

Axinn Antitrust Insight: District Court Vacates the FTC's Expansion of HSR Reporting Requirements

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

3 MIN READ

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What You Need to Know

- The District Court vacated the new HSR Rule and its accompanying HSR Form on February 12 but stayed its decision for 7 days.
- Parties required to file premerger notifications should continue to use the new HSR Form for filings through February 19.
- The FTC will likely request, and the Fifth Circuit may grant, an emergency stay of the District Court's Order pending appeal. In that case, the agencies are likely to continue to require parties to use the new HSR Form.
- If FTC does not seek an emergency stay, or the Fifth Circuit declines to grant one, the old HSR Form will likely go back into effect on February 20.

On February 12, 2026, Judge Kernodle of the U.S. District Court for the Eastern District of Texas struck down the U.S. Federal Trade Commission ("FTC") Rule that, in the Court's words, "significantly expands the amount of documentary material and information that merging companies must include in a premerger notification" under the Hart-Scott-Rodino ("HSR") Act. The Rule was approved in 2024 under the Biden Administration pursuant to a 5-0 unanimous

Commissioner vote, and it went into effect on February 10, 2025 at the beginning of the second Trump Administration. By the FTC's own estimation, the Rule roughly triples the time and cost required for merging parties to meet their premerger notification obligations for transactions that are subject to an HSR filing (currently, certain deals valued above \$126.4 million¹).

The decision was the culmination of a lawsuit filed by a U.S. Chamber of Commerce-led coalition that challenged the new HSR Rule in January 2025. The plaintiffs did not pursue preliminary relief against the Rule at the time of their complaint. As a result, the Rule went into effect the following month.

Now a year later, the District Court has reached its decision. In a 34-page opinion, Judge Kernodle granted summary judgment against the FTC and held that the Rule exceeded the FTC's statutory authority under the Administrative Procedure Act (the "APA"). The Court concluded that the Rule's enforcement benefits do not "reasonably outweigh" the significantly increased time and resources that are required to prepare the new Form. According to the Court, the Rule is contrary to the command of the HSR Act, which requires the federal antitrust enforcers to obtain information as "necessary and appropriate" to evaluate the legality of a proposed transaction. The Court also found that the Rule was the product of arbitrary and capricious rulemaking because the FTC did not (i) substantiate the claimed benefits of the Rule and thus failed to meaningfully weigh the relevant costs and benefits or (ii) properly consider and justifiably reject less burdensome alternatives. Rejecting the FTC's argument that universal vacatur was an inappropriate remedy, the Court vacated the Rule, but it stayed its order for seven days to allow the FTC to apply for emergency relief in the U.S. Court of Appeals for the Fifth Circuit.

The legal challenge is far from over, however. The FTC has until February 19 to seek immediate intervention from the Fifth Circuit. The FTC is likely to do so and to appeal the District Court's decision. FTC Chair Andrew Ferguson, who voted in favor of the Rule in October 2024, is an outspoken proponent of the Rule, tweeting last year that "updates [to the Rule] were long overdue."

Merging parties currently in the process of filing an HSR Form should proceed with their filing as planned. The FTC Premerger Notification Office's website acknowledges the Court's decision and instructs filers to use the new HSR Form until February 19, with "further updates" to come.

Those further updates will depend on whether, as we expect, the FTC seeks emergency relief from the Fifth Circuit and whether, as is more likely here than in the usual case, the Fifth Circuit grants that relief. If the Fifth Circuit issues the stay, the agencies likely will continue to require parties to use the new Form. But in the event a stay is denied, the District Court's vacatur of the Rule will go into effect, and the agencies will no longer be able to mandate use of the new Form. The FTC's briefing in the case has already previewed that, in those circumstances, filing parties would "pivot[] to the old form."

¹The threshold will increase to \$133.9 million on February 17, 2026.

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