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*The Merger Review Process at the Federal Trade Commission:
Administrative Efficiency and the Rule of Law*

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Abstract by Alex M. Johnson

This article examines the Federal Trade Commission's (FTC) merger review practices and reforms that underwent a significant change after the enactment of the Hart-Scott-Rodino Premerger Notification Act (HSR Act). While the author acknowledges that the FTC has made strides in delineating standards for determining when mergers and acquisitions transactions controvert antitrust principles, particularly in the areas of transparency and investigatory practices, the article highlights several areas necessitating reform. After briefly reviewing the development of the FTC, the author examines three fundamental factors promulgated by the agency that have led to an efficient, successful, merger review process: (1) the passage of the HSR Act which articulated preemptive measures to eradicate illegal mergers; (2) a standard for determining when official challenges to mergers would occur; (3) and a "fix-it-first" policy, entailing an informal approach that avoids potential litigation challenges effectuated by injunctions imposed by the agency.

But the author expresses concern for the FTC's methodology of analyzing a merger transaction because it leads to potential confusion among corporations participating in the merger review process. The author also notes that the FTC maintains an exceedingly high level of "nonreviewable discretion" over the merger review process which acts as a burden to companies. Additionally, critics of the merger process suggest that it is burdensome and devoid of procedural mechanisms that enable a balanced response to potential merger challenges. Finally, the article balances these criticisms by highlighting the FTC's reforms in each of the four critiqued areas.