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January 24, 2020

VIA ELECTRONIC MAIL and U.S. MAIL

The Honorable Joseph J. Simons, Chairman
The Honorable Noah Joshua Phillips, Commissioner
The Honorable Rohit Chopra, Commissioner
The Honorable Rebecca Kelly Slaughter, Commissioner
The Honorable Christine S. Wilson, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Request for Extension of Time for Vertical Merger Guidelines Comments

Dear Chairman Simons, Commissioners, and Assistant Attorney General Delrahim:

On behalf of the National Association of Attorneys General Antitrust Committee, we write to request an extension of the comment period for the new proposed Vertical Merger Guidelines issued by the Department of Justice and the Federal Trade Commission. The proposed new Guidelines are an important tool for antitrust enforcement. As State antitrust enforcers who are on the front lines of addressing competitive impacts in our local markets, we have a unique and important perspective to bring to this process. In light of the importance of these new Guidelines, we ask (i) for an additional thirty (30) days to provide initial comments, (ii) that the comment period be kept open until sixty (60) days after the release of any agency commentary, and (iii) that there be an opportunity to submit reply comments. In addition, we encourage the agencies to hold public hearings.

The Vertical Merger Guidelines have the potential to guide the way courts consider vertical transactions. State knowledge of local markets and assistance in evaluating the competitive effects of vertical mergers on those markets has for many

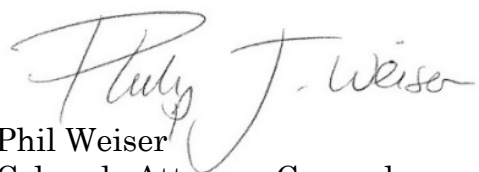
years provided a crucial element to antitrust enforcement efforts most often led by your two agencies. Moreover, state attorneys general working together can bolster antitrust enforcement across the nation by effectively deploying expertise and resources. Antitrust enforcement at the federal and state level is improved when antitrust enforcers cooperate, share information, and coordinate investigations.

That cooperation can extend to the issuance and finalization of the Vertical Merger Guidelines, which are an important and much needed step in antitrust enforcement. They are particularly important given the paucity of recent caselaw and the changes in our economy since issuance of the Non-Horizontal Guidelines by the Department of Justice in 1984. A single thirty-day comment period for the Vertical Merger Guidelines fails to recognize the importance the Guidelines bring to our collective enforcement of antitrust laws. The process for public input before issuance of the Horizontal Merger Guidelines in 2010 provides a useful model. The agencies coordinated a process that took place over roughly a year, involving the posting of questions, invitations for public comment on possible revisions, five public workshops, publication of draft Guidelines, invitations for further public comments, and then issuance of the final Guidelines. By creating an open and collaborative process that allowed sufficient time for stakeholder input and consideration, the agencies published a robust set of guidelines that have had an enormous impact on investigations and litigation. The same kind of process would yield the same kind of continuing impact here.

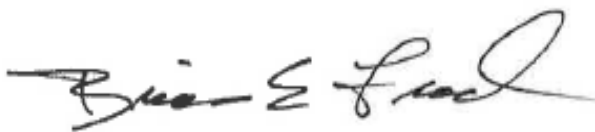
Moreover, if the agencies issue commentary on the Vertical Merger Guidelines, that commentary will itself shape the understanding of their meaning. The Guidelines should not be finalized until there has been a separate opportunity to comment on the expected agency commentary. Thus, our request is both reasonable and advantageous to the establishment of Vertical Merger Guidelines that will stand the test of time.

We welcome the opportunity to work with our federal partners to assist in crafting Vertical Merger Guidelines that will provide much-needed clarity to enforcers, the courts, and the public. We ask only that the agencies provide a process with enough time to ensure that the final Guidelines are the product of robust and thorough evaluation and consideration by all stakeholders.

Sincerely,



Phil Weiser
Colorado Attorney General



Brian Frosh
Maryland Attorney General

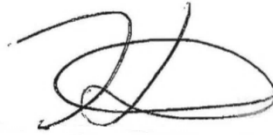
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William Tong
Connecticut Attorney General



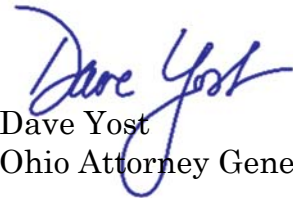
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cc: David B. Lawrence, Chief, Competition Policy and Advocacy Section, DOJ
David J. Shaw, Counsel to the Assistant Attorney General, DOJ
Tara Isa Koslov, Chief of Staff, FTC
Bilal K. Sayyed, Director, Office of Policy Planning, FTC
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