Before the
United States Federal Trade Commission and
Department of Justice
Washington, D.C.

In re Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form	Docket No. FTC-2026-0298-0001

COMMENTS OF

THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

In response to the Federal Trade Commission ("FTC") and the Department of Justice's ("DOJ") (jointly "Agencies") request for public comment regarding the effectiveness of the Hart-Scott-Rodino ("HSR") premerger reporting requirements, released on March 25, 2026,[1] the Computer & Communications Industry Association ("CCIA")[2] submits the following comments. These comments provide CCIA's general observations and specific recommendations on key issues to be addressed in any update to the HSR premerger notification rule.

I. Introduction

CCIA appreciates the Agencies' efforts to ensure the efficiency and effectiveness of premerger notification regulations in identifying potentially anticompetitive mergers. Any updates to the HSR premerger notification rule should increase legal predictability and business certainty without expanding substantive liability beyond statute and precedent. With the ongoing

[1] Fed. Trade Comm'n., *Federal Trade Commission and Department of Justice Seek Public Comment on the Premerger Notification and Report Form* (Mar. 25, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/03/federal-trade-commission-department-justice-seek-public-comment-premerger-notification-report-form.

[2] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

digital transformation of the U.S. economy[3] and the U.S.'s contested technological leadership in artificial intelligence ("AI"),[4] any new rule should promote, rather than hinder, competition and innovation, aligning with the Administration's priorities.[5]

Any expansion of HSR reporting obligations should be evaluated against the practical function of the premerger notification system, which is to enable efficient identification of potentially anticompetitive transactions while minimizing burdens on procompetitive ones. Expanded reporting requirements impose significant compliance costs on HSR-reportable transactions, the vast majority of which do not raise significant competitive concerns.[6] Before adopting additional requirements, the Agencies should identify the specific competitive issues that existing enforcement mechanisms are unable to address, explain why existing investigatory tools are insufficient, and provide evidence that prior expansions of the HSR Form improved screening efficiency or enforcement outcomes proportionate to their increased burden.[7]

II. Non-Traditional Transaction Structures

Regulatory predictability and legal certainty are essential to promoting competition and innovation.[8] While CCIA acknowledges the need for regulatory clarity regarding "acquihire" and "hire-and-license-out"[9] ("HALO," sometimes known as "reverse acquihire") arrangements,

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[3] John Deighton and Leora Kornfeld, *Measuring the Digital Economy*, Interactive Advertising Bureau, (Apr. 30, 2025), https://www.iab.com/wp-content/uploads/2025/04/Measuring-the-Digital-Economy_April_29.pdf (Finding the value of the U.S. digital economy has doubled from 2020-2025 to $4.9 trillion, representing 18 percent of total U.S. GDP in 2025).
[4] Stanford University, *The 2026 AI Index Report*, Human-Centered Artificial Intelligence (Apr. 2026), https://hai.stanford.edu/ai-index/2026-ai-index-report ("The U.S.-China AI model performance gap has effectively closed.").
[5] The White House, *Reducing Anti-Competitive Regulatory Barriers* (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/.
[6] Dep't. of Just., *Remarks of Acting AAG Omeed Assefi*, Engelberg Center on Innovation Law & Policy, NYU School of Law (May 7, 2026), https://www.justice.gov/opa/speech/acting-assistant-attorney-general-omeed-assefi-delivers-remarks-engelberg-center ("[I]in FY25, the Antitrust Division approved 99.5% of all mergers submitted to DOJ for HSR review.").
[7] For example, evidence that prior expansions of the HSR Form resulted in either fewer Second Requests or more early terminations.
[8] Businesses at OECD, *Competition Enforcement and Regulatory Alternatives – Note by BIAC* (Jun. 7, 2021), at 2, https://one.oecd.org/document/DAF/COMP/WP2/WD(2021)18/en/pdf ("Fairness, legal certainty, and predictability of enforcement are vital to business. Pursuing the enforcement of specific non-competition regulatory objectives and laws through competition enforcement, or imposing conflicting or inconsistent standards on business through a mix of competition enforcement and regulatory means, creates an untenable situation that would chill both investment and innovation.").
[9] Kevin Kwok, *The HALO Effect*, Kwok Chain, (Jul. 15, 2025), https://kwokchain.com/2025/07/15/the-halo-effect/ (Coining the term for "HALO" transactions).

