



May 8, 2026

VIA EMAIL

Daniel Guarnera, Director, Bureau of Competition
Chris Muffarrige, Director, Bureau of Consumer Protection
Federal Trade Commission
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RE: *Chamber of Commerce of the United States v. FTC*, No. 26-40094 (5th Cir. filed Feb. 18, 2026)

Dear Directors Guarnera and Muffarrige,

The American Antitrust Institute (“AAI”)¹ submits this letter to urge the Bureau of Competition and Bureau of Consumer Protection to recommend that the Federal Trade Commission vigorously pursue its appeal of the district court opinion invalidating its 2024 rule revising the Hart-Scott-Rodino (“HSR”) Act filing form.² In the aftermath of the opinion, the Commission issued a request for public comment on a revised form and noted that Agency staff have gained insights about how aspects of the 2024 form may be improved.³ We write to emphasize the importance of pursuing the appeal even if the Commission chooses to pursue a new rulemaking and a revised form.

The district court’s opinion has serious implications because it adopts an improper and onerous standard of review that the FTC will be unable to meet in any future rulemaking

¹ AAI is an independent nonprofit organization devoted to promoting competition that protects consumers, businesses, and society. It serves the public through research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy. AAI enjoys the input of an Advisory Board that consists of over 130 prominent antitrust lawyers, law professors, economists, and business leaders. Individual views of members of AAI’s Board of Directors or its Advisory Board may differ from AAI’s positions. See <http://www.antitrustinstitute.org>. AAI General Counsel Mark Hegedus did not participate in any deliberations regarding the submission of this letter.

² *Chamber of Commerce of the United States v. FTC*, No. 26-40094 (5th Cir., filed Feb. 18, 2026); see also *Chamber of Commerce of the United States v. FTC*, No. 6:25-cv-9-JDK, 2026 U.S. Dist. LEXIS 29274 (E.D. Tex. Feb. 12, 2026) (invalidating Premerger Notification; Reporting and Waiting Periods Requirements, 89 Fed. Reg. 89,216 (Nov. 12, 2024)) (hereinafter “District Court Opinion”).

³ See Fed. Trade Comm. and Dep’t of Justice, *Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form* (March 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RFI.pdf.

challenge. It also applies an improper standing analysis that will allow plaintiffs to successfully challenge future rulemakings without regard to whether they or their members are directly affected by the rule at issue. Given the significant advantages the opinion confers on challengers to FTC rulemakings, the FTC will almost certainly face additional lawsuits in the Eastern District of Texas, where the district court’s erroneous analysis will guide future decisions. Because the opinion thwarts the Agency’s basic ability to promulgate any rules that are necessary to carry out both its competition and consumer protection mandates,⁴ reversal is required regardless of whether the Commission intends to defend the 2024 rule itself.

The district court’s analysis contradicts long-standing principles of administrative and antitrust law. The court should have meaningfully examined the alternatives the FTC considered and the substance of the 2024 rule’s additional requirements, each of which corresponds neatly with a demonstrated shortcoming of the prior form. It also should have considered the qualitative and non-quantifiable benefits of the rule as required by long-standing principles reflected in the administration’s current budget guidelines,⁵ including a reduction in the estimated \$1.4 trillion per year in deadweight economic loss caused by market concentration.⁶ And its assessment should have been informed by bedrock antitrust principles embodied in Section 7’s incipiency mandate and the HSR Act’s premerger notification requirement, both of which “reflect Congress’s low risk tolerance for anticompetitive mergers,” place “greater weight ‘on avoiding harmful mergers (false negatives) at a cost of sometimes preventing beneficial mergers (false positives),’” and “demand[] that the merging parties, not consumers and competition, bear the risk” that a proposed merger threatens competition.⁷

⁴ 15 U.S.C. § 57a (authorizing agency to prescribe rules and general statements of policy); 15 U.S.C. § 46(g) (authorizing Agency to “make rules and regulations for the purpose of carrying out the provisions” of the FTC Act).

⁵ U.S. Office of Management and Budget, *Circular A-4: Regulatory Analysis* (September 17, 2003), <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>.

⁶ Thomas Philippon, *Causes, Consequences, and Policy Responses to Market Concentration*, in *Aspen Institute: Maintaining the Strength of American Capitalism* (2019), available at <https://www.economicstrategygroup.org/wp-content/uploads/2019/12/Maintaining-the-Strength-of-American-Capialism-Causes-Consequences-and-Policy-Responses-to-Market-Concentration.pdf> (connecting rising market concentration since the early 2000s to increased markups and estimating that such markups have reduced labor income by \$1.4 trillion); Chen Yeh, *How Costly is Rising Market Power for the U.S. Economy?* (Fed. Res. Bank of Richmond, Economic Br. No. 23-34) (July 2023), https://www.richmondfed.org/publications/research%20/economic_brief/2023/eb_23-24 (explaining how markups represent “deadweight loss’ by reducing total sales, causing misallocation of resources, and distorting entry decisions).

