

# Acquihires and Labor Markets: A New Enforcement Frontier?

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On May 12, 2026, the International Committee of the American Bar Association’s Section of Antitrust Law hosted a webinar exploring whether the recently reheated public debate on “acquihires” and “reverse acquihires” is truly motivated by an existing enforcement gap. Co-sponsored by the Section’s Media and Technology Committee and the Mergers and Acquisitions Committee, the program was prompted by a February 2026 letter from U.S. senators to the U.S. Department of Justice and the U.S. Federal Trade Commission (FTC) calling for increased scrutiny of acquihire deals.<sup>1</sup> Moderated by Ildikó Magyarfi of Cornerstone Research, the panel featured four speakers: Lucy Chambers from Weil, Gotshal & Manges in London, UK, and Brussels, Belgium; Ryan Quillian from Covington & Burling in Washington, D.C.; Laura-Lucia Richter, Ph.D., from Google in London, UK; and Christopher Stanton, Ph.D., from the Harvard Business School in Boston, MA.

Ms. Chambers opened the discussion by setting up the conceptual framework for acquihires. She distinguished between two primary structures: (i) traditional acquihires, which are deals in which a company is acquired primarily for its talent, often resulting in the target company being wound down, or “sunsetting,” shortly thereafter, and (ii) reverse acquihire deals, in which the acquirer hires key personnel and secures a non-exclusive license to the target’s intellectual property (IP) while the target company survives. In antitrust parlance, the term “acquihiere” often refers specifically to reverse acquihires. Mr. Quillian added that these are “coordinated hiring events” that allow buyers to avoid the liabilities and non-core assets of the target. Because these deals typically involve no acquisition of voting securities or assets, they generally do not trigger Hart-Scott-Rodino (HSR) filing requirements in the U.S. Panelists also noted that acquihires are particularly relevant to the AI space today due to its rapid pace and the fact that talent is the primary driver of innovation. Recent examples include Microsoft’s deal with Inflection AI, Google’s arrangement with Character.AI, Amazon’s partnership with Adept AI, Nvidia’s deal with Groq, and Meta’s deal with Scale AI.

Dr. Richter explained that speed is the primary business driver. These deals, often referred to as “license and release” agreements, allow companies to hire talent very quickly, while hiring via traditional M&A requires lengthy diligence and regulatory timelines associated with traditional M&A. This accelerates innovation while technically allowing the target firm to continue operating. Professor Stanton echoed this, noting that acquihires allow firms to target specific talent rather than an entire organization, which helps mitigate post-deal retention risks. He highlighted that in the context of acquihires, it’s important to consider the motivation of talent in moving too.

Mr. Quillian observed that the fact that these types of transactions do not require HSR filings (and the associated waiting period) adds to the appeal of these structures in the U.S., given the benefits of speed in the competition for AI talent. In contrast, Ms. Chambers noted that the EU and UK legal frameworks are evolving to focus on whether transactions effectively transfer “competitive capabilities.” She further explained that under Article 14 of the Digital Markets Act (DMA), designated gatekeepers must report transactions, including acquihires, regardless of traditional merger thresholds. Similarly, the UK’s Competition and Markets Authority (CMA) employs a more flexible jurisdictional test than the HSR.

After setting up the conceptual framework for their discussion, the panelists identified several theories of harm that regulators and enforcement agencies consider regarding acquihires in the U.S., UK, and EU. These included:

- **Killer acquisitions:** Acquiring a startup’s talent to eliminate a nascent competitive threat or “maverick” innovator.
- **Reverse killer acquisitions:** The acquiring company might stop innovating in the area in which the talent was acquired.
- **Talent hoarding:** A form of vertical foreclosure where a firm locks up talent to prevent rivals from accessing necessary inputs.
- **Employer consolidation:** Using acquihires to consolidate top-tier AI talent to suppress labor market competition.

