UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION

16 CFR parts 801-803: **Hart-Scott-Rodino Coverage,** **Exemption, and Transmittal Rules**	**Project No. P110014**

COMMENTS OF THE
AMERICAN ANTITRUST INSTITUTE

The American Antitrust Institute (AAI)[1] submits these comments in response to the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in Project No. P110014 (issued December 1, 2020), *16 CFR parts 801-803: Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules*.[2] AAI's comments address the proposed rules regarding exemption from the Hart-Scott-Rodino ("HSR") reporting requirements. AAI is an independent and non-profit research, education, and advocacy organization devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws. AAI has, for more than two decades, commented frequently on competition issues related to merger enforcement, remedies, and reporting requirements.[3]

[1] AAI is an independent, non-profit organization devoted to promoting competition that protects consumers, businesses, and society. For more information, see www.antitrustinstitute.org.

[2] Premerger Notification; Reporting and Waiting Period Requirements, 85 Fed. Reg. 77,053 (Proposed December 1, 2020) (to be codified at 16 CFR Parts 801-803).

[3] *See, e.g.*, Comments of the American Antitrust Institute, Draft Vertical Merger Guidelines (Feb. 25, 2020), https://www.ftc.gov/system/files/attachments/798-draft-vertical-merger-guidelines/aai_comments_draft_vm_guidelines_f.pdf; *see also, e.g.*, Comments of the American Antitrust Institute, NextEra Energy, Inc., *et al.*, FERC Docket No. EL21-14-000 (Nov. 30, 2020), https://www.antitrustinstitute.org/wp-content/uploads/2020/12/AAI_Comments-in-FERC-EL21-14_11.30.20.pdf.

I. MORE, NOT LESS, OVERSIGHT OF PARTIAL OWNERSHIP TRANSACTIONS IS NEEDED

The Commission proposes to reduce reporting requirements at a time when more, not less, study and oversight of partial ownership transactions are needed. Since 1988, when the FTC first proposed eliminating the reporting requirement for acquisitions of less than 10% of a company's stock, there has been an explosion in partial ownership models, combined with concerns over systemic increases in market concentration and a weakening of merger enforcement.[4] Exempting such transactions from HSR reporting requirements is an even worse idea now than it was 33 years ago.

Section 7 of the Clayton Act prohibits acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."[5] The Hart Scott Rodino Antitrust Improvements Act of 1976 ("HSR") was designed to enhance enforcement of Section 7 of the Clayton Act by mandating advance notification of acquisitions that could potentially violate the law. Stock acquisitions violate Section 7 when they give the acquiring person the power to influence the management of the target in an anticompetitive manner. Section 7 is intended to "arrest restraints of trade in their incipiency and before they develop into full-fledged restraints violative of the Sherman Act."[6] Without such early action, the concern is that unrestrained consolidation will lead to monopolies and the attendant issues addressed by Section 2 of the Sherman Act. By exempting acquisitions of up to 10% of a company's stock from the HSR reporting requirements, the proposal would hinder the practical ability of the FTC and DOJ to evaluate whether significant transactions violate Section 7 and to stop those that do before they are consummated.

[4] American Antitrust Institute, *A National Competition Policy: Unpacking the Problem of Declining Competition and Setting Priorities Moving Forward* (Sept. 28, 2016), https://www.antitrustinstitute.org/wp-content/uploads/2018/08/AAINatlCompPolicy-1.pdf; American Antitrust Institute, *The State of Antitrust Enforcement and Competition Policy in the U.S.* (April 19, 2020), https://www.antitrustinstitute.org/wp-content/uploads/2020/04/AAI_StateofAntitrust2019_FINAL3.pdf.

[5] 15 U.S.C. § 18.

[6] S. Rep. No. 1775, 81st Cong., 2d Sess. 6 (1950); *see also* Ford Motor Co. v. United States, 405 U.S. 562, 567 n.4 (1972) (acknowledging this incipiency standard and noting that the Commission, itself, suggested this standard to Congress).

The NPRM justifies exempting acquisitions of 10% or less of an issuer's voting securities because "[i]n the Agencies' experience, these filings almost never present competition concerns."[7] On the contrary, such partial acquisitions can and do present significant competition concerns. Moreover, both the frequency of such transactions and the antitrust concerns associated with them have only grown in the thirty-plus years since the Commission abandoned a similar proposed rule.

