

May 26, 2026

To: Federal Trade Commission
Department of Justice, Antitrust Division

From: Jennifer Young
CEO
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Submitted electronically via www.regulations.gov

Re: Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form, Docket No. FTC-2026-0298-0001

To Whom It May Concern:

The Technology Councils of North America (TECNA) serves as the collective voice for regional technology ecosystems across the United States and Canada. We are comprised of more than 60 technology business-serving councils, and our members represent over 22,000 small- to medium-sized technology-driven companies, many of which are startups and heavily dependent on a thriving ecosystem of investment capital and acquisitions.

For small- to medium-sized innovators, mergers and acquisitions (M&A) are a vital business strategy, which also supports a competitive U.S. economy. M&A provides an incentive for startup creation and produces the critical financing needed for entrepreneurs and startups to successfully realize their value. Ultimately, it leads to faster and better products and services for consumers at reduced costs.

We thank the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division (DOJ) (“Agencies”) for affording us an opportunity to respond to this Request for Public Comment. TECNA previously submitted comments on the 2023 Notice of Proposed Rulemaking and, together with a broad coalition of business organizations, wrote to the Congressional Judiciary Committees urging legislative oversight of that rulemaking. We respectfully offer the following comments for your consideration.

Congressional Intent and Predictability in the M&A Process

Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”)

In crafting the HSR Act, Congress carefully balanced the benefits of premerger notification against the burdens of reporting transactions that were unlikely to raise competitive concerns. The intent was to detect and prevent illegal transactions without unduly burdening businesses with unnecessary paperwork or delays.

Both the legislative history and the structure of the preclearance system make clear Congress’ intent to neither deter nor impede the consummation of the vast majority of M&A activity. Under the system established by Congress, the premerger filing obligation is not to be a burden on general M&A activity; rather, it is a means of identifying those transactions which might reasonably require further scrutiny and/or a “Second Request.” Any revision to the premerger notification form must be evaluated against that foundational principle.

Current pre-2025 rules require well-defined, basic information about proposed transactions and the relevant parties (e.g., subsidiaries, revenues, shareholders). Dramatically expanding upfront information shifts burdens from targeted, justifiable Second Requests to *all* transactions—contrary to Congressional intent and the design of the HSR Act.

Lessons Learned from the Updated Form

The Agencies have stated that their goal is to “reduce the burden for non-problematic transactions while also making necessary updates informed by lessons learned from experience with the Updated Form.” TECNA strongly supports this objective. This framing appropriately reflects the original intent of the HSR Act and represents a constructive departure from the approach taken in the 2023 Proposed Rulemaking, which TECNA and many other stakeholders argued fundamentally misread Congress’ intent.

The primary lesson of the Updated Form period is that significant expansions in upfront requirements disrupt predictability in the M&A process without proportional benefit. Businesses—particularly small- to medium-sized businesses (SMBs) and startups—structure exit strategies, capital raises, and acquisition timelines around the predictable time and cost parameters of the HSR process. The Updated Form, followed by its judicial vacatur and the current state of regulatory uncertainty, created significant planning disruption across the M&A market. Preliminary FY25 data revealed a filing spike in February 2025 as parties rushed to file under the old form before the Updated Form took effect, followed by a significant dip in March, April, and May 2025—a clear market distortion directly attributable to the form change. Maintaining or reverting to the longstanding pre-2025 form restores this critical predictability; TECNA strongly supports that approach.

Paperwork Reduction Act

Congress enacted the Paperwork Reduction Act (PRA) to prevent federal agencies from requiring businesses and individuals to spend excessive time filling out paperwork without clear justification. Materially broadening HSR reporting requirements exponentially increases the volume of documents and data production from businesses without commensurate benefit.

In FY24, the Agencies reviewed 2,031 reported transactions (1,973 adjusted) and issued 59 Second Requests—approximately 3% of all adjusted transactions (30 by the FTC, 29 by the DOJ). This is consistent with the historical pattern in which roughly 97–98% of reported transactions proceed without Second Requests. The Agencies themselves acknowledged in the original rulemaking that less than 2% of all transactions historically required a Second Request, and less than 1% resulted in a challenge or remedial consent order. Subjecting 100% of transactions to enhanced upfront scrutiny appropriate only for the 3% that raise competitive concerns imposes an excessive, duplicative, and unjust burden, inconsistent with the intent of both the HSR Act and PRA.

Impact on Small- to Medium-Sized Technology Businesses

SMBs are the backbone of the U.S. economy and disproportionately responsible for job creation and innovation. TECNA’s member companies are precisely the kinds of businesses most directly affected by the design of the HSR premerger notification process. Smaller companies and startups do not have the dedicated legal teams and compliance infrastructure commonplace at large multinationals. Requirements that may be manageable for Fortune 500 companies can be prohibitively burdensome for growing, smaller firms with limited resources and time.

