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**RESPONSE**

**POLICING COOPTIVE ACQUISITIONS WHILE  
PRESERVING THE VENTURE CAPITAL ECOSYSTEM<sup>†</sup>**

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<sup>†</sup> An invited response to Mark A. Lemley & Matthew T. Wansley, *Coopting Disruption*, 105 B.U. L. REV. 457 (2025).

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## INTRODUCTION

In their provocative article, *Coopting Disruption*,<sup>1</sup> Professors Lemley and Wansley pose an intriguing question: how is it that no company has commercialized a new technology in a way that threatens the five major technology companies—Alphabet, Amazon, Apple, Meta and Microsoft—that dominate our economy?<sup>2</sup> In many respects, these firms’ continued dominance over the past twenty years presents a puzzle, given the historical pattern of technological disruption in which innovative startups have repeatedly displaced once-dominant incumbents.<sup>3</sup> The explanation, they argue, lies not in the absence of disruptive innovations but in incumbents’ success in coopting these innovations before they become competitive threats. Specifically, by following a cooption “playbook,” incumbents leverage their data, networks, and relationships with venture capitalists and regulators to stifle competition, often through acquiring nascent firms.<sup>4</sup> Accordingly, the article offers several policy proposals to make cooption more difficult—most notably, by substantially restricting incumbents’ ability to acquire startups that might compete with them, particularly within a specified list of “potentially disruptive technologies.”<sup>5</sup>

In this short Response, we consider some of the implications for U.S. innovation policy if we were to embrace fully *Coopting Disruption*’s proposal to limit incumbents’ ability to acquire firms. Without question, Professors Lemley and Wansley highlight several practices among incumbents that should concern anyone interested in maintaining a competitive economy that fosters new and useful technologies. A monopolist that staves off new entrants by acquiring nascent competitors and mothballing their technologies deprives the market of innovations that could challenge incumbents’ dominance and drive technological progress forward.<sup>6</sup> In this sense, a cooptive acquisition is no different from acquiring a current competitor to reduce output—both strategies suppress market competition, restrict consumer choice, and ultimately limit incentives for further innovation.

At the same time, however, the link between such acquisitions and overall innovation is complex given the important role of venture capital (“VC”) in

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<sup>1</sup> Mark A. Lemley & Matthew T. Wansley, *Coopting Disruption*, 105 B.U. L. REV. 457, 457 (2025).

<sup>2</sup> *Id.* at 460.

<sup>3</sup> See JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 73 (Routledge Classics 2010) (1943) (outlining model of creative destruction in which technological innovation leads to rise of new firms and decline of incumbents); CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL 112-18 (3d ed. 2016) (explaining how established firms, despite strong market positions, often fail to adapt to disruptive innovations, allowing new entrants to gain competitive foothold).

<sup>4</sup> Lemley & Wansley, *supra* note 1, at 460.

<sup>5</sup> *Id.* at 531.

<sup>6</sup> *Id.* at 460-61 (discussing pro-consumer effects of innovation on decisions of incumbent firm).

facilitating innovation writ large. As Professors Lemley and Wansley note, “[t]he incubator of disruptive competition is the venture capital market.”<sup>7</sup> However, for this market to function, a VC fund must attract capital willing to invest in an illiquid asset class where capital may be tied up for years until the fund achieves an “exit” of its portfolio company investments—typically through an initial public offering (“IPO”) or acquisition.<sup>8</sup> Once exited, the (hopefully) much larger amount of capital can then be redeployed into future VC funds managed by both existing and new investors, allowing the VC flywheel to function. Yet since the early 2000s, IPOs have effectively been limited to only the largest startups,<sup>9</sup> making acquisitions the primary means for venture capitalists to exit portfolio company investments.<sup>10</sup>

As a result, ensuring that VC funds can finance tomorrow’s innovations often requires the acquisition of startups today. From this perspective, even a seemingly cooptive acquisition enables the VC ecosystem to function. It is notable, for instance, that among Instagram’s primary investors was Benchmark Capital.<sup>11</sup> Despite Facebook’s desire to acquire Instagram to manage an emerging competitive threat, the strong return Instagram’s 2011 acquisition provided for Benchmark Capital’s investors undoubtedly helped the firm raise funds in 2012 for Benchmark Capital Partners VII, LP, a large portion of which would fund Uber.<sup>12</sup>

Moreover, as we write this Response, the VC industry is grappling with a notable decline in overall exits, driven by both a reduced number of IPOs since 2022 and a decline in startup acquisitions. Using PitchBook data, the National Venture Capital Association (“NVCA”) reported that “2023 had the lowest exit

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<sup>7</sup> *Id.* at 477.

