

## Parties sue FTC seeking to enjoin implementation of new HSR rules

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On January 10, 2025, the U.S. Chamber of Commerce and other parties filed a complaint in the Eastern District of Texas against the Federal Trade Commission and FTC chair Lina Khan seeking to set and enjoin implementation of the new rules governing filings under Hart–Scott–Rodino Act.

### Background: New HSR rules

Certain mergers and acquisitions, investments, and other transactions are subject to notification and waiting period requirements under the HSR Act.<sup>1</sup> Under the HSR Act, companies must file a premerger notification with the FTC and the Department of Justice (together, the “Agencies”). The HSR Act requires that merging parties not consummate their transaction until the expiration of the statutory waiting period. Under the current rules, merging parties must include in their HSR filing basic information and documents relating to their planned transaction, including information relating to each of the parties, the structure of the deal, competitive overlaps, financial data, and documents relating to the transaction’s strategic rationale. HSR forms require an officer or director of the filing party to certify that the form is complete and accurate. Failing to file, providing false information in a filing, or omitting required information could expose the filing party to fines in excess of \$50,000 per day they are in violation of the Act.

In October 2024, the FTC issued a final rule that promised significant changes to the content of HSR filings. As [discussed in our previous update](#), the HSR overhaul would require transacting parties to provide significantly more information and a much larger set of documents to the agencies, requiring much more time and effort from the filing parties.<sup>2</sup> The new rule is scheduled to go into effect on February 10. As previous incoming presidential administrations have, the Trump administration may issue a 60-day regulatory freeze shortly after inauguration, which could extend this effective date until the end of March.

### The lawsuit

On January 10, 2025, the U.S. Chamber of Commerce, Business Roundtable, American Investment Council, and Longview, Texas Chamber of Commerce filed a [complaint](#) to enjoin the FTC’s new HSR rule. The complaint seeks (1) a declaratory judgment that the new rules exceed the FTC’s statutory authority or are arbitrary, capricious, or otherwise contrary to law; (2) an order setting aside the new rules; and (3) an order enjoining the FTC from enforcing the new rules.

The complaint alleges that the HSR rule should be enjoined based on the following arguments:

#### The new rules exceed the FTC’s statutory authority

- **The FTC exceeded the limits on its authority to require information and documents.** The complaint alleges that while the HSR Act authorizes the FTC to specify the content of the premerger notification form, it limits that authority to seeking information that is *necessary and appropriate* to evaluate the proposed transaction on antitrust grounds. The complaint, which describes the scope of the information the Agencies are permitted to require in the HSR Form

as limited to what is required to allow the Agencies to assess whether a further review is needed, claims that the additional information and documents the FTC proposes to require are not “necessary” to enable the FTC or DOJ to determine whether to issue a Second Request.

- **The FTC lacks authority to require disclosure of the identify of officers and directors of entities that are not parties to the transaction being notified.** The FTC asserts that this information is necessary for the Agencies to screen for “a violation of section 8,” the interlocking directorates provision in the Clayton Act. The complaint alleges that the Agencies may not use the HSR process to enforce Section 8.
- **The FTC lacks authority to require filing parties to submit substantive antitrust analysis.** The new rules require the filer to provide substantive legal analysis regarding the transaction rationale, overlaps, and supply relationships. The complaint alleges that there is no basis in the HSR Act for requiring such submissions.

## Arguments that the FTC’s rulemaking was arbitrary and capricious

- **The new rules’ overall benefits do not outweigh their costs.** The complaint alleges that the FTC could not have rationally concluded that the benefits of obtaining the new information and material required exceed the costs imposed:
  - **The FTC discounted significant costs.** The complaint alleges that while the FTC estimated that the new rules would add approximately 68 to 105 hours to the time for filers needed to complete their form, this estimate minimized the amount of time that would actually be required. Instead, the complaint predicts that the additional preparation time that compliance with the new rules will require could force parties to extend closing dates and impose additional delays, including in situations where the Agencies reject a filing as being incomplete.
  - **The FTC significantly overstated the rule’s benefits.** The complaint alleges that the FTC did not substantiate how the new rules will enable the Agencies to detect and prevent unlawful mergers that they would not have identified otherwise. The complaint alleges that the new rules would not significantly reduce the time Agency staff spend to collect additional information, as that time is spent in investigating approximately only 15 percent of reported transactions. The complaint alleges that the new rules would not significantly reduce the burden imposed on third parties, as the Agencies request information from third parties during the initial waiting period in only a small percentage of reported transactions.
- **The new rules’ individual requirements do not pass any reasonable cost-benefit analysis.** The complaint alleges that the collection and production of numerous categories of documents and information requested under the new rules will likely create significant difficulties and costs for filers while conferring relatively minimal benefits to antitrust enforcement.
- **The FTC failed to adequately justify its departure from the 1978-2024 status quo.** The complaint alleges that, to the extent the FTC even concluded that the information and documents it newly requires are “necessary” for an effective initial antitrust screen, that decision “runs counter to the evidence” and is not “the product of reasoned decisionmaking.” The complaint claims that the purported benefits of the new rules are not “adequately substantiated” because the FTC failed to show that the new rules address “a genuine problem.” The complaint also alleges that the new rules represent a departure from the FTC’s “longstanding polic[y]” without adequate explanation.
- **The FTC did not rationally explain why it cannot sufficiently plug any information gaps through other means.** The complaint alleges that the FTC failed in its APA duty to meaningfully “consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives,” including the use of voluntary information requests and the use of Civil Investigative Demands. The complaint notes that if the Agencies need more time, they can request merging parties to “pull and refile” their HSR notification to restart the statutory clock. The complaint also alleges that the FTC did not reasonably explain why it cannot make better use of Second Requests. The FTC has explained that Second Requests are extremely costly and burdensome, but the Complaint notes that, considering the small number of transactions that actually receive Second Requests (an average of 48 per year from 2001 to 2020), it does not make sense to impose substantial filing burdens on the parties that notify thousands of other unproblematic transactions. In any event, the complaint suggests that the Agencies could consider altering their Second Request procedures.

