ACQUIHIRES IN THE TECHNOLOGY SECTOR: ANTITRUST SCRUTINY THROUGH THE LENS OF ECONOMICS

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This paper examines the economic and regulatory implications of "acqui-hires" in the technology sector, including both traditional acquisitions and emerging "reverse acqui-hire" arrangements. Drawing on recent literature and case examples, it assesses how such transactions may influence innovation, competition, and labor market outcomes. Regulators and scholars have raised four principal concerns: that acqui-hires may function as disguised "killer acquisitions," reduce incentives for startup investment, enable inefficient "talent hoarding," or create labor market power. At the same time, economic research also highlights mitigating factors that may limit these potential risks, including labor mobility, the availability of alternative hiring channels, and the challenges of post-acquisition integration. The paper concludes that while acqui-hires may warrant regulatory scrutiny in certain contexts, overenforcement could suppress startup investment and innovation. A balanced, evidence-based approach is therefore essential to distinguish between transactions that harm competition in product and labor markets and those that advance innovation and benefit workers.

I. INTRODUCTION

As described in a 2013 article, an "acquihire" is the acquisition of a firm, including all of its assets, primarily for the purpose of acquiring the target firm's employees rather than its assets or products.[2] Research indicates that acquihires began attracting attention in the technology sector in the early 2010s, particularly in Silicon Valley, when they became a common way to acquire engineering talent for large technology firms.[3] These acquihires resembled traditional acquisitions in form, as the target – typically a startup – was fully acquired by a larger buyer.

With the rapid development of the AI sector, tech industry observers have highlighted another form of talent acquisition. Rather than buying companies outright, several large technology firms have engaged in what industry observers have termed "reverse acquihires" – partnerships in which a large tech firm hires most or all of a startup's employees while licensing the startup's intellectual property.[4] Notable examples of partnerships described as "reverse acquihires" include those between Microsoft and Inflection AI in March 2024, Amazon and Adept in June 2024, Google and Character.AI in August 2024, Meta and Scale AI in June 2025, and Apple and Prompt AI in October 2025. [5,6,7,8,9]

In this context, competition authorities, along with legal and economic scholars, have started to reexamine the implications of startup acquisitions, particularly those motivated by the desire to acquire human capital. For example, former FTC Commissioner Rohit Chopra and former Assistant Attorney General for the DOJ Jonathan Kanter have expressed concern that "reverse acquihires" may serve as a means of circumventing regulatory scrutiny typically applied to formal acquisitions. They have argued that such deals are, in substance, acquisitions under a different name and therefore should be subject to similar oversight.[10]

This article reviews legal and economic literature on acquihires, focusing on their potential pro- and anticompetitive effects and the factors that may influence potential regulatory scrutiny. In the remainder of this article, we use the term "acquihire" to refer to both "traditional" and so-called "reverse" forms, where the discussion applies to both. Although much of the economic and legal analysis are relevant to both, there are notable distinctions arise in certain contexts, particularly in evaluating their potential impact on startup formation and investment.

The balance of this article is organized as follows. Section II reviews the principal concerns regarding acquihires raised by regulators and discussed in the economic literature, including their characterization as "killer acquisitions," their impact on incentives to invest in start-ups, the risks of "talent hoarding," and potential implications for labor market power. Section III discusses mitigating factors that may limit these potential risks, focusing on labor mobility, alternative channels for hiring, and challenges associated with post-acquisition integration. Section IV outlines insights from the economic literature on the potential benefits of regulatory scrutiny of acquihires to consumers and the risks of overenforcement.

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2 Gregg D. Polsky & John F. Coyle, *Acqui-Hiring*, 63 Duke L.J. 281, 281-346 (2013).

3 Coyle & Polsky, *supra* note 2, at 283–286, 326-327.

4 See e.g. Alex Heath, *This Is Big Tech's Playbook for Swallowing the AI Industry*, The Verge (July 1, 2024), https://www.theverge.com/2024/7/1/24190060/amazon-adept-ai-acquisition-playbook-microsoft-inflection, identifies reverse acquihire[s] as an "emerging" "pattern" and highlights Microsoft's and Amazon's hiring of employees and licensing of technologies from Inflection and Adept respectively.