<sup>8</sup> For an analysis of liquidity in the venture capital context, see Darian M. Ibrahim, *The New Exit in Venture Capital*, 65 VAND. L. REV. 1, 6-7 (2012) (noting VC demands investor lock-in, which “means extreme illiquidity for individual investors”).

<sup>9</sup> Robert P. Bartlett III, Paul Rose & Steven Davidoff Solomon, *The Small IPO and the Investing Preferences of Mutual Funds*, 47 J. CORP. FIN. 151, 152 (2017) (finding sustained drop in small IPOs commencing in 1998 due in part to growing assets under management among institutional investors).

<sup>10</sup> According to the National Venture Capital Association (“NVCA”) 2024 Yearbook, there were over ten times as many exits by VCs through acquisitions than through IPOs between 2011 and 2023. Conditional on a portfolio company conducting an IPO, however, the gross returns to a VC fund from an IPO will typically be greater than that from an acquisition. For instance, the NVCA reports that in 2023, the total deal value for the 121 acquisitions of VC-backed firms with disclosed values amounted to \$26.68 billion, while the total deal value for the 40 IPOs of VC-backed firms amounted to \$25.16 billion. NAT’L VENTURE CAP. ASS’N, 2024 YEARBOOK 32-33 (2024).

<sup>11</sup> *Instagram Inks \$7M from Benchmark, Baseline*, VENTURE CAP. J. (Feb. 3, 2011), <https://www.venturecapitaljournal.com/instagram-inks-7m-from-benchmark-baseline/> [<https://perma.cc/39L7-RVKJ>] (reporting Benchmark Capital as early Instagram investor).

<sup>12</sup> Uber, Prospectus 266-67 (Form 424B4) (May 9, 2019) (listing Benchmark Capital Partners VI and Benchmark Capital Partners VII as selling stockholding entities).

activity in a decade,”<sup>13</sup> which the association attributed in part to the federal government’s “anti-merger” stance during the Biden administration.<sup>14</sup> Relatedly, due to the lack of exit activity, the PitchBook-NVCA Venture Monitor reported that median distributions to paid-in capital (“DPI”) for funds with vintage years from 2019 to 2022 was 0x, and it remained below 1x for vintages from 2015 to 2018.<sup>15</sup> VC net cash flows have also been in deficit since 2022, meaning that aggregate contributions to venture capital funds have exceeded distributions.<sup>16</sup> Finally, the report noted that, due to this “liquidity drought,” institutional investors in VC funds “have become more selective and cautious in this muted VC fundraising environment, opting to spend more time on due diligence and preferring to allocate their available capital to more established managers.”<sup>17</sup>

To their credit, Professors Lemley and Wansley acknowledge the critical role acquisitions play in VC exits and market liquidity, and they caution that antitrust enforcement needs a strategy “surgical enough to avoid chilling investment.”<sup>18</sup> For this reason, they propose an antitrust policy focused on scrutinizing incumbents’ acquisitions of nascent competitors along with an outright presumption against an incumbent’s acquisition of firms developing specific “potentially disruptive technologies.”<sup>19</sup> In the following sections, we explore the impact such a policy might have on VC exits and liquidity.

#### I. VC LIQUIDITY AND THE M&A ACTIVITY OF INCUMBENT FIRMS

We begin by exploring the historical role that the M&A activity of incumbent firms has played within the VC ecosystem. Unless otherwise noted, we obtain our data regarding mergers and acquisitions from PitchBook.<sup>20</sup> Our sample includes all acquisitions of U.S. companies between 2010 and 2024, and we

<sup>13</sup> NAT’L VENTURE CAP. ASS’N, *supra* note 10, at 5.

<sup>14</sup> *Id.* at 32-33.

<sup>15</sup> PITCHBOOK DATA, INC. & NAT’L VENTURE CAP. ASS’N, VENTURE MONITOR Q2 2024, at 38 (2024).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Lemley & Wansley, *supra* note 1, at 530.

