



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF
COMMISSIONER ROHIT CHOPRA

Regarding the Hart-Scott-Rodino Antitrust Premerger Notification Rulemaking Notices

will receive no information whatsoever from the buyer or the seller that the transaction even occurred. This adds to the burdens and information asymmetries that the agency already faces when it comes to detecting potentially harmful transactions.

Companies and investors purchase minority, controlling stakes in a firm for a number of reasons. Sometimes, buyers might start with a minority stake, with the goal – or even with a contractual option – of an outright takeover as they learn more about the company's operations. Even though they might have a small stake, they can exert outsized influence in some cases,

Conclusion

Adequate premerger reporting is a helpful tool used to halt anticompetitive transactions before too much damage is done. However, the usefulness of the HSR Act only goes so far. This is because many deals can quietly close without any notification and since only transactions above a certain size are reportable, the FTC ends up missing a large number of anticompetitive mergers every year. In addition, since amendments to the HSR Act in 2000 raised the size thresholds on an annual basis, the number of HSR-reportable transactions has decreased.

I want to commend agency staff for their work in identifying potential blind spots in the premerger reporting regime. I also want to thank state legislatures and state attorneys general for enacting and implementing their own premerger notification laws to fill in some of these gaps. For example, a new law in State of Washington has taken effect, which requires advance notice of any transactions in the health care sector, where many problematic mergers fall below the radar.⁶

As we conduct this examination of the HSR Act, we should identify areas where laws may need to be changed or updated, especially when we cannot fill those gaps through amendments to our rules. For example, we may need to pursue reforms to ensure that “roll ups” are reported, where a buyer might acquire a large number of small companies that may not be individually reportable. We may also need to look carefully at the length of the waiting period to determine if it is long enough to conduct a thorough investigation. I look forward to reviewing the input to these two rulemaking notices, so that our approach reflects market realities.

⁵ Small transactions can be just as harmful to competition as large transactions notified under the HSR Act. For example, “catch and kill” acquisitions of an upstart competitor in fast-moving markets can be particularly destructive. In addition, “roll ups,” an acquisition strategy involving a series of acquisitions of small players to combine into a larger one, can have very significant negative effects on competition. See Statement of Fed. Trade Comm’r Rohit Chopra Re: Big Private Equity Roll-ups and the Hart-Scott Rodino Annual Report to Congress, Comm’n File No. P110014 (July 8, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577783/p110014hsrannualreportchoprastatement.pdf

⁶ See Healthcare Transaction Notification Requirement, WASH. STATE OFF. OF THE ATT’Y GEN. (last visited Sept. 16, 2020), <https://www.atg.wa.gov/healthcare/transactions/notification-requirement>; see also S.H.B. 1607, 66th Leg., Reg. Sess. (Wash 2019).