the Agencies should avoid extending reporting requirements to transactions falling outside the HSR Act's statutory scope.[10]

Transactions largely focused on hiring talent and licensing intellectual property have been common in the technology sector since the Web 2.0 era, and can be structured in many ways.[11] In HALO arrangements, which are not acquisitions but rather talent-focused transactions,[12] there is no transfer of control or beneficial ownership of governance rights or assets. The licensor remains an independent market participant and typically retains its intellectual property for continued use or licensing, including to the licensee's competitors.[13] As the Agencies have previously recognized, non-exclusive licensing is often procompetitive and can promote innovation and competition.[14] Any reporting requirement capturing non-exclusive licenses and ordinary-course hiring arrangements risks imposing substantial regulatory burdens on firms in highly dynamic markets, reducing incentives for startups to enter and compete, and potentially chilling innovation and competition.[15]

Talent-focused transaction structures are central to competition in high-technology industries, where employees retained through traditional acquisitions often exhibit higher rates of turnover.[16] HALO agreements are a natural response to the competitive dynamics of AI, where

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[10] 15 U.S.C. § 18a. The HSR Act applies to direct or indirect acquisitions of any voting securities or assets.

[11] John F. Coyle and Gregg D. Polsky, *Acqui-hiring*, 63 Duke Law Journal 281, 284 (2013), https://scholarship.law.duke.edu/dlj/vol63/iss2/1/.

[12] Gleb Domnenko, *Reverse Acquihires are Neither "Reverse" nor Acquihires, ABA Antitrust Spring Meeting Panelists Discuss New Tech and AI Deals*, American Bar Association Antitrust Law Section (Apr. 16, 2026), https://www.americanbar.org/groups/antitrust_law/resources/newsletters/reverse-acquihires-neither-reverse-nor-acquihires/.

[13] Josh Wright, *Do Reverse Acquihires Really Evade Antitrust Review?*, Competition on the Merits Substack (Feb. 17, 2026), https://competitiononthemerits.substack.com/p/do-reverse-acquihires-really-evade ("[I]n the newer acquihires, often it is the case that the talented team's knowledge is wrapped up in code, tools, or algorithms that are the intellectual property of the target. Thus the need for some kind of license, often non-exclusive, to the IP along with the people.").

[14] U.S. Dep't of Just. and Fed. Trade Comm'n, *Antitrust Guidelines for the Licensing of Intellectual Property* (2017) §§ 2.3 and 3.1, https://www.justice.gov/atr/IPguidelines/dl; *see also* Martin Watzinger et. al., *How Antitrust Enforcement Can Spur Innovation: Bell Labs and the 1956 Consent Decree*, Yale Department of Economics (Jan. 9, 2017), https://economics.yale.edu/sites/default/files/how_antitrust_enforcement.pdf.

[15] Susan Woodward, *Antitrust Enforcement Over-deters Acquisitions, Squeesing Smaller Startups and Venture Capital Investors*, CCIA Research Center (Jan. 24, 2025), https://ccianet.org/research/reports/antitrust-enforcement-over-deters-acquisitions-squeesing-smaller-startups-and-venture-capital-investors/#main-content.

[16] Luca Verginer et. al., *Acquisitions as catalysts for inventor departures in the biotechnology industry*, Humanit Soc Sci Commun 12, 607 (May 3, 2025). https://doi.org/10.1057/s41599-025-04894-w (Finding that inventors affected by startup acquisitions in high-technology industries are 20 percent more likely to leave the acquiring company); PWC, *M&A trends in AI for drug discovery* (2023), https://www.pwc.ch/en/publications/2023/m-and-a-trends-in-AI_EN_web.pdf ("Many M&A executives we spoke to raised the concern that it would be difficult to retain the talent behind a potential target after an acquisition[.]").

human expertise and proprietary models rather than physical assets or established pricing structures are the primary drivers of differentiation.[17] These transactions typically involve the release of employees from employment contracts and restrictive non-competes,[18] promoting labor market competition by incentivizing employees to change employers with significant compensation packages.[19] As AI technology matures, talent-focused transaction structures will likely continue to promote productive deployment of expertise in ways that benefit the broader innovation ecosystem,[20] aligning with the administration's AI Action Plan to accelerate AI innovation.[21]

