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FTC and DoJ Launch Effort to Restrict Anticompetitive Mergers

On January 18, 2022, the U.S. Federal Trade Commission ("FTC") and Department of Justice ("DoJ") launched a joint public inquiry aimed at modernizing merger guidelines to better detect and prevent anticompetitive mergers.

We reported last year on the FTC's series of initiatives under its Biden administration chair, Lina M. Khan, to shift from a decades-long generally tolerant merger review policy deemed to have allowed many anticompetitive deals to proceed to a more restrictive posture. See, "FTC Rescinds 2020 Vertical Merger Guidelines...", Sept. 29, 2021 and "FTC Reinstates Restrictive 'Prior Approval' Merger Control Review Policy," Oct. 26, 2021, both available at [Kurtin PLLC Whitepapers and Advisories](#). Earlier in 2021, the FTC had for the first time lowered the statutory Hart-Scott-Rodino ("HSR") pre-clearance reporting monetary thresholds.

The September rescission of the 2020 Vertical Merger Guidelines was notable not only for its withdrawal of a recent policy, but for being a unilateral FTC announcement without the apparent participation of the DoJ, which had jointly promulgated the Guidelines. Now, however, under newly-installed DoJ Antitrust Chief, Jonathan Kanter, the FTC and DoJ are jointly moving to develop a new policy that promises to be more hawkish and less tolerant towards M&A activity deemed anticompetitive or tending to create monopolies. The joint FTC - DoJ Request for Information on Merger Enforcement, seeks public comment on, *inter alia*:

- The Purpose and Scope of Merger Review;
- Presumptions that Certain Transactions are Anticompetitive;

- Use of Market Definition in Analyzing Competitive Effects;
- Threats to Potential and Nascent Competition;
- The Impact of Buyer Power such as Labor Markets, on Mergers and Competition; and
- The Unique Characteristics of Digital Markets.

The Joint Request for Information on Merger Enforcement can be found [Here](#).

The Request for Information is open for public comments for 60 days, with comments to be received no later than March 21, 2022 through [regulations.gov](https://www.regulations.gov). If you would like assistance submitting a comment or other information on the Joint FTC - DoJ initiative, please contact us at info@kurтинlaw.com.

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