One commenter 33 years ago, in opposition to the Commission's 1988 proposal, ably refuted the assertion that acquisitions of 10% or less of a company's voting securities are "inherently less troublesome" than larger acquisitions.[8] Those comments correctly noted that "[a]ntitrust courts enforcing Section 7 of the Clayton Act have long recognized the potency of minority shareholdings" and that no caselaw exists "suggesting that there is any minimum percentage shareholding below which Clayton Act issues rarely arise."[9] The authors also detailed the economic research establishing that "even low percentage shareholdings, particularly of large corporations, can and do confer on the minority shareholder influence and control over the issuer."[10] Furthermore, they confirmed that "the larger the corporation and more widely dispersed its shares, the smaller the shareholding needed to exert influence or effective working control.[11] Indeed, the NPRM itself tacitly acknowledges that part of its reason for proposing the exemption is to allow partial shareholders to exert control without the burden of antitrust scrutiny.[12]

[7] 85 Fed. Reg. 77,055.

[8] Comments Opposing Proposals to Exempt Acquisitions of Ten Percent or Less of an Issuer's Voting Securities from Existing Premerger Notification Obligations, submitted by Covington & Burling, Howrey & Simon, and Capital Economics (Dec. 19, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/12/p812937hsrrulemakingcomment15.pdf.

[9] *Id.* at 12-21.

[10] *Id.* at 21-22.

[11] *Id.* at 22.

[12] 85 Fed. Reg. 77,059 ("Notably, some argue that communications between investors and management encourage corporate accountability to shareholders, and that HSR filing requirements (and attendant obligations to provide notice to the issuer prior to purchase of the shares) might chill this beneficial interaction, particularly since depending on the degree of shareholder engagement, it can be quite difficult to determine whether filing parties can rely on the § 802.9 exemption.") Section 802.9 of the HSR Act already exempts from reporting holdings that are for investment purposes only. Accordingly, the additional exemption proposed in the NPRM only has import to companies that wish to not just invest, but to influence a target's management. The NPRM states that a concern that HSR reporting requirements might

As AAI detailed in a recent White Paper, since 1998 these concerns have only become more acute.[13] Aggregate concentration in the U.S. economy has risen significantly since the mid-1990s,[14] as has concentration in relevant antitrust markets.[15] Partial ownership structures have proliferated with the rise of institutional investors such as mutual funds, pensions, insurance companies, and private equity business models.[16] And newer theoretic and empirical scholarship strongly supports the idea that partial ownership transactions raise significant competitive concerns.[17] Sources estimate that the share of S&P firms holding at least 3% ownership stakes in firms that compete in the same product markets increased from 20% in 2000 to 90% in 2010.[18] And even as early as 2000,

"chill" this type of influence is one of the motivating purposes behind the current proposal. But, of course, it is just this type of influencing that raises competition concerns, as well. *See, e.g.* Daniel P. O'Brien & Steven C. Salop, *Competitive Effects of Partial Ownership: Financial Interest & Corporate Control*, 67 ANTITRUST L.J. 559, 562 (2000) ("The competitive effects of partial ownership depend critically on two separate and distinct elements: financial interest and corporate control.").

[13] Diana L. Moss, *What Does Expanding Horizontal Control Mean for Antitrust Enforcement? A Look at Mergers, Partial Ownership, and Joint Ventures*, AMERICAN ANTITRUST INSTITUTE (Nov. 4, 2020), https://www.antitrustinstitute.org/work-product/what-does-expanding-horizontal-control-mean-for-antitrust-enforcement-a-look-at-mergers-partial-ownership-and-joint-ventures/.

[14] *See, e.g.*, COUNCIL OF ECONOMIC ADVISERS ISSUE BRIEF, BENEFITS OF COMPETITION AND INDICATORS OF MARKET POWER 4–6 (April 2016) https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160502_competition_issuebrief_updated_cea.pdf.

[15] *See, e.g.*, Martin Gaynor, *Examining the Impact of Health Care Consolidation*, Statement Before the Oversight and Investigations Subcommittee of the Committee on Energy and Commerce, U.S. House of Rep. (Feb. 14, 2018) (reviewing evidence of increased concentration in relevant geographic hospital, health insurance, and physician services markets).

