



[Author's correction: This comment incorrectly stated that the Federal Trade Commission's Draft Strategic Plan for FY 2026-2030 failed to comply with the Foundations for Evidence-Based Policymaking Act of 2018 (5 U.S.C. § 312(a)). That Act applies only to agencies as defined by 5 U.S.C. § 311. Section 311(1) defines agency as an agency referred to under 31 U.S.C. § 901(b), which does not include the Federal Trade Commission.]

1310 L Street, NW, 7th Floor | Washington, DC 20005 | 202.331.1010 | cei.org

October 17, 2025

Comments of the Competitive Enterprise Institute

RE: Draft FTC Strategic Plan for FY 2026-2030

Docket No.: FTC-2025-0660

On behalf of the Competitive Enterprise Institute (CEI), I would like to thank the Federal Trade Commission (FTC) for the opportunity to comment on the agency's Draft Strategic Plan for Fiscal Years 2026-2030. Founded in 1984, CEI is a non-profit research and advocacy organization that focuses on regulatory policy from a free-market perspective.

The FTC deserves praise for restoring the limiting clause "without unduly burdening legitimate business activity" into its mission statement.¹ The prior administration retracted the provision in 2021, after it had been part of the agency's mission statement for 25 years.² The restoration illustrates that the FTC will take a more balanced regulatory approach, one where the agency encourages innovation and does not hinder procompetitive business activity. It also provides more predictability and clarity, showing that the FTC's actions will be proportionate to the harm it is seeking to prevent. The FTC is a powerful regulatory body, one that has executive, legislative, and judicial powers.³ Restoring the phrase "without unduly burdening legitimate business activity" to its mission statement is a positive signal that the agency intends to use its vast authority more prudently and with greater balance.

I. Foundations for Evidence-Based Policymaking Act

Congress passed the Foundations for Evidence-Based Policymaking Act of 2018 to help ensure that government decisions are based on evidence and data regarding what is effective.⁴ The FTC

¹ Federal Trade Commission, *Draft Strategic Plan Fiscal Years 2026-2030*, September 2025, p. 4, <https://www.regulations.gov/document/FTC-2025-0660-0001>.

² Andy Jung, "FTC Proposes Astounding Change to the Agency's Mission Statement," Washinton Legal Foundation, December 7, 2021, <https://www.wlf.org/2021/12/07/wlf-legal-pulse/ftc-proposes-astounding-change-to-the-agencys-mission-statement/>.

³ Kevin Frazier, "The Curse Cuts Both Ways: Why a 'Big' Federal Trade Commission Is Bad for the Constitutional Order," *Journal of Law, Economics and Policy*, Vol. 20, No. 3 (Spring 2025), <https://static1.squarespace.com/static/6233d0b9d24b954d519e5d62/t/684c7cd642065933ed855e7a/1749843160857/Journal+of+Law%2C+Ecomomics+and+Policy+Volume+20.3.pdf>.

⁴ H.R. 4174 – Foundation for Evidence-Based Policymaking Act of 2018, 115th Congress, Second Session, <https://www.congress.gov/bill/115th-congress/house-bill/4174>; Results for America, *The Promise of the Foundations for Evidence-Based Policymaking Act and Proposed Next Steps*, September 2019, <https://results4america.org/wp-content/uploads/2019/09/Evidence-Act-Proposed-Next-Steps-FINAL.pdf>.

should consider whether its Draft Strategic Plan for Fiscal Years 2026-2030 fully conforms to the Act's requirements under 5 U.S.C. § 312(a). It states that “[t]he head of each agency shall include in the strategic plan required under section 306 a systematic plan for identifying and addressing policy questions relevant to the programs, policies, and regulations of the agency.”⁵ Further, § 312(a) requires six components to be included in the agency's systematic plan, including policy questions, data, methods, challenges, steps an agency will use to develop evidence for policymaking, and any information required by the Director of the Office of Management and Budget.⁶

While the FTC's Draft Strategic Plan does outline general strategic goals, objectives, and strategies that relate to research, information gathering, and policy development, it does not appear to include a dedicated, systematic section with the six specific components required by § 312(a). Section 312 is cross-referenced in 5 U.S.C. § 306, which requires agencies to produce a strategic plan.⁷ Failure to integrate these components may place the FTC's Strategic Plan at variance with both § 312(a) and OMB Circular A-11's guidance on evidence-building requirements.⁸

II. Evaluating the new Premerger Notification Form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

As part of the FTC's plan to accomplish its mission “without unduly burdening legitimate business activity,” the Commission should consider evaluating the efficiency of the Hart-Scott-Rodino (HSR) Program under the new Premerger Notification Form.

