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Insight

District Court Strikes Down FTC’s HSR Rule

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Executive Summary

- This week a federal court for the Eastern District of Texas struck down the Federal Trade Commission’s (FTC) Hart-Scott-Rodino (HSR) rule that expanded the amount of documentary material merging companies were required to include in a premerger notification to the agency.
- The U.S. Chamber of Commerce, Business Roundtable, American Investment Council, and Longview Chamber of Commerce challenged the HSR rule – which was promulgated in 2024 and went into effect in 2025 – alleging it violated the Administrative Procedure Act.
- By the FTC’s own estimate, the rule would have nearly tripled the average time to comply with the new rules, at an added total cost of $139.3 million; the FTC failed to show that the additional costs were necessary to prevent illegal mergers from being approved.

Introduction

A federal court for the Eastern District of Texas struck down the Federal Trade Commission’s (FTC) Hart-Scott-Rodino (HSR) rule that expanded the amount of documentary material merging firms were required to include in a premerger notification to the agency.

Several business groups including the U.S. Chamber of Commerce, Business Roundtable, American Investment Council, and Longview (Texas) Chamber of Commerce challenged the

HSR rule. The plaintiffs challenged the final rule as unlawful under the Administrative Procedure Act, claiming that the rule exceeded the FTC's authority and was the product of arbitrary and capricious rulemaking.

The FTC estimated that its final rule would have nearly tripled the average time merging firms spent, at an added total cost of $139.3 million, to comply with the rule. The judge concluded that the agency failed to show that the benefits would "reasonably outweigh" the cost of the rule and is therefore not "necessary and appropriate" as required by statute to prevent illegal mergers from being approved.

The court stayed the order for seven days to allow the FTC time to seek emergency relief. The agency has not indicated whether it would appeal.

The HSR Rule

On October 10, 2024, the FTC, in collaboration with the Department of Justice, released its finalized changes to the premerger notification form and rules implementing the HSR Act. The new rule was the first significant change to the HSR filing process since the law was enacted over 45 years ago. The American Action Forum (AAF) previously discussed the major changes to the rule.

The rule significantly expanded the amount of documentary material merging parties would have to submit to the agencies as part of the premerger notification process. By the FTC's own estimate, an average of 68 additional hours – nearly four times as long as the current form – and an added $139.3 million would be needed to fulfill the new requirements. This result would be an additional cost of $39,644 per filing, on average.

The Lawsuit and Ruling

The U.S. Chamber of Commerce, American Investment Council, Business Roundtable, and Longview (Texas) Chamber of Commerce alleged that the final HSR rule exceeded the FTC's statutory authority under the HSR Act. The FTC, however, claimed that Section 18(a) of the HSR Act afforded the agency the authority for the final rule.

The judge noted that the statute mandated that any required documentary material and information be "…necessary and appropriate to enable the [FTC and DOJ] to determine whether such acquisition, if consummated, violate the antitrust laws."

The FTC conceded, according to the ruling, "that the costs to comply with the Final Rule are roughly triple the costs to comply with the previous Form." And yet, the judge explained, the "FTC could not identify a single illegal merger in the forty-six-year history of the prior Form that the Final Rule's new form would have prevented." In other words, the added information did not help the FTC detect illegal mergers more effectively. Moreover, the FTC claimed that it had "identified information that, if the agencies had at the beginning of previous investigations, 'would have changed the Agencies' decision whether and how to investigate reportable transactions,'" but, according to the judge, "fail[ed] to substantiate this claim."

Also at issue was that the "FTC's resource-savings argument is limited to a small subset of HSR filers." Citing the FTC's own data – and previously detailed by AAF – "approximately 92% of HSR-reported mergers do not require any investigation or additional requests by the agency." Further, "only 8% or HSR-reported mergers, and even fewer – 3% – receive Second Requests from the agency," the judge added. On this matter, the judge concluded, that the HSR rule "imposes costs on *all filers* – including the 92% for which the new form will provide the agency with little or no benefit."

Finally, the plaintiffs argued that the Final Rule was "the product of arbitrary and capricious rulemaking in violation of the [Administrative Procedure Act]," claiming that the agency "'failed to show that the Rule's benefits are worth the immense new cost on every HSR filer'… and 'gave no reasoned explanation for rejecting less burdensome alternatives.'" The judge favored the plaintiffs' argument that the benefits did not exceed the cost. Moreover, the judge again relied on the FTC's inability to substantiate claims that the agency required the additional information to identify illegal mergers. For that reason, the judge ruled, the agency's "rejection of the alternatives was based on improper reasoning."

The court decisively sided with the plaintiffs' arguments and vacated the HSR rule. In its determination, the court necessarily weighed the disruption such a ruling would cause. The court found that the "old Form – used for forty-six years – certainly 'provide[s] a sufficient framework' for mergers to be processed." Ultimately, it will be the old HSR form that merging parties will be required to submit to the antitrust enforcement agencies as part of the premerger notification process.