



May 26, 2026

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

The Association for Competitive Technology (ACT) appreciates the opportunity to submit comments in response to the Federal Trade Commission's (FTC) and Department of Justice Antitrust Division's (DOJ) joint Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form.¹ ACT represents small and medium-sized software developers and connected device companies that are building, deploying, and commercializing technology across consumer, enterprise, industrial, health, education, and emerging artificial intelligence markets. The small businesses ACT represents are frequently the source of novel technical approaches and real-world applications, yet they face persistent structural barriers in translating early-stage innovation into scalable, deployable products.

ACT supports effective antitrust enforcement and recognizes the value of giving the Agencies appropriate information necessary to evaluate whether a transaction may substantially lessen competition. At the same time, merger review rules should be predictable, administrable, and proportionate to the competition policy questions presented by the transaction. Overbroad or unclear filing obligations can impose costs on transactions that are competitively neutral or procompetitive, including transactions that help small businesses scale innovation, reach customers, and compete more effectively.

For ACT members, merger review process matters. Small businesses do not have the same ability as larger firms to absorb prolonged regulatory uncertainty. When filing requirements become too broad or unclear, the burden is not limited to legal compliance. It can affect investment, deal timing, product development, employee retention, and a small firm's ability to pursue acquisition as a legitimate path to scale.

ACT therefore urges the Agencies to use any future rulemaking to reduce unnecessary burdens for non-problematic transactions, preserve the ability of small businesses to pursue procompetitive transactions, and ensure that any additional information requirement is tied to a concrete and demonstrable benefit to merger review.

¹ FTC & DOJ Antitrust Division, *Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form* (Mar. 25, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RFI.pdf.

I. Statement of Interest

ACT is a global policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with our members around the world to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

The value of the domestic ecosystem ACT represents, which we call the app economy, is approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.² ACT members develop software, connected devices, AI-enabled tools, enterprise applications, digital health products, productivity services, cybersecurity solutions, and other technologies that depend on access to trusted distribution channels, technical infrastructure, and complementary business relationships.

Merger policy directly affects this community. For many startups and small businesses, acquisition is the most realistic path to success. Initial public offerings are costly, risky, and inaccessible to many small firms. Acquisition can allow innovative products and services to reach scale quickly by combining them with complementary resources, technical expertise, customer relationships, infrastructure, and distribution networks. This is especially important in AI and other fast-moving technology markets. A small AI developer may have a valuable product or technical approach but lack access to compute, cloud infrastructure, specialized compliance support, enterprise distribution, or deployment resources. A connected device company may have a promising product but need integration support, security resources, or manufacturing and distribution relationships to reach customers. A small enterprise software company may need a larger partner to commercialize a tool at scale.

For these companies, delays and uncertainty in merger review are not abstract process concerns. They can reduce enterprise value, weaken investment prospects, force renegotiation, and prevent transactions that would otherwise expand output, improve quality, and accelerate innovation.

II. ACT Comments Regarding Making Improvements to the Premerger Notification and Report Form

The vacated Updated Form should not serve as the baseline for future rulemaking

At the outset, ACT requests that the analytical baseline for any future rulemaking be the Premerger Notification and Report Form and Instructions in effect prior to the 2025

² ACT, *The App Economy: The Backbone of American Innovation: Fast Facts* (2023), https://actonline.org/wp-content/uploads/Fast-Facts_Website.pdf

amendments, and not the Updated Form that took effect on February 10, 2025. On February 12, 2026, the U.S. District Court for the Eastern District of Texas vacated the Updated Form, and on March 19, 2026, the U.S. Court of Appeals for the Fifth Circuit denied the Commission's motion for a stay pending appeal.³ As the RFI itself acknowledges, the Agencies are now accepting HSR filings using the pre-2025 Form and Instructions, and the pre-2025 Form should be the operative baseline since using the vacated Updated Form as a presumptive floor would in effect preserve the substance of a rule that has been judicially set aside.

