

AI Acquihires Under Fire: FTC Signals HSR Scrutiny — AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

Main Points

- Earlier in January, Federal Trade Commission (FTC) Chair Andrew Ferguson signaled in an [interview](#) that the FTC is watching acquihire structures more closely, particularly as they concern the AI industry. Acquihires — especially those in which team hires are paired with IP licenses, data access, or other commercial side-agreements — have become an increasingly common strategy for big tech firms to secure scarce AI talent, often without acquiring the company or triggering formal merger review. These transactions allow big tech companies to hire a startup's top talent and license its technology but not acquire the company itself, a model sometimes described as "reverse acquihiring."
- Chair Ferguson emphasized there is no one-size-fits-all rule for when a talent-focused deal crosses the line into an acquisition that must be reported per the Hart-Scott-Rodino (HSR) Act, but the FTC is "beginning to look very closely at how these things work," and may consider "if we need to promulgate additional guidance here in how we understand these acquihires."
- This practice of talent-focused acquisition plays a crucial role in the AI industry landscape as high-value talent is scarce in the fast-growing field, and big tech firms are interested in acquiring human capital.
- Whether through enforcement actions, guidance, or interagency coordination, acquihires in AI are likely to remain on regulators' radar as agencies continue refining how antitrust law applies to innovation-driven markets.
- The regulatory path forward remains uncertain. Given the Trump administration's broader pro-innovation and deregulatory posture toward AI, it is unclear whether heightened scrutiny will translate into formal enforcement actions, new guidance, or case-by-case review. To date, there has been limited public guidance or litigation directly addressing acquihire structures in the AI context.

What's Happening

Earlier in January, Federal Trade Commission (FTC) Chair Andrew Ferguson signaled in an [interview](#) that the FTC is watching acquihire structures more closely, particularly as they concern the AI industry. He emphasized there is no one-size-fits-all rule for when a talent-focused deal crosses the line into an acquisition that must be reported per the Hart-Scott-Rodino (HSR) Act, but the FTC is "beginning to look very closely at how these things work," and may consider "if we need to promulgate additional guidance here in how we understand these acquihires."

"Tech companies have recently executed acquihire agreements that were not notified under the Hart-Scott-Rodino (HSR) Act, the statute requiring companies entering acquisitions exceeding certain monetary thresholds to file notifications with the federal antitrust agencies," said FTC Chair Ferguson.

Acquihires, particularly those in which team hires are paired with IP licenses, data access, or other commercial side-agreements, have become an increasingly common strategy for big tech firms to secure scarce AI talent, often without acquiring the company or triggering formal merger review. These transactions allow big tech companies to hire a startup's top talent and license its technology but not acquire the company itself, a model sometimes described as "reverse acquihiring."

This practice of a talent-focused acquisition plays a crucial role in the AI ecosystem industry landscape as high-value talent is scarce in the fast-growing field, and big tech firms are interested in acquiring human capital. Since big tech companies are acquiring the talent of competitors without the purchase of the competitor, Chair Ferguson is pointing to the antitrust issues that arise for HSR reportability. This practice has been increasingly scrutinized as AI investments in the industry are growing exponentially, and this growth and competitiveness invite big tech companies' interest in startups' technology and talent.

Chair Ferguson also underscored the statutory standard: The HSR Act applies to deals where "assets or stock" are being acquired, and that is what triggers pre-merger notification. He also raised a broader question: When does an acquihire amount to an acquisition of assets (or stock) in a way that could trigger the statute? In the same vein, a procedural question arises with acquihires: The FTC is interested in whether acquihire structures are being used to circumvent HSR review.

However, whether it is the substantive competitive concerns or the procedural question for how a deal is structured will vary deal to deal, said Chair Ferguson, adding that formal rulemaking may not necessarily be the best solution.

Why It Matters

In a highly competitive and innovation-driven market like AI, acquiring has become a strategy for established tech companies to nip the bud of their competition at the get-go. For established firms, acquirers can provide a rapid means of scaling internal capabilities.

The regulatory path forward remains uncertain. Given the Trump administration's broader pro-innovation and deregulatory posture toward AI, it is unclear whether heightened scrutiny will translate into formal enforcement actions, new guidance, or case-by-case review. To date, there has been limited public guidance or litigation directly addressing acquire structures in the AI context.

Nonetheless, the issue has attracted political attention. Three Democratic senators recently urged the FTC and DOJ, in a [letter](#), to scrutinize AI acquirers and "block or reverse" them if they function as "de facto mergers."

"If left unchecked, these types of arrangements between Big Tech companies and smaller AI developers ... risk[] driving up prices and choking off innovation," said the senators in their letter.

Antitrust Implications

While FTC Chair Ferguson's comments signal increasing scrutiny of acquire transactions, it remains unclear whether the FTC will pursue formal rulemaking, enforcement actions, or simply heightened monitoring. Moreover, whether existing statutory frameworks can be interpreted to encompass certain acquire structures remains an open question.

Beyond the procedural issue of reportability, the more significant long-term antitrust question may be substantive rather than procedural. Acquirers, particularly those involving concentrated markets and dominant platforms, can functionally remove competitors, who are still at infancy, or key inputs (such as specialized talent and proprietary algorithms) from the competitive landscape without a traditional merger. In a rapidly evolving field like AI, where competition often centers on innovation and talent, the acquisition of a startup's core team and related commercial rights may, in effect, neutralize a competitive threat before it matures.

The attention on acquiring is also not entirely novel. Back in 2021, former FTC Commissioner Rohit Chopra [raised concerns](#) about technology firms structuring transactions to avoid formal merger review. What appears to be new is the context: the strategic importance of AI for President Trump, the scarcity of top-tier AI talent, and the heightened political focus on competition in the AI and tech industries. Whether through enforcement actions, guidance, or interagency coordination, acquirers in AI are likely to remain on regulators' radar as agencies continue refining how antitrust law applies to innovation-driven markets.

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