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Antitrust & Competition | Appellate & Constitutional
Law Update

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Fifth Circuit Pauses Appeal of Decision Vacating 2024 HSR Rule as Antitrust Agencies Pursue Replacement Rulemaking

The abeyance will provide the Federal Trade Commission and the Department of Justice Antitrust Division with time to promulgate an updated HSR Premerger Notification Form rulemaking based on the ongoing public comment process.

On May 26, 2026, the U.S. Court of Appeals for the Fifth Circuit granted the government's unopposed motion to hold in abeyance its appeal of the district court decision vacating the FTC's 2024 overhaul of the Hart-Scott-Rodino (HSR) Premerger Notification and Report Form (the 2024 Rule). The appeal in *Chamber of Commerce v. FTC*, No. 26-40094, will remain paused until December 31, 2026. During this period, the FTC and the DOJ Antitrust Division (together, the Antitrust Agencies) will continue to accept HSR filings using the pre-2024 Form and Instructions.

The Antitrust Agencies sought the abeyance to allow their renewed HSR Form rulemaking to proceed. As we previously reported, on March 25, 2026, the Antitrust Agencies issued a joint request for public comment on potential revisions to the HSR Form, including disclosures introduced by the vacated 2024 Rule, as well as additional targeted changes such as narrowing the "solely for the purpose of investment" exemption and capturing acquihires and other "non-traditional" transaction structures. The comment period closes on May 26, 2026, and, according to the motion for abeyance, the Antitrust Agencies anticipate issuing an updated rulemaking by year-end 2026.

Implications for Dealmakers

The Fifth Circuit's order provides short-term clarity but should not be mistaken for a return to the pre-2024 status quo. Several points warrant attention:

- ***Pre-2024 Form Remains in Effect—For Now.*** Filers may continue to use the pre-2024 HSR Form and Instructions through the abeyance.
- ***A New Premerger Notification Rulemaking Is Likely by Year-End.*** Dealmakers should expect the forthcoming notice of proposed rulemaking to build on the 2024 Rule's framework, while incorporating targeted changes addressing the procedural deficiencies identified in the district court's vacatur decision. Once published, parties will have an opportunity to comment on any proposed rulemaking before it is implemented.
- ***Appellate Review Is Deferred but Remains Open.*** The district court's vacatur of the 2024 Rule remains in force, but the Fifth Circuit has not addressed the merits. While the appeal may be rendered moot or substantially narrowed if the Antitrust Agencies issue a sufficiently revised rule by year-end, the FTC retains the ability to reinstate the appeal.
- ***Staff Information-Gathering Continues.*** Even under the pre-2024 Form, Antitrust Agency staff retain the authority to request additional information during the initial waiting period and through Second Requests. Transactions raising substantive antitrust concerns should still be prepared to produce the categories of information sought by the 2024 Rule.
- ***Engagement During the Comment Period Remains Crucial.*** Parties whose transactions could be affected by the contemplated changes should consider submitting comments before the current comment period closes on May 26, 2026, and again when the notice of proposed rulemaking opens a further round of public comment.

Gibson Dunn attorneys are closely monitoring these developments and are available to discuss the implications for transaction planning, HSR filing strategy, and participation in the forthcoming rulemaking. 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: Jeffrey Wall, Rachel Brass, Jamie France, Kristen Limarzi, Judson Littleton, Bradley Smith, Caroline Black, and Logan Billman.

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](#), [Appellate and Constitutional Law](#), [Private Equity](#), or [Mergers and Acquisitions](#) practice groups:

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