

September 16, 2024

The Honorable Roger Williams
Chairman
House Committee on Small Business
Washington, District of Columbia 20515

The Honorable Nydia Velázquez
Ranking Member
House Committee on Small Business
Washington, District of Columbia 20515

RE: Markup of H.R. 8033, H.R. 9031, H.R. 9032, H.R. 9030, H.R. 9085, H.R. 9033, H.R. 7198

Dear Chairman Williams and Ranking Member Velázquez,

We commend the House Small Business Committee’s work on several pieces of legislation reported to the full chamber this week to enhance regulatory certainty and eliminate red tape for small businesses. At a high level, these bills would help ensure that, when regulators set out to take on market failures and especially when their sights are set on big company conduct, they report on the effects these proposals would have on small businesses and give small businesses a chance to be heard in these proceedings. The Committee’s action follows its report on agency observance of the Regulatory Flexibility Act’s (RFA’s) requirements,¹ and we publicly supported the report as well.²

Nowhere is it more apparent that regulators must listen to small business concerns than with the Federal Trade Commission’s (FTC’s) proposed updates to its merger review rules under the Hart-Scott-Rodino (HSR) Act.³ Last month, more than 50 ACT | The App Association members signed a letter cautioning against governments around the world proposing to make it harder for them to seek an acquisition. In the United States, the FTC appears to have skipped an important step in its rulemaking process by “certifying” that its draft rule updates would not have a “significant economic impact on a substantial number”

¹ “Committee on Small Business Releases Report on Federal Agency Compliance with RFA,” Press Release, House Comm. On Small Bus. (May 22, 2024), *available at* <https://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=405994>.

² Graham Dufault, “Checking in on the Box Checkers: House Committee Reports on Regulations’ Effect on Small Biz,” ACT | THE APP ASSOCIATION BLOG, (May 29, 2024), *available at* <https://actonline.org/2024/05/29/checking-in-on-the-box-checkers-house-committee-reports-on-regulations-effect-on-small-biz/>.

³ Open letter from ACT | The App Association members, Aug. 12, 2024, *available at* <https://actonline.org/2024/08/12/global-activists-for-change-an-open-letter-regarding-recent-international-trends-in-competition-regulation/>.

of small entities, under the Regulatory Flexibility Act (RFA) requirements. By making the certification, the FTC sought to unburden itself of the need to conduct a full RFA process, which would have involved seeking feedback from small businesses themselves. Unfortunately, even though HSR review only applies to transactions of \$119 million and above, the proposal's effect has already extended to much smaller businesses. In a hearing before your Committee in March, our member company, Vēmos, provided valuable insights on the costs to small businesses of closing down the ability for small, innovative companies to be acquired.⁴

As Vēmos pointed out, the HSR proposal is just one piece of the FTC's recent plan to make it impossible for firms to merge or seek an acquisition.⁵ The proposed HSR updates would increase the number of lawyer hours required for such filings from 37 to 144 and add to an already-nightmarish set of changes by the FTC that leave potential acquisitions in limbo and under constant threat. As all of our members who signed the global letter can attest, the FTC made a mistake in certifying that there would be no significant impact, because placing significant new red tape and uncertainty around mergers of any size directly undermines small businesses' ability to be acquired.

The fact that the FTC deemed the RFA analysis unnecessary for the proposed rule, at a time when cash is harder to come by, loan rates are high, and investors are wary, is a strong signal that agencies have fallen into a pattern of box-checking that must be second guessed. Whether or not the HSR proposal is finalized, we are heartened that this Committee is forwarding legislation to ensure agencies recognize small business' stake in rules directed at larger entities and that the impacts on them are fully understood before adding new peaks to the existing mountain range of regulation.

Sincerely,



Morgan Reed
President

ACT | The App Association

⁴ "Navigating Regulations: Alternative Pathways to Investing in Small Businesses," hearing before the House Committee on Small Business, 118th Cong., 2d Sess., (Mar. 12, 2024), *available at* <https://www.congress.gov/118/meeting/house/116897/witnesses/HHRG-118-SM24-Wstate-ShahP-20240312.pdf>.

⁵ Graham Dufault, "Killing Commerce for Dummies: A How-To Manual from the FTC," ACT | THE APP ASSOCIATION BLOG, (Mar. 5, 2024), *available at* <https://actonline.org/2024/03/05/killing-commerce-for-dummies-a-how-to-manual-from-the-ftc/>.