

**Statement of Commissioner Christine S. Wilson,  
Joined by Commissioner Rohit Chopra**  
Concerning Non-Reportable Hart-Scott-Rodino Act Filing 6(b) Orders  
February 11, 2020

We support the Commission’s decision to issue a 6(b) study designed to assess the sufficiency of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (“HSR Act”) thresholds with respect to technology mergers and acquisitions of competitive significance. The Commission will benefit from a deeper understanding of the kinds of transactions – and the nature of their competitive impact – that were not reportable under the HSR requirements.

While non-reportable deals involving technology companies garner significant attention, academic work in other industries raises similar questions about the sufficiency of the HSR notification process. Given the FTC’s significant expertise in the healthcare industry, and the vital importance of quality healthcare services at competitive prices to every American consumer, we encourage the Commission to analyze sub-HSR deals in that industry next. During the last three decades, the share of independent dialysis facilities has shrunk drastically and two national chains now own the majority of dialysis facilities and earn nearly all of the industry’s revenue, with most acquisitions occurring below the HSR thresholds.<sup>1</sup> Similar patterns of “stealth consolidation” have been observed in pharmaceutical and hospital markets.<sup>2</sup> We urge the Commission to consider similar 6(b) studies across other industries to ensure that we have a more complete understanding about the competitive effects of non-reportable mergers writ large.

While we commend the FTC for exploring this timely and important topic, we reiterate our call for the Commission to prioritize 6(b) studies that explore consumer protection issues arising from the privacy and data security practices of technology companies, including social media platforms. In particular, we encourage the FTC to study whether and, if so, how content curation and targeted advertising practices impact data collection, use, and sharing, and how the monetization of data impacts the creation and refinement of algorithms that drive content curation and targeted advertising practices.

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<sup>1</sup> Eliason, Paul J. et al., *How Acquisitions Affect Firm Behavior and Performance: Evidence from the Dialysis Industry*, 135 *Quarterly J. Econ.* 221 (2020) (finding that during the past three decades, the share of independent dialysis facilities fell from 86% to 21%, so that DaVita and Fresenius now own more than 60% of facilities and earn more than 90% of the industry’s revenue); Wollmann, Thomas, *How to Get Away With Merger: Stealth Consolidation and its Real Effects on US Healthcare*, working paper (2018) (finding that “many proposed dialysis facility acquisitions that would otherwise be blocked over 95% of the time are blocked less than 5% of the time when exempt from premerger notification requirements... Exempt facility acquisitions account for most of the rise in industry-wide within-market concentration over the last two decades.”).

<sup>2</sup> Cunningham, Colleen et al. *Killer Acquisitions*, working paper (2019) (finding that “killer acquisitions” in pharma disproportionately occur just below the HSR threshold and generally appear to involve products that are less likely to launch and more likely to be discontinued); Wollmann, Thomas, *Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act*, 1 *American Economic Review: Insights* 77 (2019) (tracking hospital mergers from 1994 to 2011 and finding that mergers exempt under the revised, higher, filing thresholds but not exempt under the original thresholds greatly increase after the revision, and that 50% of all hospital mergers are horizontal and exempt under the higher thresholds).