Comments to FTC: ANPR Concerning Future Amendments to the HSR Rules
February 1, 2021
Dirk Auer, Geoffrey A. Manne and Samuel Bowman

We thank the Commission for the opportunity to comment on its Advance Notice of Proposed Rulemaking ("ANPRM") concerning future amendments to the premerger notification rules under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR'').

The International Center for Law and Economics (ICLE) is a nonprofit, nonpartisan research center whose work promotes the use of law & economics methodologies to inform public policy debates. We believe that intellectually rigorous, data-driven analysis will lead to efficient policy solutions that promote consumer welfare and global economic growth.

ICLE's scholars have written extensively on competition and consumer protection policy. Some of our writings are included as references in the comment below. Additional materials may be found at our website: www.laweconcenter.org.

Our comment argues that the FTC's rulemaking initiatives should be informed by the error-cost framework. As we explain, the framework offers several key insights that authorities should carefully consider when reviewing existing merger rules and guidance.

Among other things, it demonstrates that the societal costs stemming from false negatives (i.e. anticompetitive mergers that evade antitrust enforcement) are inextricably linked to those that originate from false positives (efficient mergers that are prohibited or deterred) and administrative costs (the social costs that are created by the operation of a given regulatory regime). As a result, any attempt to reduce one of these costs necessary entails a tradeoff as far as the others are concerned. All three costs should thus be considered together.

In short, we urge the FTC to take a holistic view when updating HSR rules and interpretations of those rules. In particular, it is important to consider the overall welfare costs of new rules, and not just their ability to plug existing enforcement gaps.

Read the full comments here.

View Article