

April 23, 2024

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex C)  
Washington, DC 20580

**Re: Request to Restart Notice and Comment Process on the Proposed Rulemaking for the HSR Filing Process (Matter No. P239300)**

Dear Ms. Tabor:

The undersigned organizations provided feedback to the Federal Trade Commission (“FTC”) and the Department of Justice’s Antitrust Division (“DOJ”) raising serious concerns with the Agencies’ proposed rule to fundamentally reshape the pre-merger notification process under the Hart-Scott-Rodino (“HSR”) Act. We continue to believe that wholesale revisions to the HSR filing process are not needed. However, if the FTC and the DOJ still plan to move forward with proposed HSR amendments, we respectfully encourage the Agencies to repropose a modified rule and provide robust opportunity for feedback on the modified proposal via a new notice and comment period, as required by the Administrative Procedure Act.

According to news reports, the Department of Justice recently stated that “the final rule would have *material differences* as compared to the proposed rule.”<sup>1</sup> The agency also said that it expects “many changes” as the two antitrust agencies work through various issues.

“Material” changes to the proposed rule are welcome, as the original proposal would have imposed tremendous burdens on companies considering business combinations throughout the economy. As a matter of law, however, the Agencies must repropose—rather than finalize—the rule if it substantially diverges from the proposed rule, which, according to public comments, it apparently will. Absent a reproposal, it is likely that a substantially modified final rule will not “be a logical outgrowth of [the Agencies’ original] notice [of proposed rulemaking]” and that the regulated public thus will have been deprived of the opportunity to provide feedback on relevant policy choices given that the proposal would not have “made clear that the agency was contemplating” the “particular change” adopted in the final rule.<sup>2</sup>

A withdrawal of the original proposed rule and a new notice and comment rulemaking process would serve the interests of both the public and the agencies by allowing stakeholders to evaluate a proposal that could reshape U.S. merger policy and capital markets. A typical year sees more than 2,000 mergers whose aggregate value approach \$3 trillion in transactions. The FTC itself acknowledges that the proposed new form would almost quadruple average preparation time, and as explained by commenters, the data suggests that those revisions could impose regulatory costs

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<sup>1</sup> <https://mlexmarketinsight.com/news/insight/final-us-hsr-forms-roughly-weeks-away-will-contain-material-changes-from-proposal-doj-official-says>.

<sup>2</sup> CSX Transp., Inc. v. STB, 584 F.3d 1076, 1079 (D.C. Cir. 2009) (quotation marks omitted).

more than five times greater than the Agency's estimates. The original proposal solicits feedback on numerous specific ideas that touch upon complex questions of markets, labor, capital, regulatory costs, and attorney-client privilege; any material changes to the original proposal could dramatically impact any of these topics.

For these reasons, we urge the Agencies to withdraw the original proposed rule and to repropose a revised rule for notice and comment. Thank you for your consideration of this matter.

Sincerely,

ACT | The App Association  
Alternative Investment Management Association  
American Coatings Association  
American Investment Council  
Business Roundtable  
Center for American Entrepreneurship  
Consumer Technology Association  
Computer & Communications Industry Association (CCIA)  
CTIA  
Engine  
Federation of American Hospitals  
Information Technology Industry Council (ITI)  
Managed Funds Association  
Metals Service Center Institute  
National Association of Manufacturers  
Small Business & Entrepreneurship Council  
Software & Information Industry Association (SIIA)  
TechNet  
U.S. Chamber of Commerce

cc: Chair Khan  
Commissioner Slaughter  
Commissioner Bedoya  
Commissioner Ferguson  
Commissioner Holyoak  
Assistant Attorney General Kanter  
House Judiciary Committee  
Senate Judiciary Committee