While the Agencies may wish to draw on their experiences with the now-vacated Updated Form where instructive, twelve months of compressed implementation is a thin evidentiary base on which to lock in expanded requirements, particularly requirements that fall disproportionately on small businesses. ACT merely requests that the Agencies approach any future rulemaking with renewed attention to small business impacts and a commitment to base proposed requirements on data sufficient to support them.

A Future Updated Form should be evaluated under a disciplined burden-benefit framework.
(RFI Questions 1, 2, 3, and 4)

Any future HSR rulemaking should begin from a disciplined burden-benefit framework. The Agencies should retain or add requirements only where the information sought is likely to provide probative value that justifies the incremental cost to filers.

The HSR process should collect information that is necessary and useful to identify transactions that may violate the antitrust laws. It should not require extensive frontloaded submissions for broad categories of transactions without evidence that the information meaningfully improves the Agencies' ability to screen for competitive harm. For small businesses, the costs of expanded filing obligations can be significant even where the target firm itself has limited staff, limited administrative capacity, and no internal antitrust function.

Expanded Hart-Scott-Rodino (HSR) requirements could widen the scope and frontload the filing of documents and data without a clear public-interest benefit.⁴ Those burdens can increase disclosure costs, delay or prevent procompetitive transactions, and damage a primary means of success for the small business innovator community, which is being acquired.

The Agencies should be especially careful not to conflate transaction size with the size or capacity of the small business being acquired. A small technology company may have few employees and limited administrative infrastructure while still having a high valuation based on

³ See Memorandum Opinion and Order, *Chamber of Commerce v. FTC*, No. 6:25-cv-9, Dkt. 75 (E.D. Tex. Feb. 12, 2026); Order, *Chamber of Commerce v. FTC*, No. 26-40094, Dkt. 44 (5th Cir. Mar. 19, 2026) (denying motion for stay pending appeal).

⁴ See ACT, *Letter to Chair Lina Khan and General Counsel Anisha Dasgupta re: Hart-Scott-Rodino Proposed Rule and Regulatory Flexibility Act Concerns* (Feb. 1, 2024), <https://actonline.org/wp-content/uploads/App-Association-HSR-RFA-Ltr-1-Feb-2024-1.pdf>.

projected customer growth, revenue potential, intellectual property, or strategic technical assets. These companies may be captured by HSR reporting obligations even though they lack the internal resources of larger firms. Any future HSR rulemaking should expressly account for this reality.

Several types of requirements warrant careful burden-benefit review. Requirements that call for information not ordinarily compiled in the sale process can impose significant incremental costs. Requirements that force parties to create new analyses, reorganize business records, develop competitive narratives across speculative markets, or may require outside counsel, economic consultants, management time, and engineering or product-team input. For small firms, that work can divert the same employees responsible for multiple business operations. The Agencies should therefore ask, for each requirement, whether the information is likely to change the screening decision for a meaningful number of transactions. The Agencies should also assess whether the same information could be obtained through a narrower request, a targeted follow-up, a Voluntary Access Letter, or a Second Request in the smaller subset of transactions where additional inquiry is warranted. This approach would not weaken antitrust enforcement. It would strengthen the HSR process by focusing resources on information that is actually probative of competitive effects.

The Agencies should identify lower-risk transaction categories and tailor filing obligations accordingly. (RFI Questions 5, 7, and 13)

Some reportable transactions are less likely to present competitive concerns and should receive tailored treatment. The Agencies should identify categories of lower-risk transactions and calibrate filing obligations accordingly.

Transactions without a horizontal overlap are an important category. Many small business transactions in technology markets are vertical, complementary, or capability-driven. A larger company may acquire a small developer to integrate specialized software, improve cybersecurity, expand customer support, commercialize a product, add technical talent, or combine complementary assets. These transactions can expand output, improve product quality, accelerate deployment, and help smaller firms reach customers more efficiently.

The Agencies should also consider tailored treatment for acquisitions of small firms where the transaction is primarily designed to provide capital, infrastructure, distribution, technical support, or commercialization resources. For ACT members, these inputs often determine whether a promising product reaches the market. A small firm may have the innovation, but not the infrastructure required to scale. In that context, acquisition can be part of the competitive process.