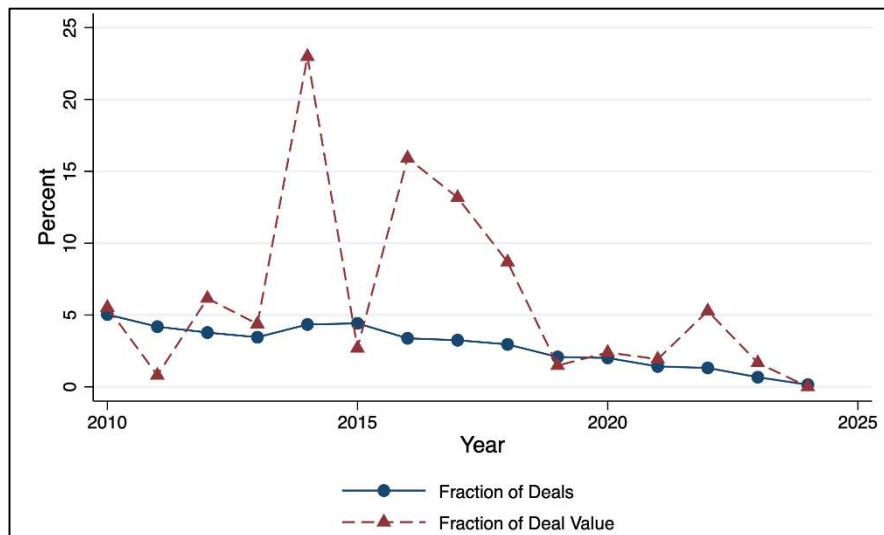
<sup>19</sup> *Id.* at 531.

<sup>20</sup> All of the PitchBook data used in this study are available at *PitchBook*, PITCHBOOK, <http://www.PitchBook.com> [<https://perma.cc/N55H-KDT4>]. Access to these data is also available via a direct FTP feed provided by PitchBook or through the PitchBook vendor section of Wharton Research Data Services (“WRDS”). *PitchBook*, WHARTON RSCH. DATA SERVS, <https://wrds-www.wharton.upenn.edu/pages/about/data-vendors/vendor-partner-PitchBook/> [<https://perma.cc/3Y3L-3Q4Q>]. Our analyses rely on both of these latter sources, which are more computationally efficient for large queries than using the graphical user interface at [www.PitchBook.com](http://www.PitchBook.com). For both the FTP feeds and WRDS data, PitchBook structures its data across separate tables, which must be linked together using unique identifiers assigned to each company and investor. In our analyses, we rely on data from four PitchBook tables: Deals, Deal-Investor Relationships, Companies, and Company-Affiliate Relationships.

filter for acquired companies classified by PitchBook as having a financing status of “Formerly VC-backed” or otherwise indicating that the firm received VC financing.<sup>21</sup> We additionally classify the acquiring firm as an incumbent if the acquiring firm is Alphabet, Amazon, Apple, Meta, or Microsoft, including their wholly-owned subsidiaries.<sup>22</sup> In Figure 1, we present by year all acquisitions completed by incumbents as a fraction of all completed acquisitions tracked by PitchBook (blue line) and the fraction of all deal value (red line) for acquisitions having a disclosed value. Due to the large number of acquisitions in medical-related industries, we also present in Figure 2 the same statistics if we confine the dataset to target firms operating in PitchBook’s Information Technology (“IT”) industry.

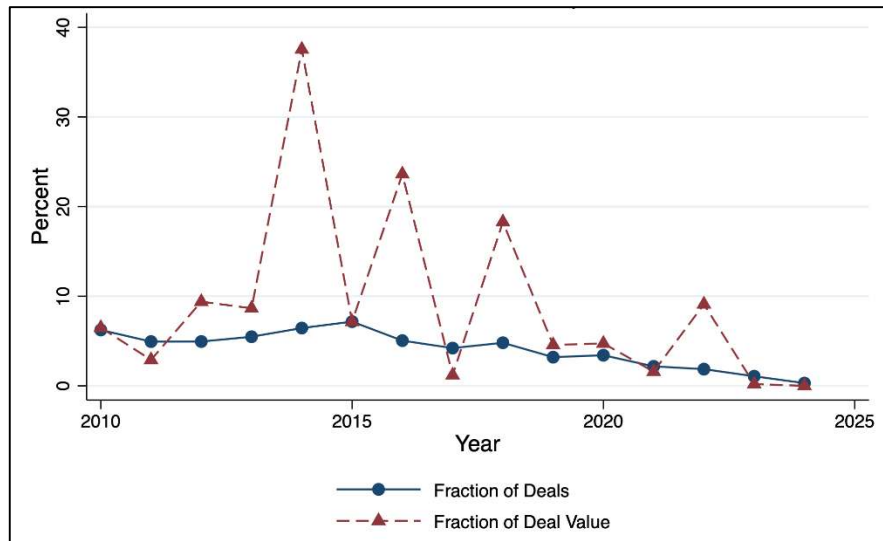
As shown in both figures, overall acquisitions by incumbents have declined notably since 2010, especially after 2018. Whereas incumbent acquisitions in 2010 represented approximately 5% of all acquisitions and 6% of IT-related acquisitions, their acquisition activity in 2024 was nearly nonexistent with just two reported acquisitions. Clearly, the acquisition of venture-backed companies by incumbents now represents a much smaller share of all acquisitions than in the recent past.