[16] *See* Moss, *supra* n.13 at 11. *See also* Eileen Appelbaum & Rosemary Batt, PRIVATE EQUITY AT WORK: WHEN WALL STREET MANAGES MAIN STREET 36 (2014) (explaining that private equity companies branched out into partial ownership structures when leveraged buy out opportunities became scarce following the dot com crash in the early 2000's). Again, the NPRM acknowledges this but, ironically, cites these changes as a basis for relaxing antitrust scrutiny. 85 Fed. Reg. 77,059, n.24 (citing to a series of statements by private equity companies and institutional investors).

[17] *See* Einer R. Elhauge, *How Horizontal Shareholding Harms Our Economy—And Why Antitrust Law Can Fix It*, 10 HARV. BUS. L. REV. 207, 254 (2020) ("[T]oday the empirical support extends far beyond the original airline and banking studies…. Thus, even if it were once true that the empirical evidence was too uncertain for enforcement action, that is no longer the case today."); José Azar, Martin C. Schmalz, & Isabel Tecu, *Anti-Competition Effects of Common Ownership*, 73 J. OF FIN. 4, 54 (2018) ("We find that when firms have reduced incentives to compete due to common ownership, prices are higher and output is lower."); José Azar, Martin C. Schmalz, & Isabel Tecu, *Why Common Ownership Creates Antitrust Risks*, CPI ANTITRUST CHRONICLE 8 (June 2017) ("Recent empirical research has uncovered evidence consistent with a negative causal effect of common ownership on competition.").

[18] *See* José Azar, *Portfolio Diversification, Market Power, and the Theory of the Firm*, Fig. 1 (Aug. 23, 2017) https://ssrn.com/abstract=2811221.

the Deputy Assistant Attorney General at the Antitrust Division characterized private equity as a "complex web of interrelated relationships."[19]

As markets and business models have evolved, so too has our understanding of the ways in which partial ownership can threaten competition. Recent scholarship reveals that increases in market concentration resulting from partial ownership acquisitions can be even higher than from a horizontal merger, depending on the degree of corporate control and financial interest.[20] Scholars are also just beginning to understand and quantify the significant anticompetitive effects stemming from common ownership, that is, a single firm owning small stakes in multiple companies that compete in the same product market.[21] Even with no control or influence, a partial-ownership acquisition can violate Section 7.[22]

In sum, this rapid evolution in business models and markets, combined with our growing understanding of the variety and significance of the harms to competition that can flow from partial ownership, cautions in favor of more, not less, scrutiny for partial acquisitions.

II. EXEMPTING THESE TRANSACTIONS FROM HSR REPORTING WILL UNDERMINE STUDY OF THEIR ANTITRUST IMPACT

The ability of the Agencies to better understand the antitrust impact of partial ownership transactions in light of new economic knowledge and enhanced HSR data will be constrained if a large subset of those transactions are exempted entirely from reporting requirements.

[19] John M. Nannes, *Last Year and This Year: The View from the Antitrust Trenches*, Address before the New York State Bar Association (Jan. 27, 2000), https://www.justice.gov/atr/speech/last-year-and-year-view-antitrust-trenches.

[20] Moss, *supra* note 11 at 11. *See also* O'Brien & Salop, *Competitive Effects of Partial Ownership: Financial Interest & Corporate Control*, *supra* note 12 at 562 ("We find that partial investments can rase either larger or smaller concerns than complete mergers.").

[21] Moss, *supra* note 11 at 6. *See also* Elhauge, *How Horizontal Shareholding Harms Our Economy—And Why Antitrust Law Can Fix It*, *supra* note 17; Fiona M. Scott Morton & Herbert Hovenkamp, *Horizontal Shareholding and Antitrust Policy*, 127 YALE L.J. 2026, 2029 (2018) ("[T]he widespread occurrence of common ownership of firms that compete in the product market, or horizontal shareholding, in this form is relatively new and has not yet attracted policy or enforcement action from the agencies."); and Azar, Schmalz, & Tecu, *Why Common Ownership Creates Antitrust Risks*, *supra* note 17.

[22] Laura A. Wilkinson & Jeff L. White, *Private Equity: Antitrust Concerns with Partial Acquisitions*, 21 ANTITRUST 28, 29-30 (2007) ("Even a non-controlling partial acquisition by a private-equity firm of a competitor to a portfolio company that the private-equity firm already owns in whole or in part can lead to anticompetitive effects….").