⁷ Brief of Amici Curiae the American Antitrust Institute and the Hon. William J. Baer, *United States v. Assa Abloy*, No. 22-cv-2791 (DDC Jan 13, 2023), at 4 (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 323 (1962); Steven C. Salop & Jennifer E. Sturiale, *Fixing “Litigating the Fix”*, 85 Antitrust L.J. 619, 624–25 (2024)).

Instead, the district court focused solely on the estimated \$39,644 in additional costs the revised form imposes on merging parties,⁸ a number which amounts to less than .03% of the minimum value of proposed mergers subject to HSR filing requirements.⁹ And it required the FTC to justify that relatively small increase by citing an example in which an illegally anticompetitive merger was allowed under the previous HSR form,¹⁰ a virtually impossible standard requiring the same onerous, fact-intensive analysis that causes the average merger investigation to last longer than a year.¹¹ Even if such a standard could be met, it would require the Agency to declare that it allowed a merger that it should not have allowed, undermining the Agency’s credibility and exposing the merging parties to Section 7 liability. This clearly erroneous standard cannot be the law. And yet, unless and until it is vacated by the Fifth Circuit, it will remain persuasive authority that, as a matter of comity, cannot be lightly disregarded by judges of coordinate jurisdiction in the Eastern District of Texas.¹²

The district court’s opinion also ensures that future rule challengers can benefit from this standard by bringing suit in the Eastern District of Texas, even if they do not satisfy the requirements of Article III standing. The court ignored black-letter law on organizational standing to find that the Longview Chamber of Commerce had members who face imminent injury because of the rule, even though no admissible evidence was presented establishing that any specific member contemplated a merger that would require the filing of an HSR form as updated.¹³ This means that firms can tie up any FTC rule they dislike in litigation—no matter how reasonable or cost-effective—by filing suit in the Eastern District of Texas and invoking the favorable standard adopted by the district court. Indeed, the Chamber of Commerce has used this forum-shopping strategy to challenge prior federal rules,¹⁴ and—considering that many of its most influential members are subject to HSR filing requirements and other FTC oversight¹⁵—it is likely to do so again.

The district court’s opinion provides a roadmap for future rulemaking challenges and effectively gives the Chamber’s powerful membership an unchecked ability to thwart future

⁸ District Court Opinion at *25–26.

⁹ 15 U.S.C. § 18a(a)(2)(B)(i); Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 FR 2133, 2134 (Jan. 16, 2026).

¹⁰ District Court Opinion at *30.

¹¹ Dechert, LLP, DAMITT 2025 Review: Merger Investigations Neared Record Lows and Remedy Policies Shifted (Jan 29, 2026), <https://www.dechert.com/knowledge/publication/2026/1/damitt-2025-annual-report.html> (reporting that merger investigations took an average of 12.3 months to complete in 2025).

¹² See *Abshire v. Seacoast Products, Inc.*, 668 F.2d 832, 838 (5th Cir. 1982) (“[G]enerally, one judge, in coordinate jurisdiction with another judge, should not overrule that other.”).

¹³ See District Court Opinion at *12–19.

¹⁴ See, e.g., *Chamber of Commerce of the United States v. FTC*, 732 F. Supp. 3d 674 (E.D. Tex. 2024) (challenging FTC’s non-compete clause rule); *Chamber of Commerce of United States v. NLRB*, 723 F. Supp. 3d 498 (E.D. Tex. 2024) (challenging NLRB’s joint employer rule).

¹⁵ See U.S. Chamber Board of Directors, <https://www.uschamber.com/about/governance/board-of-directors> (listing board members from, *inter alia*, Meta, T-Mobile, Microsoft, Abbott Laboratories, ConocoPhillips, IBM, TransUnion, Bristol Meyers Squibb, and Pfizer).

rulemakings, including a rulemaking implementing a revised HSR form that does not meet with their approval. Regardless of whether the FTC proceeds with a further revision to the HSR rule, we urge you to recommend a vigorous appeal of the district court's ruling that seeks vacatur of the district court's cost-benefit analysis. This is the only way to ensure that the FTC can preserve its ability to carry out its statutory mandate.

Thank you for considering AAI's views. We remain available to discuss any of the issues raised in this letter. Questions or comments regarding its substance may be directed to AAI Senior Counsel David O. Fisher at dfisher@antitrustinstitute.org.

Sincerely,



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