5 Press Release, Microsoft, *Mustafa Suleyman, DeepMind and Inflection Co-founder, Joins Microsoft to Lead Copilot* (Mar. 19, 2024), https://blogs.microsoft.com/blog/2024/03/19/mustafa-suleyman-deepmind-and-inflection-co-founder-joins-microsoft-to-lead-copilot/.

6 Kyle Wiggers, *Amazon Hires Founders Away from AI Startup Adept*, TechCrunch (June 28, 2024), https://techcrunch.com/2024/06/28/amazon-hires-founders-away-from-ai-startup-adept/.

7 Kenrick Cai, *Google Hires Top Talent from Startup Character.AI, Signs Licensing Deal*, Reuters (Aug. 2, 2024), https://www.reuters.com/technology/artificial-intelligence/google-hires-characterai-cofounders-licenses-its-models-information-reports-2024-08-02/.

8 Jody Godoy, *Meta's $14.8 Billion Scale AI Deal Latest Test of AI Partnerships*, Reuters (June 16, 2025), https://www.reuters.com/sustainability/boards-policy-regulation/metas-148-billion-scale-ai-deal-latest-test-ai-partnerships-2025-06-13/.

9 Sissi Cao, *Apple Is a Master of Acqui-Hire as It Quietly Grabs Top Talent in A.I. Race*, Observer (Oct. 20, 2025), https://observer.com/2025/10/apple-acqui-hire-ai-talent/.

10 See e.g. Rohit Chopra, Comm'r, Fed. Trade Comm'n, *Prepared Remarks of Commissioner Rohit Chopra* (Sept. 15, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596340/20210915_final_chopra_remarks_non-hsr_reported_acquisitions_by_big_tech_platforms.pdf; Jonathan Kanter, *Billion-Dollar "Acqui-Hires" Are Bad for Competition*, Fin. Times (Aug. 18, 2025), https://www.ft.com/content/1d7075d4-12f3-404e-8667-7ef42e715a4e.

II. COMPETITIVE CONCERNS RAISED BY REGULATORS AND DISCUSSED IN ECONOMIC LITERATURE

While acquihires are often presented by the companies involved as mechanisms for acquiring talent and expanding innovation capacity, some scholars and competition authorities have expressed concerns that such deals (i) may serve as disguised "killer acquisitions" that can suppress innovation, (ii) may reduce incentives to invest in startups, (iii) may lead to inefficient "talent hoarding," or (iv) could contribute to the creation of labor market power.

A. Concerns About Potential for Acquihires Being Disguised So-called "Killer Acquisitions"

In recent years, competition authorities and scholars – following the study of Cunningham, Ederer & Ma (2021) – have examined the potential threat to competition posed by so-called "killer acquisitions," whereby large incumbents acquire nascent or potential competitors with the apparent aim of suppressing future innovations and eliminating emerging market threats.[11,12] The term originally referred to acquisitions intended to discontinue existing or prospective products that might challenge the acquirer's own offerings. Concerns about such acquisitions first arose in the pharmaceutical and technology sectors.[13,14] More recently, however, competition agency officials such as former Assistant Attorney General for the DOJ Jonathan Kanter have voiced concern that "reverse acquihire" deals may constitute "killer acquisitions" in disguise, even though they typically do not result in exclusive ownership of the target's assets.[15]

Since the seminal work of Cunningham, Ederer & Ma, economists have examined the potential competitive effects of nascent-firm acquisitions. A substantial body of primarily theoretical economic literature has developed, analyzing the trade-offs associated with stricter control of startup acquisitions in the technology sector.[16] This literature highlights three key considerations when evaluating such acquisitions:

- Balancing innovation risks and benefits by weighing the potential risk that an acquirer may suppress a startup's innovation against the potential benefits of facilitating successful market entry – such as broader promotion and distribution of the startup's technologies through the acquirer's resources.[17]

