

Concurring Statement of Commissioner Joshua D. Wright Regarding
Proposed Amendments to Hart-Scott-Rodino Rules

FTC Matter No. P859910

February 1, 2013

The Commission has voted today to publish a notice of proposed rulemaking seeking comment on amendments to the Hart-Scott-Rodino (HSR) rules. Under the proposed amendments, HSR filings would be automatically withdrawn upon the submission of an SEC filing that the notified transaction had been terminated.¹ I wish to thank staff in the Premerger Notification Office for their efforts in crafting this proposed rule and their diligent administration of the premerger notification program.

I concur in the Commission's decision because I believe the Commission would benefit from the public's input into this proposed rulemaking. Nevertheless, I am concerned that the proposed rules may impose costs in excess of any potential benefits.

The proposed rulemaking appears to be a solution in search of a problem. The Federal Register notice states that the proposed rules are necessary to prevent the FTC and DOJ from "expend[ing] scarce resources on hypothetical transactions." Yet, I have not to date been presented with evidence that any of the over 68,000 transactions notified under the HSR rules have required Commission resources to be allocated to a truly hypothetical transaction. Indeed, 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.

The proposed rules, if adopted, could increase the costs of corporate takeovers and thus distort the market for corporate control. Some companies that had complied with or were attempting to comply with a Second Request, for example, could be forced to restart their antitrust review, leading to significant delays and added expenses. The proposed rules could also create incentives for firms to structure their transactions less efficiently and discourage the use of tender offers. Finally, the proposed new rules will disproportionately burden U.S. public companies; the Federal Register notice acknowledges that the new rules will not apply to tender offers for many non-public and foreign companies.

Given these concerns, I hope that interested parties will avail themselves of the opportunity to submit public comments so that the Commission can make an informed decision at the conclusion of this process.

¹ The proposed rulemaking would also codify, with one modification, the existing procedure for pulling and refiling an HSR notification without payment of an additional filing fee. I have no objections to this proposal.