

Concurring Statement of Christine S. Wilson
Publication of FTC-DOJ Draft Vertical Merger Guidelines for Public Comment
File No. P810034
January 10, 2020

Today the Commission – with the Department of Justice – issues draft Vertical Merger Guidelines for public comment. I concur in this action, which allows the Agencies to gather and consider input from the public before the Guidelines are finalized.

As a more general matter, I also concur with the decision to update and replace the outdated 1984 Non-Horizontal Merger Guidelines. Indeed, during the Commission’s recently-concluded Hearings on Competition and Consumer Protection in the 21st Century, and particularly during the November 1, 2018 session on vertical mergers,¹ commentators almost unanimously called upon the Commission to issue modern guidance that explains how we assess vertical mergers today. Now, just over a year after that Hearing, the Agencies are responding with a timely and comprehensive draft.

I am pleased that the Agencies are working to create Guidelines that explain and formalize existing agency practices. In so doing, the Agencies will promote transparent and predictable enforcement.² That said, I believe the Guidelines will benefit from public input. I encourage comments from all interested and impacted constituencies, particularly on the following topics:

- **Elimination of Double Marginalization (EDM):** Should we align our treatment of EDM³ more closely with the economic literature, which recognizes both its significant benefits and the many reasons that these benefits may not be achieved by contract?⁴
- **Symmetry:**

¹ Fed. Trade Comm'n, Hearings on Competition and Consumer Protection in the 21st Century, Hearing #5: Vertical Merger Analysis and the Role of the Consumer Welfare Standard in U.S. Antitrust Law, Nov. 1, 2018, Georgetown Univ. Law Center, *materials available at* <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-5-competition-consumer-protection-21st-century>.

² See Christine S. Wilson, Vertical Merger Policy: What Do We Know and Where Do We Go?, Keynote Address at GCR Live, at 6-7, Feb. 1, 2019, *available at* https://www.ftc.gov/system/files/documents/public_statements/1455670/wilson_-_vertical_merger_speech_at_gcr_2-1-19.pdf

that vertical mergers are pro-competitive” and there is “a relatively narrow set of circumstances under which these models predict an anticompetitive effect”).

⁸ *See, e.g.*, Steven C. Salop, Revising the Vertical Merger Guidelines: Presentation at the FTC Hearings on Competition and Consumer Protection in the 21st Century, at 8 (Nov. 1, 2018), *available at*

https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_5_georgetown_slides.pdf

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