

# FTC Asks Fifth Circuit to Put HSR Rules Appeal on Hold to Facilitate Agency’s Consideration of Revised Rules

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On May 18, 2026, the Federal Trade Commission (the “FTC”) asked the Fifth Circuit to pause its appeal of a district court ruling that struck down the agency’s new Hart-Scott-Rodino (“HSR”) rules.<sup>1</sup> The move is the clearest signal yet that the FTC intends to go back to the drawing board and develop revised HSR filing requirements—ones that, in the agency’s words, better “strike the proper balance between [their] benefits and burdens.”

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<sup>1</sup> *Chamber of Commerce v. Federal Trade Commission*, No. 26-40094, ECF 50 (5th Cir. May 18, 2026).

## Background

In February 2026, a federal district court in Texas vacated the new HSR rules as arbitrary and capricious.<sup>2</sup> Those rules had dramatically expanded the information required in premerger filings, drawing widespread criticism from the business community.<sup>3</sup> The FTC appealed the ruling, but the Fifth Circuit declined to keep the new rules in effect while the appeal proceeded, and filers immediately reverted to the prior, less burdensome form.<sup>4</sup>

Rather than continue to press that appeal, the FTC has shifted course. In March, the FTC and the Department of Justice (the “DOJ”) jointly solicited public comment on how to “reduce the burden for non-problematic transactions,” while making “necessary updates informed by lessons learned from the recent implementation.”<sup>5</sup> Now, the FTC has asked the Fifth Circuit to hold the case in abeyance through December 31, 2026, giving the agency time to review those comments and potentially launch a new rulemaking.

## What This Means for Dealmakers

For now, parties can continue to prepare HSR filings using the significantly less burdensome pre-2025 form and instructions, and they may also opt to file voluntarily under the vacated rules.<sup>6</sup> This is expected to remain the case until the FTC decides whether a new form is needed—a process that could extend well into 2027 if a formal rulemaking follows.

That said, the agencies’ investigative powers have not changed. Both the FTC and the DOJ Antitrust Division can still request during the HSR waiting period the same types of documents and information that the vacated rules would have required up front. Early engagement with antitrust counsel remains important—particularly for transactions likely to attract agency scrutiny.

The members of our antitrust and merger control team will continue monitoring these developments and are available to provide additional guidance.

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<sup>2</sup> We discussed this decision in our February 13, 2026 Client Alert titled *Texas District Court Vacates New HSR Rules*, available at: <https://www.willkie.com/-/media/files/publications/2026/02/texas-district-court-vacates-new-hsr-rules.pdf>.

<sup>3</sup> We discussed the overhaul in our October 14, 2024 Client Alert titled *FTC Finalizes Substantial Overhaul of HSR Pre-Merger Notification Requirements*, available at: <https://www.willkie.com/-/media/files/publications/2024/10/ftc-finalizes-substantial-overhaul-of-hsr-pre-merger-notification-requirements.pdf>.

<sup>4</sup> *Chamber of Commerce v. Federal Trade Commission*, No. 26-40094, ECF 44-2 (5th Cir. Mar. 19, 2026).

<sup>5</sup> FTC, Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form (Mar. 25, 2026), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2026.03.25-HSR-RFI.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RFI.pdf).

<sup>6</sup> See FTC, *HSR Notification Forms, Instructions, and Guidance* (updated Mar. 23, 2026), <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-notification-forms-instructions-guidance>.

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