

Authors

Bradley C. Weber
214-740-8497
bweber@lockelord.com

Stacy Williams
713-226-1297
swilliams@lockelord.com

www.lockelord.com

This *Client Alert* is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed.

If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive *Client Alerts*.

Attorney Advertising

© 2010 Locke Lord Bissell & Liddell LLP

Antitrust Officials Propose New Merger Guidelines

On April 20, 2010, the Department of Justice and the Federal Trade Commission (“FTC”) issued proposed changes to the guidelines they use for reviewing mergers. The current guidelines were originally implemented in 1992 and were last revised in 1997. While the guidelines do not have the force of law, they are important because they provide companies with guidance as to how antitrust regulators decide whether a merger complies with United States law.

FTC Chairman John Leibowitz stated, “Eighteen years have passed since the Horizontal Merger Guidelines were revised. During that time the agencies’ approach has evolved significantly, and the Guidelines should reflect that.” Of note, the new guidelines provide the agencies with flexibility by noting that “merger analysis does not use a single methodology, but is a fact-specific process through which the agencies use a variety of tools to analyze the evidence to determine whether a merger may substantially lessen competition.” The new guidelines also lessen the importance of market definition in merger analysis by noting that market definition is simply one tool to use in reviewing a merger’s competitive effects.

Other changes of note include a change in the concentration levels that are likely to warrant further scrutiny from the agencies. A new section entitled, “Evidence of Adverse Competitive Effects” is added which sets forth several categories and sources of evidence useful in predicting the competitive effects of mergers.

These proposed guidelines should be reviewed by anyone likely to be affected by antitrust scrutiny. Public comments are being accepted until May 20, 2010.

If you have any questions about the contents or potential effects of the guidelines, please contact one of the authors.

About the Authors

Bradley C. Weber is a partner at Locke Lord and is the co-leader of the firm’s Antitrust Litigation Practice Group, working in both the Dallas office and the Washington, D.C. office. He is experienced in a wide variety of arbitration matters and commercial litigation in both state and federal courts. His practice includes the representation of clients in cases involving antitrust, energy, oil and gas, construction, technology, and banking law.

Stacy Williams is a partner at Locke Lord. He practices complex commercial litigation and has extensive experience with antitrust matters. He has advised clients on a wide variety of criminal and civil business fraud, antitrust, class actions, energy, oil and gas, Commodities Exchange Act, and Foreign Corrupt Practices Act.