- Assessing incentives for entrepreneurship by considering the role that acquisition opportunities play in encouraging startup formation and investment by providing viable exit options for entrepreneurs and venture capital investors.[18]

- Evaluating the potential risk of market entrenchment by examining whether startup acquisitions may reinforce incumbents' market positions or enable them to steer innovation in ways that favor existing products or platforms.[19,20]

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11 See e.g. U.S. Dep't of Justice & Fed. Trade Comm'n, *Start-Ups, Killer Acquisitions, and Merger Control – Note by the United States* (Submission to OECD Competition Comm., 2020), www.justice.gov/atr/page/file/1316551/dl?inline.

12 Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. Pol. Econ. 649, 649-702 (2021).

13 Speech, Margrethe Vestager, Exec. Vice President, Eur. Comm'n, *Speech at the 28th Annual Competition Conference of the International Bar Association* (Sept. 2024), https://ec.europa.eu/commission/presscorner/detail/en/speech_24_4582.

14 Experts have highlighted that transactions appearing to be "killer acquisitions" may be motivated by other considerations rooted in the specificities of the innovation processes in the pharmaceutical sector. See e. g. Michael S. Finch, Jee-Yeon Lehman & Federico Mantovanelli, *How Biotech Deals May Help Competition, Despite FTC View*, Law360 (January 30, 2024), https://www.analysisgroup.com/globalassets/insights/publishing/2024_how_biotech_deals_may_help_competition_law360.pdf.

15 See e.g. Jonathan Kanter, *Billion-Dollar "Acqui-Hires" Are Bad for Competition*, Fin. Times (Aug. 18, 2025), https://www.ft.com/content/1d7075d4-12f3-404e-8667-7ef42e715a4e.

16 See e.g. Massimo Motta & Martin Peitz, *Big Tech Mergers*, 54 Info. Econ. & Pol'y 100868 (2021); Michael L. Katz, *Big Tech Mergers: Innovation, Competition for the Market, and the Acquisition of Emerging Competitors*, 54 Info. Econ. & Pol'y 100883 (2021); Chiara Fumagalli, Massimo Motta & Emanuele Tarantino, *Shelving or Developing? The Acquisition of Potential Competitors Under Financial Constraints*, CEPR Discussion Paper, No. DP16742 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3674889.

17 See e.g. Fumagalli, Motta & Tarantino, *supra* note 16, at 1; Devin Reilly, D. Daniel Sokol & David Toniatti, *The Importance of Exit via Acquisition to Venture Capital, Entrepreneurship, and Innovation*, 32 Minn. J. Int'l L. 159, 159-93 (2023).

18 *Ibid.*

19 Vincenzo Denicolò & Michele Polo, *Innovation, Acquisitions, and the Entrenchment of Monopoly*, Rand J. Econ. (forthcoming 2023).

20 Esmée Dijk, José Moraga-González & Evgenia Motchenkova, *How Do Start-Up Acquisitions Affect the Direction of Innovation?*, 72 J. Indus. Econ. 118, 118-56 (2023).

Overall, the literature suggests that although the potential for innovation suppression or market entrenchment may justify closer regulatory scrutiny in certain contexts, other situations – particularly those in which startups face substantial development or financing challenges – support a more lenient regulatory approach. Empirical observations of technology-sector acquihires underscore both the significant commercialization hurdles that startups encounter and the importance of maintaining investment incentives. For example, Tham & Kinsella (2024) emphasize that the role of large acquirers in bringing struggling startups' innovations to market is not merely hypothetical. They highlight the example of the Android operating system – developed by a startup with fewer than ten employees – which was on the verge of shutting down prior to its acquisition by Google.[21]

