



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, SEPTEMBER 22, 2009
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION TO HOLD WORKSHOPS CONCERNING HORIZONTAL MERGER GUIDELINES

Antitrust Agencies Explore Possible Update to Guidelines to Account for Legal and Economic Developments

WASHINGTON – The Department of Justice and the Federal Trade Commission (FTC) announced today that they will solicit public comment and hold joint public workshops to explore the possibility of updating the Horizontal Merger Guidelines that are used by both agencies to evaluate the potential competitive effects of mergers and acquisitions.

The goal of the workshops will be to determine whether the Horizontal Merger Guidelines accurately reflect the current practice of merger review at the Department and the FTC as well as to take into account legal and economic developments that have occurred since the last significant Guidelines revision in 1992.

The Horizontal Merger Guidelines outline the merger enforcement policy of the Department and the FTC. The Guidelines describe the analytical framework and specific standards normally used by the agencies in analyzing mergers. The Guidelines are intended to reduce the uncertainty associated with enforcement of the antitrust laws in the merger area. Merger Guidelines were first adopted in 1968 by the Department of Justice. They were substantially revised in 1982 and again in 1992, when they became the Horizontal Merger Guidelines, jointly issued by the Department and the FTC. The section on efficiencies was revised in 1997. The agencies also issued a detailed Commentary on the Horizontal Merger Guidelines in 2006.

The agencies will issue a set of questions about the current Guidelines and possible revisions. Following receipt of public comments and original research addressing those questions or other issues related to the Guidelines, the agencies will host a series of five workshops. The workshops, which are open to the public and press, will take place in December 2009 and January 2010. The first workshop will be held in Washington, D.C., on Dec. 3, 2009, followed by workshops in Chicago, New York City and San Francisco. A final workshop also will be held in Washington, D.C.

“In light of legal and economic developments that have occurred since the last major revision of the guidelines, it is an appropriate time for the antitrust agencies to conduct a review of the guidelines to determine whether any revisions should be made to better protect American

consumers and businesses from anticompetitive mergers,” said Christine A. Varney, Assistant Attorney General in charge of the Department’s Antitrust Division. “Having guidelines that offer more clarity and better reflect agency practice provides for enhanced transparency and gives businesses greater certainty when making merger decisions, resulting in a more competitive marketplace that benefits consumers.”

“The bulk of the Merger Guidelines is over 17 years old,” said FTC Chairman Jon Leibowitz. “The 1992 Guidelines explicitly stated that they would be revised from time to time. We think the time has come to do that.”

The FTC will post a set of questions on its Web site later today to begin the discussion on the Guidelines. The agencies are interested in receiving written comments from attorneys, economists, academics, consumer groups, the business community and other interested parties. The questions can be found at: <http://www.ftc.gov/bc/workshops/hmg/hmg-questions.pdf>.

Horizontal Merger Guidelines topics to be discussed include: the overall method of analysis used by the agencies; the use of more direct forms of evidence of competitive effects; market definition; market shares and market concentration; unilateral effects, especially in markets with differentiated products; price discrimination; geographic market definition; the relevance of large buyers; the distinction between uncommitted and committed entry; the distinction between efficiencies involving fixed and marginal cost savings; the non-price effects of mergers, especially the effects of mergers on innovation; and remedies. Public comments are also invited on whether to incorporate aspects of the 2006 Commentary on the Horizontal Merger Guidelines into the Guidelines themselves.

Additional information about the date, time and exact location of the workshops will be provided at a later date. Speakers at the workshops will be drawn principally from those filing comments with the agencies. Interested parties should submit comments in accord with the procedures and time frame set forth on the FTC’s Web site.

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