

April 14, 2013

VIA ELECTRONIC SUBMISSION

Federal Trade Commission

Attn: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office

Subject: Comments on proposed amendments to the premerger notification rules

I am commenting as a law student at the University of California Hastings College of the Law in San Francisco, California. I recommend that the FTC reconsider its proposal to automatically withdraw a company's HSR filing once the company publicly announces the termination of a transaction to the Securities and Exchange Commission (SEC).

The proposed amendments to the FTC's rules regarding the withdrawal procedure for Hart Scott Rodino (HSR) premerger notification filings may ultimately be more costly than beneficial. While I applaud the FTC's interest in promoting government efficiency, I share Commissioner Joshua D. Wright's concerns that the problems the Commission seeks to remedy do not justify the potential difficulties the proposed rule might create.

I have witnessed first-hand how an abundance of corporate mergers and acquisitions – particularly among technology companies – have produced an economic boon to the Bay Area. The “automatic withdrawal” provision – the most drastic change proposed by the amendment – may discourage such transactions.

The rulemaking proposes an automatic withdrawal of a company's HSR filing once the company publicly announces the termination of a transaction to the SEC. “Public announcement” is defined extremely broadly. According to the Federal Register, if *one* statement made in an SEC filing indicates a desire to recommence a tender offer or agreement, a company's HSR filing would be automatically withdrawn. This rule is motivated by the FTC's interest in “not expend[ing] scarce resources on hypothetical transactions.”

Although the rule may prevent such inefficiency in the future, it would also require companies to incur substantial costs in premerger negotiations and resource allocation while waiting for FTC approval during the HSR period. Currently, firms can avoid such costs by temporarily withdrawing offers or agreements until they are assured of FTC approval. Under the proposed rule, however, doing so would automatically withdraw a company's HSR filing, subjecting it to another HSR filing and filing fee.

The automatic withdrawal provision therefore sets forth convincing disincentives to engage in transactions covered by HSR rules. As Commissioner Wright stated, “it would be surprising to see firms incurring the costs and devoting the time and effort associated with antitrust review in the absence of a good faith intent to proceed with their transaction.”

Commissioner Wright also notes a lack of evidence suggesting the FTC has expended any resources on genuinely hypothetical transactions. However, even assuming that such hypothetical transactions do require the FTC to expend some resources, the proposed solution unduly burdens firms engaging in transactions that facilitate growth. The rule should not only produce a chilling effect on such transactions, but also create widespread confusion about proper procedures regarding FTC and SEC filings.

The FTC's interest in more efficient regulation is compelling. However, the proposed rulemaking goes too far in seeking to fix a problem that, according to some authorities, does not exist. I am concerned that the automatic withdrawal rule will discourage some of the mergers, acquisitions, and transfers that contribute to market growth. I hope that the FTC reconsiders this proposal, taking into account the rulemaking's detrimental effects on commercial transactions across the country.

Respectfully submitted,

Kenneth Hsu
UC Hastings College of the Law