**Figure 1.** Incumbent Share of All VC-Backed Acquisitions, 2010-2024.



<sup>21</sup> Specifically, we include all firms with a financing status of “Formerly VC-backed,” “Formerly Angel backed,” “Formerly Accelerator/Incubator backed,” “Venture Capital Backed,” “Angel backed,” and “Accelerator/Incubator backed.”

<sup>22</sup> PitchBook provides the company-affiliates links. The affiliate relationship can take one of three forms: “Parent,” “Subsidiary,” or “Sister.” In the case of the five incumbents, all identified affiliates are subsidiaries.

**Figure 2.** Incumbent Share of IT VC-Backed Acquisitions, 2010-2024.

Notably, while the overall share of incumbent acquisitions has been less than 5% for the past decade, their share of overall deal value has often been considerably higher. For instance, owing in large part to Meta's \$17.2 billion acquisition of WhatsApp and Alphabet's \$3.2 billion acquisition of Nest Labs, acquisitions by incumbents in 2014 constituted over 20% of all deal value and nearly 40% of all IT-related deal value for acquisitions closing that year. As these examples suggest, deal values are highly skewed: while the average size acquisition during this time period was \$387 million, the median was just \$49 million while the 99th percentile was \$6.4 billion. In other words, acquisition prices reflect the power law distribution of venture fund returns discussed by Professors Lemley and Wansley.<sup>23</sup> As a result, a handful of very large acquisitions drive the return of capital back to the institutional investors who fund the VC ecosystem.

Indeed, WhatsApp represents a particularly stark example of this dynamic. By the time of its acquisition, its VC investors had invested a total of just \$61 million in the six-year-old startup. Thus, for their \$61 million in investment capital, the institutional investors who ultimately funded WhatsApp's VC investors received a payback in the range of \$12 to \$13 *billion* (roughly 200x), net of the incentive compensation paid to the VC investors.<sup>24</sup> More generally,

<sup>23</sup> Lemley & Wansley, *supra* note 1, at 477-78.

<sup>24</sup> VC funds typically charge a performance fee (or carried interest) of 20%, though some prominent VC managers can charge a premium carry of up to 30% or more. Mark A. Lemley & Andrew McCreary, *Exit Strategy*, 101 B.U. L. REV. 1, 32 (2021). The primary investor in

just five incumbent acquisitions by deal value during this time period had a total value of nearly \$75 billion, which represented 60% of the \$125 billion in total deal value among all incumbent acquisitions.<sup>25</sup>

A similar distinction between deal counts and deal values arises if we focus on transactions within the potentially disruptive technologies discussed by Professors Lemley and Wansley. Figure 3A presents the fraction of all acquisitions of companies operating in Artificial Intelligence and Virtual Reality<sup>26</sup> completed by incumbents between 2015 and 2025, while Figure 3B presents their fraction of deal value. (We do not consider the third disruptive technology proposed by Professors Lemley and Wansley, Automated Driving,<sup>27</sup> because PitchBook indicates that incumbents made very few acquisitions in this sector.) As in Figures 1 and 2, the overall fraction of deals completed by incumbents represents a small portion of all M&A activity in these sectors; however, those deals that are completed by incumbents are clearly some of the largest that occurred in these industries. Nor should this fact be entirely surprising given the enormous capital incumbents have at their disposal, allowing them to pursue larger acquisition targets.