From 1997 to 2009, the FTC's Strategic Plan included tracking and maintaining the timeliness of review under the HSR Program.⁹ In the agency's annual Performance Report for Fiscal Years 1999 and 2000, the Commission measured the “average number of days for review of HSR-reported transactions” and provided fiscal year (FY) targets and actuals.¹⁰ The FTC explained in both the 1999 and the 2000 Performance Report that

⁵ 5 U.S.C. § 312(a).

⁶ 5 U.S.C. § 312(a)(1)-(6).

⁷ 5 U.S.C. § 306(a)(8)-(9).

⁸ Office of Management and Budget, Executive Office of the President, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, Part 6, §§ 230, 290 (August 2025).

⁹ Federal Trade Commission, *Strategic Plan under the Government Performance and Results Act: Fiscal Years 1997 – 2002*, September 1997, p. A-30, https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy97fy02.pdf; Federal Trade Commission, *Strategic Plan Fiscal Years 2000 – 2005 under the Government Performance and Results Act*, September 2000, p. 27, https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy00fy05.pdf; Federal Trade Commission, *Strategic Plan Fiscal Years 2003 - 2008 under the Government Performance and Results Act*, September 2003, p. 31, https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy03fy08.pdf; Federal Trade Commission, *Strategic Plan Fiscal Years 2006-2011*, September 30, 2006, p. 19, https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy06fy11.pdf; Federal Trade Commission, *Strategic Plan for Fiscal Years 2009 to 2014*, September 2009, p. 9, https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy09fy14.pdf.

¹⁰ Federal Trade Commission, *Performance Report Fiscal Year 1999*, September 1999, p. 15, https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1999/prfy1999.pdf; Federal Trade

We measure our success in identifying anticompetitive mergers by the average number of days we devote to reviewing actions reported to us under the HSR premerger notification program. This measure is important because it reflects the *efficiency* with which we conduct these reviews. When the review of reported actions is completed quickly and efficiently, we conserve available resources that can be devoted to other important activities. In addition, a prompt review better serves economic growth, because it allows businesses to proceed with mergers and acquisitions that pose no antitrust issues with minimal delay.¹¹

On February 10, 2025, the new HSR Notification Form went into effect.¹² Commissioners Andrew Ferguson and Melissa Holyoak deserve tremendous credit for their efforts to reduce the estimated compliance burden from the initial notice of proposed rulemaking (NPRM), which projected a quadrupling of the number of hours needed to file under the HSR Program.¹³ However, the Commission still estimated that the Final Rule would nearly triple the compliance hours.¹⁴ Commissioner Ferguson acknowledged the deficiencies in the final rule in his concurring statement, writing “Were I the lone decision maker, the rule I would have written would be different from today’s Final Rule.”¹⁵

From the start of the rulemaking process, efficiency claims have been used to justify the increased burden on filers. After the release of the NPRM, at an event hosted by the Brookings Institution, then-Chair Lina Khan said,

We’re still really building up the muscle to figure out what’s the right data that we need on the front end, but we think the data that we capture in the renewed HSR Form will help expedite some of that analysis. . . . But ultimately, we think that this has the prospect of actually making our analysis more efficient in ways that will

Commission, *Performance Report Fiscal Year 2000*, March 31, 2001, p. 17, https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-2000/prfy2000.pdf.

¹¹ Federal Trade Commission, *Performance Report Fiscal Year 1999*, p. 15 (emphasis added); Federal Trade Commission, *Performance Report Fiscal Year 2000*, p. 17 (emphasis added).

¹² “HSR Notification Forms, Instructions and Guidance,” Federal Trade Commission, accessed October 9, 2025, <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-notification-forms-instructions-guidance>.

¹³ Federal Trade Commission, “Premerger Notification; Reporting and Waiting Period Requirements,” notice of proposed rulemaking, *Federal Register*, Vol. 88, No. 124 (June 29, 2023), p. 42208, <https://www.federalregister.gov/documents/2023/06/29/2023-13511/premerger-notification-reporting-and-waiting-period-requirements>.

