

Publications

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District Court Rejects FTC's Expanded HSR Rule, Leaving Merger Filings Uncertain

Key Takeaways

- A federal district court has vacated the FTC's recent expansion of HSR Act merger filing requirements, ruling the agency failed to properly justify the rule through a cost-benefit analysis. The FTC plans to appeal.
- The decision creates immediate uncertainty for businesses planning mergers, especially those close to notification thresholds, as filing obligations could shift again based on the FTC's appeal.
- Companies preparing merger filings should closely monitor developments and consider whether to revert to pre-2024 reporting practices or continue complying with expanded requirements pending court clarity.

Judge Kernodle of the Eastern District of Texas recently vacated the Federal Trade Commission's (FTC) final rule expanding Hart-Scott-Rodino (HSR) Act notification requirements, significantly impacting merger filings and introducing uncertainty for businesses currently preparing transactions. The FTC has indicated it will appeal this ruling and has asked the District Court to stay its mandate pending the appeal to the Fifth Circuit.

For businesses contemplating or currently navigating mergers, this means a period of regulatory uncertainty, particularly for transactions near filing thresholds, as companies must now assess whether to revert to pre-2024 notification standards or prepare for potentially shifting rules pending the FTC's appeal.

The FTC's Final Rule Explained

Since 1978, the FTC has administered the rules implementing the HSR Act, which requires parties to transactions meeting certain thresholds to report these transactions to both the FTC and the Antitrust Division of the Department of Justice and observe a waiting period prior to completing the transaction. The FTC has implemented numerous changes to those rules and the HSR Act Premerger Notification Report Form over the years, but in October 2024, the FTC unanimously adopted a final rule overhauling the scope of the HSR Act reporting requirements, which added 20 new categories of information filing

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parties must submit. The FTC estimated that complying with the final rule would roughly triple the cost in time spent preparing notification compared to the status quo and require an average of 105 hours, up from 37.

The FTC's reasons for the overhaul included detecting additional harmful mergers and saving time and governmental expense to obtain information during the merger review process.

The Challenge and the Ruling

Three months after the Final Rule went into effect, a group of business and trade organizations led by the Chamber of Commerce of the U.S.A. sued the FTC under the Administrative Procedures Act, arguing the final rule exceeded the FTC's authority and was arbitrary and capricious.

The FTC countered that Section 18(a)(d) of the HSR Act expressly authorizes the FTC to require such notification as is "necessary and appropriate" to evaluate transactions. When the FTC adopted the final rule, current FTC Chair Andrew Ferguson, who has criticized other FTC commissioners for taking too expansive of a view of the FTC's authority, said in a concurring statement that "[u]nlike the Commission's recent, doomed effort to ban noncompete agreements, Congress undoubtedly gave us authority to promulgate rules governing HSR notification requirements."^[1] The parties contested whether this provision gave the FTC broad discretion or limited the FTC's authority to requiring notification that is cost-justified.

In its Feb. 12, 2026 decision, the court held the FTC's rule was arbitrary and capricious and granted summary judgment for the coalition of business and trade associations. It also determined that the FTC failed to consider whether the final rule's benefits bore a rational relationship to its costs.

According to the court, the HSR Act requires any benefits to the FTC in increasing the burden on filers to "reasonably outweigh" the costs imposed on businesses. The court found that the FTC's claimed benefits were unsubstantiated, noting that the additional information sought by the FTC would not benefit the agency in 92% of filings, and further concluding that the FTC failed to conduct the required cost-benefit analysis.^[2]

What's Next

If the court agrees to stay its mandate pending the FTC's appeal, the final rule will remain in effect until the Fifth Circuit rules. Polsinelli will closely monitor this case and provide updates. If you have any questions about how or whether this will affect your upcoming transactions, be sure to reach out to Polsinelli's Antitrust team.

[1] *Concurring Statement of Commissioner Ferguson in the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule*, (October 10, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-final-hsr-rule-statement.pdf

[2] *Chamber of Commerce of the United States v. FTC*, No. 6:25-cv-9-JDK, at *19 (E.D. Tex. Feb. 12, 2026).