

## FTC's Final HSR Premerger Rules Place Undue Burden on Competitive M&A Across Life Sciences

The Federal Trade Commission (FTC)'s final Hart-Scott-Rodino (HSR) premerger notification rule has dramatically increased the amount of information that merging companies are required to provide to federal antitrust authorities in order to complete a merger.<sup>1</sup> Experts assert the rule will effectively amount to a tax that could delay deals and deter pro-competitive mergers.

### Increased Cost & Burden

**The actual costs of the final HSR rule are much higher than even the FTC's own estimate**, which notes that the rule nearly triples the average compliance burden for merging companies and more than quadruples it for nearly half of all transactions subject to HSR review. **The brunt of these costs is most felt by small, early-stage American life sciences companies** which make up **more than 85%** of the U.S. life sciences ecosystem and **often operate without a profit**.

The additional time and administrative requirements imposed by the HSR rule will **deter M&A and hamper the pace of scientific innovation in the life sciences** ecosystem, where M&A facilitates mutually beneficial partnerships. The HSR rule could also **indirectly chill external investment in small and early-stage life sciences companies**, which use the potential for M&A to attract investment.

**These immense costs and compliance burdens placed on American life sciences innovators far outweigh any of the stated benefits of the HSR rule.**

### Previous Framework Is Sufficient

**The FTC's existing tools have enabled the agency to sufficiently investigate life sciences M&A** for decades, without unduly burdening the vast majority of clearly pro-competitive M&A that drives innovation and benefits patients.

**According to the government's own data, 98% of mergers do not raise any competitive concerns, and there is no reason for additional requirements** on these plainly pro-competitive transactions. For the small proportion of M&A that warrants further investigation, the FTC can already issue a targeted Second Request for more detailed information, without placing an additional burden on every transaction.

While the FTC revised certain policies included as part of the proposed rule, leading organizations continue to assert that the final rule imposes a significant burden on the many life sciences companies that rely on competitive M&A as a fundamental path to be able to bring new innovative treatments and cures to market.

#### Key Stakeholder Perspectives on the FTC's HSR Rule

*"Despite some changes from the proposed rule, the final rule still imposes substantial costs, time, and administrative burdens on companies seeking to engage in M&A activities—including mergers, partnerships and licensing deals—which are fundamental to life sciences innovation... This will be especially devastating to our early-stage innovators and startups for whom M&A represents a path to necessary resources, investments and infrastructure needed to advance breakthroughs from the lab to patients."*

—CALIFORNIA LIFE SCIENCES<sup>2</sup>

*“The final rule will chill mergers and acquisitions (M&A) and hamper Maryland’s technology and life sciences industries, which employ more than 300,000 Marylanders and generate billions of dollars in economic activity in our state. Above all, we believe in saving lives, securing our nation, and improving quality of life through innovation, and restricting M&A threatens to upend industry’s ability to do so.”*

—MARYLAND TECH COUNCIL<sup>3</sup>

*“We are particularly concerned that small and early-stage biopharmaceutical companies will bear the brunt of these costs, which may be insurmountable as an estimated 80% of these companies operate without a profit. We urge our federal representatives to support a return to balanced and bipartisan public policies that are supportive of Indiana’s life sciences ecosystem, which requires pro-competitive mergers in order to continue pushing the boundaries of innovation, collaboration and growth.”*

—INDIANA LIFE SCIENCES ASSOCIATION<sup>4</sup>

*“The final HSR rules as issued by the Federal Trade Commission will impose a significant burden on the future of New Jersey’s life sciences community and our ability to do what we do best—saving lives around the world by finding new treatments and cures in New Jersey.”*

—HEALTHCARE INSTITUTE OF NEW JERSEY<sup>5</sup>

*“The increased burden of premerger reporting requirements will impose a significant burden on the life sciences ecosystem in Ohio and the ability for our state’s industry to bring discoveries from the lab to patients. Small and early-stage biopharmaceutical companies will bear the brunt of these costs, which may be insurmountable as an estimated 80% of these companies operate without a profit.”*

—OHIO LIFE SCIENCES<sup>6</sup>

*“According to the government’s own data, 98% of mergers do not raise competitive concerns. The increased burden the new rule imposes remains questionable. Increased bureaucracy will stifle innovation, reduce market efficiencies, and ultimately harm consumers who benefit from the competitive dynamics that mergers can foster.”*

—U.S. CHAMBER OF COMMERCE<sup>7</sup>

*“The ‘vast majority’ of mergers and acquisitions are not only obviously lawful, but critical for sustaining a dynamic modern economy. Congress designed the HSR Act’s two-step process to avoid undue interference with that engine of economic growth. The FTC’s unprecedented revisions to the premerger notification form disregard that core feature of the statutory framework and will impose alarming and unprecedented new burdens on all HSR-reportable transactions—not just those ‘on the margins’—without any good reason.”*

—U.S. CHAMBER OF COMMERCE, BUSINESS ROUNDTABLE,  
AMERICAN INVESTMENT COUNCIL, LONGVIEW CHAMBER OF COMMERCE<sup>8</sup>

<sup>1</sup> FTC. Premerger Notification; Reporting and Waiting Requirements. November 12, 2024. <https://www.ftc.gov/legal-library/browse/federal-register-notices/premerger-notification-reporting-waiting-requirements>

<sup>2</sup> California Life Sciences. The FTC’s final Hart-Scott-Rodino rules will harm California’s life sciences ecosystem. October 11, 2024. <https://www.califesciences.org/ftc-finalizes-changes-to-premerger-notification-form/>

<sup>3</sup> Maryland Tech Council. Statement on HSR Rules. [https://www.linkedin.com/posts/mdtechcouncil\\_ftc-lifesciences-hsr-activity-7250529596125663235-flH4/](https://www.linkedin.com/posts/mdtechcouncil_ftc-lifesciences-hsr-activity-7250529596125663235-flH4/)

<sup>4</sup> Indiana Life Sciences Association. Statement on HSR Pre-merger Notification Rules. [https://www.linkedin.com/posts/indiana-life-sciences-association\\_pulse-campaign-statement-on-final-hsr-rules-activity-7250536026668978176-9U9b/](https://www.linkedin.com/posts/indiana-life-sciences-association_pulse-campaign-statement-on-final-hsr-rules-activity-7250536026668978176-9U9b/)

<sup>5</sup> HealthCare Institute of New Jersey. HealthCare Institute of New Jersey Statement on the Federal Trade Commission’s Final HSR Premerger Notification Rules. <https://hinj.org/healthcare-institute-of-new-jersey-statement-on-the-federal-trade-commissions-final-hsr-premerger-notification-rules/>

<sup>6</sup> Ohio Life Sciences. Statement on Final HSR Premerger Notification Rules.

<sup>7</sup> U.S. Chamber of Commerce. Statement on Final HSR Rules. October 10, 2024. <https://www.uschamber.com/antitrust/antitrust-agencies-forced-to-scale-back-revisions-to-hart-scott-rodino-rule>

<sup>8</sup> U.S. Chamber of Commerce, Business Roundtable, American Investment Council, Longview Chamber of Commerce. Civil Action No. 6:25-cv-009. Complaint for Declaratory and Injunctive Relief. <https://www.uschamber.com/assets/documents/Complaint-Chamber-of-Commerce-v-FTC-E.D.-Tex.pdf>