These commercialization and financing challenges may be even more acute in the generative AI sector, where the most recent wave of "reverse acquihires" has taken place. Several authorities have warned that the generative AI supply chain contains bottlenecks that may impede smaller firms' ability to innovate successfully.[22] For example, the U.K. Competition and Markets Authority's review of the Microsoft/Inflection partnership acknowledged these obstacles, finding that Inflection was unlikely to become a significant competitor independently, given its stagnating chatbot user base and limited capacity to raise the substantial capital required to continue developing its model.[23,24]

B. Concerns About Potential Impact on Investment Incentives

Recent research suggests that the extent to which acquihires foster investment in startups may differ between "reverse" and traditional forms.[25] In traditional acquihires, the acquiring firm purchases the entire startup, and shareholders are typically compensated through that deal. In contrast, in "reverse acquihires" – in which the startup itself is not acquired – investors may not receive direct compensation from the partnership.

Some researchers have indicated that, in practice, the beneficiaries of "reverse acquihires" depend partly on the deal's structure and the specific contractual provisions among the parties. Broughman, Wansley & Weinstein (2025) argue that, in the cases of Microsoft/Inflection, Google/Character.AI, and Meta/Scale AI, startup investors were well compensated through various payment channels specified in the partnership deals facilitating these transactions.[26] On the other hand, according to a press report, investors in Prompt AI were not able to fully recover their investment following the reported Apple acquihire.[27]

Research also suggests that "reverse acquihires" may continue to incentivize startup investment, though those incentives may be weaker than the ones generated by traditional acquisitions. Broughman, Wansley & Weinstein argue that this difference may become more pronounced depending on how competition authorities evaluate "reverse acquihires." They further opine that "reverse acquihires" emerged precisely because the recent increase in scrutiny of U.S. M&A activity – especially regarding nascent competition and startup acquisitions – has made one critical "exit path," the "traditional" acquisition, less available for some startups. The authors caution that further scrutiny of "reverse acquihires" may reduce investment in innovation, a risk that should be taken seriously.[28]

An additional consideration that has received comparatively little attention from researchers is how the prospect of acquihires affects workers' incentives to join startups in the first place. Just as acquihires can provide an attractive exit opportunity for investors, they can also serve as a viable pathway to employment at large firms, although alternative, independent employment paths may also exist. If scrutiny of acquihires limits workers' future employment options, they may be less inclined to join startups, potentially weakening incentives to join startups in turn may impair the innovation these startups may create. A clearer understanding of these worker-level incentives would provide valuable insight into the appropriate degree of regulatory scrutiny for acquihires.

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21 Kah Loon Tham & Stephen Kinsella, *The Talent Trap: Acqui-Hires and Non-Competes from an Antitrust Perspective*, CPI Antitrust Chron. (Aug. 2024), at 7.

22 Competition & Mkts. Auth., *AI Foundation Models: Initial Report*, at 52-53 (2023), https://assets.publishing.service.gov.uk/media/65081d3aa41cc300145612c0/Full_report_.pdf; Fed. Trade Comm'n, *Staff Report on Partnerships Between Cloud Service Providers and AI Developers* (hereinafter "FTC Staff Report"), at 30-31 (2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p246201_aipartnerships6breport_redacted_0.pdf; Eur. Comm'n, *Competition in Generative AI and Virtual Worlds*, Competition Pol'y Brief No. 3/2024 (hereinafter "EC Competition Policy Brief"), at 4-5, https://competition-policy.ec.europa.eu/document/download/c86d461f-062e-4dde-a662-15228d6ca385_en.

23 Competition & Mkts. Auth., *Decision on Microsoft Corp.'s Hiring of Certain Former Employees of Inflection and Its Entry Into Arrangements with Inflection* ¶¶ 220, 228 (2024), https://assets.publishing.service.gov.uk/media/6719ff5f549f63039436b3c8/__Full_text_decision__.pdf.

24 *Ibid.* ¶¶ 181, 193, 224-225.

25 Brian J. Broughman, Matthew Wansley & Samuel Weinstein, *No Exit, N.Y.U. L. Rev.* (forthcoming 2025) (working paper available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5316792).