¹⁴ Federal Trade Commission, “Premerger Notification; Reporting and Waiting Period Requirements,” final rule, *Federal Register*, Vol. 89, No. 218 (November 12, 2024), p. 89334, <https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements>.

¹⁵ Concurring Statement of Commissioner Andrew N. Ferguson in the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule 16 C.F.R. Parts 801 and 803, Matter No. P239300, October 10, 2024, p. 2, https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-final-hsr-rule-statement.pdf (“The Final Rule is not perfect, nor is it the rule I would have written if the decision were mine alone.”).

benefit businesses as well. Sometimes we will, through this additional information, be able to determine actually there are no problems. . . . Previously we may have issued a second request to get this additional information, but now we have that on the front end, so we're not going to tie up the deal any longer. . . . Those efficiency benefits could pay off internally but also externally.¹⁶

Commissioner Ferguson acknowledged these efficiency gains in his concurrence to the adoption of the Final Rule. He quoted the Final Rule, writing that “if the Agencies can determine from review of an HSR Filing that a transaction does not present [competitive concerns], the Agencies can more *quickly* and confidently determine that the transaction does not require a more in-depth review and may proceed to consummation.”¹⁷ Ferguson reiterated these claims when the Form went into effect, writing on X that “These updates were the product of bipartisan consensus and will allow us to find anticompetitive mergers efficiently, while more *quickly* getting out of the way of deals that will benefit the American people.”¹⁸ Finally, Commissioner Holyoak also wrote in her concurrence that “One of the virtues of the Final Rule is that certain provisions will allow staff to more *quickly* identify which mergers should receive early termination, a significant benefit to both staff and merging parties.”¹⁹

There have been recent indications that those efficiency gains may not be realized. On August 22, 2025, Assistant Attorney General Abigail Slater posted a short video on X offering a glimpse into the antitrust agencies’ enforcement of the HSR Act under the first six months of the new Form. She said, “Between March 1, 2025, and August 20, 2025, the Antitrust Division and the Federal Trade Commission granted early termination in 25 percent of all our deal reviews.”²⁰ Granting early termination only 25 percent of the time would be a sharp decrease from historical averages. For the ten fiscal years preceding the Biden administration’s suspension in 2021, the antitrust agencies granted early termination 58 percent of the time.²¹

A lack of personnel and resources could partially explain the decline in granting early termination, according to antitrust attorneys at the law firm of Akin Gump Strauss Hauer & Feld LLP. They say, “agencies’ efforts to reduce headcount could mean that granting ET is not a high

¹⁶ “FTC Chair Lina Khan and DOJ Assistant Attorney General Jonathan Kanter on Antitrust Enforcement,” streamed live October 5, 2023, by Brookings Institution, YouTube, <https://www.youtube.com/live/bSJxHhzU0fo?t=3120s>.

¹⁷ Concurring Statement of Commissioner Andrew N. Ferguson in the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule 16 C.F.R. Parts 801 and 803, p. 10 (emphasis added).

¹⁸ Andrew Ferguson (@AFergusonFTC), “Today is a big day if you care about stopping monopolization and protecting Americans from anticompetitive mergers,” X, February 10, 2025, <https://x.com/afergusonftc/status/1889104725624168453> (emphasis added).

¹⁹ Statement of Commissioner Melissa Holyoak in Final Premerger Notification Form and the Hart-Scott-Rodino Rules, FTC File No. P239300, October 10, 2024, p. 2, https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-hsr-rule-statement.pdf (emphasis added).

²⁰ Abigail Slater (@AAGSlater), “ Trust Talk: Merger Review/ Enforcement Update,” X, August 22, 2025, <https://x.com/AAGSlater/status/1958979832819150873>.

