



## The FTC and the DOJ finalize new vertical merger guidelines

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As noted in a [previous publication](#), the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) have been developing new vertical merger guidelines to supersede and replace the guidance issued by the DOJ in 1984. That work is now complete and the [new vertical merger guidelines](#) have been issued.

The new guidelines attempt to provide transparency into the agencies' enforcement techniques, practices and policies, which, in turn, are expected to help businesses and attorneys gain a better understanding of how vertical mergers might be evaluated. The increased level of predictability provided by these new guidelines is intended to help businesses comply with the antitrust laws and, at the same time, allow the agencies to continue to enforce the antitrust laws in a way that protects consumers. The guidelines will certainly be beneficial when evaluating non-horizontal mergers; however, the analysis remains very fact dependent and will continue to require a diligent analysis of proposed mergers.

While the final guidelines closely resemble the draft guidelines released earlier this year, the final guidelines did eliminate a "quasi safe harbor" referenced in the draft guidelines indicating that mergers between parties with less than 20 percent market share would be unlikely to be challenged. In addition, the final guidelines also expanded the scope of the guidance to expressly include so-called "horizontal mergers," which can be described as combinations of firms at different stages of competing supply chains.

Finally, the FTC's vote on whether or not to adopt the final guidelines was split 3-2. The three Republican appointees voted to approve the final guidelines, while the two Democratic appointees voted against adopting the final guidelines, believing the final guidance to be too permissive. Accordingly, shifts in the agency's political make-up should be closely monitored as those changes could alter the agency's enforcement approach.

*Note: The FTC's vote to issue the Vertical Merger Guidelines was 3-2, with Commissioner Rohit Chopra and Rebecca Kelly Slaughter voting "no." Chairman Simons and Commissioners Noah Joshua Phillips and Christine S. Wilson [issued a statement](#). Commissioners [Chopra](#) and [Slaughter](#) issued dissenting statements.*

