ALERT MEMORANDUM

U.S. District Court Vacates FTC's 2024 HSR Filing Rule

February 13, 2026

On February 12th, the U.S. District Court for the Eastern District of Texas vacated the new expanded HSR filing requirements that went into effect in February 2025. The court held that the FTC lacked authority under the HSR Act to put the new requirements into place and that the new requirements were arbitrary and capricious under the Administrative Procedure Act ("APA"). The court stayed its ruling for seven days to allow the FTC to seek an injunction pending appeal.[1] If upheld on appeal, or there is no appeal, the decision should lead the FTC to revert to the prior rules for HSR filings, which for virtually all filers will mean a less onerous process.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

CALIFORNIA

Brian Byrne
+1 650 815 4110
bbyrne@cgsh.com

George Cary
+1 415 796 4410
gcary@cgsh.com

WASHINGTON DC

Matthew Bachrack
+1 202 974 1662
mbachrack@cgsh.com

Leah Brannon
+1 202 974 1508
lbrannon@cgsh.com

Jeremy Calsyn
+1 202 974 1522
jcalsyn@cgsh.com

Daniel Culley
+1 202 974 1593
dculley@cgsh.com

Alan Freedman
+1 202 974 1647
afreedman@cgsh.com

David Gelfand
+1 202 974 1690
dgelfand@cgsh.com

Bruce Hoffman
+1 202 974 1784
bhoffman@cgsh.com

Steven Kaiser
+1 202 974 1554
skaiser@cgsh.com

Blair K. Matthews
+1 202 974 1791
bmatthews@cgsh.com

Kenneth Reinker
+1 202 974 1743
kreinker@cgsh.com

Ryan Shores
+1 202 974 1876
rshores@cgsh.com

Kelton E. Anderson
+1 202 974 1627
keanderson@cgsh.com

NEW YORK

Puja Patel
+1 212 225 2732
pujapatel@cgsh.com

[1] *Chamber of Commerce of the United States v. FTC*, No. 6:25-cv-9-JDK, slip op. at 33–34 (E.D. Tex. Feb. 12, 2026).

© Cleary Gottlieb Steen & Hamilton LLP, 2026. All rights reserved.
This memorandum was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice. Throughout this memorandum, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.

Background

In October 2024, the FTC issued a final rule changing the scope of information and documents that need to be provided with premerger filings under the HSR Act, including new requirements relating to ownership structure, transaction rationale, competitive overlaps, supply relationships, and additional documents from deal teams and certain ordinary course documents.[2] While this rule was promulgated under the Biden administration, the Trump administration's FTC and DOJ decided to permit it to go into effect.

The FTC estimated that the revised form would increase average preparation time from 37 hours to 105 hours per filing, nearly triple that of the prior form's average, and impose approximately $139 million in annual incremental compliance costs.[3]

Trade associations and business groups challenged the new requirements under the HSR Act and the APA, arguing that it exceeded the FTC's statutory authority and was arbitrary and capricious. The court accepted those arguments and vacated the new requirements.[4]

The Court's Decision

After determining that the plaintiffs had standing, the Court held that the HSR Act authorizes the FTC to require only information that is "necessary and appropriate" to determine whether a transaction may violate the antitrust laws.[5] As such, the court reasoned, the FTC must demonstrate that the incremental filing burden is justified by the purposes of the HSR Act, which is to provide the government sufficient notice of proposed mergers and acquisitions so that it may determine whether further inquiry is needed. [6] Applying that standard, the court concluded that the FTC failed to justify the rule. The court emphasized that the FTC could not identify a single prior transaction that would have been blocked or better analyzed under the new rule relative to the old regime.[7] At the same time, the court found that the rule would impose significant burdens on all HSR filers in the form of increased time and millions in aggregate cost, with little to no benefit.[8] On balance, the court concluded, the new requirements were not "necessary and appropriate" and therefore exceeded the FTC's statutory authority to put forward rules under the HSR Act.[9]