26 Broughman, Wansley & Weinstein, *supra* note 25, at 64-65.

27 Sissi Cao, *Apple Is a Master of Acqui-Hire as It Quietly Grabs Top Talent in A.I. Race*, Observer (Oct. 20, 2025), https://observer.com/2025/10/apple-acqui-hire-ai-talent/.

28 Broughman, Wansley & Weinstein, *supra* note 25, at 76.

C. Concerns About Potential "Talent Hoarding"

Industry observers and economic studies have also raised concerns about the potential risk of "talent hoarding" associated with acquihires. Rather than focusing on the potential elimination of actual or potential competition in the product or service space, these concerns center on the inefficient use of acquired human capital. The underlying argument is that firms may acquire talent not to utilize it productively but to preempt rivals from accessing it. While competition authorities have not yet explicitly expressed concern about "talent hoarding" in the technology sector, media reports increasingly question whether tech companies are engaging in overhiring practices.[29]

In this context, some academics have explored the welfare implications of potential "talent hoarding" in the context of acquihires.[30] According to the predictions of their theoretical model, the effects of such transactions on consumer welfare – under certain assumptions – will depend primarily on the difference between the startup's standalone contribution to consumer welfare through innovation and the risk of inefficient post-acquisition use of talent.[31]

The potential risks studied by these academics have been reflected in statements by selected competition authorities. For example, a Competition Policy Brief issued by the European Commission (EC) discusses potential future attempts at foreclosure through restricting rivals' access to talent, though it tempers these concerns by noting that "the market for the acquisition of AI talent seems to be dynamic at this stage."[32] Similarly, the Portuguese Competition Authority (Autoridade da Concorrência, AdC) and the FTC have flagged the potential scarcity of talent in the AI sector that could raise greater concerns about such acquisitions.[33] It remains an open question – both in practice and among researchers – whether firms operating in fast-changing industries could retain skilled workers if they are underused. Possibly, "talent hoarding" may be more of a concern in slower-moving sectors where there is less pressure to continually adapt to technological change.[34]

D. Concerns About Potential Creation of Labor Market Power

Regulatory scrutiny of labor market outcomes has increased in recent years, as reflected, for example, in the DOJ/FTC's 2023 Merger Guidelines, which explicitly address potential harm to competition in labor markets.[35] In 2025, the EC also included questions related to labor market considerations in its public consultation to update merger guidelines.[36]

Recent academic economic research has begun to explore the potential effects of acquihires on labor market outcomes. For example, a theoretical model by Bar-Isaac, Johnson & Nocke (2024) compares acquihiring with the independent hiring of employees in a setting where workers derive non-monetary "private benefits" from working at startups.[37] These private benefits encompass factors such as working conditions, culture, and alignment with a firm's mission. The model finds that employees may be worse off under acquihiring than under independent hiring if the acquirer is not required to compensate them with higher wages for the loss of such benefits. Under the model's assumptions, the acquirer would compensate employees for this loss if it hired them independently.[38]

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29 See e.g. Erin Griffith, *Tech's Talent Wars Have Come Back to Bite It*, N.Y. Times (Nov. 10, 2022), https://www.nytimes.com/2022/11/10/technology/big-tech-layoffs.html.

30 Jean-Michel Benkert, Igor Letina & Shuo Liu, *Startup Acquisitions: Acquihires and Talent Hoarding*, 178 Eur. Econ. Rev. 105103 (2025).

31 Benkert, Letina & Liu, *supra* note 30, at 6.

32 EC Competition Policy Brief, *supra* note 22, at 5.

33 See e.g. Portuguese Competition Auth., *Competition and Generative AI – Labour Markets, AdC Short Papers*, (hereinafter "AdC Short Paper"), at 3 (2025), https://www.concorrencia.pt/sites/default/files/documentos/Competition%20and%20Generative%20AI%20-%20Labour%20Markets.pdf. See also, FTC Staff Report, *supra* note 22, at 31-32 ("[T]he skills necessary to develop and deploy large-scale generative AI models are relatively rare and may be difficult to acquire outside of working for large AI developers or the hyperscalers themselves.")

