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For Release

# FTC and DOJ Seek Comment on Draft Merger Guidelines

Proposed guidelines would address the many ways mergers can weaken competition, harming consumers, workers, and businesses

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Today, the Federal Trade Commission and the Department of Justice are releasing a [draft update of the Merger Guidelines](#), which describe and guide the agencies' review of mergers and acquisitions to determine compliance with federal antitrust laws. The goal of this update is to better reflect how the agencies determine a merger's effect on competition in the modern economy and evaluate proposed mergers under the law. Both agencies encourage the public to review the draft and provide feedback through a public comment period that will last 60 days.

"Open, competitive, resilient markets have been a bedrock of America's economic success and dynamism throughout our nation's history. Faithful and vigorous enforcement of the antitrust laws is key to maintaining that success," said FTC Chair Lina M. Khan. "With these draft Merger Guidelines, we are updating our enforcement manual to reflect the realities of how firms do business in the modern economy. Informed by thousands of public comments—spanning healthcare workers, farmers, patient advocates, musicians, and entrepreneurs—these guidelines contain critical updates while ensuring fidelity to the mandate Congress has given us and the legal precedent on the books."

"Unchecked consolidation threatens the free and fair markets upon which our economy is based," said Attorney General Merrick B. Garland. "These updated Merger Guidelines respond to modern

market realities and will enable the Justice Department to transparently and effectively protect the American people from the damage that anticompetitive mergers cause.”

“Competitive markets and economic opportunity go hand in hand. Today, we are issuing draft guidelines that are faithful to the law, which prevents mergers that threaten competition or tend to create monopolies. As markets and commercial realities change, it is vital that we adapt our law enforcement tools to keep pace so that we can protect competition in a manner that reflects the intricacies of our modern economy. Simply put, competition today looks different than it did 50 — or even 15 — years ago.” said Assistant Attorney General Jonathan Kanter of the Antitrust Division. “There will be a substantial process for public to review and provide comments before we finalize these guidelines.”

The agencies protect competition through enforcement of the antitrust laws and other federal competition statutes. Since 1968, the agencies have issued and revised merger guidelines to enhance transparency and promote awareness of how the agencies carry out that charge with respect to mergers and acquisitions.

The draft guidelines build upon, expand, and clarify frameworks set out in previous versions. At the outset, the guidelines give an overview of thirteen principles that the agencies may use when determining whether a merger is unlawfully anticompetitive under the antitrust laws. These guidelines are not mutually exclusive, and a given merger may implicate multiple guidelines. The document then describes in greater depth the frameworks and tools that may be used when analyzing a merger with respect to each guideline.

The thirteen guidelines are:


1. Mergers should not significantly increase concentration in highly concentrated markets.
2. Mergers should not eliminate substantial competition between firms.
3. Mergers should not increase the risk of coordination.
4. Mergers should not eliminate a potential entrant in a concentrated market.
5. Mergers should not substantially lessen competition by creating a firm that controls products or services that its rivals may use to compete.
6. Vertical mergers should not create market structures that foreclose competition.



7. Mergers should not entrench or extend a dominant position.
8. Mergers should not further a trend toward concentration.
9. When a merger is part of a series of multiple acquisitions, the agencies may examine the whole series.
10. When a merger involves a multi-sided platform, the agencies examine competition between platforms, on a platform, or to displace a platform.
11. When a merger involves competing buyers, the agencies examine whether it may substantially lessen competition for workers or other sellers.
12. When an acquisition involves partial ownership or minority interests, the agencies examine its impact on competition.
13. Mergers should not otherwise substantially lessen competition or tend to create a monopoly.

The agencies have amended the guidelines several times since the first guidelines were released in 1968, including in 1982, 1984, 1992, 1997, 2010, and 2020. In January 2022, the agencies announced a broad initiative to evaluate potential updates and revisions to the Horizontal Merger Guidelines, issued in 2010, and the Vertical Merger Guidelines issued in 2020.

Following a public comment period, which included a [request for information](#), more than 5,000 members of the public—including consumers, workers, state attorneys general, academics, businesses, trade associations, practitioners, and entrepreneurs—contributed feedback. The agencies also conducted [four listening sessions](#) that highlighted the potential for mergers and acquisitions to undermine open, vibrant, and competitive markets in industries ranging from food and agriculture to health care.

In revising the Merger Guidelines, the agencies focused on three core goals: First, the guidelines should reflect the law as written by Congress and interpreted by the highest courts. The guidelines are built around statutory text and relevant case precedent, citing cases in order to clarify the connection between the law and the analytic frameworks described. The draft Merger Guidelines also make clear that they are not a substitute for the law itself, and do not create new rights or obligations. Second, the guidelines should be accessible, increasing transparency and awareness. Third, the guidelines should provide frameworks that reflect the realities of our modern economy and the best of modern economics and other analytical tools. 

The public is invited to [provide comments to the Draft Guidelines](#) for a period of 60 days. The deadline is September 18, 2023. The agencies will use the public comments to evaluate and update the draft before finalizing the guidelines. Visit the [fact sheet on Draft Merger Guidelines](#) .

The Commission vote to approve the draft Merger Guidelines was 3-0. [Chair Khan](#), along with Commissioners [Rebecca Kelly Slaughter](#) and [Alvaro Bedoya](#), issued separate statements that were each joined by the other commissioners.

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