Back to the Future: The Return of the Old HSR Rules

By Paul Feinstein, Hannah Shoss | March 23, 2026

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On March 19, the Fifth Circuit denied a motion by the Federal Trade Commission ("FTC") for a stay pending its appeal of a lower court's recent order vacating the FTC's expansive new rules ("New Rules") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), which overhauled the HSR premerger notification form ("HSR Form") in February 2025. As described in our previous alert, the U.S. District Court for the Eastern District of Texas vacated the New Rules – which represented the first major change to the HSR Form in nearly 50 years – on grounds that they are not "necessary and appropriate" and thus exceed the FTC's statutory authority. The FTC immediately appealed and sought a stay of the district court's order pending appeal. The Fifth Circuit's refusal to grant a stay means that the HSR rules and Form that were in place before February 2025 ("Old Rules") are back in effect while the FTC's appeal unfolds. As with the transition to the New Rules last year, the return to the Old Rules significantly impacts the substance of HSR filings for at least the near term but does not affect any rules pertaining to when an HSR filing is required, the HSR thresholds or filing fees or the HSR waiting period (generally 30 days).

Transition Back to Old HSR Form

According to a notice posted by the FTC in response to the Fifth Circuit's denial of its motion to stay, filing parties can immediately return to using the old HSR Form. Alternatively, the FTC will continue to accept filings made pursuant to the new HSR Form, should filers voluntarily choose to submit them. In practice, the reinstatement of the Old Rules and Form reduces the burden on filing parties by significantly narrowing the scope of information and documents required for HSR filings. Most notably, with the Old Rules back in place, filing parties are no longer obligated to:

- Provide a narrative description of their rationale for the transaction
- Disclose certain information concerning the acquiring party's directors and officers and their positions in other companies
- Disclose additional transaction-related documents from each party's "supervisory deal team lead" (as opposed to only those documents prepared by or for officers and directors)
- Produce certain ordinary-course business plans and reports provided to the CEO or Board of Directors that include content relating to competition
- Provide narrative descriptions about the filing party's businesses and any products or services (including those under development) that compete (or could compete) with the other side's products or services (even if the parties do not have overlapping NAICS codes)
- Provide sales information and lists of top customers – including top customers by category – in areas of overlap between the parties
- Identify and describe certain supply relationships between the transacting parties and/or with competitors of the other party
- Disclose information on previous acquisitions by sellers (a requirement previously reserved for buy-side parties)

FTC Appeal Continues

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Although the Old Rules are back in place for now, the FTC is currently expected to proceed with its appeal at the Fifth Circuit, with the FTC's opening brief due on April 20, 2026. Based on the Fifth Circuit's rules and historical timeline, the FTC's appeal should be fully briefed by June, but a decision on the merits is unlikely to be issued for at least several months thereafter and could be upwards of a year away.

What Comes Next

As described above, the return to the old HSR Rules and Form should generally reduce the burden on filing parties moving forward. That said, while filing parties can return to using the old HSR Form for the foreseeable future, the FTC and the Department of Justice (collectively, "Agencies") may continue to request some of the expanded disclosures and documents previously required under the New Rules as they investigate transactions, formally or informally. As such, filing parties should consult with antitrust counsel and consider continuing to collect certain information in order to quickly address any potential questions or concerns from the Agencies (e.g., CEO/Board reports and information on competing products or services, supply relationships, and top customers, many of which were commonly requested during informal inquiries or second requests under the Old Rules). It is also possible that the FTC could release supplemental guidance in the coming weeks or months requesting that filing parties continue to submit certain information and documents generally associated with the New Rules.

If the Fifth Circuit ultimately rules against the FTC – meaning a permanent return to the Old Rules – it could be back to the drawing board for the FTC in their effort to expand the HSR framework. The Agencies could pursue a new rulemaking process, resulting in another remake of the Old Rules, but such a process is likely to be lengthy. For context, the New Rules were not finalized and effective until approximately 20 months after the FTC's initial notice of proposed rulemaking and request for comment.

For more information and assistance regarding HSR issues, please contact Paul Feinstein or Hannah Shoss.

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