

GIBSON DUNN



Antitrust & Competition Update

February 13, 2026

Federal Court Vacates FTC's 2024 HSR Premerger Notification Rule

Absent an appeal, the premerger notification requirements will revert to the prior HSR reporting rule on February 20, 2026.

On February 12, 2026, the U.S. District Court for the Eastern District of Texas vacated the Federal Trade Commission's 2024 rule overhauling the Hart-Scott-Rodino (HSR) premerger notification form (the 2024 Rule), finding that the FTC failed to analyze whether the 2024 Rule's benefits outweighed its substantial costs. The Court stayed its ruling for seven days, affording the FTC an opportunity to assess an appeal. Absent an appeal, the premerger notification requirements will revert to the prior HSR reporting rule on February 20, 2026.

Vacated HSR Rule Had Substantially Expanded Scope of Pre-Merger Review

The 2024 Rule represented the most significant overhaul of HSR filing requirements since the publication of the original premerger notification form in 1978. The 2024 Rule added disclosures that previously arose only in later-stage investigations. Key additions included: deal documents from supervisory deal team leads (not just directors and officers); ordinary course competitive documents shared with the CEO or Board within one year of filing; narrative descriptions of transaction rationale and competitive overlaps; and supply relationship information.

The final rule went into effect on February 10, 2025. Notably, the rulemaking garnered bipartisan support: the FTC approved the final rule on a 5-0 vote, and the current FTC leadership had embraced the 2024 Rule prior to this decision.

District Court Vacated HSR Rule as Exceeding FTC's Authority

In *Chamber of Commerce v. FTC*, a coalition of business groups led by the U.S. Chamber of Commerce challenged the FTC's 2024 Rule. On February 12, 2026, Judge Jeremy D. Kernodle on the U.S. District Court for the Eastern District of Texas granted summary judgment to the plaintiffs, holding that the 2024 Rule exceeded the FTC's statutory authority because "the agency has not shown that the Rule's claimed benefits will 'reasonably outweigh' its significant and widespread costs."

Under the HSR Act, the FTC may request only pre-merger information "necessary and appropriate" to assess whether a transaction may violate the antitrust laws—a standard the Court interpreted as requiring a reasonable cost-benefit analysis. The FTC failed to meet that requirement. Although the FTC acknowledged that the 2024 Rule would nearly triple filing time—from 37 to 105 hours—the Court found the FTC could not substantiate the benefits it claimed the changes would produce. For example, the FTC was unable to identify a single illegal merger in the 46-year history of the prior form that the new form would have prevented. The Court rejected the FTC's argument that the 2024 Rule would conserve agency resources, noting that any efficiency gains would accrue only in the roughly 8% of transactions the FTC investigates, while all filers would bear the increased compliance burden.

Judge Kernodle also ruled that the 2024 Rule is arbitrary and capricious because the FTC failed to consider whether the 2024 Rule's benefits "bear a rational relationship" to its costs and the FTC "did not adequately explain its rejection of less costly and burdensome alternatives," such as targeted voluntary submissions or more focused Second Requests.

The Court vacated and set aside the 2024 Rule but stayed its decision through February 19, 2026. During this period, the FTC may choose to appeal or allow the prior HSR reporting rule to take effect.

Key Takeaways for Dealmakers

The 2024 Rule Will Likely Remain in Effect During Appeal. If the FTC elects to appeal, the Agency will likely secure a further stay of the Court's vacatur order pending appeal. In this case, deal teams should continue preparing filings under the 2024 Rule's requirements. If, however, the FTC declines to appeal, the premerger notification requirements will revert to the prior HSR reporting rule on February 20. Regardless of the FTC's decision, the Court's decision will not affect the [recently-announced jurisdictional thresholds and filing fees for 2026](#).

The FTC May Again Promulgate Heightened HSR Filing Requirements if the Vacatur is Sustained. The Court's decision rests on procedural grounds, not a rejection of the FTC's authority to modernize the HSR form. Given the unanimous, bipartisan FTC support for stronger filing requirements, if the vacatur is sustained, the FTC may promulgate a similar rule with a more

developed administrative record. Dealmakers should not expect a permanent return to the pre-2024 filing regime.

Agency Staff Retain Significant Investigative Tools. Even if the 2024 Rule is ultimately vacated, FTC and DOJ Antitrust Division staff retain authority to request similar information from merging parties on a voluntary basis during the initial HSR waiting period, and on a mandatory basis at a later stage for transactions that trigger a Second Request. The practical implication: the information the FTC sought to require upfront through the 2024 Rule, including ordinary course business documents, will likely still be requested in transactions that draw agency interest.

Early Engagement with Antitrust Counsel Remains Critical. Regardless of the fate of the 2024 Rule, parties considering M&A activities should continue engaging antitrust counsel early. Transaction agreements may benefit from additional regulatory flexibility to accommodate potential changes in filing requirements or extended review timelines.

State Mini-HSR Regimes Continue to Expand. Dealmakers should also monitor evolving state premerger notification requirements. California recently enacted SB 25, joining Washington and Colorado in requiring certain HSR filers to submit copies of their federal filings to state authorities, effective January 1, 2027. These requirements underscore the broader trend toward enhanced premerger scrutiny at the federal and state levels.

For further details on these developments, see our previous Client Alerts and related HSR resources on the firm's Antitrust and Competition page [here](#).

The following Gibson Dunn lawyers prepared this update: Jamie France, Kristen Limarzi, Michael Perry, Brad Smith, Logan Billman, and Caroline Black.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Antitrust and Competition, Private Equity, or Mergers and Acquisitions practice groups:

Antitrust and Competition:

Rachel S. Brass – San Francisco (+1 415.393.8293, rbrass@gibsondunn.com)

Jamie E. France – Washington, D.C. (+1 202.955.8218, jfrance@gibsondunn.com)

Sophia A. Hansell – Washington, D.C. (+1 202.887.3625, shansell@gibsondunn.com)

Caeli A. Higney – San Francisco (+1 415.393.8248, chigney@gibsondunn.com)

Julian W. Kleinbrodt – San Francisco (+1 415.393.8382, jkleinbrodt@gibsondunn.com)

Kristen C. Limarzi – Washington, D.C. (+1 202.887.3518, klimarzi@gibsondunn.com)

Samuel G. Liversidge – Los Angeles (+1 213.229.7420, sliversidge@gibsondunn.com)

Michael J. Perry - Washinton, D.C. (+1 202.887.3558, mjperry@gibsondunn.com)

Cynthia Richman – Washington, D.C. (+1 202.955.8234, crichman@gibsondunn.com)
Bradley P. Smith – New York (+1 212.351.5376, bpsmith@gibsondunn.com)
Daniel G. Swanson – Los Angeles (+1 213.229.7430, dswanson@gibsondunn.com)
Stephen Weissman – Washington, D.C. (+1 202.955.8678, sweissman@gibsondunn.com)

Private Equity:

Richard J. Birns – New York (+1 212.351.4032, rbirns@gibsondunn.com)
Ari Lanin – Los Angeles (+1 310.552.8581, alanin@gibsondunn.com)
Michael Piazza – Houston (+1 346.718.6670, mpiazza@gibsondunn.com)
John M. Pollack – New York (+1 212.351.3903, jpollack@gibsondunn.com)

Mergers and Acquisitions:

Robert B. Little – Dallas (+1 214.698.3260, rlittle@gibsondunn.com)
Saeed Muzumdar – New York (+1 212.351.3966, smuzumdar@gibsondunn.com)
George Sampas – New York (+1 212.351.6300, gsampas@gibsondunn.com)

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