The Updated Form significantly increased the time, cost, and complexity of HSR filings for all reportable transactions, regardless of their competitive significance. The Agencies' own estimates acknowledged that the Updated Form would nearly triple the average HSR filing preparation time—from 37 hours to 105 hours per filing, and up to 121 hours for acquiring parties in transactions with overlaps or supply relationships—an approximation that many in industry, especially SMBs, considered an underestimate. A September 2025 Chamber of Commerce survey confirmed that real-world experience was even more burdensome: average completion time reached 20 business days, and average costs nearly doubled, from \$80,000 to \$155,000 per filing.

For SMBs, these are not abstract burdens. Materially broadening the scope of HSR form requirements makes smaller acquisitions cost-prohibitive, ultimately stunting the growth of the very companies these transactions are designed to empower. While TECNA supports the current pre-2025 form, should the Agencies choose a new or revised version, they should recognize this reality and include meaningful safe harbors or tiered requirements calibrated to the size and nature of the transaction and the filer. Policymakers should avoid unduly preventing or delaying general M&A activity, which creates significant harmful impacts on SMBs, their customers, and their employees.

Impact on U.S. Innovation

M&A as a Driver of Innovation

M&A activity is a crucial part of the environment necessary for a healthy and innovative technology sector of the U.S. economy. For many entrepreneurs and startups, their entire business model is driven by exit options. Venture capital investors, in particular, look at exit options when evaluating potential investments, driving funding and growth opportunities for companies most likely to be attractive acquisition targets after initial business development phases.

According to the National Venture Capital Association, M&A has consistently comprised the dominant share of venture-backed exits by volume compared to IPOs—a pattern that has held across market cycles for decades. Acquisitions remain the primary path to liquidity for most venture-backed startups, providing essential returns for investors and founders alike. According to Crunchbase, in the first half of 2025 alone, acquirers completed 918 announced global startup acquisitions—a 13% increase year-over-year—with disclosed deal values exceeding \$100 billion, representing a 155% jump from the same period in 2024. This competitive, healthy economic environment depends on a predictable, efficient M&A process; excessive regulatory burdens threaten to dampen it.

Overly burdensome premerger notification requirements threaten this ecosystem in several compounding ways. With fewer viable exit options—due to cost, delay, or regulatory uncertainty—more startups may simply go out of business or fail to raise the capital they need to innovate. And some may never get off the ground at all.

Risk of Foreign Acquisition of U.S. Technology Assets

Critically, excessive domestic M&A friction creates a perverse incentive: U.S. innovators may look to foreign acquirers for exit opportunities—including foreign government-controlled entities and, potentially, adversaries. It would be a deeply counterproductive outcome if U.S. regulatory policy designed to protect and foster domestic economic competition instead accelerated the transfer of U.S. companies, U.S. jobs, and U.S. intellectual property to foreign interests, to the significant detriment of U.S. markets and long-term competitiveness.

TECNA raised this concern in its 2023 comments, and it remains equally valid today. As such, the Agencies should prioritize reducing domestic M&A uncertainty and complexity rather than exacerbating it.

TECNA's Primary Position: Maintain the Pre-2025 Form

The experience of the past three years—from TECNA's 2023 comments opposing the proposed NPRM, to the 2024 Final Rule, to the Updated Form's implementation and judicial vacatur—demonstrates the significant harm that results from expanding HSR filing requirements beyond what Congress intended and without adequate cost-benefit justification or meaningful consultation of the innovation economy, especially SMBs. The core lesson is clear: the longstanding pre-2025 form efficiently screens the small fraction of transactions warranting further scrutiny (approximately 3% in FY24) while preserving the predictability and efficiency on which the M&A ecosystem and U.S. innovation depend.

We urge the Agencies to prioritize reducing burdens on non-problematic transactions by maintaining the efficient, predictable pre-2025 form.

Responses to Specific RFI Questions

TECNA offers the following specific responses to selected questions posed in the Agencies' Request for Information. These responses are provided in the event the Agencies proceed with any new rulemaking and are intended to ensure that any revised form is meaningfully calibrated to the concerns described above.

Question 3 – Burdensome Requirements of the Updated Form

TECNA's members and their counsel identified the following requirements of the Updated Form as particularly burdensome relative to their probative value:

- **Transaction rationale documents and drafts:** The requirement to produce drafts, presentations, and internal communications discussing deal rationale imposed significant search and review burdens, particularly for SMBs without robust document management systems. These documents frequently contain privileged materials and competitively sensitive information beyond what is reasonably needed for an initial review.
- **Labor market data:** Requirements to provide detailed information about workforce composition and labor market overlaps proved especially difficult for many smaller filers, who do not compile this data in formats responsive to the form's requirements.
- **Prior acquisition history:** Requiring comprehensive information about past acquisitions placed a disproportionate burden on serial acquirers and investor vehicles, many of which are TECNA members. Compiling this historical information required substantial time and resources far exceeding the informational value it provided for evaluating the specific transaction at hand.
- **Narrative competitive overlap and supply relationship descriptions:** These new narrative requirements added substantial time and cost without demonstrated commensurate benefit. The district court in *Chamber of Commerce v. FTC* found specifically that the FTC failed to substantiate that the additional information would actually prevent illegal mergers or materially improve enforcement.