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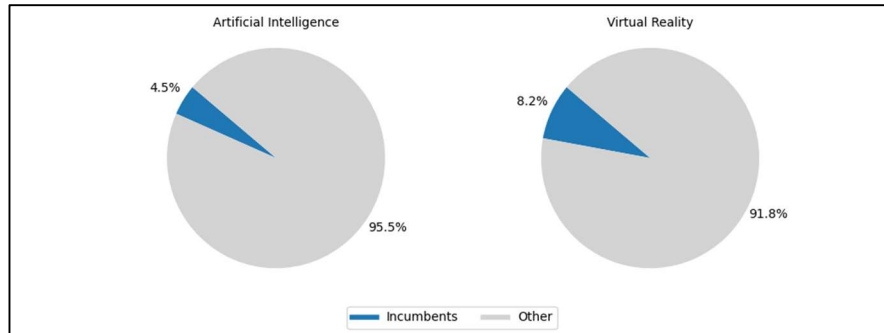
WhatsApp was Sequoia, an especially prominent VC investor; therefore, this range is estimated using performance fees of 20% and 30%.

<sup>25</sup> In addition to Meta's acquisition of WhatsApp, these deals included Microsoft's 2016 acquisition of LinkedIn (\$27 billion), Amazon's 2014 acquisition of Whole Foods (\$17 billion), Microsoft's 2018 acquisition of GitHub (\$7.5 billion), and Alphabet's 2022 acquisition of Mandiant (\$6.1 billion). All but Whole Foods are classified by PitchBook as operating in the Information Technology industry, which accounts for the dramatic difference between Figure 1 and Figure 2 in 2017 for the percent of deal value represented by incumbent acquisitions.

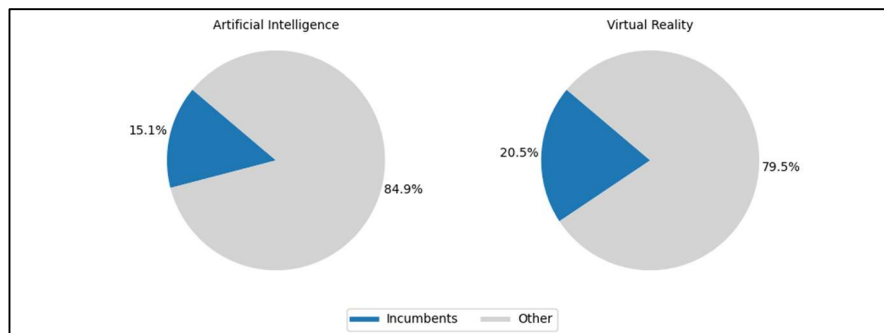
<sup>26</sup> We identify target companies operating in potentially disruptive technologies using PitchBook's "Keywords" variable, which provides comma-separated words describing the company's business. A company is classified in the Artificial Intelligence sector if its Keywords contain any of the following terms, regardless of case: ai, LLM, artificial intelligence, large language model, chatbot. Similarly, a company falls under the Virtual Reality sector if its Keywords include any of the following: VR, virtual reality, AR, augmented reality, mixed reality, extended reality, metaverse, holographic display, immersive technology.

<sup>27</sup> Lemley & Wansley, *supra* note 1, at 510.

**Figure 3A.** Incumbents' Share of Acquisitions Within Potentially Disruptive Industries.



**Figure 3B.** Incumbents' Share of Deal Value Within Potentially Disruptive Industries.



We believe this distinction between deal activity and deal value raises an important question for U.S. innovation policy: to the extent incumbents substantially reduce their acquisitions, who will step in to take their place in making the substantial acquisitions that drive overall returns to the VC ecosystem and induce institutional investors to allocate capital to the VC asset class? While we share Professors Lemley and Wansley's hope that much of the substitution might occur by way of more firms conducting an IPO,<sup>28</sup> we are skeptical that the U.S. IPO market will be an appealing option for most startups. Empirically, the IPO market has effectively been closed to most smaller firms for more than a decade for reasons that are beyond the scope of this Response.<sup>29</sup> And even for faster growing, larger firms, there are multiple reasons a firm may continue to prefer an acquisition to a public listing. These range from the pricing

<sup>28</sup> *Id.* at 481.

