



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and
Commissioner Alvaro M. Bedoya
Regarding the FY2022 HSR Annual Report to Congress
Commission File No. P110014**

December 21, 2023

The Commission recently submitted to Congress an annual report on the Federal Trade Commission and Department of Justice’s administration of the Hart-Scott-Rodino Act (“HSR Act”). We thank the staff of the FTC’s Premerger Notification Office and the DOJ’s Antitrust Division, who prepared the report and led the charge in tackling the record number of merger filings the agencies received.

The Fiscal Year 2022 HSR Annual Report reflects the challenges the agencies continue to face in effectively reviewing mergers in the modern economy. This is not a question of paperwork; mergers affect the everyday lives of all Americans. In thousands of comments from market participants spanning farmers, nurses, musicians, physicians, engineers, pharmacists and others, the antitrust agencies have heard directly from Americans across the country about how consolidation affects—and all too often harms—their daily lives.

Against this backdrop, the agencies remain committed to faithfully enforcing the antitrust laws. In fiscal year 2022, the FTC and DOJ together filed 50 merger enforcement actions. This represents the highest level of enforcement activity in over 20 years.¹ The 24 merger enforcement challenges the Commission brought in fiscal year 2022 are the second-highest in the last ten years.² These enforcement actions preserved competition in numerous sectors of the economy, including consumer goods and services, pharmaceuticals, healthcare, high tech and industrial goods, and energy. The number of litigation complaints and abandonments has likewise increased over years past. The Commission filed six litigation complaints in fiscal year 2022, a near doubling of the prior ten-year average of 3.2 complaints per year. The seven abandonments in fiscal year 2022 are similarly higher than the ten-year average of 5.4 transactions.

In recent years, there has been unprecedented growth in the scale, volume, and complexity of mergers. Since the HSR Act was passed in 1976, deal volume has soared.³ Firms

¹ In 2001, the FTC and DOJ brought 55 merger enforcement actions in total.

² In 2020, the Commission brought 28 enforcement challenges. The Commission has generally averaged about 22 merger enforcement challenges per year over the prior ten years.

³ While the 1976 House Report for the HSR Act estimated that the statute would “requir[e] advance notice” for approximately “the largest 150 mergers annually[,]” the agencies today often receive more than 150 filings each month. *See* Statement of Chair Lina M. Khan Joined by Comm’r Rebecca Kelly Slaughter and Comm’r Alvaro M. Bedoya Regarding Proposed Amendments to the Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules (Jun. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_khan

have been proposing transactions at a rapid pace, with the number of reported transactions more than doubling over just the last decade.⁴ The number of transactions reported in the last two years alone represent the highest announced transaction volumes for U.S. firms in over 20 years.⁵ The 3,152 transactions reported in fiscal year 2022 remain more than 62% above the prior ten-year average.

Transactions have also grown increasingly complex, in both deal structure and potential competitive impact. Investment vehicles have changed, alongside major transformations in how firms compete in today's economy.⁶ The size of mergers has likewise substantially grown. The number of HSR filings with transactions exceeding one billion dollars has more than tripled over the last decade and is over seven times greater than levels from 20 years ago.⁷ And very large deals account for an increasing amount of the agencies' investigational resources. Over the past 20 years, billion-dollar deals have gone from accounting for under a quarter (24.5%) to well over half (55.3%) of the agencies' Second Requests.

We are deeply grateful for funding increases Congress has provided to the FTC over the past two fiscal years and proposed in the fiscal year 2023 spending bills. However, even with these increases, fully resourcing the FTC's competition mission—especially merger review—has been a challenge. For instance, our headcount remains well below what is needed to meet the volume of proposed deals. Over the past ten years, the absolute number of HSR filings has nearly doubled, but the number of employees we have in our Bureau of Competition has stayed almost flat. FTC staff work tirelessly to meet the enormous demand of enforcing the laws against unlawful mergers, but the Commission has been forced to make difficult triage decisions and forego meritorious investigations. Additional resources would better equip the Commission to fully pursue its mandate and protect the public from unlawful mergers.⁸

The stakes here are real for the American people. We have heard from a wide breadth of people about how consolidation directly threatens their ability to live stable and secure lives. An organization representing more than 200,000 nurses told us that hospital consolidation had reduced options for employees, and that the resulting “threat of being blacklisted from further hiring in a system that controls many of the hospitals in the area makes workers afraid to file

[joined by commrs slaughter and bedoya on the hsr form and rules - final 130p 1.pdf](#) (quoting H.R. REP. No. 1373, 94th Cong., 2d Sess., at 11 (1976)).