Dr. Richter and Mr. Quillian argued these theories are unlikely to hold. Discussing the “killer acquisition” theories, Dr. Richter noted that the target companies may not have the resources to compete on their own absent a deal, and if they did, the non-exclusive license agreements would allow them to continue operating. Moving to the talent hoarding theory, she noted that talent is not a fixed asset and that “license and release” deals actually promote mobility by releasing employees from non-competes. Mr. Quillian added that this concern remains largely theoretical and lacks an established enforcement mechanism in the U.S. On employer consolidation, Dr. Richter observed that this theory sits awkwardly alongside the common complaint of high pay levels for AI talent. Discussing whether acquihires would reduce innovation, Mr. Quillian warned that over-scrutiny could “chill” startup investments by removing viable exit strategies. Finally, Ms. Chambers emphasized that the CMA and European Commission (EC), in addition to the theories of harm outlined by Dr. Richter and Mr. Quillian, are particularly focused on “ecosystem consolidation,” viewing talent as a core asset whose transfer can shift a target’s competitive capabilities even if the company survives.

Next, the panel discussed the legal framework in which regulators and enforcement agencies would consider these theories of harm while assessing antitrust risks related to acquihires and reverse acquihires. Drawing on his experience at the FTC, Mr. Quillian analyzed the applicability of the 2023 Merger Guidelines to acquihires and reverse acquihires, noting that while Guideline 11 (partial ownership) was mentioned in the senators’ letter, it is likely irrelevant given the lack of the acquisition of voting securities in the target and the non-exclusive nature of the typical licensing agreement. Instead, he noted that Guidelines 4 (eliminating potential entrants), 5 (limiting rivals’ access to key inputs), and 6 (entrenching dominance) would be more applicable. He also highlighted that Guideline 7 (trends towards consolidation) and 8 (serial acquisitions) might theoretically apply but would face significant challenges in the labor market context.

Statutorily, Mr. Quillian explained that applying Section 7 of the Clayton Act would be challenging because there is often no transfer of assets or voting securities, nor is there typically exclusive licensing. He also noted that it would be challenging to apply Section 1 of the Sherman Act given that the competitive harms are speculative, or to apply Section 5 of the FTC Act given courts’ skepticism that it extends meaningfully beyond the other antitrust laws. Mr. Quillian pointed out an “awkward position” for the FTC: challenging mass hiring agreements could contradict the agency’s stated goal of supporting labor mobility and employee choice.

After the discussion of the relevant legal framework, the panelists moved to a discussion of the economic framework relevant for analyzing potential antitrust risk from acquihires and reverse acquihires. Dr. Richter highlighted the complexities of evaluating these deals, specifically the difficulty of defining markets in nascent industries and the speculative nature of predicting (i) a startup’s future success and (ii) how the acquisition of its talent would impact innovation and competition. She argued that the procompetitive benefits—namely the complementarities between talent and a large firm’s resources—usually prevail.

Prof. Stanton argued for a case-by-case economic analysis and walked the audience through a series of recommended considerations for such an analysis:

- **Product market:** Professor Stanton noted that in the product market, the elimination of nascent competition is likely the main anticompetitive theory. But he argued that the anticompetitive risk is hard to model convincingly when the target is a startup, given how frequently new companies fail, even when they are highly innovative. He explained that the original research on “killer acquisitions” was focused on the pharma sector, where IP can be shelved. In tech, product features such as open-source components, customer use tracking, and long-term contracts make them less susceptible to outright termination. Furthermore, he noted that academic literature finds that acquisitions in the tech sector have led to more diffusion of new products, suggesting that anticompetitive product market effects are unlikely to be first-order.
- **Labor market:** Professor Stanton explained that the “talent hoarding” concern is undermined by data showing that employees who join via acquihires are about 25 percent more likely to turn over annually than direct hires at the acquirer.
- **Innovation ecosystem:** Citing his research on entrepreneurship, Professor Stanton cautioned that increased scrutiny could discourage new entrepreneurial entry by creating more uncertainty around startups’ exit strategies. He acknowledged a countervailing concern that the possibility of reverse-acquihires could make it harder for startups to recruit talent if prospective hires fear being excluded from a deal’s benefits. However, he suggested that employment contracts—much like venture contracts using so-called “tag-along” and “drag-along” rights—are likely to evolve to address these concerns and protect employee interests.

