Department of Justice

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JUSTICE DEPARTMENT AND FEDERAL TRADE COMMISSION ANNOUNCE REVISIONS TO MERGER GUIDELINES

Revisions Clarify How Agencies Analyze Claims that a Merger will Lower Costs, Improve Product Quality

WASHINGTON, D.C. -- The Department of Justice and the Federal Trade Commission today revised a portion of their joint Merger Guidelines to clarify how the agencies analyze claims that a merger is likely to lower costs, improve product quality, or otherwise achieve efficiencies.

The Horizontal Merger Guidelines, issued jointly by the Justice Department and the FTC in April 1992, are designed to give merging parties and the general public guidance on how the agencies analyze the competitive effects of a merger, and how they decide whether to challenge a merger under the antitrust laws.

"We already take efficiencies into account in merger analysis, and have done so for some time," said Joel I. Klein, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "The revisions explain more thoroughly how we take efficiencies into account and what information we need from the merging parties to evaluate their claims."

The revisions announced today affect Section 4 of the Merger Guidelines, which relates to efficiency justifications that may be asserted for a merger.

"The revisions better reflect existing practices at the agencies, and provide better guidance to merging parties," said Larry Fullerton, Deputy Assistant Attorney General for Merger Enforcement in the Department's Antitrust Division. "They will allow the agencies to better ensure that valid efficiency claims are taken into account in their enforcement decisions, and that unsubstantiated or otherwise invalid claims are appropriately set aside."

The revisions were developed by an interagency task force, following extensive FTC hearings during the fall of 1995, and the release of a comprehensive report on the hearings prepared by the FTC staff.

"Chairman Pitofsky and the entire Commission and staff deserve a great deal of credit for focusing attention on the need to clarify this aspect of our Merger Guidelines and for the many contributions they have made to the revisions themselves," said Klein.

The revisions make clear that the agencies will take efficiencies into account as part of their analysis of the competitive effects of a merger.

The revisions also provide explicit guidance on issues such as:

- How the agencies determine if the claimed efficiencies are properly attributable to the merger.
- What the parties must do to substantiate their efficiencies claims.
- The circumstances, as a practical matter, in which the agencies are likely to find efficiencies claims persuasive.
- The limited circumstances under which consideration will be given to out-of-market efficiencies and to in-market efficiencies that are not expected to have short-term, direct effects on prices.

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