

March 17, 2025

The Honorable Jim Jordan
Chair
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Scott Fitzgerald
Chair
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
Committee on the Judiciary
U.S. Houses of Representatives
Washington, D.C. 20515

The Honorable Jerrold Nadler
Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
U.S. House of Representatives
Washington, D.C. 20515

Dear Chair Jordan, Ranking Member Raskin, Subcommittee Chair Fitzgerald, and Subcommittee Ranking Member Nadler,

We write to urge you to prioritize your constituents and a fairer economy over special interest groups¹ by opposing the Congressional Review Act (“CRA”) resolution of disapproval² to overturn the Federal Trade Commission (FTC) and Department of Justice (DOJ)’s³ “Premerger Notification; Reporting and Waiting Period Requirements” bipartisan rule.⁴ These common sense, simple and necessary changes to a fifty year

¹ *Chamber of Commerce of the United States of America, et al., v. FTC and Lina Khan*, E.D. Tex., No. 6:25-cv-009, <https://www.uschamber.com/assets/documents/Complaint-Chamber-of-Commerce-v.-FTC-E.D.-Tex.pdf>; American Hospital Association, “Chamber of Commerce files lawsuit against FTC for changes to premerger notification rules,” press release, January 13, 2025, <https://www.aha.org/news/headline/2025-01-13-chamber-commerce-files-lawsuit-against-ftc-changes-premerger-notification-rules>; Letter to Representatives Jordan, Fitzgerald, Raskin, and Nadler from AHA, Chamber of Commerce, et al., February 12, 2025, <https://www.aha.org/system/files/media/file/2025/02/aha-other-organizations-in-support-of-congressional-review-act-letter-2-12-2025.pdf>.

² H.J.Res.39, <https://www.congress.gov/bill/119th-congress/house-joint-resolution/39?q=%7B%22search%22%3A%22scott+fitzgerald%22%7D&s=3&r=12>.

³ Federal Trade Commission (FTC), “FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review,” press release, June 27, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

⁴ Federal Register, “Premerger Notification; Reporting and Waiting Period Requirements,” A rule by the Federal Trade Commission, November 12, 2024, <https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements#footnote-5-p89217>.

old law – which were recently affirmed by FTC Chair Ferguson⁵ and Attorney General Pam Bondi – will allow the antitrust enforcers to fulfill their Congressional mandate to identify and block mergers that violate the antitrust laws, while more quickly clearing transactions that do not threaten competition. Coupled with the FTC’s launch of a new online portal⁶ so members of the public can submit comments on mergers that may threaten competition, the HSR Rule can provide greater transparency into a review process that has a direct impact on the cost of housing, food, and healthcare.

What is the HSR Act and Premerger Notification Process?

The Hart-Scott-Rodino (HSR) Antitrust Improvement Act was enacted by Congress in 1976 to strengthen the enforcement of existing federal antitrust laws. The law 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.⁷ This information is used to determine “which transactions should be challenged to prevent harm to American consumers and workers.”⁸ If the agencies determine that a transaction “may [] substantially [] lessen competition, or tend to create a monopoly,”⁹ one of the two agencies will initiate an investigation, and either negotiate with the transacting parties or block the deal.¹⁰

The HSR Act also gives the antitrust agencies the authority to determine what information transacting parties must submit for review.¹¹ It also enables regulators to “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section,” including by updating the HSR forms.¹²

Why Changes to the HSR Process Are Necessary

The status quo has been problematic for regulators, merging parties, and the public. The previous HSR form had not been modernized since the 1970s, despite rapid innovations in business models, financing structures, and deal volume surging as companies have consolidated instead of relying on new or better products for growth.¹³ And the form required basic and often irrelevant information, including the names

⁵ FTC Chair Andrew Ferguson, X, February 10, 2025, <https://x.com/AFergusonFTC/status/1889104730128834995>.

⁶ FTC, “Comment on a Proposed Merger,” <https://www.ftc.gov/enforcement/merger-review/comment-on-a-proposed-merger>.

⁷ 15 U.S.C. 18(a)(b)(1).

⁸ Public Law 94-435, September 30, 1976, <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1383.pdf>.

⁹ 15 U.S.C. 18.

¹⁰ Kathleen Ann Ruane, “Pre-Merger Review and Challenges Under the Clayton Act and the Federal Trade Commission Act,” Congressional Research Service, September 27, 2017, <https://crsreports.congress.gov/product/pdf/R/R44971>; FTC, “Premerger Notification and the Merger Review Process,” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process>.

