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New HSR Rule Vacated, but Its Fate Remains Uncertain on Appeal

There was substantial controversy surrounding the FTC's issuance of a new rule in October 2024 that significantly increased the burden on parties filing notifications under the Hart-Scott-Rodino (HSR) Act. Under that new rule, parties were required to report transactions meeting the HSR thresholds using a new form demanding information and documentation well beyond what had been required since the HSR Act was enacted in the late 1970s.

In January 2025, the U.S. Chamber of Commerce filed suit seeking to set aside the rule. On February 12, 2026, the United States District Court for the Eastern District of Texas did just that by issuing a landmark decision in *Chamber of Commerce of the United States of America v. Federal Trade Commission*, vacating the new HSR rule.[1] The court found that the rule was not "necessary and appropriate," exceeded the FTC's statutory authority, and was "arbitrary and capricious" because its costs outweighed its benefits. Thus, the court vacated and set aside the new rule.

The district court stayed its order for seven days but declined to extend the stay further. Before that stay expired, however, the FTC appealed, and the Fifth Circuit issued an administrative stay of the district court's judgment while it considers the FTC's request for a longer stay pending appeal. Accordingly, the new HSR form remains in effect for the time being. If the Fifth Circuit denies a stay, the prior HSR form could be reinstated.

More Details on the Decision

The new rule, approved by a unanimous 5-0 vote of the FTC, marked the most significant overhaul of the HSR premerger notification form in nearly 50 years. The 2024 rule added approximately 20 new categories of required information and documentation, including transaction rationale narratives, organizational charts, supervisory deal team leads, competition documents, descriptions of overlap and supply relationships, and disclosures regarding certain foreign subsidies.

By the FTC's own estimate, the new form would require an average of 105 hours to complete—nearly triple the prior form's 37 hours—resulting in approximately $139.3 million in annual aggregate compliance costs across all HSR filers.

In vacating the rule, the court weighed those costs against the FTC's proffered justifications for the new rule. The court noted that the FTC could not identify a single illegal merger in the 46-year history of the prior form that the new form would have prevented. It also rejected the agency's contention that front-loaded information would generate efficiencies sufficient to offset compliance costs, particularly given that only about 8% of HSR filings result in investigations, *i.e.,* 92% of HSR-reported transactions require no further investigation at all. Finally, the court concluded that the new rule was arbitrary and capricious because the FTC failed to adequately consider less burdensome alternatives, such as voluntary submissions

[1] Memorandum Opinion and Order, *Chamber of Commerce of the United States of America et al v. Federal Trade Commission et al.*, Case No. 6:25-cv-00009 (S.D. Texas), available at https://www.uschamber.com/assets/documents/Opinion-Chamber-of-Commerce-v.-FTC-E.D.-Tex.pdf.

and more targeted Second Requests, dismissing them with conclusory reasoning rather than substantive analysis.

The FTC is pursuing an appeal. FTC Chair Andrew Ferguson had been an opponent of the new rule as originally proposed but ultimately voted in favor of the final version after engaging in considerable negotiations with his colleagues in the Democratic majority at the time. In a concurring statement in favor of the new rule, he said the rule is “plainly authorized by a valid grant of authority from Congress.” Following the district court’s ruling, the FTC publicly criticized the Chamber of Commerce as “a left-wing, open borders supporting activist group.”[2]

Takeaways

The *Chamber of Commerce* decision and pending appeal create continued uncertainty for M&A practitioners. While the administrative stay remains in effect, parties must continue to use the expanded HSR form and should budget the additional time and expense—potentially averaging 105 hours per filing—necessary for HSR compliance.

If the Fifth Circuit ultimately affirms the order vacating the new rule or declines to issue a stay pending appeal, the filing process could revert to the prior form that was in effect for half a century. Although the district court suggested that such a reversion to the old regime would not be disruptive, transaction parties negotiating timelines and HSR-related covenants should consider incorporating flexibility into their agreements to account for potential changes in filing requirements during the pendency of a deal.

FOR MORE INFORMATION

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[2] *FTC Mulls Merger Rule Appeal, Blasts 'Left-Wing' Chamber*, Bryan Koenig, Law360 (Feb. 13, 2026), *available at* https://www.law360.com/articles/2441951/ftc-mulls-merger-rule-appeal-blasts-left-wing-chamber