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Washington, DC 20548

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December 5, 2024

The Honorable Richard J. Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Federal Trade Commission: Premerger Notification; Reporting and Waiting Period Requirements*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Trade Commission (FTC) entitled "Premerger Notification; Reporting and Waiting Period Requirements" (RIN: 3084-AB46). We received the rule on November 21, 2024. It was published in the *Federal Register* on November 12, 2024. 89 Fed. Reg. 89216. The effective date of the rule is February 10, 2025.

According to FTC, this rule amends the Premerger Notification Rules that implement the Hart-Scott-Rodino Antitrust Improvement Act (HSR Act), including the Premerger Notification and Report Form for Certain Mergers and Acquisitions and Instructions to the Notification and Report Form for Certain Mergers and Acquisitions. FTC stated that the rule requires parties to transactions that are reportable under the HSR Act to provide documentary material and information that are necessary and appropriate for the agencies to efficiently and effectively conduct an initial assessment to determine whether the transaction may violate the antitrust laws and whether to issue a Request for Additional Information as provided by the HSR Act.

Enclosed is our assessment of FTC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Joel Christie
Attorney
Federal Trade Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL TRADE COMMISSION
ENTITLED
“PREMERGER NOTIFICATION; REPORTING AND WAITING PERIOD REQUIREMENTS”
(RIN: 3084-AB46)

(i) Cost-benefit analysis

The Federal Trade Commission (FTC) prepared an economic analysis of the costs and benefits for this rule. See 89 Fed. Reg. 89236–89270 (Nov. 12, 2024). FTC estimated that the rule will benefit consumers by allowing FTC to detect additional harmful mergers and reduce avoidable costs and delays arising from insufficient information. *Id.* at 89250.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FTC certified that this rule will not have a significant impact on a substantial number of small entities. 89 Fed. Reg. 89335–89337.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FTC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FTC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On June 29, 2023, FTC published a proposed rule. 88 Fed. Reg. 42178. FTC stated that it received comments from various interested parties. See 89 Fed. Reg. 89408. FTC responded to comments in the rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FTC determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. 89331–89335.

Statutory authorization for the rule

FTC promulgated this rule pursuant to sections 18a and 18b of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FTC is not subject to the Order's regulatory review procedures.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FTC is not subject to the Order.