Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER
REBECCA KELLY SLAUGHTER

Regarding the Hart-Scott-Rodino Act Premerger Notification Rulemaking Notices
Commission File No. P110014
September 21, 2020

Today, the Commission voted to advance two proposals with respect to our HSR premerger notification rules. I support the broad solicitation of input in the Advance Notice of Proposed Rulemaking and the proposed aggregation provisions in the Notice of Proposed Rulemaking (NPRM). But I oppose provisions in the NPRM that would broaden the categories of transactions exempt from filing HSR notice. I share the concerns Commissioner Chopra articulated, and write separately only to add a few points.

I share the general view that we should do what we can to right-size our HSR requirements. We generally benefit when the universe of transactions that are required to file under HSR matches as closely as possible the universe of transactions that are competitively problematic. Too many filings on non-problematic transactions are an unnecessary resource drain for the agency, and too few filings on problematic transactions clearly would allow anticompetitive acquisitions to proceed unnoticed and unchallenged. I also generally agree that transaction size (the main trigger for HSR filing under current law) is not the only or even necessarily the best indicator of

improvement—and, ultimately, competition." Although I have not seen evidence to support his conclusion about the effect on competition, the evidence we have seen, even anecdotally, supports his assertions about investor behavior. It follows, therefore, that expanding HSR exemptions may likely change investor incentives and behavior.

These changes may ultimately be a good thing as a matter of public policy, and they might not be; the concern for me is that they would effect a public policy goal outside the realm of antitrust, and I am hesitant for the FTC unilaterally to enact rules outside the scope of our primary authority. I certainly understand that the rules as they exist today have a public policy effect outside antitrust, but they are the rules that we have, and disrupting the status quo is something that should be done only after careful consideration of and in consultation with experts on corporate governance, investor behavior, and securities law and policy.

So, I welcome comments on this NPRM from those in the corporate governance and securities community, and experts on investor behavior, to help us better understand the implications of such a change—including whether it would, as Commissioner Phillips asserts, actually improve competition.