

STATEMENT OF CHAIRMAN LEIBOWITZ ON THE RELEASE OF THE
2010 HORIZONTAL MERGER GUIDELINES

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The process for modifying the Horizontal Merger Guidelines has concluded more successfully than I could have predicted at the outset. The result is a clear and systematic description of the techniques the FTC and the Antitrust Division of the Department of Justice use to review mergers, and a document that has received bi-partisan and unanimous support from the Commission. Because of the hard work of all involved at both agencies, private parties and judges will be better equipped to understand how the agencies evaluate deals. That improvement in clarity and predictability will benefit everyone.

In revising the Guidelines, the Commission jointly with the Antitrust Division solicited public comments on a number of questions, and held a series of public workshops around the country. Fifty-one parties filed comments in response to those questions, and the agencies incorporated the input they received through those responses and workshops into the draft of the Guidelines that the Commission put out for public comment in April. The Commission received 31 public comments on that draft from a wide variety of sources, including lawyers, economists, corporations, trade associations, and public interest groups. Those comments played a critical role in staff's compilation of the final Guidelines we release today.

The Guidelines have been improved through this process in ways – large and small – that are too numerous to mention. But several major advances stand out: first, the Guidelines emphasize the competitive effects of a deal over the more rigid, formulaic approach imposed by some interpretations of the 1992 Guidelines. Second, for the first time the Guidelines provide a clear description, and many examples, of the range of evidence the agencies consider when evaluating the competitive effects of a transaction. Third, the Guidelines explain in more detail the role of market-concentration measures and revise the concentration thresholds from which the agencies will draw inferences about the likely effects of a merger on market power. Finally, the new Guidelines contain revised discussions of several factors that may be important in analyzing a merger, among them innovation and product variety, coordinated effects, price discrimination, and market entry.

With these and other changes, the new Guidelines provide a clearer and more accurate explanation to merging parties, courts, and antitrust practitioners of how the agencies review transactions. We thank everyone who participated in this process.