²¹ Federal Trade Commission and Department of Justice, *Hart-Scott-Rodino Annual Report: Fiscal Year 2020*, November 2021, Appendix A, https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_hsr_annual_report_final.pdf.

priority” and “[g]iven agency resource constraints, however, not every deal that warrants ET may receive it.”²² Considering the new Form substantially increases the amount of paperwork to be submitted, the reviewing agencies’ resource constraints could be further exacerbated. In response to one commenter who argued that the new Form would result in a substantial increase in the number of staff hours needed to review the additional information required, the FTC concluded that

Based on its own experience and in light of the significant reductions contained in the final rule as compared to the proposed rule, the Commission believes that the additional information required by the final rule would result in an overall reduction in the number of staff hours spent collecting additional information from all sources, including the parties, as well as a reduction in associated burdens of reviewing and processing that information.²³

To ensure the increased burden on filers is justified, these efficiency claims must be studied and evaluated to confirm that the new HSR Form is not unduly burdening business with minimal corresponding benefit. FTC Chair Ferguson positively indicated his willingness to re-evaluate the new HSR Form. The Chair spoke at the Free State Foundation’s 17th Annual Policy Conference on March 25, 2025, and said,

If over the course of time, these rules just went into effect in February, so we’ve had very little time with them, but if over the course of time it becomes clear that the information that they require companies to turn over isn’t useful or it becomes clear that the burden, the cost isn’t justified by the benefit, you know, Gail Slater at DOJ and I can put our heads together and come up with potential reforms and launch rulemakings of those, but the rules have been in effect for about 40 days, so, you know, we still need time to see how they’re playing out.²⁴

We suggest that the FTC use timeliness of review, as it did in the past, to measure the efficiency of the new HSR Form.

III. Antitrust Guidelines for Collaboration Among Competitors

The Strategic Plan ought to include more specific plans to evaluate whether new Antitrust Guidelines for Collaboration Among Competitors (Collaboration Guidelines) should be drafted and issued. This would fit well in the strategies listed under Objective 2.2 in the Commission’s

²² Brian Raffkin, Gorav Jindal, and Dennis S. Schmelzer, “The First 100 Days of the New HSR Rules: Assessing the Impact,” Akin Gump Strauss Hauer & Feld LLP, May 29, 2025, <https://www.akingump.com/en/insights/alerts/the-first-100-days-of-the-new-hsr-rules-assessing-the-impact>.

²³ Federal Trade Commission, “Premerger Notification; Reporting and Waiting Period Requirements,” final rule, p. 89253.

²⁴ “New Directions in Competition and Consumer Protection Policies,” moderated by Randolph May and Barry Nigro, transcript, Free State Foundation 17th Annual Policy Conference, March 25, 2025, https://ia800706.us.archive.org/35/items/fsfconf17/02_Andrew_Ferguson.TRANSCRIPT.pdf.

Draft Strategic Plan to “Research new developments in the marketplace” and “Provide guidance to American businesses about competition law, policy, and remedies.”²⁵ The FTC has historically used public processes like workshops and hearings to investigate evolving markets, ensuring its policies are informed by current economic and technological realities. This should be employed now to address the implications of modern collaboration, particularly in the realm of artificial intelligence (AI) and its related safety implications.²⁶

The FTC and DOJ jointly withdrew the Collaboration Guidelines on December 11, 2024,²⁷ “a mere 40 days before the country inaugurate[d] a new President,” as Commissioner Ferguson said in his dissent to the withdrawal.²⁸ Commissioner Holyoak, in her dissent, noted that the majority was doing so “without providing any replacement guidance, or even intimating plans for future replacement, leav[ing] business grasping in the dark.”²⁹

A month after withdrawing the 2000 Collaboration Guidelines, the FTC released its 6(b) study on *Partnerships Between Cloud Service Providers and AI Developers*.³⁰ Commissioners Ferguson and Holyoak were, again, correct in dissenting to the inclusion of section 5 in the 6(b) report, which was entitled “Areas to Watch Regarding Potential Implications of the AI Partnerships.”³¹ The study was quick and limited in scope, and a greater understanding is needed regarding the procompetitive effects of certain AI partnerships and collaborations.

The FTC should make clear in its Strategic Plan that it intends to launch a notice of opportunity for comment and public hearing to determine if new Collaboration Guidelines are needed. Before drafting new Collaboration Guidelines, the FTC should request public comments, with a 90-day comment period, as it did in contemplating the prior Guidelines.³² The Commission should

²⁵ Federal Trade Commission, *Draft Strategic Plan Fiscal Years 2026-2030*, pp. 18-19.

