
FTC and DOJ Propose Significantly Revised Merger Guidelines

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The U.S. Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) (together “the agencies”) have released draft merger guidelines that will replace the 2010 Horizontal Merger Guidelines and meaningfully alter the approach the DOJ and FTC previously used to evaluate mergers. These guidelines describe and guide the agencies’ review of mergers and acquisitions to assess the potential to harm competition. The guidelines focus on 13 principles that the agencies may use when determining whether a merger may be unlawful under the antitrust laws, including a focus on labor markets, potential entrants, and multi-sided platforms that connect two or more different groups of customers, allowing the groups to interact. The guidelines also explain tools the agencies may use to evaluate market definition and enumerate the rebuttal evidence merging parties can use to demonstrate that no substantial lessening of competition is threatened by the merger, including the failing firm defense, entry and repositioning in the relevant market, efficiencies, and structural barriers to coordination.