Without any mandated reporting of purchases of 10% or less of an issuer's voting securities, outside of several excepted cases addressed below, the ability of the Agencies or third parties to monitor acquisitions and flag any competition issues will be exceedingly limited. Although securities laws will require some limited reporting of a subset of these transactions,[23] those reports will not provide the detailed ownership and other information necessary to assess whether the acquisition threatens competition. For example, Schedule 13-D, the SEC form used for this disclosure, does not require any information about the competitive relationship between the acquiring person and the issuer.[24] Moreover, such reporting is entirely retrospective.[25]

Also lost will be the opportunity to evaluate the question of whether these partial ownership transactions in fact pose a competitive threat. Beyond real-time assessment of competitive threats, reporting requirements also allow the agencies to develop rich data sets which they can use to study and better understand trends over time and more completely understand the effects of partial ownership transactions on competition. Dispensing with reporting requirements entirely will significantly hamper antitrust and competition scholars' and policymakers' ability to study these transactions and to assess whether, in fact, some or all of them raise antitrust concerns.

III. THE FTC'S PROPOSAL TO EXEMPT CERTAIN PARTIAL OWNERSHIP TRANSACTIONS FROM REPORTING REQUIREMENTS IS BASED ON FLAWED, CIRCULAR REASONING

The Commission's assertion that acquisitions of less than 10% of an issuer's securities "almost never present competition issues" appears to rest entirely on a single assertion. Namely, from 2001 to 2017 the Agencies did not challenge any acquisitions involving a stake of 10% or less,

[23] The Securities Exchange Act of 1934, as amended in 1968 by the Williams Act, requires anyone who acquires more than 5 percent of the outstanding shares of a publicly-traded company to disclosure the acquisition to the Securities and Exchange Commission within 10 days of the transaction. 15 U.S.C. § 78a et seq.
[24] 17 C.F.R. § 240.13d-101.
[25] An acquiring company has until 10 days *after* the acquisition to file a Schedule 13-D disclosure.

despite receiving 1,804 such filings.[26] This circular reasoning dodges any substantive inquiry into the issue. And, a closer look reveals that several reasons, beyond a purported lack of competition issues, likely underly this statistic.

As the NPRM acknowledges, and as we describe above, "[s]ince the promulgation of the Rules in 1978, the investment landscape has undergone vast changes, including the proliferation of investment entities such as investment funds and master limited partnerships ("MLPs")."[27] The HSR reporting requirements have not kept pace with these changes. The NPRM notes that these developments have created "scenarios in which it is difficult for the Agencies to assess the competitive impact of a transaction based on the HSR filings."[28]

Indeed, as part of this same rulemaking, the FTC proposes to update the information that these entities are required to include as part of the HSR submission—when they are not exempt from making an HSR submission. This additional information is necessary, per the NPRM, because the currently required information is "too limited to provide the Agencies with a sufficient overview of investment funds and MLPs as acquiring persons" and makes it "difficult" for the Agencies "to understand the potential competitive impact of a transaction when a filing does not represent the total economic stake being acquired."[29]

To the extent that the Commission's past assessment of the competitive impact of partial ownership transactions is based on the HSR filings alone, it is clearly lacking. Given that HSR filings have not, to date, required companies to include the information necessary to accurately evaluate the competitive impact of acquisitions by new types of entities, such as institutional investors and private equity companies, it would be irresponsible and illogical to base an exemption from the reporting requirements on a prior lack of enforcement action that depended on those

[26] 85 Fed. Reg. 77,055, n.1.
[27] 85 Fed. Reg. 77,055.
[28] *Id.*
[29] 85 Fed. Reg. 77,056.

filings. Perhaps the Agencies issued a large number of requests for additional information that can support their assertion regarding some of these acquisitions, but the enforcement inattention that was based solely on deficient filings is not probative of the remaining acquisitions' likely competitive effects. Without any detail provided by the Commission in the NPRM, it is impossible to know the significance of the Commission's past enforcement statistics.

In any event, if, as it appears may be the case, the Agencies usually do not have access to sufficient information to evaluate these transactions, a better course is to require the information necessary to "understand the potential competitive impact of a transaction." After a period where the Agencies have the information needed "to understand the potential competitive impact of [these] transaction[s]," their record of enforcement actions in these types of transactions may inform whether the transactions actually pose a threat to competition.

