

## Business Groups Sue to Block New HSR Form

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In a joint lawsuit filed on January 10, the U.S. Chamber of Commerce, Longview Chamber of Commerce, American Investment Council, and Business Roundtable (collectively, the Plaintiffs) challenge the Federal Trade Commission's (FTC) recent changes to the premerger notification rules under the Hart-Scott-Rodino (HSR) Act, seeking to block the requirement to use a new HSR form that requires substantially more information and documents than required under the current HSR form.

Under the current HSR regime, parties to transactions meeting certain jurisdictional thresholds are required to submit an HSR form that includes information and documents about the transaction and the parties themselves to allow the FTC and the Antitrust Division of the Department of Justice (DOJ) to conduct a premerger investigation of whether the merger is likely to run afoul of antitrust law.

The FTC announced substantial and burdensome changes to the HSR form in June 2023, which were partially pulled back and finalized in October 2024 and scheduled to go into effect February 10, 2025. The new HSR form constitutes the most significant change to the HSR filing requirements since the HSR form was first adopted in 1978, and the additional burdens for filing parties will be substantial. As Plaintiffs point out, the new HSR form instructs filers to submit significantly more documents and information than what is currently required, increasing the number of hours needed to prepare an average HSR filing—by the FTC's own estimates—from 37 hours to 144 hours. Among other new requirements, merging parties will have to submit a competition analysis, provide more documents related to competition and market share, and disclose additional information related to business lines, ownership and organizational structure, officers and directors, and national security concerns.

The Plaintiffs claim that the new rule, and the process used to enact the rule, violates the Administrative Procedure Act (APA), which establishes the procedures federal agencies must follow to create and enforce regulations. Plaintiffs put forward several grounds to support their claims that the new HSR form violates the APA, arguing:

- the information required by the new HSR form falls outside of the scope of information the FTC is statutorily authorized to request, including the required disclosure of officers and directors and the required antitrust competition analysis;
- the FTC failed to establish, and could not have rationally concluded, that the rule's benefits outweigh their costs;

- multiple individual requirements do not pass any reasonable cost-benefit analysis;
- the FTC failed to adequately justify the revisions to the HSR form; and
- the FTC and DOJ did not rationally explain why alternative means, such as the increased use of existing tools, were insufficient for collecting the additional information sought.

Plaintiffs' lawsuit may find a receptive audience on the bench. Plaintiffs filed the lawsuit in the Eastern District of Texas, Tyler Division, where it was assigned to Judge Jeremy D. Kernodle. Judge Kernodle was appointed by President Trump in 2018 and has subsequently issued orders blocking a number of federal regulations. For example, he blocked a new version of the Department of Labor's fiduciary rule that would have classified more retirement advisers as fiduciaries, enjoined the enforcement of a rule that would have required federally funded healthcare entities and U.S. state health programs to offer gender transition services to transgender patients, and vacated billing arbitration rules intended to implement the No Surprises Act's prohibitions on surprise medical bills. Most recently, on January 7, 2025, Judge Kernodle frustrated efforts by the Biden administration to enforce financial disclosure requirements by blocking enforcement of the Corporate Transparency Act's disclosure requirements against the plaintiffs, finding the Act was likely an unconstitutional expansion of federal power.

It remains to be seen whether the changes to the HSR form will withstand judicial scrutiny. With the February 10, 2025, effective date for the new form looming, stay tuned to Winston & Strawn's Competition Corner blog for updates on major developments with respect to this lawsuit and the HSR form.

Winston & Strawn attorneys frequently prepare HSR filings and prepare advocacy before the FTC and DOJ and are positioned to assist in advising on the impact of the proposed rule and preparing HSR filings.

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