

Congress Should Reject CRA to Overturn Bipartisan FTC, DOJ Rule

INTRODUCTION

- We urge the House of Representatives Antitrust Subcommittee to prioritize American consumers, government efficiency, and a free market by **opposing the Congressional Review Act (“CRA”) resolution of disapproval¹** to overturn the Federal Trade Commission (FTC) and Department of Justice (DOJ)’s “Premerger Notification; Reporting and Waiting Period Requirements” rule, known colloquially as the “HSR Form.”
- **The 1976 Hart-Scott-Rodino (HSR) Antitrust Improvement Act** requires companies to report proposed transactions above a certain dollar threshold to the agencies, and prohibits them from finalizing a transaction before a 30-day statutory waiting period has expired. This information is used to determine “which transactions should be challenged to prevent harm to American consumers and workers.”
- **In 2024, the FTC and DOJ finalized common sense, simple, and overdue changes to a form that hadn’t been updated for half a century.** This revision will allow antitrust enforcers to fulfill their Congressional mandate to identify and block illegal mergers that harm fair competition, consumers, workers, and businesses, while more quickly clearing transactions that do not threaten competition.

BIPARTISAN SUPPORT WITHIN THE FTC, CONGRESS

- The changes garnered bipartisan support in Congress and the Executive Branch. **The FTC’s five Commissioners voted unanimously to finalize these changes in October 2024², while Senator Elizabeth Warren and Vice President**

¹ Representative Scott Fitzgerald, “Congressman Fitzgerald Introduces Legislation to Provide Clarity on Merger Process,” press release, February 11, 2025, <https://fitzgerald.house.gov/media/press-releases/congressman-fitzgerald-introduces-legislation-provide-clarity-merger-process>.

² FTC, “FTC Finalizes Changes to Premerger Notification Form,” press release, October 10, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-finalizes-changes-premerger-notification-form>.

J.D. Vance (as Senator Vance) expressed support.³

- The rule closes a national security loophole in our laws by implementing provisions of the bipartisan **Merger Filing Fee Modernization Act of 2022**, in which Congress required companies to disclose any subsidies received from a foreign entity of concern to the FTC and DOJ.

WHY THIS RULE IS NEEDED NOW

- As deals become more complex and increase in value, the HSR rule requires additional information from parties that describes the purpose **of the deal, financial and investment vehicle details, competitive overlaps between the parties, and details on prior related transactions, all of which are gaps for antitrust agency review prior to the finalization of the HSR Rule.**
- This is important, as firms, such as in the housing and healthcare space, have worked to consolidate a market through **a series of smaller deals that fly below the radar of antitrust enforcers.** For instance, the FTC challenged a private equity roll up of a dozen anesthesiology providers across Texas in the span of eight years and has investigated serial acquisitions of veterinarian clinics that harm consumers. **Greater antitrust scrutiny into healthcare mergers has bipartisan support by Congress**⁴

MINIMAL IMPACT FOR VAST MAJORITY OF MERGING COMPANIES

- Special interest groups opposing the HSR rule, despite bipartisan support, claiming that requiring additional information is too burdensome. **The reality is that the majority of transactions fall below the reporting threshold (nearly**

³ Letter from Senator Warren et al. to the FTC, September 27, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.27%20Letter%20to%20FTC%20re%20HSR%20Guidelines.pdf>; The Capitol Forum, “Vance’s Letter to FTC on HSR Form Review Suggests Interest in All-of-Government Approach to Competition, Even as Friends in Silicon Valley and the Republican Platform Call for Return to Laissez-faire Approach,” July 18, 2024, <https://thecapitolforum.com/vances-letter-to-ftc-on-hsr-form-review/>.

⁴ [Private Equity in Health Care Shown to Harm Patients, Degrade Care and Drive Hospital Closures.](#) U.S. Anesthesia Partners (May 2024): defeated USAP’s motion to dismiss the FTC’s lawsuit alleging USAP had illegally monopolized the Texas anesthesiology market through a series of roll-ups, raising prices for patients and payors; court upheld FTC’s legal approach to serial acquisitions, upheld the FTC’s market definition, and rejected arguments regarding the agency’s constitutionality.

84%), so these changes will have no impact.⁵ For those transactions that are reportable in FY2023, just 0.1% were between \$50-100 million in value. By contrast, nearly 25% were above \$1 billion in value. See Diagram 1 below for more details.⁶

- **Only the largest, most complex transactions will see a modest increase in time required to complete the form**, a small burden for the largest companies who have robust in-house counsel.
- A survey, cited in the rule, found that fees paid to financial advisors upon successfully concluding deals represented 1 to 2 percent of deal value, or \$1,500,000 to \$3,000,000 for a \$150 million deal. Costs for these reportable lower- value transactions far exceed the costs associated with completing the HSR form (\$437,314) by no less than ten times, and as many as 100 times.⁷
- In conclusion, the unanimously approved HSR rule will significantly boost government efficiency, reduce the time antitrust enforcers will need to initially determine whether a deal may pose antitrust concerns, and follow direction from Congress to address foreign investment.

⁵ Between 2018 and 2022, 16.5% of the about 15,000 transactions were above the HSR threshold. See, e.g., https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.

⁶ See Diagram 1. [ftc.gov/system/files/ftc_gov/pdf/fy2023hsrreport.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy2023hsrreport.pdf)

⁷ [2024-25024.pdf](#). Page 89256.

Diagram 1:

TABLE I FISCAL YEAR 2023¹ ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²												
TRANSACTION RANGE (SMILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
50M - 100M	2	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
100M - 150M	173	10.0%	5	2	2.9%	1.2%	4.0%	0	0	0.0%	0.0%	0.0%
150M - 200M	227	13.1%	10	5	4.4%	2.2%	6.6%	1	0	0.4%	0.0%	0.4%
200M - 300M	293	16.9%	21	1	7.2%	0.3%	7.5%	8	0	2.7%	0.0%	2.7%
300M - 500M	259	14.9%	14	8	5.4%	3.1%	8.5%	2	1	0.8%	0.4%	1.2%
500M - 1000M	364	21.0%	26	21	7.1%	5.8%	12.9%	6	3	1.6%	0.8%	2.5%
Over 1000M	417	24.0%	48	24	11.5%	5.8%	17.3%	9	7	2.2%	1.7%	3.8%
<i>ALL TRANSACTIONS</i>	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%