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Just Like That: New HSR Form Vacated; Old Form Reinstated

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By Fiona Schaeffer, Adam Di Vincenzo, Alexis Brown-Reilly
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This is an update to our February 23, 2026, [client alert](#) on the legal challenge to the Federal Trade Commission's (FTC's) expanded Hart-Scott-Rodino Act (HSR) form.

Key Development

On March 19, 2026, the Fifth Circuit denied the FTC's motion for a stay to keep the FTC new HSR rules in effect pending appeal. The district court's vacatur of the FTC rules implementing the expanded HSR form is effective immediately. For the time being, the FTC's Premerger Notification Office will accept HSR filings under both the prior (pre-February 2025) and new HSR form and instructions. We will provide further updates when and if the FTC changes this policy.

What Just Happened?

As discussed in our [prior alert](#), Judge Kernodle of the US District court for the Eastern District of Texas vacated the FTC's rules implementing an expanded HSR filing form on February 12, 2026. The Fifth Circuit granted an administrative stay on February 19, 2026, while it considered the FTC's emergency motion for a (longer) stay pending appeal. On March 19, 2026, the Fifth Circuit denied that motion, meaning the district court's vacatur is now in full force and effect.

The FTC's Premerger Notification Office posted the following notice for filers:

The Commission is now accepting HSR filings using the Form and Instructions that were in place before the February 10, 2025, effective date of the new rule. The agency is in the process of updating its website to effectuate the court's order and will be making relevant HSR filing materials available for filers soon. The agency will continue to accept HSR filings made pursuant to the February 10, 2025, Form and Instructions should filers voluntarily decide to submit them.

Practical Implications

- **Use of the Old Form:** Parties may now file using the pre-February 2025 HSR form. The FTC's Premerger Notification Office is updating its website and will make filing materials available shortly.
- **Voluntary Use of the Expanded Form:** The FTC will continue to accept filings under the new expanded form on a voluntary basis. Deal teams that have substantially completed preparation under the new form—or that perceive benefits from the new form—may elect to proceed voluntarily to facilitate the reviewing agency's initial assessment.
- **Reduced Burden:** The prior form requires significantly less information and documentation at the filing stage, reducing preparation time and cost, though the old form does require certain minimal information not required under the new expanded form.
- **Filings in Process:** Deal teams currently preparing filings under the expanded form should assess with counsel whether to pivot to the prior form or proceed voluntarily, weighing preparation progress, and the potential benefits and drawbacks of using each form.

What Comes Next

- **Merits Appeal:** The FTC's appeal remains pending. If the Fifth Circuit reverses, the expanded form could be reinstated. For this reason, it may be prudent for frequent filers to continue collecting information needed under the more expansive HSR form and instructions.
- **Further Review:** Either party may seek *en banc* review or certiorari to the Supreme Court.
- **New Rulemaking:** The FTC may pursue a new rulemaking that addresses the district court's concerns, while maintaining aspects of the new HSR form and instructions, including those that were congressionally mandated.

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- **Agency Investigatory Tools:** As always, the agencies retain the ability to seek additional information through voluntary access letters and Second Requests regardless of the form used at the initial filing stage.

Stay tuned! Milbank will continue to update its guidance on the new/old HSR form.

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