The Agencies should also avoid relying too heavily on static indicators when evaluating dynamic technology markets. Market shares and concentration can be relevant, but they may provide an incomplete picture in markets shaped by rapid entry, product differentiation, open-source alternatives, changing customer needs, and global competition. A transaction that appears significant through a static lens may still increase competition by helping a smaller firm deploy a better product or compete against incumbents.

For lower-risk categories, the Agencies should consider streamlined requirements. The Agencies should avoid requiring parties to create extensive new analyses where the transaction does not present a plausible competition concern. A tailored approach would also help small businesses. Small firms often face tight financing timelines and high opportunity costs from delay. A streamlined path for lower-risk transactions would allow the Agencies to reduce unnecessary burdens on procompetitive deals.

Consistent with the framework above, ACT urges the Agencies to use safe harbors and materiality thresholds to operationalize tailored treatment for lower-risk transactions. The RFI specifically invites commenters to propose such thresholds, and ACT believes targeted exceptions would substantially reduce compliance complexity without limiting the Agencies' access to information needed to identify potentially anticompetitive transactions. The Agencies should consider, for example: (i) reduced submission requirements for transactions with no horizontal overlap between the merging parties; (ii) reduced requirements for acquisitions in which the target firm has fewer than a defined threshold of employees or falls below an annual-revenue threshold consistent with Small Business Administration size standards in the relevant industry; (iii) reduced requirements for acquisitions of pre-revenue or early-stage technology companies whose competitive significance is prospective rather than established; and (iv) clear materiality thresholds for ancillary information requests so that filers are not required to compile data that is immaterial to the competitive analysis. ACT would welcome the opportunity to develop these proposals further with the Agencies and to provide additional small-business cost data in support.

ACT also offers a note of caution regarding the RFI's questions on "acquihires," "reverse acquihires," non-exclusive intellectual property licenses, and similar non-traditional transaction structures. For many small technology businesses, these structures are legitimate (and sometimes the only commercially viable) mechanisms for moving talent, technology, and capital between firms. A small company that licenses IP to a larger firm, or whose engineers are hired into a larger firm alongside a technology transfer, is often realizing the only realistic exit available given the cost and risk of an initial public offering. Sweeping these arrangements into HSR reporting, or treating them as presumptively suspect, risks chilling pro-competitive talent and technology mobility in precisely the sectors, including areas vital to U.S. national and

economic interests such as artificial intelligence and cybersecurity. To the extent the Agencies pursue any rule changes addressing these structures, ACT urges the Agencies to (i) define the targeted conduct narrowly and with reference to identified competitive harm (rather than transaction form), (ii) avoid creating reporting obligations that capture routine licensing or hiring arrangements with no plausible competitive effect, and (iii) provide clear guidance and worked examples so that small firms and their counsel can structure ordinary-course transactions with certainty.

Supplemental HSR filings for structural modifications should be narrow and designed to preserve incentives for good-faith remedies. (RFI Questions 14 and 15)

New or supplemental HSR filings for structural modifications should be required only when a proposed change materially alters the transaction in a way that staff cannot evaluate through ordinary investigative tools. ACT recognizes that the Agencies need sufficient information to evaluate remedies that materially alter the competitive analysis, but an automatic new filing requirement would risk discouraging settlement.

Remedy discussions are often iterative. Parties may not be able to develop a meaningful remedy proposal until the Agencies identify their theory of harm with sufficient clarity. Once that theory is understood, parties and staff may need to refine the scope of the deal. That process requires flexibility.

An automatic supplemental filing requirement could discourage parties from proposing remedies or delay the timing of remedy discussions. If every meaningful structural modification triggers a new filing obligation, parties may hesitate to engage constructively until late in the process or may abandon potentially efficient remedies. This would not serve consumers or competition.

