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May 26, 2026

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Mail Stop H-144 (Annex N)
Washington, DC 20580

Re: Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form

To the Federal Trade Commission and U.S. Department of Justice Antitrust Division:

The Consumer Technology Association® (“CTA”) writes in response to the Federal Trade Commission’s (“FTC”) and Department of Justice’s (“DOJ”) request for feedback on the effectiveness of the Updated Hart-Scott-Rodino Act Form (“HSR Form”) along with whether additional modifications to the form are needed.¹ While the outcome of the Updated HSR Form is decided in the courts, CTA believes the Updated Form remains overly burdensome and that the additional modifications proposed expand beyond the vacated Updated HSR Form and should be rejected.²

CTA is North America’s largest technology trade association, representing a wide variety of tech companies, from startups to major global brands. CTA members operate in a competitive marketplace that relies on acquisitions to fuel growth and innovation and bring benefits to consumers as well as the broader economy.

CTA has previously submitted comments in response to the FTC’s proposed rulemaking for updating the HSR reporting requirements. In September 2023,³ CTA submitted an initial comment opposing the Updated Form and, in February 2024,⁴ CTA submitted an additional comment requesting to vacate the proposed rulemaking because it failed to consider the potential effect on small businesses.

In the September 2023 comment, CTA explained that the technology startup market is highly competitive and successful, and that mergers and acquisitions (“M&A”) are an important driver of investments and innovations in the market. CTA also argued that the FTC and DOJ should reconsider broad changes to the HSR form that impose unnecessary friction on acquisitions and

¹ Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form, FTC and DOJ, https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RF1.pdf.

² If the FTC and DOJ wish to pursue the additional modifications, the agencies will need to undertake a formal Notice of Proposed Rulemaking under the APA following this initial request for comment.

³ Comments of CTA, Docket No. FTC-2023-0040 (filed Sept. 27, 2023), <https://cdn.cta.tech/cta/media/media/pdfs/cta-comments-on-ftc-and-doj-hsr-rulemaking.pdf>.

⁴ Comments of CTA, Docket No. FTC-2023-0040 (filed Feb. 23, 2024), <https://www.cta.tech/media/kgchkw4u/cta-letter-requesting-to-vacate-hsr-proposed-rulemaking-final.pdf>.

should instead focus on targeted revisions that minimize burdens on pro-competitive transactions.

In this comment, CTA argues that these points remain true both with the Updated Form and the additional proposed modifications. CTA will also comment specifically on the proposed modification for “Non-Traditional Transaction Structures,” which has particular importance to the technology sector, as it has the potential to burden and ultimately chill legitimate, pro-competitive business activities that drive innovation in the sector.

Technology Startup Market Relies on Acquisitions

As CTA previously conveyed in its September 2023 comment, the technology startup market in the United States has and continues to be the most competitive and successful market of its kind in the world.⁵ The startup market’s success is due in part to the possibility of merger or acquisition, which allows startups to attract capital and take on greater risk. M&A activity has procompetitive benefits including driving innovation; delivering affordable, competitive prices; and expanding the range of goods and services available to a broad range of consumers and business customers.

As an organization that proudly includes many small businesses and startups amongst its members--CTA counts 80% of its members as small businesses--CTA has seen firsthand that the startup market for consumer technology continues to drive innovation that directly benefits consumers. The possibility of acquisition allows startups to focus on building products and services. It also encourages investors to fund riskier ventures. The potential for acquisition allows for much-needed innovation in the technology sector. Further, many startups are founded by serial entrepreneurs who use proceeds from past acquisitions to start new ventures, leading to a continuous cycle of innovation.

The innovation undertaken by startups in turn drives innovation in the whole technology sector, which is why CTA’s larger business members are concerned about regulations that discourage funding and investment to support smaller companies. Companies that acquire startups scale their innovations and make them available to businesses and consumers. Incumbent technology companies have incentives to invest and develop to compete with the innovations coming out of startups. A large portion of the innovation in the U.S. technology sector can trace its origins to startups that had the incentive and ability to innovate due to the possibility of acquisition. Without the possibility of acquisition, many pioneering innovations that are now considered essential to the lives of consumers may never have reached the market.

