

TEXAS DISTRICT COURT STRIKES DOWN UPDATED HSR ACT

On February 12, 2026, the U.S. District Court for the Eastern District of Texas (the "Court") struck down the Federal Trade Commission's ("FTC") rule expanding the scope of the Hart-Scott-Rodino ("HSR") Act Premerger Notification Form. See *Chamber of Com. of the U.S. v. Fed. Trade Comm'n*, No. 6:25-CV-9-JDK, 2026 WL 402498 (E.D. Tex. Feb. 12, 2026). The Court deemed the new rule "arbitrary and capricious" under the Administrative Procedure Act ("APA") and ruled the FTC failed to show that costs on merging companies outweigh the FTC's claimed benefits.

The Court's decision casts uncertainty on the filing process and requirements for companies entering into or considering **HSR reportable transactions**.

BACKGROUND

The HSR Antitrust Improvements Act of 1976, as amended, requires all persons contemplating certain mergers or acquisitions that meet or exceed certain jurisdictional financial thresholds to file a premerger notification (an "HSR Filing") with the FTC and Antitrust Division of the Department of Justice (collectively, the "Agencies") and to wait a period of time before consummating the transaction.

On October 10, 2024, the FTC voted unanimously (5-0) to finalize changes to the HSR premerger notification form and associated instructions, as well as the premerger notification rules implementing the HSR Act. Based on changes to the form and instructions, the FTC estimated that the average time to complete an HSR Filing would nearly triple – from an average of 37 hours per filing under the original rule to 105 hours per filing under the new rule (with associated costs rising commensurately).

On January 10, 2025, the U.S. Chamber of Commerce, along with other prominent business organizations such as the Business Roundtable and American Investment Council, filed a lawsuit challenging the amendments to the HSR premerger notification rules, arguing that the FTC overstepped its statutory authority by implementing requirements that are not "necessary and appropriate" for initial antitrust review. The plaintiffs argued that the new HSR rules impose excessive burdens on business and could deter potentially beneficial mergers and acquisitions, while the Agencies argued that the changes imposed by the new rule are intended to address "significant gaps in the information generated for premerger review" that antitrust enforcers need to evaluate potentially anticompetitive transactions.

The parties cross-moved for Summary Judgment, the plaintiffs maintaining their arguments, and the FTC arguing plaintiffs lacked standing. The Court ruled in favor of the plaintiffs, holding that the final rule implementing the new HSR Filing requirements violated the APA and should be vacated, given it is "unlikely that the FTC can justify its decision on remand."

NEXT STEPS AND PRACTICAL TAKEAWAYS

- In granting Summary Judgment for the plaintiffs, the Court also stayed the order for seven days, allowing the FTC to appeal the Court's decision to the Fifth Circuit. During this stay, the updated HSR rule and the new form and instructions will remain in place.
- The FTC is likely to appeal the decision, given the significant resources and time spent, to date, developing and implementing the new HSR form and general bipartisan support with the Agencies for the updated rule.
- An appeal would create significant uncertainty for transaction filing requirements and timing as the process plays out through the courts.
- In the event of an appeal, courts will provide updated guidance regarding the status of the HSR Filing process, including likely a further stay of the Court's decision, maintaining the status quo while the issue is considered by the Fifth Circuit.
- Any outcome from the Fifth Circuit is likely to, again, be appealed to the Supreme Court, which would decide whether to grant certiorari.
- If, on the other hand, the FTC elects *not* to appeal the Court's ruling, the HSR process will revert to the Agencies' historical HSR processes, subject to further guidance from the Agencies.

In the interim, merging parties should continue to plan to file under the new HSR form and associated instructions. As this matter progresses, Hall Render's Antitrust Team will continue to monitor the situation and provide regular updates.

If you have any questions or would like additional information about this topic, please contact one of the following members of Hall Render's Antitrust Practice Group:

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