The Agencies should instead use a more targeted framework. A new or supplemental filing should be required only where the proposed modification fundamentally changes the transaction being reviewed in a way that creates a materially different competitive effects analysis and cannot be evaluated through targeted submissions, timing agreements, or ordinary investigative tools. In particular, ACT urges the Agencies to favor the alternatives the RFI itself identifies (supplemental submissions, timing agreements, revised HSR rules, or guidance) over an automatic new filing trigger. Such tools will allow the Agencies to obtain incremental information about a modified transaction without restarting the review clock, and preserve the procedural flexibility needed to support efficient remedy negotiations. Where additional clarity is needed, ACT submits that policy guidance and case-by-case discretion will generally serve the Agencies' objectives more effectively than a categorical rule, particularly given the diversity of

positions and the risk that bright-line filing triggers will deter parties from engaging constructively with staff.

AI tools used in HSR preparation should reduce burdens, not create unrelated disclosure obligations. (RFI Questions 18, 20, and 21)

AI and other technology tools used in HSR preparation should be treated as potential burden-reduction tools, not as a basis for new disclosure obligations. HSR filings already require certification. Filers must ensure that submissions are accurate and complete.⁵ If the Agencies are concerned that AI tools could introduce errors, the existing certification obligation and applicable penalties already create strong incentives for careful review and human oversight. The Agencies should not create broad new disclosure requirements merely because a filer used AI-enabled software, document review tools, search tools, or other technology to prepare a filing.

Information about the software tools used to prepare a submission usually does not help the Agencies determine whether a transaction may substantially lessen competition. A filing prepared with AI-assisted document review is not more or less anticompetitive because of the tool used to prepare it. The relevant question remains whether the transaction is likely to harm competition.

A broad AI-use disclosure requirement could also impose unnecessary costs. Filers may need to identify and describe multiple software tools used by counsel, vendors, economists, internal legal teams, business personnel, and document review providers. They may need to explain tool functionality, vendor relationships, review protocols, search methods, and quality-control procedures even when those details have no bearing on competitive effects. For small businesses, this could add complexity to a filing process that is already resource-intensive.

At the same time, AI tools can reduce costs. AI-enabled search, review, deduplication, translation, summarization, and document management tools may help parties identify responsive materials more efficiently, reduce attorney review time, and manage large document sets. These tools may be especially useful in Second Request compliance, where document review costs can be substantial. For small filers, savings from AI-enabled tools can be the difference between substantially complying with a Second Request on a feasible budget and abandoning a procompetitive transaction. Imposing new front-end disclosure obligations that single out AI use may chill adoption of the very tools that make Second Request compliance affordable for smaller parties and that reduce overall review burden on Agency staff as well. Rather than treating AI use as a basis for new reporting, the Agencies should treat documented

⁵ 16 C.F.R. § 803.6(a)–(b).

AI-driven efficiency gains as evidence that the existing process can accommodate carefully scoped information requests without expanding standardized disclosure across all filings.

Additional improvements should focus on proportionality, materiality, clarity, early termination, and small-business engagement. (RFI Questions 6, 7, 22, and 24)

First, the Agencies should adopt a proportionality principle for HSR information requirements. The scope of required information should be tied to the transaction's likely competitive risk. Transactions with no horizontal overlap, limited plausible competitive concern, or clear complementary rationale should not face the same information burden as transactions that present substantial overlaps in concentrated markets.

Second, the Agencies should provide clear instructions and examples. Ambiguity increases costs because filers must make conservative judgments or seek extensive outside advice. For small businesses, unclear instructions can be especially burdensome. Guidance should use plain language, practical examples, and defined terms that allow businesses to understand what is required without unnecessary back-and-forth.

Third, the Agencies should preserve and expand early termination where appropriate. ACT welcomed the reinstatement of early termination letters because they restore needed certainty around mergers and acquisitions⁶. Early termination is especially important for small businesses because unnecessary waiting periods can affect financing, hiring, customer commitments, and product timelines.