<sup>29</sup> See Bartlett et al., *supra* note 9, at 151-52 (observing declining interest for small IPOs since 1990s).



uncertainty and risk associated with the IPO process, to the operational and regulatory challenges associated with transitioning to a publicly traded firm, to the benefits to the firm that come with the economies of scope offered by an established acquirer (discussed below), and to the enhanced scrutiny by regulators, analysts and activists, that comes with being at the helm of a publicly-traded firm.<sup>30</sup> Perhaps for these reasons, the considerable drop in incumbent acquisitions since 2022 has not been accompanied by a meaningful increase in IPOs; on the contrary, the number of IPOs of venture-backed companies in each of 2023 and 2024 was just 53% and 52%, respectively, of the annual average between 2015 and 2021.<sup>31</sup>

For these reasons, we suspect the most likely candidate for replacing incumbents in the VC ecosystem would be other major technology firms through their M&A activity. This, in turn, may pose a major challenge for designing an antitrust policy that is surgical enough to block acquisitions of nascent competitors while still permitting major acquisitions to support the VC flywheel.<sup>32</sup> Consider, for instance, the acquisition of venture-backed Information Technology companies shown in Figure 2. In total, these deals amounted to nearly \$1 trillion in acquisition proceeds, but 50% of this amount was generated by the acquisition of only thirty-three firms by twenty-three large technology companies. A full 30% was generated by the acquisition of eight firms by just seven large technology firms, only one of which was an incumbent. Absent broader reforms to make IPOs more attractive for venture-backed companies, these figures highlight the need for an antitrust policy that carefully targets acquisitions of nascent competitors without inadvertently evolving—either in practice or perception—into a blanket prohibition on acquisitions by large technology firms.

## II. VC NETWORKS, ECONOMIES OF SCOPE, AND THE ACQUISITION OF NASCENT FIRMS

The preceding Section focused on the value of large acquisitions to the VC ecosystem and the innovation it promotes, but we do not mean to suggest that acquisitions of smaller venture-backed companies do not also contribute to this ecosystem. There will, of course, be many more small- and medium-sized venture-backed companies than large ones, and their cumulative impact on the overall stock of innovation is no doubt substantial. Indeed, it is their very potential to develop disruptive technologies that gives rise to Professors Lemley and Wansley's concern that incumbents might acquire them to impair the forces of Schumpeter's creative destruction. But, as they note, the potential for acquisitions also provides an incentive for VC investors to fund them in the first

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<sup>30</sup> For a deep dive into the motivations for VC exits turning away from IPOs, see Lemley & McCreary, *supra* note 24, at 26-54 (2021).

<sup>31</sup> *PitchBook*, *supra* note 21.

<sup>32</sup> See Lemley & Wansley, *supra* note 1, at 482 (“[I]t is extremely useful for VCs to be on good terms with the corporate development arms of the tech giants.”).

place, and cumulatively, the returns from these acquisitions also contribute to the VC flywheel.

In exploring the dynamic by which large incumbents acquire small firms, Professors Lemley and Wansley draw a distinction between synergistic and cooptive acquisitions that we think is quite important. This seems especially so when policing the acquisition of smaller firms. In contrast to the acquisition of a larger firm, the lower cost and (presumably) lower profile of a small firm target would seem to provide ideal conditions for a truly cooptive acquisition designed to shut down the development of a threatening technology.<sup>33</sup> Additionally, Professors Lemley and Wansley also appear to view with caution non-synergistic acquisitions by an incumbent designed to scale the company's technology without any meaningful post-acquisition innovation.<sup>34</sup>

However, while we share their concerns regarding cooptive acquisitions of smaller firms and view policing them as imposing fewer costs on the VC ecosystem, we part company with Professors Lemley and Wansley when it comes to acquisitions of smaller firms designed to scale their technologies.

On the contrary, we believe these acquisitions have become an increasingly important means of lessening risk for both founders and VC investors when starting a venture or making an early-stage investment. In many ways, we view these acquisitions as consistent with the Cisco story initially studied by Ron Gilson<sup>35</sup> and recounted in *Coopting Disruption*.<sup>36</sup> As Professors Lemley and Wansley aptly describe it, Cisco was the dominant company in the market for computer networking software and hardware during the 1990s, and the company was also the most active acquirer over the decade.<sup>37</sup> Because networking technology was evolving quickly, the company effectively used acquisitions as a way to substitute for a larger and more costly internal R&D operation, and it acquired new, promising networking technologies using its “‘large market share and its extensive marketing and distribution system’ [to get] the new networking technologies to market faster than a startup might have.”<sup>38</sup>

According to Gilson, a feature of Cisco's model involved the company assessing which company had “won the technology race in time to have a product to market when it was needed.”<sup>39</sup> But part of the model not discussed by Gilson also involved a synergistic relationship between Cisco and Sequoia

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<sup>33</sup> See *id.* at 461-63.