For many technology startups, particularly pre-revenue or early-stage companies lacking the asset base to support a traditional acquisition, talent-focused HALO agreements often provide a capital-efficient "soft landing" for struggling startups that allows specialized talent to continue innovating, rather than being lost when a startup cannot independently scale.[22] Any rule requiring reporting these agreements would disproportionately harm tech startups by effectively reducing competition for highly specialized talent and risks reducing investor incentives,[23] effectively chilling early-stage funding and innovation.[24]

Before adopting a new rule, the Agencies should consider whether the HSR Act authorizes mandatory reporting for HALO arrangements. The HSR Act applies to acquisitions of voting securities, assets, and non-corporate interests conferring control.[25] Labor is not a

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[17] OECD, *Competition in Artificial Intelligence Infrastructure* (Nov. 2025), at 21 https://www.oecd.org/en/publications/competition-in-artificial-intelligence-infrastructure_623d1874-en.html.

[18] Matthew S. Johnson et. al., *Innovation, Inventor Mobility, and the Enforceability of Noncompete Agreements*, NBER Working Paper Series, Working Paper 31487 (2023), https://www.nber.org/system/files/working_papers/w31487/w31487.pdf (Finding that non-compete enforcement reduces patenting by 16-19 percent).

[19] Edward P. Lazear, *Compensation and Incentives in the Workplace*, Journal of Economic Perspectives, Vol. 32, No. 3 (Summer 2018), Pages 195-214, at https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.32.3.195.

[20] Zili Yang, *Technology M&As and Knowledge Diffusion*, Department of Economics, University of Southern California (Nov. 10, 2025), at 1, https://ziligit.github.io/files/jmp_paper.pdf ("Tech M&As do not diminish young firms' ability to cite and build upon acquired targets' patents, contradicting concerns about innovation foreclosure.").

[21] The White House, *America's AI Action Plan* (Jul. 2025), at 3 https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf.

[22] *Supra* n. 11 at 295; *see also* Elizabeth Pollman, *Startup Failure*, 73 Duke Law Journal 327, at 356-59 (2023), https://scholarship.law.duke.edu/dlj/vol73/iss2/2/.

[23] *Supra* n. 15, at 2.

[24] *Supra* n. 15, at 2; *see also* Brian J. Broughman et. al., *No Exit*, 100 N.Y.U. Law Review 1481 (2025) at 16-17, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5316792 ("[E]nhanced procedural burdens and uncertainty surrounding merger review reshaped the dealmaking environment in Silicon Valley.").

[25] 15 U.S.C. § 18a; "Control" as defined by 16 C.F.R. § 801.1(b)(1)(ii).

commodity or article of commerce,[26] and thus not an "asset." Hiring employees does not transfer beneficial ownership of company assets. Likewise, non-exclusive intellectual property licenses are non-HSR reportable contractual agreements because they do not ordinarily transfer beneficial ownership associated with an asset acquisition.[27] The combination of two independently non-reportable elements does not become reportable absent a transfer of a reporting-eligible interest under the Act.[28] Treating these agreements as presumptive reportable concentrations risks over-enforcement in dynamic and innovation-driven markets, representing a significant departure from past HSR practice.

HALO transactions that have drawn Agency attention[29] reflect genuine commercial and labor market considerations.[30] While the Agencies have so far declined to bring any enforcement actions against these transaction structures, they have twice deployed their broadest investigative authority to examine them. In 2020, the FTC issued Section 6(b) orders to five major technology companies requiring detailed information on acquisitions from 2010 to 2019 that were not reported under the HSR Act.[31] The resulting report, which examined more than 600 transactions, did not produce findings of systemic competitive harm.[32] Likewise, the FTC's more recent

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[26] 15 U.S.C. § 17.

[27] In non-exclusive intellectual property license agreements, the licensor typically retains the ability to use and license the same intellectual property to others, including the licensee's competitors. *See* Fed. Trade Comm'n., Premerger Notif. Off., *9911001 Informal Interpretation* (Oct. 5, 1999), https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/9911001 (Citing PNO Practice Manual Interpretation 49 ("The FTC Staff position is that the grant of a non-exclusive patent or trademark license does not involve the acquisition of an asset.. . .") and Interpretation 126 ("A sublease is not considered an asset and is therefore unreportable even if 'part of a larger transaction.'")); *see also* Fed. Trade Comm'n., Premerger Notif. Off., *0812010 Informal Interpretation* (Jan. 23, 2008), https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/0812010 (Finding that a license must operate as a title transfer to be an asset acquisition).