Professor Stanton concluded that, on balance, procompetitive considerations are likely to weigh strongly. However, Mr. Quillian noted that while the staff at the U.S. enforcement agencies are sure to be engaging privately with the procompetitive case for acquihires, the political appointees’ public statements have not. If anything, the Competition’s leadership has moved in the opposite direction: the director of the Bureau of Competition has publicly suggested that the agencies may seek to bring reverse acquihires under HSR by categorizing humans as “assets” for HSR purposes. He argued that this proposal raises significant legal difficulties since labor is not a commodity, as Section 6 in the Clayton Act highlights. He further argued that restricting workers’ ability to pursue their best payout is fundamentally inconsistent with the agencies’ simultaneous push for labor mobility.

Ms. Chambers noted that EU and UK regulators have been somewhat more open to recognizing procompetitive benefits of transactions in the context of AI generally, with the CMA’s 2024 report acknowledging that partnerships such as Microsoft/OpenAI can provide startups with essential capital and computing. She concluded that there is, however, some recognition among regulators of the need for a balanced approach, especially in a nascent sector like AI where the need for fast-paced innovation remains high.

Throughout the program, the panelists articulated a series of practical recommendations regarding regulatory scrutiny of acquihire and reverse acquihire type of deal structures, including:

- Despite regulators’ and enforcement agencies’ interest in these deal structures, making the case that they are anticompetitive will be a complex and challenging task. Additional difficulty lies in thinking about remedies due to limited precedent.
- In terms of strategy, in the U.S., clients must ensure “ordinary course” documents are carefully prepared, as these will be critical if a deal faces scrutiny.
- Additionally, counsel working on the review of such deals should consider a rigorous, case-by-case economic analysis to disentangle how they impact the complex landscape for product markets, labor markets, and innovation.
- In the EU and UK, authorities are signaling that they will treat acquihires as mergers if the transaction effectively transfers the target’s competitive capabilities, even when traditional thresholds are not met. In the UK, in particular, the CMA’s flexible jurisdictional test means that even non-traditional structures can be reviewable without any share or asset acquisition. This needs to be given careful consideration if a transaction has ex-U.S. elements. Additionally, designated gatekeepers should assume acquihires will be visible to the EC through DMA reporting, making it important to factor transparency into deal planning and communications strategy.

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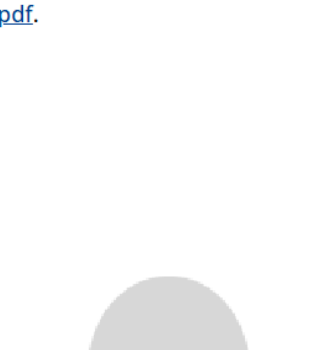
## Endnotes

1. Letter from U.S. Senators Elizabeth Warren, Ron Wyden, and Richard Blumenthal to U.S. Department of Justice Assistant Attorney General Gail Slater and Federal Trade Commission Chair Andrew N. Ferguson, February 4, 2026. [https://www.warren.senate.gov/imo/media/doc/final\\_warren\\_wyden\\_blumenthal\\_letter\\_to\\_the\\_department\\_of\\_justice\\_and\\_the\\_federal\\_trade\\_commission\\_on\\_big\\_tech\\_reverse\\_acqui-hires.pdf](https://www.warren.senate.gov/imo/media/doc/final_warren_wyden_blumenthal_letter_to_the_department_of_justice_and_the_federal_trade_commission_on_big_tech_reverse_acqui-hires.pdf).

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