GUIDELINES BY CLIFFORD CHANCE US LLP

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> the incremental cost of production, are more likely to be susceptible to verification and are less likely to result from anticompetitive reductions in output. Other efficiencies, such as those relating to research and development, are potentially substantial but are generally less susceptible to verification and may be the result of anticompetitive output reductions. Yet others, such as those relating to procurement, management, or capital cost, are less likely to be merger-specific or substantial, or may not be cognizable for other reasons.

The Proposed Guidelines fail to outline, even at a high-level, the Agencies' "new economic understandings."

The Proposed Guidelines should provide insight into the types of evidence the Agencies will find sufficient to support efficiency arguments. The Proposed Guidelines should also examine recent vertical transactions, acting as natural experiments, to explore what the Agencies have learned about efficiencies in vertical mergers. Such examinations have often been part of any guidance issued by the Agencies. If the Proposed Guidelines delineate other types of persuasive efficiencies, beyond eliminating double marginalization, merging parties, attorneys, and economists can be better prepared to engage in more fruitful discussions earlier in the merger review process. Likewise, such guidance would help courts better understand how the Agencies consider economic arguments regarding efficiencies.