



# Department of Justice

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## **ANTITRUST DIVISION ISSUES MERGER REMEDIES GUIDE**

### ***Guide Provides Business Community, Antitrust Bar a Framework for Merger Remedies***

WASHINGTON, D.C. – R. Hewitt Pate, Assistant Attorney General in charge of the Department’s Antitrust Division, today released an “Antitrust Division Policy Guide to Merger Remedies” that sets forth the Division’s policies on merger remedies and describes the legal and economic underpinnings of those policies. The guide provides the business community, antitrust bar, and economists with an understanding of the Division’s analytical framework for crafting and implementing relief in merger cases.

“Effective antitrust enforcement requires remedies based on sound legal and economic principles and closely related to the identified competitive harm,” said Pate. “Once we have determined that a merger may substantially lessen competition, the Division will insist upon relief that fully restores competition to the market.”

After setting forth a number of “guiding principles” for the development of remedies in all Antitrust Division merger cases, the guide emphasizes the following important points:

- Structural remedies involving the divestiture of physical or intangible assets are preferred to conduct remedies; conduct remedies are appropriate only in limited circumstances.
- The divestiture must include all assets necessary for the purchaser to be an effective, long-term competitor, including critical intangible assets.

- The divestiture of an existing business entity that possesses all of the assets necessary for the efficient production and distribution of the relevant product is preferred to a partial divestiture.

- If the Division believes the merger will result in a violation, the Division will be willing to forego filing a case and accept instead a structural “fix” that the parties implement before the merger is consummated as long as it fully eliminates the competitive harm arising from the merger.

- The Division will ensure that remedies are completely implemented and will fully enforce its judgments.

“The Remedies Guide provides the tools needed to more quickly identify critical legal and economic issues regarding merger remedies and devise a remedy specifically tailored to the competitive harm,” added Pate.

A copy of the guide is available on the Department of Justice’s website: <http://www.usdoj.gov/atr>. Paper copies of the guide are also available from the Antitrust Documents Group. The Antitrust Documents Group can be contacted by phone: 202-514-2481, fax: 202-514-3763, or e-mail: [atrdocs.grp@usdoj.gov](mailto:atrdocs.grp@usdoj.gov).

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