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Regulatory Update

New HSR Rules Stay but Their Future Is Uncertain

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Merging parties must continue to use the new Hart-Scott-Rodino (HSR) form until further notice. On Feb. 19, the U.S. Court of Appeals for the Fifth Circuit temporarily stayed a lower court's ruling that vacated the new HSR rules that had significantly expanded filing requirements for merging parties. The future of the new rules, however, remains uncertain as several trade associations and the Federal Trade Commission (FTC) square off in the federal courts over the FTC's authority to issue the rules.

Last week, the U.S. District Court for the Eastern District of Texas vacated the new HSR rules over a year after they went into effect. On Feb. 18, the district court denied the FTC's motion for a stay pending appeal. The FTC then sought a stay from the Fifth Circuit, which granted it until "further order of our court." Therefore, filing parties are continuing to use the more burdensome forms for the immediate future.

Background

The new rules, which went into effect on Feb. 10, 2025, represented the most significant expansion of the HSR filing requirements in nearly 50 years. While some of the most onerous changes were scaled back in the final bipartisan published rules, the change still dramatically expanded the information and documents required for HSR filings.

HSR Rules Found Not 'Necessary and Appropriate'

In January 2025, the U.S. Chamber of Commerce, American Investment Council and several other trade associations challenged this expansion, asserting that the promulgation of the new rules exceeded the FTC's authority under the HSR Act and ran afoul of the Administrative Procedure Act.

On Feb. 12, the U.S. District Court for the Eastern District of Texas sided with the challengers, ruling to vacate the 2024 amendments to the premerger notification requirements. Judge Jeremy D. Kernodle found the new rules were not "necessary and appropriate," as required by the authorizing statute. He also found them "arbitrary and capricious." The district court focused heavily on the increased costs that filers incur, determining that those costs were not "reasonably outweigh[ed]" by the potential benefits to the antitrust agencies in improving their merger reviews. According to the district court, the FTC had presented little to no evidence of such benefits.

The district court stayed its ruling for seven days, allowing filings under the current regime to continue until Feb. 19. On Feb. 17, the FTC filed its motion to stay the vacatur pending appeal. The following day, the district court denied the stay. On Feb. 19, the Fifth Circuit granted a stay, allowing new form filings to continue until “a further order of our court.”

The future of the rules is uncertain as the Fifth Circuit weighs the FTC’s argument that the district court got it wrong. According to the FTC, the “Commission has unambiguous statutory authority to create — and thus, to update — the form.” Deadlines for briefing are later this month.

Paul Hastings will keep merging parties updated on the case as it progresses.

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