34 In the terminology of Benkert, Letina & Liu, *supra* note 30, it is unlikely that the acquirers of AI startups would be "low match" due to the innovation pressure that characterizes the sector.

35 See e.g. Guideline 10 that explicitly indicates that worker welfare should be computed holding product market competition fixed, and p. 41 that introduces a hypothetical monopsonist test in U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines*, at 26-27, 41 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

36 Between May 8 and September 3, 2025, the European Commission carried out a public consultation on merger regulation. Topics of the consultation included labor market considerations. See e.g. Eur. Comm'n, *Review of Merger Guidelines, In-Depth Consultation: Topic G – Public Policy, Security and Labour Market Considerations* ¶¶ 120-23 (2025), https://competition-policy.ec.europa.eu/document/download/3ebe19c4-4b33-4ae4-a2e0-dbff47916225_en?filename=Topic_G_Public_policy_security_and_labour_market_considerations.pdf.

37 Heski Bar-Isaac, Justin P. Johnson & Volker Nocke, *Acquihiring for Monopsony Power*, 71 Mgmt. Sci. 3485, 3485–96 (2025) (working paper available at https://www.volkernocke.com/BJN.pdf).

38 Bar-Isaac, Johnson & Nocke, *supra* note 37, at 4-7.

The model's results depend heavily on the availability of outside options for startup employees. When such outside options exist, they incentivize acquirers to compensate acquihired workers for any loss of private benefits. Conversely, when outside options are limited, an acquirer may acquihire employees without compensating them for this loss.

Communication from competition authorities in the technology sector suggests that numerous employment opportunities exist for top talent, particularly in AI. The EC, for example, has observed that the market for AI talent is highly dynamic, and a survey by the Japan Fair Trade Commission found that AI talent is not concentrated in a few companies, with examples of employees leaving large companies to join startups. In this context, employers must compete vigorously to attract and retain workers.[39] Accordingly, some academics question whether wage-suppression concerns are likely to arise under such competitive conditions.[40]

III. MITIGATING FACTORS

While some regulatory and academic discussions have outlined potential risks associated with acquihires, other research suggests that such concerns may be tempered by several mitigating factors. This section examines these factors, drawing on recent empirical and theoretical research on post-acquisition labor dynamics, innovation spillovers, and the legal and economic implications of labor mobility in the context of acquihires. In particular, research emphasizes that the mobility of labor assets and the possibility of independent hiring can mitigate concerns about long-term effects of acquihires on market concentration and "talent hoarding," if any.

A. Labor Is an Asset That Can – And Does – Move on Its Own

Recent empirical studies highlight a key distinction between labor and other asset forms: Unlike physical, financial, or intellectual property assets, labor can move independently of the acquiring firm. A growing body of empirical research finds that acquihired workers tend to leave their new employers at much higher rates than other workers.[41] This pattern suggests that market-structure changes following acquihires are less durable than those resulting from traditional acquisitions, as employees often move to other firms and continue contributing to innovation elsewhere. Accordingly, some scholars argue that the potential anticompetitive effects of acquihires – particularly on innovation – are less likely to be severe.[42]

Furthermore, studies find that more senior and highly educated acquihired employees are generally more likely to leave their employers after acquisition. Ng & Stuart (2022), for example, analyzed turnover rates among acquihired technology employees across levels of seniority and qualifications. Their study found that the most senior and highly educated employees were likelier to leave their acquirers than lower-ranking or less educated colleagues.[43] This finding is particularly salient in the AI sector, where critical know-how appears to be concentrated among a small number of individuals,[44] suggesting that high turnover among senior and highly skilled workers may further limit the potential for long-term concentration of expertise within acquiring firms.