²⁶ The existing policy statement on sharing cybersecurity information does not provide adequate guidance for general, proactive AI safety collaboration that goes beyond traditional cybersecurity threats. Department of Justice and Federal Trade Commission, *Antitrust Policy Statement on Sharing Cybersecurity Information*, April 10, 2014, https://www.ftc.gov/system/files/documents/public_statements/297681/140410ftcdojcyberthreatstmt.pdf.

²⁷ Federal Trade Commission, FTC and DOJ Withdraw Guidelines for Collaboration Among Competitors,” press release, December 11, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-doj-withdraw-guidelines-collaboration-among-competitors>.

²⁸ Dissenting Statement of Commissioner Andrew N. Ferguson Regarding the Withdrawal of the Antitrust Guidelines for Collaborations Among Competitors, FTC Matter No. V250000, December 11, 2024, p. 1, https://www.ftc.gov/system/files/ftc_gov/pdf/collaborations-guidance-withdrawal-ferguson_statement.pdf.

²⁹ Dissenting Statement of Commissioner Melissa Holyoak Regarding the Withdrawal of 2000 Antitrust Guidelines for Collaboration Among Competitors, FTC Matter No. V250000, December 11, 2024, p.1, https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-collaboration-guidelines-withdrawal-statement.pdf.

³⁰ Federal Trade Commission, *Partnerships Between Cloud Service Providers and AI Developers: FTC Staff Report on AI Partnerships & Investments 6(b) Study*, January 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/p246201_aipartnerships6breport_redacted_0.pdf.

³¹ Federal Trade Commission, *Partnerships Between Cloud Service Providers and AI Developers*, pp. 29-36.

³² Federal Trade Commission, “Comment and Hearings on Joint Venture Project,” *Federal Register*, Vol. 62, No. 81 (April 28, 1997), https://www.ftc.gov/sites/default/files/documents/federal_register_notices/comment-and-hearings-joint-venture-project/970428jointventureproject.pdf.

follow past practice by hosting a series of hearings³³ and consider hosting a series of roundtable discussions.³⁴

Both the original drafting and withdrawal of the Collaboration Guidelines were prompted by changes in technology and the global marketplace.³⁵ The previous administration's actions may have created uncertainty for emerging AI collaborations and partnerships. While any future guidance should be generally informative across many industries and collaborative arrangements, particular consideration should be given to AI in order to provide clarity and predictability. This would be consistent with the priorities set forth in the White House's *AI Action Plan*, which recommended the "[r]eview [of] all Federal Trade Commission (FTC) investigations commenced under the previous administration to ensure that they do not advance theories of liability that unduly burden AI innovation."³⁶

Conclusion

The FTC's restored commitment to conduct its mission "without unduly burdening legitimate business activity" provides an important framework for setting its future agenda. This should include a systematic evaluation of the new HSR Form's efficiency as well as an exploration of the need for new Collaboration Guidelines. Transparent, evidence-based steps are essential to fulfill the agency's mission. The FTC has the opportunity during the next four years to ensure that regulatory burdens are proportionate to proven benefits and to bolster confidence and predictability for American businesses.

Respectfully submitted,

Alex R. Reinauer
Research Fellow
Competitive Enterprise Institute
Alex.Reinauer@cei.org

³³ "Joint Venture Hearings on Antitrust Guidelines for Collaboration Among Competitors," Federal Trade Commission, July 1, 1997, <https://www.ftc.gov/news-events/events/1997/07/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors>.

³⁴ "Joint Venture Roundtables," Federal Trade Commission, March 17, 1998, <https://www.ftc.gov/news-events/events/1998/03/joint-venture-roundtables>.

³⁵ William E. Cohen and Gary P. Zanfagna, "Inside the Competitor Collaboration Guidelines: the Forest Among the Trees," *University of Chicago Legal Forum*, Vol. 2000, No. 1 (2000), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1287&context=uclf>; "Justice Department and Federal Trade Commission Withdraw Guidelines for Collaboration Among Competitors," joint statement, December 11, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/v250000collaborationguidelineswithdrawalstatement.pdf ("[T]he Collaboration Guidelines fail to address the competitive implications of modern business combinations and rapidly changing technologies such as artificial intelligence, algorithmic pricing models, vertical integration, and roll ups.").

³⁶ White House, *Winning the Race: America's AI Action Plan*, July 2025, p. 3, <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>.