

FTC and DOJ Seek Public Comments on Merger Guidelines

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The Federal Trade Commission and the U.S. Department of Justice's Antitrust Division announced last week that they are soliciting public comments on ways to "modernize federal merger guidelines" to assist the agencies in identifying anticompetitive transactions. The [Request for Information on Merger Enforcement](#) details 15 areas of particular interest to the agencies:

- Purpose, Harms, and Scope
- Types and Sources of Evidence
- Coordinated Effects
- Unilateral Effects
- Presumptions
- Market Definition
- Potential and Nascent Competition
- Remedies
- Monopsony Power and Labor Markets
- Innovation and IP
- Digital Markets
- Special Characteristics of Markets
- Barriers to Firm Entry and Growth
- Efficiencies

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- Failing and Flailing Firms

Each of the 15 areas includes specific questions on which the agencies are seeking input. Of particular note are questions such as whether the “traditional distinctions” between horizontal and vertical mergers should be reevaluated, whether the guidelines suggest “limiting enforcement to a subset of the mergers that are illegal under controlling case law,” and whether it is “necessary to precisely define the market in every case.”

The comment period is open until March 21, 2022.

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