

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: JOSEPH J. SIMONS, CHAIRMAN
MAUREEN K. OHLHAUSEN
NOAH JOSHUA PHILLIPS
ROHIT CHOPRA
REBECCA KELLY SLAUGHTER

In the Matter of

Wilh. Wilhelmsen Holding ASA
a public company,

Wilhelmsen Maritime Services AS,
a private company,

Resolute Fund II, L.P.
a private company,

Drew Marine Intermediate II B.V.
a private company,

And

Drew Marine Group, Inc.,
a corporation.

Docket No. 9380

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION TO STAY

Respondents Wilhelm Wilhelmsen and Wilhelmsen Maritime Services AS (together,

however, shown “good cause” for a stay, as required by Rule 3.41(f)(1)(i). In particular, in recent decisions, the Commission has found that the mere pendency of a collateral proceeding in federal district court does not constitute “good cause.” Respondents’ motion should therefore be denied.

ARGUMENT

I. A Pending Preliminary Injunction Proceeding Does not Constitute “Good Cause” for a Stay of the Part 3 Proceeding.

The Part 3 Rules, as amended in 2009, establish a schedule for administrative hearings. Under Rule 3.11(b)(4), the administrative hearing is scheduled five months after the issuance of the complaint in any case involving a merger which the Commission has sought to preliminarily enjoin under §13(b) of the FTC Act, 15 U.S.C. § 53(b). Rule 3.41(b) expressly provides that, “The hearing will take place on the date specified in the notice accompanying the complaint pursuant to § 3.11(b)(4)” And, Rule 3.41(f) provides that Part 3 proceedings will not be stayed due to the pendency of a collateral federal court action unless “the Commission *for good cause* so directs” (emphasis added).

This five-

parallel federal court action. For example, in *In re Advocate Health Care Network*, Docket No. 9369, the respondents sought a stay of the Part 3 hearing until 60 days after the federal court had ruled on the preliminary injunction motion pending in federal court. The Commission denied that motion, explaining:

At this time, we see no conflict between the two proceedings, or any other reason that would justify staying the administrative hearing. Furthermore, as reflected in the Commission’s rules, the Commission has made a commitment to move forward as expeditiously as possible with administrative hearings on the merits. *We therefore find that no good cause exists to grant Respondents’ motion to stay.*⁵

Three days later, the Commission reached the same conclusion in *The Penn State Hershey Medical Center*, Docket No. 9368. There, the respondent sought a stay of the administrative hearing – without a stay of discovery or any other deadlines in the Part 3 proceeding – on the grounds that “the district court may not rule on the preliminary injunction request until after the administrative hearing begins. . . .” The Commission expressly rejected this argument, however, because “Respondents’ conjecture . . . is not a basis for delaying the administrative hearing.”⁶

Respondents here argue “continuance will lessen the substantial burden the parties presently face of conducting and preparing for the District Court trial while se hefn-a2 (y) 3e s0.004rs-Do (e)4(n

Amendments to the Part 3 Rules did not view parallel proceedings to be a substantial burden that would justify a stay in a Part 3 proceeding, neither should the Commission in this instance.

II. The Preliminary Injunction Hearing Schedule Harmonizes with the Part 3 Administrative Trial Schedule.

The preliminary injunction hearing in the U.S. District Court for the District of Columbia will commence on May 29, 2018, and will involve eight non-consecutive hearing days, ending on June 14, 2018—well in advance of the July 24, 2018 commencement of the administrative trial on the merits. Respondents point to no Part 3 administrative trial deadlines or other requirements that would require significant efforts or expenditures by Complaint Counsel or Respondents through the duration of the federal court preliminary injunction hearing. These facts further confirm that there is not “good cause” for a 90-day postponement of the administrative trial scheduled to begin on July 24, 2018.

CONCLUSION

Respondents have failed to demonstrate the good cause necessary to justify a 90-day stay of this administrative proceeding, as required by Rule 3.41. Absent such a demonstration, Respondents’ motion for a 90-day stay of the Part 3 hearing should be denied.

Dated: May 25, 2018

Respectfully Submitted

/s/ Thomas J. Dillickrath
Thomas J. Dillickrath
James Rhilinger
Christopher Caputo
Stephen Antonio
Michael Lovinger
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3680
Facsimile: (202) 326-2286

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Corey W. Roush
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 887-4115
croush@akingump.com

*Counsel for Respondents Wilhelm Wilhelmsen and Wilhelmsen
Maritime Services AS*

Mark W. Ryan
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3338
mryan@mayerbrown.com

*Counsel for Respondents Resolute Fund II, L.P.,
Drew Marine Intermediate II B.V., and
Drew Marine Group Inc.*

Dated: May 25, 2018

By: /s/ Michael Lovinger
Michael Lovinger

Counsel Supporting the Complaint

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I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that