¹¹ 15 U.S.C. 18(a)(d)(1).

¹² 15 U.S.C. 18(a)(d)(2)(c).

¹³ FTC, Statement of Chair Lina M. Khan Joined by Commissioners Slaughter and Bedoya Regarding Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules, June 27, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_khan_joined_by_comms_slaughter_and_bedoya_on_the_hsr_form_and_rules_-_final_130p_1.pdf; Zia Qureshi, “How Digital Transformation is Driving Economic Change,” The Brookings Institute, January 18, 2022, <https://www.brookings.edu/articles/how-digital-transformation-is-driving-economic-change/>; FTC and DOJ, “Hart-Scott-Rodino Annual Report, Fiscal Year 2021,” https://web.archive.org/web/20240927064537/https://www.ftc.gov/system/files/ftc_gov/pdf/FY2022HSRReport.pdf; Federal Register, “Premerger Notification; Reporting and Waiting Period Requirements,” A rule by the Federal Trade Commission, November 12, 2024, <https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements#footnote-5-p89217>; Gustavo Grullon,

of parties involved, final contract documents, and final documents evaluating the transaction, and the Census NAIC industry for the merging firms.¹⁴ As a result of this limited information, enforcers are often forced to issue a “second request” to the parties of the transaction, asking for more detailed information, which can drag out the review process and prevent companies from finalizing a deal.¹⁵ At the same time, staffing and funding levels at the FTC and DOJ have not kept up with the size and complexity of the economy,¹⁶ and enforcers only have 30 days to review transactions that may threaten competition once a form is filed.¹⁷ The resource strain and lack of relevant information on the HSR form has led to anti-competitive transactions not being challenged or getting approved with remedies that have failed to protect competition.¹⁸

In an effort to review proposed transactions more effectively, the FTC – in collaboration with the DOJ – proposed changes to the premerger notification form and associated instructions, along with the premerger notification rules that implement the HSR Act.¹⁹ The new form requires companies to provide the purpose of the deal, financing and investment vehicle details, competitive overlaps between the parties, and details on prior related transactions, among other key details. It also requires the transaction companies to provide internal documents that describe market conditions, projected revenue, and private equity involvement in the transaction. The new form also implements 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.²⁰

Why Congress Should Uphold the FTC-DOJ Rule

These changes have garnered bipartisan support in Congress and the Executive Branch. The FTC’s five Commissioners voted unanimously to finalize these changes,²¹ while Senator Elizabeth Warren and Vice President J.D. Vance (as Senator Vance) have both expressed support.²² And current FTC Chair Andrew

Yelena Larkin, and Roni Michaely, “Are U.S. Industries Becoming More Concentrated?,” Swiss Finance Institute, September 11, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047.

¹⁴ FTC, “Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions, revised February 4, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/HSRFormInstructions02.27.23.pdf.

¹⁵ FTC, “Premerger Notification and the Merger Review Process,” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process>.

¹⁶ FTC, “FTC Appropriation and Full-Time Equivalent (FTE) History,” <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>; DOJ, “Appropriation Figures for the Antitrust Division,” <https://www.justice.gov/atr/appropriation-figures-antitrust-division>.

¹⁷ 15 U.S.C. 18(a)(b)(1).

¹⁸ FTC, “Making the Second Request Process Both More Streamlined and More Rigorous During this Unprecedented Merger Wave,” September 28, 2021, <https://www.ftc.gov/enforcement/competition-matters/2021/09/making-second-request-process-both-more-streamlined-more-rigorous-during-unprecedented-merger-wave>.

¹⁹ FTC, “FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review,” press release, June 27, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

²⁰ H.R.3843, *Merger Filing Fee Modernization Act of 2022*, <https://www.congress.gov/bill/117th-congress/house-bill/3843>; FTC, “FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review,” press release, June 27, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review/>.

²¹ 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-csmallerhanges-premerger-notification-form>.