Question 5 – Categories of Transactions Less Likely to Raise Competitive Concerns

TECNA urges the Agencies to develop meaningful categorical exemptions or streamlined requirements for transactions that present minimal competitive risk. These should include, at a minimum:

- Early-stage startup acquisitions where the target has limited revenues and market presence, particularly in technology sectors where acquisitions frequently serve to accelerate innovation rather than consolidate market power.
- Transactions with no horizontal or vertical overlaps between the parties, which should be eligible for a simplified filing form with reduced documentary requirements.
- Transactions below meaningful thresholds that do not implicate concerns the HSR Act was designed to address.

For these categories, the Agencies should require only the information strictly necessary to confirm the absence of competitive concern, rather than the full complement of information appropriate for potentially problematic transactions.

Question 7 – Safe Harbors and Materiality Requirements

TECNA strongly supports the development of safe harbors and materiality thresholds. The Agencies should establish clear, objective criteria under which filers may omit or summarize certain categories of information. Specifically:

- Document production should be limited to materials actually created for the purpose of evaluating the transaction, excluding routine communications and drafts that reflect ordinary, routine business judgement.
- Competitive overlap analysis should focus on markets where the parties have meaningful market shares, defined by reasonable thresholds, rather than requiring comprehensive analysis of *de minimis* overlaps.
- Safe harbor provisions should be particularly robust for transactions valued reasonably or negligibly below a specified threshold above the applicable filing level, recognizing that these transactions carry the greatest burden-to-risk imbalance.

A tiered approach would be consistent with Congressional intent, reduce the disproportionate burden on SMBs, and allow the Agencies to focus resources on the small fraction of filings that warrant close scrutiny.

Question 13 – Non-Traditional Transaction Structures (Acquihires)

TECNA acknowledges the Agencies' legitimate interest in ensuring that novel transaction structures do not evade appropriate HSR review. However, we urge the Agencies to exercise particular caution in this area. Acquihires are common in the technology sector and frequently represent procompetitive outcomes, allowing innovative teams to continue their work within better-resourced organizations to the benefit of consumers and the broader innovation ecosystem.

Any guidance or rulemaking addressing acquihires, reverse acquihires, or convertible security transactions should be narrowly tailored to address demonstrated evasion or otherwise questionable patterns, accompanied by clear safe harbors for transactions that fall squarely outside the intended scope, and developed in consultation with practitioners who can identify unintended consequences for technology-sector transactions.

Question 23 – Disproportionate Burden on Small Businesses

As detailed throughout these comments, TECNA's primary concern is the disproportionate burden that overly exacting premerger notification requirements impose on SMBs. The data confirms that the vast majority of M&A activity—including the bulk of SMB transactions—pose no competitive threat and should not be subjected to enhanced initial-stage requirements. Should the Agencies pursue revisions, TECNA respectfully urges the Agencies to:

- Establish a tiered filing system that calibrates information requirements to the size of the transaction and the likelihood of competitive harm, rather than applying a one-size-fits-all approach to all reportable transactions.
- Provide clear, detailed instructions and illustrative examples for each requirement, particularly for SMBs that cannot afford the specialized antitrust counsel that larger companies routinely retain for HSR compliance.
- Conduct a rigorous Regulatory Flexibility Act analysis and genuinely consider alternatives that would achieve the Agencies' antitrust review objectives with substantially lower costs for SMBs.

Conclusion

TECNA and its member organizations remain committed to working constructively with the Agencies toward a premerger notification framework that is genuinely balanced: one that gives the Agencies the information they need to identify potentially anticompetitive transactions, while preserving the ability of innovators to engage in essential business transactions without undue delay or cost. The health of the U.S. technology sector, the innovation ecosystem that supports it, and the SMBs that are its backbone all depend on a sensible, proportionate premerger review process.

The Responses to Specific RFI Questions above are offered constructively and in good faith. They should not be read as an endorsement of new rulemaking; TECNA's primary position remains that the Agencies should maintain the efficient, predictable pre-2025 form. These responses are provided solely to ensure that, should the Agencies pursue form revisions, such actions reflect the practical realities faced by SMBs and technology companies we represent.

We thank the Agencies for affording us and other stakeholders the opportunity to comment. Should you have any questions about these comments or any of the information contained herein, please contact me at 412-545-3493 or at jyoung@tecna.org.

Respectfully Submitted,

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