Several competition authorities, as well as an empirical study by Ederer, Seibel & Simcoe (2025), also find that labor mobility facilitates the diffusion and spillover of innovation.[45,46] Coupled with evidence of higher post-acquisition mobility among senior and highly educated employees, this finding suggests that organizational restructuring following acquihires may indirectly enhance, rather than suppress, innovation spillovers across firms.[47]

39 See e.g. EC Competition Policy Brief, *supra* note 22, at 5; Japan Fair Trade Comm'n, *Report Regarding Generative AI ver. 1.0*, at 18-19 (2025), https://www.jftc.go.jp/file/250606.pdf.

40 Luis Garicano, Speaker, *CEPR Webinar: AI Acquihires—Competition Risks, Talent Battles and Economic Spillovers* (October 2025), https://www.youtube.com/watch?v=5zrSQm5jpDM. Professor Garicano argued that there is very strong demand for superstar talent in AI, biotechnology, and finance, with many potential employers willing to pay very high wages to top talent. Consequently, he expressed skepticism that wage suppression effects would be present for such top talent.

41 See e.g. Beril Boyacıoğlu, Mahmut N. Özdemir & Samina Karim, *Acqui-Hires: Redeployment and Retention of Human Capital Post-Acquisition*, 45 Strategic Mgmt. J. 205, 205-37 (2020); Weiyi Ng & Toby E. Stuart, *Acquired Employees versus Hired Employees: Retained or Turned Over?*, 43 Strategic Mgmt. J. 1025, 1025-45 (2022); Florian Ederer, Regina Seibel & Timothy Simcoe, *Digital (Killer?) Acquisitions* (Yale Univ. Working Paper No. 2025), https://florianederer.github.io/digital.pdf.

42 Ederer, Seibel & Simcoe, *supra* note 41, at 36.

43 Ng & Stuart, *supra* note 41, at 1037.

44 AdC Short Paper, *supra* note 33, at 3.

45 Ederer, Seibel & Simcoe, *supra* note 41, at 36.

46 See e.g. AdC Short Paper, *supra* note 33, at 4.

47 Ederer, Seibel & Simcoe, *supra* note 41, at 36.

However, the extent to which these mitigating effects may materialize depends, in part, on the degree of labor mobility in practice. Policy makers seem to have diverging views on how, and to what extent, labor mobility is constrained by non-compete clauses, retention agreements, or other contractual terms.[48,49] Findings by competition authorities are mixed regarding the prevalence of such restrictions in the AI sector. For example, a survey conducted by the AdC reports that non-compete clauses appear in some AI developers' employment contracts,[50] while the EC reports that the use of non-compete clauses is not widespread in the AI space.[51] These findings underscore the importance of considering the potential effects of restrictive covenants in employment contracts when assessing the broader competitive impact of acquihires.

B. Independent Hiring Is a Plausible Alternative

The emerging literature on acquihires notes that labor's ability to move on its own makes independent hiring – through negotiations with individual employees – a viable alternative to acquihiring. The availability of this option may limit the necessity or relevance of regulatory scrutiny of acquihires. For example, Bar-Isaac, Johnson & Nocke (2025) present a theoretical model examining the potential consequences of firms pursuing independent hiring instead of acquihires. They consider that large firms seeking to acquihire a startup's talent could achieve similar outcomes through independent hiring, even when acquihiring is unavailable or unattractive (e.g. due to potential regulatory risk).

Although formal policy discussions on independent hiring have yet to emerge, some legal scholars have examined the risks of additional oversight of other forms of talent acquisition. Tham & Kinsella (2024) caution against the potential adverse consequences of such interventions, arguing that restricting certain employment choices undermines labor mobility and employees' freedom to choose employers.[52] The authors further contend that acquihires exemplify healthy labor competition, as employees move toward better opportunities, and companies legitimately pursue talent rather than evade merger control.[53]

Even so, independent hiring may not serve as a perfect substitute for acquihiring, and regulatory restrictions on acquihiring – even when independent hiring remains possible – may diminish the productivity of acquiring firms. Tham & Kinsella (2024) observe that acquihiring can enable more efficient recruitment of cohesive teams, avoiding the transaction costs and coordination challenges associated with negotiating individually with multiple potential employees.[54] Other research similarly finds that hiring intact teams may yield greater benefits than hiring individual contributors, as it preserves team performance and facilitates the integration of innovative capabilities.[55] Taken together, these findings highlight the need for a balanced policy approach that recognizes the complexities of labor-market dynamics and team formation.

