



September 27, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

The American Antitrust Institute (AAI) writes to support a proposal under H.R. 3843, the Merger Filing Fee Modernization Act of 2022, that is integral to increasing the transparency and public analysis of merger enforcement in the United States. Transparency and public analysis are critical in promoting stronger enforcement of Section 7 of the Clayton Act, at a time of mounting concerns over declining competition, increasing concentration, and evidence of the harmful effects of past mergers on consumers, workers, and innovators.¹

AAI supports the proposal under H.R. 3843 to delineate new categories of merger filing fees for billion-dollar mergers that are outlined in Title 1, Section 101(1)(D)(4-6), “Modification of Premerger Notification Filing Fees.” Under the proposal, merger filing fees would account for major categories of mergers worth \$1 billion and up. These include fees for mergers valued between (1) \$1B-\$2B (\$400K filing fee); (2) \$2B-\$5B (\$800K filing fee); and (3) more than \$5B (\$2.25M filing fee).

AAI recently released the white paper, [What Does the Billion-Dollar Deal Mean for Stronger Merger Enforcement?](#)² The findings in the AAI paper strongly support the Title 1, Section 101(1)(D)(4-6) proposal for more specificity in filing fees for billion-dollar mergers *and* additional agency resources. Additional resources are needed to enable the U.S. Department of Justice Antitrust Division and the Federal Trade Commission to review and investigate billion-dollar deals.

The AAI white paper unpacks the advent of the billion-dollar merger in the 1990s and the growth of billion-dollar transactions over time. Supported by empirical analysis of enforcement data, the paper

¹ *The State of Antitrust Enforcement and Competition Policy in the U.S.*, AMERICAN ANTITRUST INSTITUTE (Apr. 14, 2020), https://www.antitrustinstitute.org/wp-content/uploads/2020/04/AAI_StateofAntitrust2019_FINAL3.pdf.

² Diana L. Moss, *What Does the Billion-Dollar Deal Mean for Stronger Merger Enforcement?* AMERICAN ANTITRUST INSTITUTE (Sept. 22, 2022), https://www.antitrustinstitute.org/wp-content/uploads/2022/09/AAI_Billion-Dollar-Mergers_9.20.22.pdf.

analyzes the outsized impact of billion-dollar deals on enforcement and associated implications for the allocation of scarce agency resources. This resource allocation issue extends to early-stage inquiries (i.e., second requests) and late-stage inquiries (i.e., investigations). Importantly, it also extends to how the agencies resolve challenged, illegal mergers through settlement, versus forced abandonments, restructurings, and injunctions.

The AAI white paper contains a number of important recommendations. One is that the antitrust agencies be required to report data for multiple categories of mergers above \$1 billion in their annual reports to Congress under the Hart Scott Rodino Act. A second recommendation is the need for more resources to enable the agencies to review billion-dollar deals. A third recommendation is that the agencies undertake a review of resource allocation for both early-stage and late-stage inquiries involving billion-dollar deals. A fourth recommendation is that the agencies review their own successes and failures in past settlements of challenged, billion-dollar mergers.

In sum, the recommendations set forth in [What Does the Billion-Dollar Deal Mean for Stronger Merger Enforcement?](#) are necessary to enable competition research, education, and advocacy organizations, like AAI, to analyze merger enforcement data and to render policy recommendations that are responsive to changing trends that directly impact the vigor of merger enforcement.

We appreciate your attention to AAI's comments in regard to H.R. 3843.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Moss', with a stylized flourish at the end.

Diana Moss, Ph.D.

President
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CC:
The Hon. Jerrold Nadler