



Federal Trade Commission

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FTC/DOJ Announce Revised Guidelines On Efficiencies In Mergers

The Federal Trade Commission and the Department of Justice today announced revisions to their joint Merger Guidelines in order to clarify how the agencies analyze efficiency claims in mergers under review by the federal government. The revisions will provide the public, the agencies, and merging firms with a clearer roadmap for determining whether efficiencies will lead merging firms to lower prices, create new products, or otherwise enhance competition. They also make clear what merging firms must do to demonstrate claimed efficiencies.

FTC Chairman Robert Pitofsky said, "Antitrust enforcers have long recognized that mergers may generate efficiencies, which may benefit consumers and the economy. But the Supreme Court has not addressed the role of efficiencies in mergers in over 20 years. Moreover, some of today's strategic mergers may well have a more realistic potential to create efficiencies than the conglomerate mergers of the 1970s or the junk bond-financed hostile acquisitions of the 1980s. These revisions to our Guidelines are designed to bring the analysis of efficiencies in mergers up-to-date with the analysis of efficiencies in other areas of antitrust and up-to-date with our contemporary competitive environment."

The revised Guidelines amend the 1992 Horizontal Merger Guidelines and were drafted by an interagency task force set up in June 1996, following the release of the FTC hearings report on "Competition Policy in the New High-Tech, Global Environment." The revisions respond to some of the concerns raised by witnesses at the FTC hearings, and also are an effort at good government, according to Pitofsky. "By setting forth our policy as simply and clearly as possible, the public better understands how the government evaluates efficiencies claims and firms face less uncertainty about how the antitrust laws will be enforced with respect to prospective mergers. A clear statement of how we operate also helps to ensure uniformity of efficiencies analysis both within each agency and between the agencies. Finally, fleshing out how the agencies analyze efficiencies may provide courts with useful guideposts when they encounter efficiencies claims in merger litigation."

The revisions to the Guidelines, among other things:

- Explain how efficiencies may affect the analysis of whether a proposed merger may likely lessen competition substantially in a relevant market. This would depend on the extent to which efficiencies enhance the merged firm's capacity to behave competitively and, in turn, result in lower prices, improved quality, enhanced service or new products.
- Define more precisely which efficiencies are attributable to a proposed merger and which likely could be achieved in other ways without posing as great a cost to competition.
- Clarify what parties will have to do to demonstrate claimed efficiencies.
- Set forth how efficiencies are factored into the analysis of the competitive effects of a merger and indicate how delays in realizing the benefits of efficiencies will be treated.

These revisions also make an important contribution by signaling when efficiencies are most likely to matter and when they will virtually never make a difference. In this respect, noted Pitofsky, the agencies' experience has been remarkably consistent: "Efficiencies are most likely to make a difference when the likely adverse competitive effects are not great and they will almost never justify a planned merger to monopoly or near-monopoly." Finally, the revisions provide some guidance as to which types of efficiencies that firms claim as resource savings are in fact more likely (and which are less likely) to be credible and substantial.

While the Guidelines improve the predictability of the agencies' merger enforcement policy, there will always be some exercise of judgment in the evaluation of mergers under the antitrust laws. These announced standards will be applied to a broad range of possible, and even unforeseeable, factual circumstances. At the end of the day, according to Chairman Pitofsky, "We do not believe that they will dramatically alter the outcome of our current merger enforcement policy. At most, they will make a difference in a few close cases."

The Commission vote to approve the Revisions to The 1992 Horizontal Merger Guidelines was 5-0.

Copies of the [Revised Guidelines](#) will be available on the Internet at the FTC's World Wide Web Site at: <http://www.ftc.gov> or by calling 202-326-3627. FTC documents are also available from the Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 1-866-653-4261. To find out the latest FTC news as it is announced, call the FTC's NewsPhone recording at 202-326-2710.

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