Increasing the amount of information and documents required to complete the HSR premerger notification form burdens parties, including startups, that are looking to engage in M&A activity. The more friction that is added to the M&A process, the less attractive M&A will be to buyers and sellers alike. If M&A continues to be burdensome to undertake, startups will likely have less

⁵ Comments of CTA, Docket No. FTC-2023-0040, at 2 (filed Sept. 27, 2023), <https://cdn.cta.tech/cta/media/media/pdfs/cta-comments-on-ftc-and-doj-hsr-rulemaking.pdf>. CTA, 2022 Corporate Report, at 4 (2022), <https://cdn.coverstand.com/66948/743840/586e475fac330e7f8abacefed052b4f4b38b4538.1.pdf> (“The U.S. consumer technology industry is poised for record growth and projected to generate over \$505 billion in retail sales revenue for the first time. . . . The projection represents a 2.8% revenue increase from 2021’s impressive 9.6% growth over 2020, driven by strong demand for smartphones, automotive tech, health devices and streaming services.”).

ability and incentive to take risks and innovate, leading to a weakened technology startup market and ultimately less U.S.-based innovation.

The antitrust agencies have previously avoided unnecessary burdens for transactions and have instead balanced their interests in reviewing a transaction with the benefits brought to the market and the general economy by vibrant M&A activity. The agencies have historically focused on avoiding unnecessary burdens for transactions involving smaller companies, like startups, that do not raise competition concerns.

Changes to HSR Rules Should be Targeted and Not Add Burdens to Pro-Competitive Transactions

The agencies have the ability to, and at times should, revise the rules surrounding the HSR premerger notification process, but any modifications to the HSR form must align with the original purpose of the law.⁶ The HSR Act was enacted to create a pre-consummation notification and waiting period for certain M&A activity to allow the agencies to conduct a review of whether a deal may unlawfully affect competition. The HSR process was designed to balance antitrust review with avoiding unnecessary burdens on transactions that raise no competitive concerns. Expanding beyond this narrowly tailored scope risks chilling procompetitive M&A activity and imposing significant costs on the economy.

CTA has actively supported previous efforts by the antitrust agencies to implement practical rules for M&A review and enforcement. For example, in 2020 CTA submitted a comment in support of the Vertical Merger Guidelines, noting that clear rules would promote certainty in the market.⁷ But CTA also noted in its 2020 comment that the agencies should not impose additional or unnecessary burdens on transactions that present no competition issues including many transactions involving startups.⁸ CTA supports the broader goal of increasing competition in the United States and supports revised premerger review rules that do not result in unnecessary burdens.

As previously noted in CTA's September 2023 comment, the Updated Form increases the burdens on merging parties. By the agencies' own estimate the Updated Form nearly quadrupled the average amount of time to file HSR,⁹ but a survey conducted by the U.S. Chamber of Commerce indicates the actual burden was far higher.¹⁰ CTA continues to support the proposition that burdening all transactions that meet the HSR threshold while only a small number, between 1.6 and 3.0% since 2020, trigger increased scrutiny, is unnecessarily burdensome and costly and does not align with the interest balancing that is central to the HSR regime.¹¹

Likewise, the newly proposed HSR form modifications outlined in the Request for Comment also impose unnecessary burdens by increasing the time and resources needed to file. CTA

⁶ 15 U.S.C. § 18a.

⁷ CTA, Comments on DOJ/FTC Draft Vertical Merger Guidelines, at 2 (Feb. 26, 2020), <https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0050.pdf>.

⁸ *Id.* at 2-3.

⁹ 89 Fed. Reg. 89216, 89332 (Nov. 12, 2024).

¹⁰ HSR/Merger Guidelines Practitioner Survey, U.S. Chamber of Commerce, at 3 (Sept. 19, 2023), <https://www.uschamber.com/assets/documents/20230919-U.S.-Chamber-Antitrust-Survey.pdf>.

¹¹ Hart-Scott-Rodino Annual Report, Fiscal Year 2024, at 5 (released Sept. 17, 2025) https://www.ftc.gov/system/files/ftc_gov/pdf/FY24-HSR-ANNUAL-REPORT-FOR-TRANSMITTAL-TO-CONGRESS.pdf.

members provided input on some of the proposed modifications noting the unnecessary burdens that these proposed modifications would create:

- The CFIUS and Department of War (“DOW”) customer reporting requirements are beyond the intended purpose of the HSR form and add additional burdens to filing parties that could be addressed through existing collaboration between the antitrust agencies and DOW.
- Submitting a second or supplemental HSR form if a structural modification is proposed adds unnecessary burdens as the original filing has sufficient information to assess competition and market conditions.
- The broadly-drafted removal of the real estate exemption will add additional burden to many transactions by sweeping in acquisitions involving facilities. In the technology sector there is particular concern of the added burdens for deals involving data centers, which may ultimately slow innovation in AI and cloud computing.