In addition, as we and others have detailed, the time period encompassed by the 1,804 filings relied on by the Commission has been characterized by weak and declining enforcement, across the board.[30] One ought to consider that the failure of the Agencies to challenge acquisitions of less than 10% of a company may likewise reflect, to some extent, this lax merger enforcement more generally.

IV. THE PROPOSED "EXCEPTIONS TO THE EXEMPTION" DO NOT CURE THE PROBLEM

The Commission's proposal correctly recognizes that an existing competitive or vertical relationship between the acquiring person and the issuer "render[s] even a small stake potentially competitively significant."[31] Thus, the Commission proposes to carve out entities with an existing competitive or vertical relationship with the issuer from the proposed exemption and to continue to require an acquiring person with an existing competitive or vertical relationship with the issuer to

[30] Moss, *supra* note 11. *See also* American Antitrust Institute, *The State of Antitrust Enforcement and Competition Policy in the U.S.* (April 14, 2020), https://www.antitrustinstitute.org/wp-content/uploads/2020/04/AAI_StateofAntitrust2019_FINAL3.pdf.

[31] 85 Fed. Reg. 77,061.

report acquisitions below the 10% level (subject to the broader HSR reporting thresholds). AAI agrees that transactions between entities in competitive or vertical relationships are competitively significant and should not be exempt from reporting. However, the proposed carve outs suffer from two fatal flaws, namely, they are both too narrow in scope and subject to abuse.

The NPRM would create two primary exceptions from the exemption for reporting of partial ownership transactions. First, the NPRM would continue to require reporting of acquisitions of 10% or less that meet the HSR dollar thresholds, where the acquiring person is a competitor of the issuer or holds a greater than 1% stake in a competitor of the issuer.[32] Second, the exception for reporting of partial acquisitions would not apply where there is a vendor-vendee relationship (beyond a $10 million annual threshold) between the acquirer and the issuer.[33] Neither is sufficient to resolve the concerns with the overall exemption.

A. DEFERRING TO THE ACQUIRING COMPANY TO DETERMINE THE RELEVANT COMPETITORS PUTS THE FOX IN CHARGE OF THE HENHOUSE

The proposal to continue to require reporting from acquirers that already own a 1% or greater stake in a competitor of the issuer is fine in concept, but flawed in execution. This is because the proposed definition of 'competitor' that is central to this exception is deficient. Without a clear, and enforceable definition of 'competitor,' this provision will not be enough to ensure the most problematic transactions are reported. The NPRM concedes this very point when it states: "The Rules do not currently define the term 'competitor,' and to implement this exception to the exemption, a definition must be added."[34]

[32] 85 Fed. Reg. 77,061.

[33] *Id.*

[34] 85 Fed. Reg. 77,062.

The NPRM proposes a two-pronged definition of 'competitor.' The first prong captures "any person that … reports revenues in the same six-digit NAICS Industry Group as the issuer."[35] The second prong is a catch-all that would apply to "any person that … competes in any line of commerce with the issuer."[36] While on the surface this definition appears quite broad, as is often the case, the devil is in the details.

The NPRM rightly acknowledges that 'competitor' cannot be limited to companies using the same NAICS code because "competitors sometimes use different NAICS codes to describe the same line of business, particularly in the case of companies engaged in technology-based businesses."[37] The solution proposed by the Commission is to define 'competitor' to also include "any person that…competes in any line of commerce with the issuer."[38] But, this prong of the definition relies entirely on the acquiring company to determine whether it meets this definition.[39] This is a recipe for failure.

The acquiring company has every incentive to construe 'competitor' as narrowly as possible. In some instances, the competition will be too stark to deny. But, beyond those clear-cut cases, one would expect companies to stretch this definition to its breaking point to avoid the burden of reporting the transaction *and* the attendant risk that competition authorities may scrutinize it. Notably, these incentives only increase if the transaction in fact poses a risk to competition, because in that case the risk of scrutiny and enforcement, if the transaction is reported, is substantial. If, however, the company concludes it owns no stake in a "competitor," it avoids the burden of reporting and virtually eliminates any risk that antitrust authorities will block or alter the transaction.

[35] 85 Fed. Reg. 77,061

[36] *Id.*

[37] 85 Fed. Reg. 77,056.

