



Department of Justice

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ANTITRUST DIVISION ISSUES UPDATED MERGER REMEDIES GUIDE

Updated Guide Recognizes Change in Merger Landscape

WASHINGTON – The Department of Justice today released an updated version of the Antitrust Division’s Policy Guide to Merger Remedies. The policy guide is a tool for Antitrust Division staff to use in analyzing proposed remedies in its merger matters. It also provides transparency into the division’s approach to merger remedies for the business community, the antitrust bar and the broader public.

Although the updated policy guide reflects changes in the merger landscape, the goal of the Antitrust Division remains the same – to provide an effective remedy to eliminate the anticompetitive effects of a proposed transaction, the department said.

“In every case, the Antitrust Division focuses on the specific facts of the proposed transaction. We are prepared to clear a merger, block a merger or accept a remedy that maintains efficiencies as long as the result eliminates any competitive harm,” said Assistant Attorney General Christine Varney of the Department of Justice’s Antitrust Division. “In the current environment of increasing transnational mergers and complex vertical transactions, the Antitrust Division must be ever nimble in its efforts to ensure that any remedies effectively preserve competition, promote innovation and protect consumers. The updated policy guide takes into account these changes.”

The updated policy guide highlights the role of the Antitrust Division’s recently created Office of the General Counsel, which will be principally responsible for enforcing division consent decrees. The updated policy guide also reflects the changes in the merger landscape and the lessons the division has learned from the remedies it has entered into since the issuance of the original guide in 2004, ensuring that it accurately details the division’s merger remedy practices.

The policy guide states that effective merger remedies typically include structural or conduct provisions, or a combination. In horizontal merger matters, the division continues to rely predominantly on structural remedies, sometimes in combination with conduct remedies. However, the division has found that in many vertical transactions tailored conduct relief can prevent competitive harm while allowing the merger’s efficiencies to be realized.

The key principles the Antitrust Division applies in analyzing merger remedies remain the same:

- Effectively preserving competition is the key to an appropriate merger remedy;
- Remedies should focus on preserving competition, not protecting individual competitors; and
- A remedy must be based on careful application of legal and economic principles to the particular facts of a specific case.

A copy of the Policy Guide is available on the Department of Justice's website:
www.justice.gov/atr/public/guidelines/272350.pdf

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