<sup>34</sup> See *id.*

<sup>35</sup> See Ronald J. Gilson, *Locating Innovation: The Endogeneity of Technology, Organizational Structure, and Financial Contracting*, 110 COLUM. L. REV. 885, 886 (2010).

<sup>36</sup> Lemley & Wansley, *supra* note 1, at 492-93.

<sup>37</sup> *Id.* Based on PitchBook data, Cisco acquired twenty-six firms during the 1990s, more than any other bidder in the PitchBook data.

<sup>38</sup> Lemley & Wansley, *supra* note 1, at 492 (citing Gilson, *supra* note 35, at 909 (2010)).

<sup>39</sup> Gilson, *supra* note 35, at 909.

Capital, the company's original VC investor.<sup>40</sup> Even after Cisco was a public company, it continued to have a relationship with Sequoia through Don Valentine—the Vice Chairman of Cisco's board of directors as well as the founder of Sequoia and the VC investor who first funded Cisco as a startup.<sup>41</sup> Between Cisco's IPO in 1990 and 2005 (the year Valentine stepped down from Cisco's board due to its mandatory retirement policy<sup>42</sup>), Cisco acquired twelve Sequoia-backed startups.<sup>43</sup> As shown in Figure 4, Cisco acquired more companies backed by Sequoia than companies backed by any other venture capital firm during this time.

To be clear, we are not suggesting that Cisco acquired Sequoia-backed companies solely because of this relationship; it is entirely possible that Sequoia was particularly adept at investing in networking companies with significant potential (after all, it had invested in Cisco). Rather, our point is simply to illustrate that the Sequoia-Cisco relationship appears to have facilitated Cisco's access to Sequoia-backed networking companies while providing a clear and less risky pathway for Sequoia to pitch portfolio companies to an active buyer of companies in this industry.

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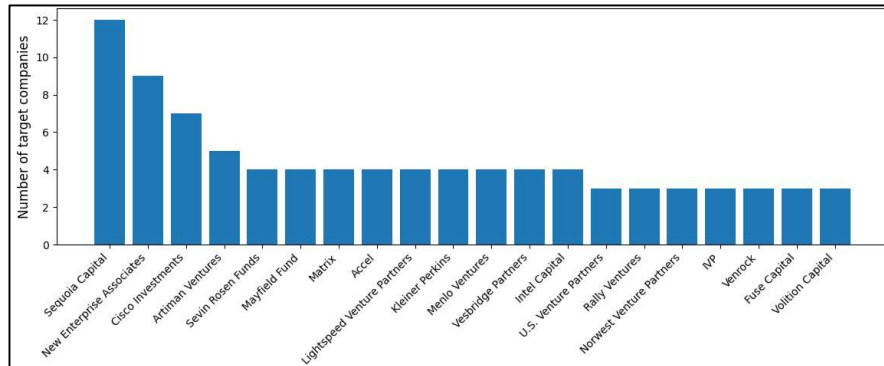
<sup>40</sup> *Cisco*, SEQUOIA, <https://www.sequoiacap.com/companies/cisco/> [https://perma.cc/FUR2-XLY9] (last visited Mar. 13, 2025) (listing partnership date between Cisco and Sequoia as 1987, three years after Cisco's founding).

<sup>41</sup> *Don Valentine*, BLOOMBERG, <https://web.archive.org/web/20191028061520/https://www.bloomberg.com/profile/person/1429678> (last visited Mar. 12, 2025) (listing Don Valentine as Founder of Sequoia and as former Director at Cisco).

<sup>42</sup> John Leyden, *Cisco Sets Age Limit for Board*, REGISTER (July 18, 2005, 11:08 AM), [https://www.theregister.com/Print/2005/07/18/cisco\\_board\\_retirement\\_age/](https://www.theregister.com/Print/2005/07/18/cisco_board_retirement_age/) [https://perma.cc/3CHT-XVGG] (noting impact of policy would preclude Don Valentine from renomination to position as vice chairman); Cisco Systems, Inc., Proxy Statement for Annual Meeting of Shareholders (Schedule 14A) 3 (Sept. 20, 2005) (providing for election of Cisco System's directors in November 2005 and noting "Mr. Valentine and Dr. Gibbons were not eligible to be renominated for election under Cisco's age limit policy adopted in July 2005").