⁴ 3,152 transactions were reported under the HSR Act in fiscal year 2022, while 1,326 transactions were reported in fiscal year 2013.

⁵ The agencies previously saw a record number of HSR merger transactions reported between 1996 (3,087), 1997 (3,702), 1998 (4,728), 1999 (4,642), and a record high in 2000 (4,926).

⁶ See Statement of Chair Lina M. Khan Joined by Comm'r Rebecca Kelly Slaughter and Comm'r Alvaro Bedoya in the Matter of EQT Corporation (Aug. 16, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2210212eqtqepkhanstatement.pdf.

⁷ In fiscal year 2002, 85 transactions exceeded one billion dollars; in fiscal year 2012, 156 transactions exceeded one billion dollars; and in fiscal year 2022, 611 transactions exceeded one billion dollars.

⁸ Congress created private treble damages actions under the Clayton Act to ease the burden on government enforcers, including by deterring anticompetitive mergers before they leave the boardroom. See *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990) (“Private enforcement of [Section 7] was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition.”). However, the antitrust plaintiffs' bar brings comparatively few private Section 7 cases. See Kevin Hahm et al, *Recent Private Merger Challenges: Anomaly or Harbinger?*, ANTITRUST, Sum. 2021, at 91 (running table identifying only 89 private merger challenges from 2000-2023).

complaints, organize their workplace, or leave before the end of a contract.”⁹ A healthcare startup told us that healthcare mergers have made it extremely difficult for patients living in rural areas to access critical services for mental health.¹⁰ A writer explained to us that mergers across Hollywood have meant that compensation for scripts is a fraction of what it was 15 years ago—even for writers who produce major hits.¹¹ Farmers explained how decades of consolidation across poultry, cattle, and dairy markets has meant that growers and producers make less even as consumers pay more.¹²

The FTC will continue endeavoring to faithfully discharge our statutory obligation and protect the American public from unlawful mergers. But the HSR Act must be modernized for today’s economy. For one, the statutory timelines laid out in the HSR Act have not kept pace with the surge in volume and complexity of transactions. The HSR Act gives the agencies 30 days to determine whether a deal warrants close investigation, and then another 30 days after parties certify they have ‘substantially complied’ with the inquiry. These timelines were set in an era where lawmakers expected the agencies would receive around 150 merger notifications per year—rather than 150 notifications per month, as the agencies now routinely receive.¹³ Accordingly, these timelines are challenging in ordinary times given the agencies’ tight resources, and the recent deal surge has further underscored their inadequacy. FTC staff are routinely at the mercy of merging parties granting extensions of the statutory deadline so that staff has the necessary time to review the transaction. But it should not be merging parties that get to determine the amount of time FTC staff has to review mergers and do the work required by law.¹⁴

The updates that FTC and DOJ have proposed to the HSR Form are similarly overdue.¹⁵ Ensuring that merging parties are furnishing enforcers with information that is probative as to the competition implications of transactions will equip our staff to pursue more efficient and effective investigations.

We are grateful to FTC staff for their thorough, diligent work to combat unlawful mergers and fulfill our agency’s mandate to promote free and fair competition.

⁹ Nat’l Nurses United, Comment Letter on Fed. Trade Comm’n and Dep’t of Justice Draft Merger Guidelines 2 (Sept. 18, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-1485>.

¹⁰ Comment Submitted by Shohini Gupta, Regulations.gov (July 25, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0435>.

¹¹ Comment Submitted by Jane Lee, Regulations.gov (July 26, 2023), <https://www.regulations.gov/comment/FTC2023-0043-0477>.

¹² Comment Submitted by Farm Action, Regulations.gov (Sept. 19, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-1515>.

¹³ *Supra* note 3.

¹⁴ See Statement of Comm’r Rebecca Kelly Slaughter Jointed by Chair Lina M. Khan and Comm’r Alvaro M. Bedoya (Feb. 10, 2023), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-rebecca-kelly-slaughter-joined-chair-lina-m-khan-commissioner-alvaro-m-bedoya-0>.

¹⁵ See Statement of Chair Lina M. Khan Joined by Comm’r Rebecca Kelly Slaughter and Comm’r Alvaro M. Bedoya Regarding Proposed Amendments to the Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules (Jun. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_khan_joined_by_commr_slaughter_and_bedoya_on_the_hsr_form_and_rules_-_final_130p_1.pdf.