[28] *See* 16 C.F.R. § 801.90 (Providing that the substance-over-form anti-evasion rule applies where a transaction is structured for the purpose of avoiding or delaying an HSR filing obligation, not where two independently non-reportable elements are combined for legitimate business reasons); *see also* Fed. Trade Comm'n., Premerger Notif. Off., *0812010 Informal Interpretation* (Jan. 23, 2008), https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/0812010 (Finding the combination of two non-reportable licenses does not give rise to HSR reportability); *see also* Fed. Trade Comm'n., Premerger Notif. Off., *2001002 Informal Interpretation* (Jan. 14, 2020), https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/2001002 (Affirming the FTC's 0812010 Informal Interpretation).

[29] Bloomberg Talks Podcasts, *FTC Chair Andrew Ferguson Talks Acquihires* (Jan. 16, 2026), https://www.youtube.com/watch?v=8u_hazxCplM.

[30] HSF Kramer, *When is a transaction that avoids HSR a transaction for avoidance?* (May 8, 2026), https://www.hsfkramer.com/insights/2026-05/when-is-a-transaction-that-avoids-hsr-a-transaction-for-avoidance ("The suggestion that acquihire transactions necessarily run afoul of Rule 801.90, however, is unsupported by precedent, stretches the bounds of Rule 801.90 and may improperly threaten the imposition of penalties on the parties.").

[31] Fed. Trade Comm'n., *FTC to Examine Past Acquisitions by Large Technology Companies* (Feb. 11, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies.

[32] Fed. Trade Comm'n., *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019*, (Sep. 15, 2021), https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf.

January 2025 Staff Report on AI Partnerships identified no systemic competitive concerns with HALO agreements, while acknowledging the significant potential of AI partnerships to promote investment and innovation.[33] As the Agencies' findings have not identified any particular competitive concerns with these transactions, it is unclear what procompetitive benefits mandatory HSR reporting would achieve.

Where specific transactions nonetheless raise competitive concerns, the Agencies retain sufficient tools to intervene; the absence of HSR reportability does not shield any transaction from antitrust scrutiny. The Agencies retain the authority to investigate potentially anticompetitive agreements under the Sherman Act,[34] and can issue broad Civil Investigative Demands to transacting and third parties to assess a transaction's legality.[35] Where a transaction is structured specifically to avoid HSR filing obligations, the anti-evasion framework under 16 C.F.R. § 801.90 already provides an appropriate enforcement mechanism. Mandatory premerger reporting is not a prerequisite to effective antitrust enforcement in this area, and the Agencies have not identified evidence that existing tools are inadequate to the task.

Any standard requiring parties to predict post-closing firm viability, such as whether a transaction "functionally resembles" an acquisition, or whether employees constitute the "core" of a business, would be unworkable in a premerger notification system that depends on objective, *ex-ante* thresholds. Such a standard would raise the transaction costs and legal risks associated with routine talent acquisition, deterring otherwise procompetitive transactions and potentially incentivizing parties to structure transactions to avoid the reporting standard.

III. Structural Transaction Modifications

CCIA recommends against a rule requiring parties to file new or supplemental HSR notifications when proposing remedies or making material modifications to transactions. This would significantly increase the cost and duration of merger review for merging parties, and further strain the Agencies' limited resources. A mandatory supplemental filing requirement

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[33] Fed. Trade Comm'n, *Partnerships Between Cloud Service Providers and AI Developers: Staff Report on AI Partnerships and Investments 6(b) Study* (Jan. 2025), at 3-4 https://www.ftc.gov/reports/ftc-staff-report-ai-partnerships-investments-6b-study.
[34] 15 U.S.C §§ 1 and 2.
[35] 15 U.S.C. § 57b-1.

accompanied by a new waiting period also risks deterring parties from proposing procompetitive remedies. Such a mandate would undermine the cooperative dynamics necessary for an effective review process while introducing procedural uncertainty that risks the abandonment of beneficial transactions.[36]

