

Statement of the Federal Trade Commission¹
In the Matter of Third Point
File No. 121-0019
August 24, 2015

At the request of the Federal Trade Commission, the Department of Justice has filed a complaint charging Third Point LLC and three affiliated hedge funds under its management and control (collectively, “Third Point”) with violations of the

candidate for Yahoo!'s board of directors, taking other steps to assemble an alternate slate of board of directors, drafting correspondence to Yahoo! announcing Third Point's interest in joining Yahoo!'s board, internally deliberating about the possible launch of a proxy battle for Yahoo! directors, and making public statements about proposing a slate of directors at Yahoo!'s next annual meeting. Given these actions by Third Point, we do not believe the investment-only exemption applies.

In their dissent, Commissioners Ohlhausen and Wright do not take issue with our conclusion that there is reason to believe that an HSR violation occurred, but they do question whether the public interest supports a referral of this matter for enforcement.¹¹ We conclude that it does.

First, there is a significant public interest in instilling respect for the HSR Act and deterring would-be violators from ignoring HSR rules and requirements.¹² There is also a public interest associated with the legitimate expectation of the business community, practitioners, and the general public that the antitrust agencies will act clearly, consistently, and transparently in their interpretation and enforcement of the HSR Act and rules.¹³ The Commission's enforcement action promotes both aspects of the public interest.

Contrary to what Commissioners Ohlhausen and Wright suggest, the public interest does not hinge on whether Third Point's acquisitions of Yahoo! stock were likely to produce any competitive harm.¹⁴ The vast majority of the acquisitions subject to the premerger notification program do not result in challenges by the FTC or DOJ. That is to be expected because the HSR Act is procedural; it does not "change the standards by which the legality of mergers is judged."¹⁵ If the FTC's referrals to DOJ depended on whether the underlying transaction is likely to cause any competitive harm, it would undermine our ability to enforce compliance with the HSR Act's notification and waiting period requirements.

Nor should the public interest rest on the purported benefits of shareholder advocacy to capital and corporate governance markets.¹⁶ The investment-only exemption already reflects Congress's considered judgment that "*de minimis* non-control" stock acquisitions may be safely

¹¹ Dissenting Statement of Commissioners Maureen K. Ohlhausen and Joshua D. Wright at 1–2.

¹² See, e.g., Press Release, Thomas O. Barnett, Asst. Atty. Gen., Antitrust Div., Iconix Brand Group to Pay \$550,000 Civil Penalty for Violating Antitrust Pre-Merger Notification Requirements (Oct. 15, 2007) ("Compliance with Hart-Scott-Rodino Act filing obligations is fundamental to the agencies' ability quickly and accurately to evaluate a transaction's competitive impact. Filing parties must understand that the Division will vigorously enforce filing requirements even if we conclude that the transaction poses no threat to competition or consumers."), http://www.justice.gov/archive/atr/public/press_releases/2007/226778.pdf.

¹³ See S. Rep. No. 94-803, at 65 ("Pre-merger notification will also advance the legitimate interests of the business community in planning and predictability."); H.R. Rep. No. 94-1373, at 11 (1976) (observing same).

¹⁴ Dissenting Statement at 2.

¹⁵ S. Rep. No. 94-803, at 8 & 62.

¹⁶ Dissenting Statement at 2 & n.4.

excepted from the notification requirements.¹⁷