## Takeaways

As discussed in our [previous client updates](#), the new rules, if implemented, would impose substantial costs and burdens on merging parties,<sup>3</sup> so it is unsurprising that there has been a challenge to the new rules. This is not the first Biden administration FTC rule to be challenged; in August 2024, a federal district court judge in the Northern District of Texas blocked the FTC’s rule banning non-competes nationwide.<sup>4</sup> We expect that the lawsuit may face some material legal

challenges as a matter of administrative law, but may still have some influence with respect to the new administration.

The incoming Trump administration may repeat the pattern of the Biden and Trump I administrations and institute a 60-day freeze on new or pending regulations upon inauguration.<sup>5</sup> Accordingly, this lawsuit and the forthcoming change in administration creates uncertainty around whether the new rules will go into effect, and if so when they may become effective.

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- <sup>1</sup> As discussed in our client update, the FTC recently announced the 2025 HSR reporting thresholds, starting at \$126.4 million and filing fee amounts up to \$2.39 million for the largest deals. *See* [2025 HSR Act jurisdictional thresholds, filing fees, and interlocking director jurisdictional thresholds announced](https://www.davispolk.com/insights/client-update/2025-hsr-act-jurisdictional-thresholds-filing-fees-and-interlocking-director), Davis Polk & Wardwell LLP (October 13, 2025), <https://www.davispolk.com/insights/client-update/2025-hsr-act-jurisdictional-thresholds-filing-fees-and-interlocking-director>.
- <sup>2</sup> *U.S. antitrust agencies implement overhaul of HSR filing requirements*, Davis Polk & Wardwell LLP (October 11, 2024), <https://www.davispolk.com/insights/client-update/us-antitrust-agencies-implement-overhaul-hsr-filing-requirements>. As discussed in detail in our client update, the key changes to the HSR requirements fall broadly into three categories: (1) submission of "brief" descriptive responses on topics including the parties' transaction rationales, competing products or services (including planned pipeline products or services), and any vertical supplier relationships between the parties; (2) submission of a broader set of transaction and business documents relating to industry competitive dynamics, both specific to the transaction and as prepared in the ordinary course of business; and (3) general corporate information, including expanded information on ownership structure, officer and director activities, subsidies from foreign entities or governments, and defense or intelligence contracts. Certain information is required only when the parties are in a competitive relationship. Under the new rule, these requirements will be triggered when the parties have not only a horizontal relationship but also a vertical relationship or even a potential horizontal or vertical relationship.
- <sup>3</sup> *U.S. antitrust agencies implement overhaul of HSR filing requirements*, Davis Polk & Wardwell LLP (October 11, 2024), <https://www.davispolk.com/insights/client-update/us-antitrust-agencies-implement-overhaul-hsr-filing-requirements>; *Proposed changes to HSR Form and Instructions would have significant impacts for private equity*, Davis Polk & Wardwell LLP (July 31, 2023), <https://www.davispolk.com/insights/client-update/proposed-changes-hsr-form-and-instructions-would-have-significant-impacts>.
- <sup>4</sup> *FTC non-compete rule vacated nationwide*, Davis Polk & Wardwell LLP (August 21, 2024), <https://www.davispolk.com/insights/client-update/ftc-non-compete-rule-vacated-nationwide>.
- <sup>5</sup> *See Memorandum for the Heads of Executive Departments and Agencies*, The White House (January 20, 2017), <https://www.politico.com/f/?id=00000159-be8f-da97-a9dd-becf15ae0001>; *Memorandum for the Heads of Executive Departments and Agencies*, The White House (January 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.