
DOJ and FTC Release 2023 Merger Guidelines

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On December 18, 2023, the U.S. Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) (together, “the agencies”) finalized merger guidelines (the “Guidelines”) to replace the 2010 Horizontal Merger Guidelines and the previously-rescinded 2020 Vertical Merger Guidelines and meaningfully altered the approach the agencies use to evaluate mergers and acquisitions. The non-legally binding Guidelines include 11 specific guidelines that the agencies may use to determine whether a merger or acquisition is unlawful under the antitrust laws, and they call for the agencies to consider matters such as the risk of coordination and consolidation, potential entrants, and multi-sided platforms. The Guidelines also explain how the agencies may evaluate market definition and the rebuttal evidence and defenses merging parties can use to show that no substantial lessening of competition is threatened by the merger, including the “failing firm” defense, entry and repositioning in the relevant market, and pro-competitive efficiencies. The Guidelines follow the agencies’ draft merger guidelines released in July 2023 and reflect the agencies’ responses to more than 30,000 public comments from attorneys, economists, academics, law enforcement officials, and other interested parties. The Guidelines differ from the draft guidelines in certain respects, although they are broadly consistent in substance to the draft version. Our previous memorandum on the July 2023 draft guidelines can be found [here](#).