<sup>43</sup> Using PitchBook's VC deals data, we can track which companies received funding from Sequoia. After filtering the M&A deals for target companies financed by Sequoia and Cisco as acquirer, we count the number of such occurrences for the years of interest.

**Figure 4.** Top 20 Investors of the Target Companies in Cisco M&A Deals (1990-2005).



In this regard, the Sequoia-Cisco relationship shares similarities with the dynamic discussed in *Coopting Disruption* whereby “tech giants only need relationships with a small number of firms to get a clear view of the competitive landscape and an inside track to acquiring potential competitive threats.”<sup>44</sup> However, rather than viewing these relationships as consistent with cooption, we interpret them as more consistent with the Cisco story and important for facilitating VC investment. In an important paper,<sup>45</sup> Xiaohui Gao, Jay Ritter, and Zhongyan Zhu examine the cause of the decline in U.S. IPOs since the late 1990s and conclude that the evidence supports what they call the “economies of scope hypothesis.”<sup>46</sup> As they summarize:

We contend that many small firms can create greater operating profits by selling out in a trade sale (being acquired by a firm in the same or a related industry) rather than operating as an independent firm and relying on organic (i.e., internal) growth. Earnings will be higher as part of a larger organization that can realize economies of scope and bring new technology to market faster. We posit that the importance of getting big fast has increased over time due to an increase in the speed of technological innovation in many industries, with profitable growth opportunities potentially lost if they are not quickly seized.<sup>47</sup>

In short, much like the companies acquired by Cisco, smaller startup companies today may be drawn to the benefits of selling to a larger firm rather than growing as an independent company, particularly in fields with rapidly

<sup>44</sup> Lemley & Wansley, *supra* note 1, at 482.

<sup>45</sup> Xiaohui Gao, Jay R. Ritter & Zhongyan Zhu, *Where Have All the IPOs Gone?*, 48 J. FIN. & QUANTITATIVE ANALYSIS 1663 (2013).

<sup>46</sup> *Id.* at 1663.

<sup>47</sup> *Id.* at 1664 (footnote omitted).

developing technology.<sup>48</sup> In such a setting, it may be especially challenging to build out the distribution and marketing capabilities required to promote a firm's innovations, thus inducing a firm to rely on the distributional capabilities of a larger firm.

For the same reason, a founder or VC investor seeking to invest in this setting may view a sale to a larger firm as an important means to minimize the risk that an innovation is never commercialized at scale. To be sure, this hypothesis implies a market environment tilted in favor of "bigness," but it seems far from clear that this bias has arisen from a failure of competition policy rather than the speed of technological innovation. In this regard, it is notable that Professors Gao, Ritter, and Zhu also find evidence consistent with the economies of scope hypothesis in Europe where the number of large incumbents is smaller and where the competition authorities have generally taken a relatively more aggressive enforcement policy against large firms.<sup>49</sup>

For these reasons, we would be inclined to classify acquisitions focused on scale as consistent with promoting competition and innovation.

#### CONCLUSION

*Coopting Disruption* offers an important and thought-provoking theory for how incumbents have managed to resist the forces of creative destruction and offers up a set of ambitious policy reforms that would go a long way toward impairing their ability to engage in cooptive acquisitions. While we share their concerns about ensuring incumbents remain subject to the forces of creative destruction, we also believe these forces are strongest with a robust venture capital ecosystem, which itself depends on a robust acquisition market particularly for the most promising venture-backed firms. For this reason, an antitrust policy focused narrowly on policing the most egregious cases of cooption among smaller, nascent startups may provide the most promising pathway for ensuring that the VC ecosystem flywheel continues to function while still addressing many of the competitive harms that Professors Lemley and Wansley identify.

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<sup>48</sup> See *id.*

<sup>49</sup> See *id.* at 1677-79; see also, e.g., Anu Bradford, Adam Chilton, Katerina Linos & Alexander Weaver, *The Global Dominance of European Competition Law over American Antitrust Law*, 16 J. EMPIRICAL LEGAL STUD. 731, 732 (2019) ("E.U. regulators typically take a more aggressive stance than U.S. regulators reviewing the very same conduct under their respective competition laws.").