C. The Potential Market Impact of Acquihires Depends on the Impact on Startups' Independent Operations

Concerns surrounding acquihires implicitly or explicitly assume that the startup's independent operations will cease following an acquihire. However, the extent to which such concerns arise when a startup remains independent is an open question. In some cases, full integration into the acquirer may be neither the objective nor the outcome of the transaction. For example, following Meta's acquihire of Scale AI, Scale AI stated that it would remain an independent company and would not integrate its operations with Meta's.[56] Thus, concerns voiced by competition authorities and researchers may not apply when a startup retains some operational independence following an acquihire.

Relatedly, the management science literature finds that post-merger integration is a complex process that may not succeed. For example, Boyacioglu, Özdemir & Karim (2020) emphasizes that successful integration of newly acquihired employees is crucial to achieving strategic objectives of the acquisition and sustaining innovative capacity. Conversely, failure to implement an appropriate integration strategy

48 Retention agreements are employment contracts that include incentives to stay with an organization including contingent bonuses based on tenure or milestone outcomes.

49 AdC Short Paper, *supra* note 33, at 6. See also, EC Competition Policy Brief, *supra* note 22, at 5.

50 AdC Short Paper, *supra* note 33, at 6-7.

51 EC Competition Policy Brief, *supra* note 22, at 5.

52 Tham & Kinsella, *supra* note 21.

53 Tham & Kinsella, *supra* note 21, at 6–7.

54 Tham & Kinsella, *supra* note 21, at 7.

55 See e.g. Ng & Stuart, *supra* note 41, at 1028; Boyacıoğlu, Özdemir & Karim, *supra* note 41, at 210.

56 Press Release, Scale AI, *What Meta's Investment Means for Our Customers, Partners, and Contributors* (June 18, 2025), https://scale.com/blog/customer-trust-scale-meta-deal.

can lead to premature departure of key acquihired personnel, undermining the acquisition's intended benefits.[57] When key team members depart quickly due to failed integration, potential concerns about "talent hoarding" or the entrenchment of the incumbent may become far less relevant.

IV. CONCLUSION

The academic and policy literature reviewed in this article suggests that regulatory scrutiny of acquihires may benefit consumers mainly when such transactions are likely to suppress innovation or harm competition in labor markets. It further suggests that intervention is most warranted when the acquired startup's innovation could have generated substantial consumer value independently, and the acquirer is expected to deploy the acquihired talent inefficiently, thereby preventing that value from materializing. Similarly, regulatory scrutiny may be justified when acquihires significantly reduce employees' outside options or when post-acquisition arrangements – such as restrictive covenants in employment contracts – restrict labor mobility enough to confer market power on the acquirer. In these cases, regulatory scrutiny can help preserve or foster innovation and competition in labor markets.

At the same time, studies caution against the risks of overenforcement. Excessive regulatory scrutiny – or the presumption that acquihires are inherently anticompetitive – can inadvertently dampen startup investment and weaken incentives for entrepreneurship by closing a viable exit path for early-stage ventures. Moreover, because labor is mobile and acquihired employees often leave the acquiring firm, the potential for long-term competitive harm from acquihires may be more limited than that arising from traditional acquisitions focused on physical or intellectual property assets. Overly restrictive enforcement could also hinder labor mobility and impede the efficient redeployment of skilled teams that could otherwise enhance innovation. In sum, findings from the economic and policy literature underscore the importance of a balanced, evidence-based approach to evaluating acquihires – one that distinguishes between transactions that genuinely threaten future competition and those that enable innovation to reach the market and benefit consumers.

57 Boyacıoğlu, Özdemir & Karim, *supra* note 41, at 232.

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