Remedies are the product of ongoing, transparent communication between the parties and the Agencies regarding potential anticompetitive concerns. Parties engage in affirmative advocacy and responsive submissions to address specific Agency concerns. Imposing a new filing requirement would create a procedural penalty for transparency, effectively disincentivizing parties from engaging in the very dialogue that facilitates the crafting of effective remedies. This would likely push parties to litigate the original transactions rather than offering a remedy that would reset the review clock and cause further delay, or result in the abandonment of otherwise procompetitive mergers.[37]

A new filing requirement would also reduce predictability and harm businesses. The standards for what constitutes a "material modification" or when a remedy is proposed "too late" are difficult to determine and inherently ambiguous. Resetting the waiting period by requiring an additional filing would make it difficult for businesses to plan for closing or litigation, potentially resulting in delays that extend beyond termination dates. Ultimately, mergers may be abandoned due to timing concerns rather than on their merits.

Existing HSR rules already reflect the principle that duplicative filings in connection with Agency- or court-supervised remedies provide limited incremental value.[38] During the Second

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[36] *Supra* n. 11, at 4; *see also* D Daniel Sokol et. al., *Antitrust Mergers and Regulatory Uncertainty*, American Bar Association, The Business Lawyer Vol. 78, Iss. 4 (Nov. 8, 2023), https://www.americanbar.org/groups/business_law/resources/business-lawyer/2023-fall/antitrust-mergers-regulatory-uncertainty/ (Survey indicating how increases in antitrust enforcement reduces M&A activity).

[37] Logan Billerman and Steven Salop, *Merger Enforcement Statistics: 2001-2020*, American Bar Association, Antitrust Law Journal Vol. 85, Iss. 1 (Mar. 23, 2023), https://www.americanbar.org/groups/antitrust_law/resources/journal/85-1/merger-enforcement-statistics-2001-2020/ ("Of the 969 transactions that received second requests between 2001 and 2020, only 286 (29.5%) ultimately survived the process without being abandoned or remedied."); *see also* Jasmine Rosner, Emma D'Arpino, et. al., *Merger Remedies: The Fix is In (Again)*, American Bar Association, Antitrust Law Section Webinar (Oct. 29, 2025) https://www.weil.com/-/media/files/pdfs/2025/december/aba_merger-remedies.pdf?rev=b00f3a235d6d40c39a01e0e591b51d91.

[38] Under 16 C.F.R. § 802.70, certain acquisitions pursuant to FTC or DOJ orders, accepted consent agreements, or proposed consent judgments are exempt from HSR notification requirements. *See also* 43 Fed. Reg. 33450, 33505 (1978) (Explaining that additional filings were unnecessary because these groups of acquisitions were already subject to careful antitrust scrutiny).

Request phase, the Agencies receive extensive access to company data, internal strategies, and executive testimony, often involving millions of documents and numerous depositions. The same level of transparency exists during the discovery process once a complaint is filed. By the time parties propose a structural remedy, a supplemental filing is unlikely to yield relevant information that the Agencies have not already obtained.

In cases where the Agencies believe additional review may be necessary to evaluate proposed remedies, existing mechanisms, such as timing agreements and negotiated extensions during the Second Request process,[39] already provide sufficient tools without imposing mandatory supplemental filing requirements across all transactions. The Agencies could also include provisions in timing agreements at the outset of Second Requests to account for proposed modifications, further incentivizing parties to introduce potential remedies earlier in the review process.

CCIA also recommends against amending 16 C.F.R. § 802.70(a) to limit the court-ordered divestiture exemption to transactions that one of the Agencies has already reviewed. Courts overseeing merger litigation are well-positioned to assess whether proposed remedies are sufficiently developed and whether the Agencies have had adequate opportunity to evaluate them. Restricting § 802.70(a) would risk returning a remedied transaction to the Agencies for additional review after a judicial determination on the merits. This would undermine both efficient judicial administration and the interests of transacting parties facing contractual deadlines or financing constraints.

IV. Conclusion

CCIA thanks the Agencies' initiative to solicit public comment to inform potential changes to the HSR premerger notification rule, and looks forward to continuing to engage with the Agencies on these important issues.

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[39] 16 C.F.R. § 803.20.