



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan
Regarding the Proposed Rescission of the FTC's Approval of the
2020 Vertical Merger Guidelines
Commission File No. P810034**

September 15, 2021

Last year, the FTC and DOJ jointly issued guidelines outlining a framework for reviewing vertical mergers. This was the first update to the agencies' vertical merger guidance since 1984, and that older guidance had become outdated and inconsistent with agency practice. The 2020 guidelines took some positive steps toward updating the FTC's approach to merger review, recognizing key ways that non-horizontal mergers can undermine competition—including through foreclosing rivals, raising rivals' costs, increasing entry barriers, and giving the merged firm access to competitively sensitive information.

Despite some improvements, the 2020 Vertical Merger Guidelines (VMGs) suffer from serious deficiencies, as detailed in my joint statement with Commissioners Chopra and Slaughter.¹ In particular, the 2020 VMGs contravene statutory text, improperly suggesting that efficiencies or "procompetitive effects" may rescue an otherwise unlawful transaction. The 2020 VMGs also posit the elimination of double marginalization (EDM) as a likely feature of vertical mergers, despite extensive economic learning and empirical evidence noting the highly limited set of conditions under which EDM may transpire.²

In order to prevent reliance on these flawed provisions, we are proposing that the FTC withdraw its approval of the Vertical Merger Guidelines issued in 2020. Going forward, the FTC looks forward to working closely with the DOJ to pursue a comprehensive review of our merger guidelines, considering a holistic approach that moves beyond outdated categories that no longer correspond to market realities. A key goal of this review process will be to ensure our framework for assessing transactions is hewing to empirical evidence over speculative theories. In the interim, the Commission will rely on its statutory authority to apply existing laws when assessing proposed transactions.

¹ Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines, Commission File No. P810034 (Sept. 15, 2021).

² See, e.g., Steven C. Salop, *Invigorating Vertical Merger Enforcement*, 127 YALE L.J. 1962, 1964-74 (2018).