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Executive Pleads Guilty to Obstruction of Justice for Submitting Falsified Documents in Connection with the Merger Review Process under the Hart-Scott-Rodino Act

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A senior executive of Korea-based Hyosung Corporation recently agreed to plead guilty to obstruction of justice and serve a five-month prison term for altering documents submitted in conjunction with the U.S. Department of Justice's review of his employer's proposed acquisition of a competing manufacturer of automated teller machines. Hyosung Corporation's parent company, Nautilus Hyosung Holdings Inc. ("NHI"), also agreed to plead guilty and pay a \$200,000 fine. NHI abandoned the proposed acquisition before the Department of Justice Antitrust Division ("DOJ") decided whether to challenge the transaction.

In connection with the proposed transaction, NHI made premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") with the DOJ and the Federal Trade Commission. In this case, the senior executive at Hyosung Corporation was responsible for collecting and submitting documents pursuant to the HSR Act. The first set of documents at issue were submitted in response to Item 4(c) of the Hart-Scott-Rodino Notification and Report Form, which requires filing companies to submit certain business documents evaluating the transaction with respect to competition, competitors, markets, and the potential for sales growth or expansion into new product or geographic

markets.[1] The second set of documents at issue were submitted in response to a request from the DOJ for additional documents during the 30-day waiting period. These documents were altered before submission to misrepresent and minimize the competitive impact of the proposed acquisition.

The stiff penalties here—prison time for an executive and large fines for the company—underscore the gravity of the violation. Acting Assistant Attorney General Joseph Wayland, head of the Antitrust Division, emphasized that “Maintaining the integrity of the merger review and investigation process is one of our highest priorities.”[2] Falsifying documents “corrupts the process”[3] because the Department of Justice and the Federal Trade Commission rely on these documents to assess the competitive effects of a transaction, and to prepare for litigation in the event that the agencies choose to challenge a transaction.

This case also has broader implications. Beyond falsifying documents, the DOJ’s investigation underscores the seriousness with which the agencies view companies’ obligations in connection with the HSR Act merger review process to conduct a reasonable search for and produce responsive documents.

[1] At the time of the HSR filings, item 4(d) of the HSR filing instructions, requesting documents related to the transaction that evaluate or analyze synergies and efficiencies, did not exist.

[2] United States Department of Justice, Hyosung Corporation Executive Agrees to Plead Guilty to Obstruction of Justice for Submitting False Documents in an ATM Merger Investigation, Press Release (May 3, 2012), available here.

[3] *Id.*