidien's parent company, Medtronic, issued a statement responding to the *New York Times* article.)

The Federal Trade Commission (FTC) granted an early termination to Covidien's purchase of Newport in April 2012 without opening a formal investigation. Covidien ultimately backed out of the government contract in 2014, citing concerns that the arrangement would not be profitable. The U.S. government then awarded a contract to another firm, but the U.S. Department of Health and Human Services is reportedly still awaiting a final product. At the same time, FTC Commissioner Rebecca Kelly Slaughter has already called for a retrospective review of the Covidien/Newport acquisition.

Previous examples of this phenomenon have eluded antitrust laws. How do you suggest these cases be addressed over the long term?

We completely trust the judgment of the FTC (and the DOJ) in this case and all the other mergers and acquisitions that they have examined. Over the past several decades, the staff at the antitrust authorities has done a tremendous job protecting the interests of American consumers. However, the case of Covidien illustrates how many potentially problematic acquisitions fly under the radar of the antitrust authorities.

The FTC reviews most mergers and acquisitions in the branded and generic pharmaceutical, pharmacy benefit management, medical distribution, and medical supplies and equipment markets. Merger control is designed to prevent acquisitions that are likely to substantially lessen competition, including acquisitions of head-to-head rivals; customers or suppliers; and potential rivals. Antitrust law is designed to prevent the adverse outcomes of anticompetitive mergers by stopping

them in their "incipiency."

Data sources reveal that between 2008 and 2014, Covidien made 17 acquisitions, or about 2.5 acquisitions per year. In 2012, the same year it acquired Newport Medical, Covidien made five other small acquisitions that most likely fell below the thresholds under the Hart Scott Rodino (HSR) Act, which governs which transactions are reportable to the U.S. government. Of Covidien's remaining 12 acquisitions, many worth hundreds of millions of dollars each, we only know the antitrust fate of two—Newport Medical Instruments and superDimension Ltd. These deals received "early termination," or a green light to proceed after a brief initial antitrust review by the FTC. Covidien's other acquisitions may have been small enough to be unreportable, or received a government request for additional information and ultimately let go.

In our research we also find that a disproportionately large number of killer acquisitions evade antitrust scrutiny because the acquisition values of these deals are sufficiently small such that they fall below the HSR pre-merger notification thresholds. As a result, the antitrust authorities are never even notified of some potentially anticompetitive mergers. Related work on so called "stealth consolidation" by Thomas G. Wollmann at Chicago Booth also emphasizes that a significant proportion of merger activity goes unnoticed (and hence unchallenged) by the antitrust authorities.

Although there are currently no concrete proposals on how to address such stealth killer acquisitions, our research suggests that it might be worthwhile to give the antitrust authorities more information about all mergers and allow them to retrospectively review previously unchallenged acquisitions.

More information: Thomas G. Wollmann. Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act, *American*

Economic Review: Insights (2019). DOI: 10.1257/aeri.20180137