Fourth, the Agencies should strengthen small-business engagement. ACT previously expressed concern that the small-business effects of expanded HSR requirements were not adequately considered. Any future rulemaking should include meaningful engagement with small businesses, startup founders, investors, and technology developers. The Agencies should not assume that transaction value reflects compliance capacity.

Finally, the Agencies should avoid requirements that make every transaction look like an investigation. The HSR form should remain a screening tool. The Agencies have powerful investigative tools when a transaction presents a plausible competitive concern. Frontloading extensive investigative demands onto all filers risks imposing unnecessary costs on competitively benign or beneficial transactions.

Any future rulemaking should minimize disproportionate burdens on small businesses. (RFI Question 23)

⁶ Morgan Reed, *Statement from ACT | The App Association on the Federal Trade Commission's Hart-Scott-Rodino Rule*, ACT (Oct. 11, 2024), <https://actonline.org/2024/10/11/statement-from-act-the-app-association-on-the-federal-trade-commissions-hart-scott-rodino-rule/>.

The RFI specifically invites commenters to identify disproportionate burdens that fall on small businesses and to propose ways to minimize those effects. Building on our existing written advocacy to the Agencies illustrating the impacts of merger compliance on small business technology businesses,⁷ ACT emphasizes that small technology businesses experience HSR compliance very differently from large filers in ways the Form should expressly account for. Small businesses typically lack an internal antitrust function. Counsel, economic consultants, and management time must be drawn from a small pool of personnel who are simultaneously responsible for product, engineering, finance, and operations, so each incremental information request creates concentrated opportunity costs that larger filers do not bear. Small filers operate on tighter financing timelines. Equity investors, lenders, and acquirers price uncertainty aggressively into small-company transactions, and even short delays in the merger review process can trigger renegotiation, valuation haircuts, or deal collapse. Finally, small businesses are often pre-revenue or revenue-thin, but valuation-rich based on technology, talent, and prospective customer growth. These firms can be captured by HSR reporting thresholds despite lacking the administrative capacity to absorb the resulting compliance burden.

To minimize these disproportionate effects, ACT urges the Agencies to:

- Build small-business considerations into the design of any new requirement rather than addressing them through post-hoc waivers; provide plain-language guidance and worked examples tailored to small filers and their counsel;
- Calibrate any new disclosure requirement to the size and capacity of the filing parties, including through size-based safe harbors as discussed above;
- Conduct meaningful Regulatory Flexibility Act analysis that draws on actual data from small filers rather than estimates derived from large-firm practice or other indirect sources; and
- Engage directly with small business founders, investors, and counsel during the rulemaking process.

CFIUS, Department of War, and sovereign wealth fund reporting should be scoped narrowly and avoid sweeping in routine commercial activity. (Questions 9, 10, and 11)

While ACT's members generally have limited direct exposure to the Committee on Foreign Investment in the United States (CFIUS), the Department of War (DOW), or sovereign-wealth-fund counterparties, ACT urges the Agencies to scope any such requirements carefully to avoid imposing unnecessary burdens on small business filers whose transactions raise no plausible national security concern. Specifically, ACT recommends that:

⁷ <https://actonline.org/wp-content/uploads/ACT-Comments-re-FTC-DOJ-Draft-Merger-Guideline-Updates-18-Sept-2023.pdf>.

- Any new CFIUS-compliance reporting should be tied to filings that actually fall within CFIUS's jurisdiction;
- Any new DOW contracts-and-sales reporting should be scoped by materiality and incorporate *de minimis* exceptions for routine commercial sales and indirect supply chain participation; and
- Any new sovereign-wealth-fund disclosure distinguish between passive minority investment positions and acquisitions of control or board influence.

III. Conclusion

ACT supports effective merger enforcement that protects competition and consumers. The Agencies should have the information needed to identify transactions that may violate the antitrust laws. But HSR rules should be predictable, administrable, and proportionate.

A predictable, evidence-based HSR process will better serve competition, innovation, consumers, and the small businesses that drive the technology economy. ACT appreciates the opportunity to provide these comments and looks forward to continued engagement with the Agencies.

Sincerely,



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