



# **DEPARTMENT OF JUSTICE**

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## **Welcome to the Workshops**

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**Welcome Remarks as Prepared for the**  
**Horizontal Merger Guidelines Review Project's**  
**First Workshop**

**Washington, D.C.**

In September, the Department of Justice and the Federal Trade Commission announced that we would be holding workshops to explore whether and how the Agencies should update the Horizontal Merger Guidelines in light of changes in economic learning, the case law, and practice at the Antitrust Division and the FTC since the last significant Guidelines revision in 1992. We then issued a detailed set of questions for public comment. In response, we received 44 comments from lawyers, economists, and other interested parties. Those comments, which are available on the FTC's Web site, reflect a great amount of thought and consideration, for which we are very grateful.

FTC's showing in the *Staples* matter that prices were generally lower when more office superstores competed within a geographic market constituted a key element of the court's views on the likely competitive effects of that proposed combination.<sup>1</sup> Whether and how the Guidelines should be modified to address direct evidence more explicitly than they currently do will be the subject of today's second panel. Included in that discussion will be views on what kinds of direct evidence are most relevant to determining a merger's likely effects on consumers and competition—the core concern of our merger laws and, hence, the Guidelines.

This issue touches upon something that was raised in a number of the public comments and is, I suspect, something that many of our panelists today will have views on: namely, the degree of specificity that is generally appropriate in the Guidelines. A number of commentators made quite specific recommendations on different aspects of the Guidelines, and, indeed, the questions we issued to guide those public comments were themselves quite specific in some circumstances. In some contrast, other commentators stressed the appropriateness of a high degree of generality in the Guidelines. Balancing those concerns is something that I am interested in hearing further views on.

Our third panel today will address market definition. Several commentators offered that, despite any perceived flaws associated with delineating product and geographic markets, defining markets should remain a cornerstone of the Guidelines

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<sup>1</sup> FTC v. Staples, Inc., 970 F. Supp. 1066, 1082 (D.D.C. 1997).





the Department explained that

agreeing to share with us the perspectives she's gained from her service at the Antitrust

relevance today, he was an architect of the 1992 Guidelines, which were the first to be jointly adopted by the Justice Department and the FTC. Between 1997 and 2000, he served as Co-Chair of the Department of Justice's International Competition Policy Advisory Committee, whose report discussed the influence of the Guidelines abroad. He currently works at Howrey. Jim, welcome.

Finally, I again would like to emphasize as we begin these workshops that we have no preconceived decisions about whether and how the Guidelines should be updated. Like the public comments, these workshops are meant to inform our decision-making. We're here today to learn. In that vein, to all the panelists who have offered or will offer their time and expertise, I extend the thanks of the Department of Justice for your insights and your valuable public service.