

Comments on Draft Vertical Merger Guidelines

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I commend the Antitrust Division of the Department of Justice (hereafter "DOJ") and the Federal Trade Commission (hereafter "FTC") for issuing new draft Vertical Merger Guidelines. The Vertical Merger Guidelines have not been revised since 1984. A great deal has changed in the past 36 years, including both knowledge about the impacts of vertical mergers, and some fundamental aspects of markets and competition in our economy. While this draft is welcome, I think it will benefit substantially from revision and refinement. The DOJ and FTC are to be commended for actively seeking comments on the revised guidelines.

I have the following comments on the Draft Vertical Merger Guidelines.

1. Clarification is needed about what is regarded as a vertical merger. The definition in the Draft Guidelines (footnote 2) states that vertical mergers are between

4. The Draft Guidelines omit some potentially important sources of harm, specifically regulatory evasion and multi-market entry barriers, and mention customer foreclosure only briefly. These should be explicitly included, so that the Guidelines will be as clear as possible about possible harms that will be considered.
5. Section 3 of the Draft Guidelines states that the Agencies are "...unlikely to challenge a vertical merger where the parties to the merger have a share in the relevant market of less than 20 percent, and the related