Ultimately, the concerns raised by the agencies are largely out of scope of the original intentions of the HSR Act and do not justify broad fishing expeditions that will burden all HSR reportable transactions, the vast majority of which present no competition concerns. The agencies have adequate existing tools to address these concerns, or, alternatively, the antitrust agencies can collaborate with other federal agencies. If concerns cannot be addressed through existing tools or collaborations, the concerns should be addressed through targeted, incremental modifications that balance cost and burden with the need for additional information.

As previously noted, any additional burden in the HSR filing process has the potential to harm innovation by taking resources away from endeavors that drive innovation or by chilling M&A activity overall. Further, the agencies have existing tools that allow them to seek tailored information from parties without burdening transactions that present no competition concerns. The Updated Form and the proposed modifications have not been justified considering the burdens they impose.

Additional Modification: Non-Traditional Transaction Structures

The proposed modification related to expanding HSR reporting requirements to cover “Non-Traditional Transaction Structures” has particular relevance for the technology sector and threatens to burden business that is commonly undertaken by technology companies.

The FTC and DOJ’s request for comment proposes a modification to the HSR form aimed at “Non-Traditional Transaction Structures,” asserting that the agencies have “seen an uptick” in such transactions that are not being reported under the HSR Act, even though they eliminate a market participant. The agencies are concerned that these transactions, including licensing agreements in combination with “acquihires” or “reverse acquihires,” have been structured to avoid HSR review.¹²

CTA believes this proposal exceeds the intent of the HSR Act and would create an overly broad rule that would obstruct lawful, procompetitive, ordinary course business activities that drive growth and innovation in the technology sector.

First, the HSR premerger notification process should not cover hiring employees. The HSR process is intended to cover transactions involving the acquisition of voting securities or assets.

¹² Request for Comment at 2.

Employees are not assets.¹³ Employees are people. Employees must be free to change employers and negotiate competitive compensation packages, even if that involves a new employer also hiring some of their colleagues or paying for a non-exclusive license for a technology they have developed. Open competition for talent is a cornerstone of the free market. Curbing the ability of Americans to seek the highest remuneration available for their services by introducing regulatory burdens and state oversight into the hiring process is antithetical to free market competition and risks harming the prosperity of the American worker.

Further, these transactions are a positive force for competition and innovation in the technology sector and particularly in the growing AI sector. Such transactions often infuse the licensor with capital to continue innovating and provide valuable employees incentives and flexibility to their employment opportunities. These transactions are common in the technology, pharmaceutical, and biotech industries where continued innovation is essential. Currently, talent acquisitions are particularly important in the rapidly developing AI industry, an industry whose growth is of deep interest to the Trump Administration.¹⁴

Lastly, the proposed modification would be an overbroad rule. The rule would capture a wide range of transactions that occur in the ordinary course and do not qualify as traditional M&A activity. Requiring the reporting of these transactions would harm businesses by adding friction and regulatory costs to the ordinary course of business. These transactions enable companies to act nimbly to hire key talent rather than acquire a full company, requiring an HSR form would add undue time and costs to these transactions. Further, this rule would have the effect of dampening labor mobility, especially for highly desirable employees.

To the extent a change is required to cover these “Non-Traditional Transaction Structures,” the agencies must define a clear standard that is tailored to deals that could plausibly affect competition based on clear thresholds to give the involved parties the ability to determine whether a filing is required for a particular “Non-Traditional” transaction.

Conclusion

CTA supports policies that promote competition and innovation. But an overly burdensome premerger review process risks slowing investment, acquisitions, and technological development. The Updated Form and the newly proposed modifications increase costs without materially improving antitrust enforcement. CTA therefore urges the agencies to return to the pre-2025 HSR form and decline to adopt the additional proposed modifications.

Sincerely,

/s/ J. David Grossman

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¹³ A sentiment that is codified in law, “[t]he labor of human beings is not a commodity or article of commerce.” 15 U.S.C. § 17.

¹⁴ See Winning the Race America’s AI Action Plan (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>.

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