²² 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

Ferguson celebrated the rule once it went into effect, calling the changes a “win-win” for all parties,²³ noting that “[t]oday is a big day ... “[w]e need to protect the American public as much as we can ... [and] [t]he updated rules will ensure that parties provide the appropriate information so law enforcement can fulfill Congress’s mandate and prevent unlawful deals from slipping through the cracks.”²⁴

Despite the FTC and DOJ’s actions being in accordance with Congressional intent and statutory authority, along with bipartisan support for these common sense and necessary changes, interest groups have moved to block them since they were proposed.²⁵ These groups – including the U.S. Chamber of Commerce, American Hospital Association, and Silicon Valley Leadership Group – that represent large businesses claim that requiring additional information is too burdensome, unnecessary, and against congressional intent. However, these complaints are overwrought. First, the vast majority of companies seeking to merge fall under the threshold for filing, so these changes will have no effect.²⁶ For those that file, the vast majority are simple transactions, requiring no increase in burden. To further illustrate the point, in FY2023, just 0.1% of reportable transactions were between \$50-100 million in value with nearly a quarter above \$1 billion in value. ²⁷Only the largest, most complex transactions will see a modest increase in time required to complete the form, but these companies and their law firms already possess this information, and providing it to the government immediately will save time and money, as second requests may cost millions of dollars.²⁸ Indeed, antitrust regulators in other jurisdictions already require much of the information that FTC and DOJ will now have access to.²⁹ Second, these changes are necessary, as they will help enforcers focus on illegal and truly harmful mergers, reducing the bureaucratic burden on most businesses. It is also a common sense way to save taxpayer dollars, and preserve agency resources for other pressing issues.

Finally, Congress gave the antitrust agencies explicit authority to determine what information parties must submit for review, and to promulgate rules to carry out the HSR Act.³⁰ Similarly, Congress directed the

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/>.

²³ FTC Chair Andrew Ferguson, X, February 10, 2025, <https://x.com/AFergusonFTC/status/1889104730128834995>.

²⁴ *Id.*, <https://x.com/AFergusonFTC/status/1889104725624168453>;
<https://x.com/AFergusonFTC/status/1889104727989756088>.

²⁵ American Investment Council, “AIC & Over 30 Trade Associations Speak Out Against FTC-DOJ Anti Business Proposal,” November 16, 2023, <https://www.investmentcouncil.org/aic-over-30-trade-associations-speak-out-against-ftc-doj-antibusiness-proposal/>; *Chamber of Commerce of the United States of America, et al., v. FTC and Lina Khan*, E.D. Tex., No. 6:25-cv-009, <https://www.uschamber.com/assets/documents/Complaint-Chamber-of-Commerce-v.-FTC-E.D.-Tex.pdf>; American Hospital Association, “Chamber of Commerce files lawsuit against FTC for changes to premerger notification rules,” press release, January 13, 2025, <https://www.aha.org/news/headline/2025-01-13-chamber-commerce-files-lawsuit-against-ftc-changes-premerger-notification-rules>; Letter to Representatives Jordan, Fitzgerald, Raskin, and Nadler from AHA, Chamber of Commerce, et al., February 12, 2025, <https://www.aha.org/system/files/media/file/2025/02/aha-other-organizations-in-support-of-congressional-review-act-letter-2-12-2025.pdf>.

²⁶ FTC, Federal Register, Final Rule, “16 CFR Parts 801 and 803: Premerger Notification; Reporting and Waiting Period Requirements,” https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.

²⁷ FTC, Hart-Scott-Rodino Annual Report. https://www.ftc.gov/system/files/ftc_gov/pdf/fy2023hsrreport.pdf

²⁸ *Id.*, p. 100, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.

²⁹ FTC, Federal Register Notices, “16 CFR Parts 801 and 803: Premerger Notification; Reporting and Waiting Period Requirements,” June 29, 2023, <https://www.ftc.gov/legal-library/browse/federal-register-notices/16-cfr-parts-801-803-premerger-notification-reporting-waiting-period-requirements>; FTC, Statement of Chair Lina M. Khan Joined by Commissioners Slaughter and Bedoya Regarding Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules, June 27, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_khan_joined_by_comms_slaughter_and_bedoya_on_the_hsr_form_and_rules_-_final_130p_1.pdf.

³⁰ 15 U.S.C. 18(a)(d)(1); 15 U.S.C. 18(a)(d)(2)(c).

FTC and DOJ make certain revisions to update the form.³¹ The FTC and DOJ's rule implements this intent, and we therefore urge Congress to vote against the CRA.

Sincerely,

American Economic Liberties Project

³¹ H.R.3843, *Merger Filing Fee Modernization Act of 2022*, <https://www.congress.gov/bill/117th-congress/house-bill/3843>.