



June 4, 2010

VIA E-MAIL

The Honorable John Liebowitz
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex P)
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Christine Varney
Assistant Attorney General for Antitrust
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: **SEIU Comments Regarding Proposed Revisions to Horizontal Merger Guidelines**

Dear Assistant Attorney General Varney and Chairman Liebowitz:

We are writing today to comment on the proposed revised Horizontal Merger Guidelines on behalf of the 2.2 million members that make up the Service Employees International Union ("SEIU"). As we emphasized in the comments that SEIU submitted earlier in the Merger Guidelines revision process, our members are profoundly, and often negatively, impacted by mergers and acquisitions. At times such consolidations create more concentrated employers who have an increased capacity to exercise market power over segments of the labor market, so that classes of workers find their choices severely constrained and their labor conditions potentially put at risk. At times such consolidations may create employers whose increased product market power allows them greater latitude to extract rents through degradations of product and service standards, which may be accomplished by pursuing a "low road" labor strategy, reducing labor costs and standards and accepting the lower skill/higher turnover conditions that may result. In either case, as we emphasized, increases in an employer's market power may injure workers in ways that have been traditionally, and unjustifiably, given little attention in the previous Horizontal Merger Guidelines. Our point in those comments was not that the antitrust laws were designed to protect labor conditions in particular, but that a variety of antitrust abuses were not given adequate attention in the previous Guidelines and that workers interests were among those injured by this.

Given these concerns, we would like to commend the proposed revisions to the Horizontal Guidelines that the agencies have proposed. In our view, the proposed Guidelines incorporate substantial improvements in its discussions of "monopsony power" and "efficiency" issues.

First, SEIU commends the agencies' decision to explicitly focus, to a greater degree than in the past, on "monopsony power" issues. As you may recall, we urged the agencies to examine not only whether a merged entity would likely be able to exercise market power to raise prices to consumers, but also examine whether a merger will allow the new entity to exercise market power over sellers or other input markets. It is not hard to imagine a situation in which two or more major employers in a geographic location

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merge and exercise market power to lower wages (or otherwise degrade labor standards) below competitive levels, especially where workers of particularized skills are involved and there is no union to collectively bargain on those workers' behalf. Such a situation would be fairly analogous to Example 22 of the proposed guidelines – which notes that prices paid to farmers for their crops are likely to be reduced when the two major buyers of their crops merge and become the only buyer of crops in a certain geographical location. In both cases, the newly merged entity is likely to be able to use its newly found market power as a buyer of goods or services to exert downward pressure on prices (including wages) paid to suppliers (including employees). We believe that the language contained in Section 12 of the proposed guidelines is a significant step in the right direction in this area. Moreover, parties whose mergers are being reviewed have no legitimate complaint concerning this change, since inattention to such “monopsony issues” was never justified.

We also would like to commend the agencies for their proposed amendments to the Guidelines governing efficiencies. While the previous Guidelines did discuss efficiency defenses, they mentioned little concerning reductions in service or product quality. This fact was criticized as reflecting an unjustified neglect of these issues in well-respected scholarly commentary. See e.g. Neil W. Averitt and Robert H. Lande, Using the “Consumer Choice” Approach to Antitrust Law, 74 Antitrust Law Journal 1) (2007). The newly proposed Guidelines begin to redress this deficiency by making clear – both in the Overview and in Section 10 – that the agencies will not credit efficiencies against any potential anticompetitive effect that a merger may have if the claimed efficiency will lead to a reduction in output or service quality. We think this is of crucial importance. As a union that represents hospital and other medical workers, we know too well that mergers too often lead to staffing cuts that are claimed to reflect added efficiencies but that in fact directly undermine the quality of patient care. We are thus glad to see that the agencies are willing to take a skeptical view of certain claimed efficiencies. We hope that the agencies will understand that all too often the resulting staffing or other labor standards cuts pursued after mergers and acquisitions do not reflect “efficiency gains” but instead reflect the increased latitude of a party with greater market power to degrade service or product quality, to the injury of both consumers and employees.

We hope that these comments are useful.

Respectfully yours,

Walter Kamiat
Associate General Counsel

Alvin Velazquez
Assistant General Counsel