Press Release

How to Think About Horizontal Mergers: What's Next for FTC & DOJ Guidelines

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The Federal Trade Commission (FTC) and the Department of Justice (DOJ) must consider many factors when determining whether to challenge a proposed horizontal merger, or a merger between direct competitors, a process outlined in the Horizontal Merger Guidelines (HMG). In a new insight, Competition Economics Analyst Fred Ashton explores the potential consequences of changing the HMG.

Key points:

- The most recent iteration of the HMG was adopted in 2010 and reflects decades of economic learning with respect to the competitive effects of mergers, a deeper understanding of markets, and refined agency practices, and this has resulted in the widespread adoption of the HMG by the courts.
- In response to President Biden's executive order on Promoting Competition in the American Economy, the FTC and DOJ announced their intention to revise the HMG to "meet the challenges and realities of the modern economy."
- Such changes could introduce novel theories of harm, adjustments to concentration thresholds, and other modifications to the HMG that threaten to abandon decades of economic advancements and limit the HMG's persuasiveness in the courts.

Read the analysis