ACT | GLOBAL APP ECONOMY CONFERENCE

# MERGERS AND ACQUISITIONS

## THE ISSUE:

Recent policy changes by the Federal Trade Commission (FTC) and Department of Justice (DoJ) to merger and acquisition rules pose significant threats to small businesses in the app economy.

### Premerger Review Rules

The FTC recently updated rules to require new and excessive reporting under the Hart-Scott-Rodino (HSR) Act for transactions over a certain size, regardless of whether they pose a potential risk to competition.

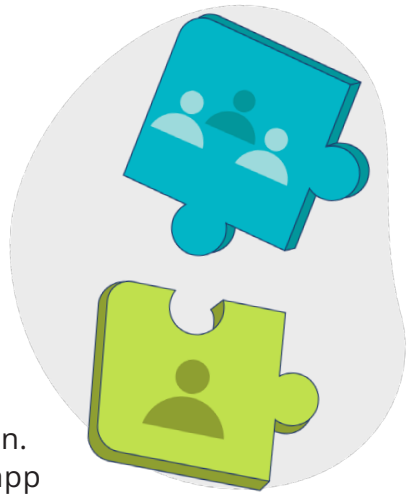
- The additional paperwork would apply to all mergers over approximately $119 million, despite the government's own data showing that 98 percent of mergers do not raise competition concerns.

- The final rule requires significant new document production requirements, including drafts of transaction-related documents, transaction rationales which must be supported by existing documents, and lists of current or planned products or services that may overlap between parties to a transaction.

### Merger Policy Guides

The FTC and DoJ's 2023 merger policy indicates plans to enjoin several categories of merger that are often beneficial for exiting companies and for consumers. The policy guides expose parties to a potential deal with significant new legal risks while adding no further clarity as to the kinds of transactions that will not garner scrutiny.

## WHY IT MATTERS TO SMALL BUSINESSES:



The federal antitrust enforcers' merger policies and enforcement decisions are creating added uncertainty for parties considering a transaction. This has harmed small app companies and device makers in several ways, including by:

- Making it harder for them to obtain startup investment in the first place, due to clouded exit options;

- Harming their prospects for securing relatively small investments from venture funds due to worsened prospects for the larger potential exits in the same portfolio;

- Directly undermining acquisition programs built around large potential transactions.

## WHAT POLICYMAKERS CAN DO:

- Repeal the recent HSR rule and replace it with statutorily required updates without additional unnecessary burdens.

- Repeal the 2023 merger guidelines and replace them with the two preexisting horizontal and vertical merger guides.