[38] 85 Fed. Reg. 77,061 ("The Rules do not currently define the term 'competitor,' and to implement this exceptions to the exemption, a definition must be added.").

[39] 85 Fed. Reg. 77,062 ("would rely on filing parties to conduct a good faith assessment to determine whether any part of the acquiring person competes with or holds interests in entities that compete with the issuer, in any line of commerce.").

"Self-determination" of any competitive status in the context of a reporting requirement is particularly perilous, as there would be no outside check on the companies' own assessment. As already discussed, if a company is not required to report the transaction, the Agencies' ability and realistic likelihood of scrutinizing the transaction are minimal. Allowing companies to self-determine whether they must report the transaction compounds the problem. Relying on a company's good faith to determine whether it must undertake the risk and expense of complying with an administrative requirement could, under certain circumstances, be a reasonable policy strategy, but only when it is backed by an effective mechanism for holding accountable those that abuse the process. The NPRM offers none of these protections and assurances.

B. THE NPRM'S "EXCEPTIONS TO THE EXEMPTIONS" FAIL TO CAPTURE LARGE SWATHS OF COMPETITIVELY SIGNIFICANT RELATIONSHIPS

In addition to exempting competitors, the proposed exception from the exemption also would not apply to acquiring persons in a "vertical relationship" with the issuer. As the Commission rightly recognizes, "[t]here can be important competitive implications in vertical relationships, and the Agencies have a strong interest in reviewing transactions that create or expand vertical relationships." AAI agrees that many economic relationships between companies that are not direct competitors have competitive significance and that even relatively small transactions between companies with such relationships should be subject to reporting and scrutiny. The problem, however, is that the Commission's proposed exception is too narrow.

The Commission's proposed 10% exemption from the reporting requirements would not be available where there is a "vendor-vendee relationship between the acquiring person and the issuer" with more than $10 million in aggregate sales.[40] This proposal is a good start, but vendor-vendee relationships are not the only type of relationships that can raise competition concerns. So limiting

[40] 85 Fed. Reg. 77067.

this "exception to the exemption" overlooks the competitive threats posed by conglomerate mergers, ecosystem mergers, and acquisitions of nascent competitors. These types of transactions can raise significant antitrust issues and should not be exempt from reporting requirements.[41] For example, the FTC's recently-filed case against Facebook challenges two acquisitions of nascent competitors as a form of monopolization.[42]

V. A BETTER APPROACH

There is no reason to tie the proposed changes to the definition of 'person' in § 801.1(a)(1) and the ministerial changes to § 801.1(d)(2) to the proposed changes to the reporting-requirement exemption in § 802.15. Indeed, as AAI's comments explain, there are very good reasons not to do so. Instead, the Commission should leave the HSR reporting requirements in place and unchanged for a period after making the proposed changes to §§ 801.1(a)(1) and 801.1(d)(2).

This path would afford the Commission an opportunity to study the transactions that it proposes to exempt from HSR reporting, armed with the comprehensive data (which it admits it currently lacks) that will flow from the enhanced reporting requirements. By eliminating the reporting requirement on these transactions *at the very moment* that it enacts the changes needed to understand whether and how these transactions pose a competitive risk, the Commission blindly ties its own hands.

Continuing to require reporting of these transactions with richer and more relevant data requirements will also facilitate the further study and understanding of partial ownership transactions as they continue to become more common. Until recently, too little attention was paid to these transactions and the understanding of their competitive effects is rapidly evolving. Keeping reporting requirements in place, as the frequency of these transactions intensifies, will allow this

[41] *See, e.g.*, Comments of the American Antitrust Institute, Draft Vertical Merger Guidelines, *supra* n.3.
[42] Complaint, Federal Trade Commission v. Facebook, Inc., Case. No. 1:20-cv-03590 (D.D.C.) (filed Jan. 13, 2021).

understanding to rapidly evolve. With greater understanding, the Agencies would be better prepared to take on the question of whether and how, if necessary, to craft any exemption to the reporting requirement that is targeted at the few acquisitions that truly pose no risk to competition.

Respectfully submitted,

/s/ *Laura Alexander*

Laura Alexander
Vice President of Policy
American Antitrust Institute
1025 Connecticut Ave. NW
Suite 1000
Washington, DC 20036
(202) 828-1226
lalexander@antitrustinstitute.org