For much the same reason, the court also held that the new requirements were independently unlawful under the APA because the FTC failed to engage in reasoned decision-making.[10] Under the APA, the court concluded, the new requirements were invalid because the FTC was unable to demonstrate that their supposed benefits bore a rational relationship to its costs.[11] The court also faulted the FTC for failing to provide a reasoned explanation for rejecting less burdensome alternatives, such as targeted information requests or reliance on second request review.[12] Without a demonstrated rational basis, the court held that the new requirements were arbitrary and capricious.[13]

Having found the new requirements to be illegal, the court set them aside, concluding that such vacatur is the default APA remedy and that the new requirements' deficiencies were sufficiently serious that remand for further FTC proceedings without vacatur was not appropriate.[14]

The court stayed the effect of the order for seven days to allow the FTC to seek emergency appellate relief.[15]

[2] *Id*. at 6–7; Premerger Notification; Reporting and Waiting Period Requirements, 89 Fed. Reg. 89,216 (Nov. 12, 2024).
[3] *Chamber of Commerce*, slip op. at 7, 20–21.
[4] *Id*. at 1–2.
[5] 15 U.S.C. § 18a(d)(1); *Chamber of Commerce*, slip op. at 16–17.
[6] *Chamber of Commerce*, slip op. at 17–18 (citing *Michigan v. EPA*, 576 U.S. 743 (2015); *Mexican Gulf Fishing Co. v. U.S. Dep't of Com.*, 60 F.4th 956 (5th Cir. 2023)).
[7] *Id*. at 22–24.
[8] *Id*. at 20–21.
[9] *Id*. at 27.
[10] *Id*. at 27–28.
[11] *Id*. at 28–29.
[12] *Id*. at 29–31.
[13] *Id*. at 31–32.
[14] *Id*. at 32–33.
[15] *Id.* at 34.

What You Should Know

Parties that anticipate needing to make an HSR filing or that have HSR filings in preparation should closely monitor further events in this litigation. If the FTC elects not to appeal, or is unable to secure an injunction pending appeal, HSR filings will revert, at least for a time, to the old rules, which were significantly less onerous than the now-vacated new rules. As summarized in our February 2025 alert regarding the new rules, those new requirements included, among other things:

- expanded narrative disclosures regarding transaction rationale, competitive overlaps, and vertical or supply relationships;
- expanded document collection obligations, including materials prepared by or for the supervisory deal team lead and drafts provided to directors;
- enhanced reporting regarding ownership structure, controlled entities, and minority interests; additional officer and director information requirements;
- expanded overlap reporting (including more granular geographic and, in certain cases, NAICS-based information);
- expanded prior acquisitions reporting;
- disclosures regarding certain defense or intelligence contracts; and
- expanded transaction documentation and related materials (including certain agreements and diagrams where they exist).[16]

These expanded requirements, particularly those tied to overlaps or vertical relationships, have significantly increased the time and burden of preparing HSR filings. On the other hand, the reversion to the prior HSR Form would also mean the return of revenue reporting requirements in their traditional form, which historically were often time-consuming and burdensome, particularly for filers with complex or diversified product and service offerings. Notably, the FTC has itself acknowledged in the Statement of Basis and Purpose accompanying the 2024 rule that certain legacy reporting requirements, such as broad revenue reporting, have not proven necessary to the agencies' initial competitive assessment.[17]

If the FTC decides to appeal, the decision could be stayed by the Fifth Circuit Court of Appeals, which could also reverse the ruling on the merits after a full review. Such a full review would take several months at least. Any decision to appeal would require coordination with the Department of Justice, and the recent leadership transition[18] at DOJ's Antitrust Division may bear on whether and how the government pursues appellate relief during the seven-day stay period.

…

CLEARY GOTTLIEB

[16] *See* Cleary Gottlieb, Update: Changes to U.S. Premerger (HSR) Rules to Take Effect on February 10, 2025 (Feb. 2025).

[17] *See* Premerger Notification; Reporting and Waiting Period Requirements, 89 Fed. Reg. 14154 (Mar. 28, 2024) (Statement of Basis and Purpose).

[18] *See*, e.g., *Washington Post*, Justice Dept.'s Head of Antitrust Departs Amid Tensions on Enforcement (Feb. 12, 2026).