

District court vacates FTC's new HSR rules

February 13, 2026 | Client Update | 5-minute read

A federal district court in Texas yesterday vacated FTC rules that went into effect last year revising the information parties must submit to the antitrust agencies in merger filings submitted under the Hart-Scott-Rodino (HSR) Act. The vacatur will be stayed for seven days to allow the FTC to seek emergency relief from the Fifth Circuit, but uncertainty remains as to what the HSR framework will look like going forward.

Background: New HSR rules and legal challenge

In October 2024, the FTC issued final rules overhauling the content of HSR filings. As discussed in prior updates,¹ the new rules required transacting parties to provide significantly more information and a larger set of materials to the agencies, requiring much more time and effort from parties to M&A deals.² On January 10, 2025, in the waning days of the Biden Administration, the U.S. Chamber of Commerce, Business Roundtable, American Investment Council, and Longview, Texas Chamber of Commerce filed a [complaint](#) seeking to enjoin the FTC's new HSR rules. As [previously explained](#), plaintiffs challenged the new HSR rules arguing that the FTC exceeded its statutory authority and that the rules are arbitrary, capricious, or otherwise contrary to law.³ Following the transition to Trump 2.0, FTC Chair Andrew Ferguson defended the overhaul as a "long overdue ... product of bipartisan consensus."⁴

Order vacating the new HSR rules

On February 12, 2026, the U.S. District Court for the Eastern District of Texas granted plaintiffs' motion for summary judgment and vacated the FTC's amended HSR rules in their entirety.⁵ The court first found that the plaintiffs had associational standing to bring the lawsuit because their members frequently enter into HSR-reportable transactions.⁶

Turning to the merits, the court ruled against the FTC on two bases. First, the court concluded that the FTC exceeded its statutory authority under Section 18(a) of the HSR Act, pursuant to which the FTC is authorized to require merging parties to submit information that is "necessary and appropriate" to determine whether a proposed merger violates the antitrust laws.⁷ The court concluded that the "necessary and appropriate" language in the HSR Act required the FTC to conduct a cost-benefit analysis to determine whether the benefits of the rules changes reasonably outweighed their costs.⁸ Even if the FTC had conducted such a cost-benefit analysis (which was contested), the court held that the FTC failed to make this showing. The court found that there was significant evidence showing the costs of the rules changes and determined that "the benefits of the Final Rule identified by the FTC are illusory or, at least, unsubstantiated."⁹ For example, the court noted that the FTC "could not identify a single illegal merger" in the history of HSR that new rules "would have prevented."¹⁰ Additionally, the FTC's assertions that the new rules will streamline or shorten investigations for a small minority of mergers does not justify the costs imposed on *all* filers.¹¹

Second, the court found that the new HSR rules were the product of arbitrary and capricious rulemaking under the Administrative Procedure Act (APA).¹² Tracking the HSR Act analysis, the court stated that the FTC failed to adequately consider the costs and benefits of the new rules.¹³ Additionally, the court concluded that the FTC also failed to properly consider less burdensome alternatives offered through comments in the rulemaking process.¹⁴

Thus, the court vacated the new HSR rule, noting that the vacatur "would not be unduly disruptive ... because the Old Form – used for forty-six years – certainly" provides a framework for mergers to be evaluated.¹⁵

Some uncertainty going forward

The district court stayed the application of its order for seven days to allow the FTC to seek emergency relief from the Fifth Circuit.¹⁶ It remains to be seen whether the Fifth Circuit will further stay the vacatur pending appellate review of the district court's decision.

Even if the district court's ruling stands, the FTC still will be required to propose new amendments to HSR rules. The Merger Filing Fee Modernization Act, passed in late 2022 as part of Consolidated Appropriations Act, 2023, requires the FTC to amend the HSR process to request information regarding foreign subsidies received by filing parties.¹⁷ In the revised HSR rules, the parties were obligated to provide information about foreign subsidies and countervailing duties, and if the E.D. Texas ruling remain in place, the FTC will implement a new rulemaking procedure to comply with this requirement.

The FTC reasonably also could attempt to revise and re-implement any of the other components of the new HSR rules with a narrower scope, which still may result in increased burden on filing parties compared to the HSR Form that had historically been in effect.

Takeaways

The district court's decision represents a significant victory for parties that objected to the additional burden imposed under the new rules. However, the FTC may file a stay pending an appeal, so it may not be time to dust off the old HSR Form just yet. For now, until there is further clarity, parties with near-term HSR filings should proceed with preparing the information required under the new rules and should stay tuned for future developments.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Nathaniel L. Asker

+1 212 450 4113
nate.asker@davispolk.com

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Nathan Kiratzis

+1 212 450 4157
nathan.kiratzis@davispolk.com

Christopher Lynch

+1 212 450 4034
christopher.lynch@davispolk.com

Meytal McCoy

+1 202 962 7104
meytal.mccoy@davispolk.com

Gregory S. Morrison

+1 212 450 3455
gregory.morrison@davispolk.com

Suzanne Munck af Rosenschold

+1 202 962 7146
suzanne.munck@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

¹ *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>.

² *Id.*

³ *Parties sue FTC seeking to enjoin implementation of new HSR rules* (January 14, 2025), <https://www.davispolk.com/insights/client-update/parties-sue-ftc-seeking-enjoin-implementation-new-hsr-rules>; see also Chamber complaint, ¶¶ 94-109 (addressing the following new HSR rules requirements: transaction rationale, ordinary course documents, drafts, d/b/a names and minority interest holders, overlap descriptions, and officers/directors).

⁴ @AFergusonFTC, X (February 10, 2025), <https://x.com/AFergusonFTC/status/1889104725624168453?mx=2>.

⁵ See Memorandum Opinion and Order, *Chamber of Commerce of the United States v. FTC*, (E.D. Tex. Feb 12, 2026) (hereinafter "Order").

⁶ *Id.* at 14.

⁷ *Id.* at 16.

⁸ *Id.* at 19.

⁹ *Id.* at 21.

¹⁰ *Id.* at 22.

¹¹ *Id.* at 26.

¹² *Id.* at 29.

¹³ *Id.* at 27.

¹⁴ *Id.*

¹⁵ *Id.* at 34.

¹⁶ *Id.*

¹⁷ See <https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf>, Sec. 202.