

AntitrustConnect Blog

Submission of Altered Documents in Merger Review Leads to Criminal Charges

Jeffrey May (Wolters Kluwer) · Tuesday, August 16th, 2011

Automated teller machine maker Nautilus Hyosung Holdings Inc. has been charged with obstruction of justice for submitting false documents to the government in its attempt to obtain U.S. antitrust approval of its proposed acquisition of a competing manufacturer of ATM systems in 2008. The altered documents allegedly misrepresented and minimized the competitive impact of Nautilus Hyosung Holdings Inc.'s proposed acquisition of Triton Systems of Delaware Inc., on the market for ATMs in the United States. Before the Department of Justice Antitrust Division reached a decision whether to challenge the transaction, the parties abandoned the proposed acquisition.

The Department of Justice [announced](#) on August 15 the filing of a two-count felony charge in the federal district court in Washington, D.C. against Nautilus Hyosung Holdings. The company, a wholly-owned subsidiary of Korea-based Nautilus Hyosung Inc. (NHI), has agreed to plead guilty to violating 18 U.S.C. § 1512(c)(1) and to pay a \$200,000 criminal fine (\$100,000 per count), according to the Justice Department. The plea agreement is subject to court approval. Obstruction of justice carries a maximum criminal fine of \$500,000 per count.

According to the two-count felony charge, NHI submitted false 4(c) documents to the Department of Justice and the Federal Trade Commission in conjunction with mandatory premerger filings made under the Hart-Scott-Rodino Antitrust Improvement Act. Then, NHI submitted additional false documents in response to a document request from the Antitrust Division. It is alleged that an executive of a company affiliated with, and acting on behalf of, Nautilus Hyosung Holdings and NHI altered and directed other corporate employees to alter existing corporate documents with the intent to impair their integrity and availability for use in an official proceeding. The executive purportedly “misrepresented the market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets relating to the proposed transaction” in the initial filing and altered “business and strategic plans for the years 2006, 2007, and 2008.”

The Justice Department said that NHI and Nautilus Hyosung Holdings voluntarily disclosed that numerous documents had been altered before being submitted to the government. Moreover, the companies agreed to cooperate in the ongoing investigation.

The case is unusual because few, if any, obstruction of justice charges have followed a merger or other civil antitrust investigation. Obstruction of justice charges are not uncommon, however, in criminal antitrust investigations into bid rigging and price fixing.

This entry was posted on Tuesday, August 16th, 2011 at 9:11 pm and is filed under [Mergers and Acquisitions](#), [U.S. Department of Justice](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.