

FTC Virtual Press Conference for Merger Guidelines RFI Joint Announcement | January 18, 2022

Lina Khan:

Good afternoon, everyone. Welcome to today's joint DOJ, FTC announcement. I'm excited to share that the FTC and DOJ today are jointly launching a review of the merger guidelines. Ever since issuing the first merger guidelines in 1968, the antitrust agencies have sought to these documents accurately set forth current enforcement policy and identify the techniques that we use to detect and assess unlawful mergers. Keeping with past practice the DOJ and FTC today are issuing a request for information, identifying key questions and topics on which we are particularly keen to receive public comment. These public comments will be critical for informing our review of the existing guidelines and our process for considering potential revisions and updates.

Lina Khan:

While periodic review of existing guidance is good practice generally, this review of the merger guidelines is especially timely and right. Global deal-making in 2021 soar to \$5.8 trillion, the highest level ever recorded with the FTC and DOJ receiving more than double the number of merger filings received on average in any of the past five years. Major technological and economic changes, meanwhile, have led to shifts in how businesses compete and grow, creating new interconnections and dynamics across multiple dimensions. For us to accurately detect and analyze potentially illegal transactions in the modern economy, ensuring that our merger guidelines reflect these new realities is critical. This inquiry comes against the backdrop of a broader reassessment of the effects of mergers across the US economy. Evidence suggests that decades of mergers have been a key driver of consolidation across industries with this latest merger wave threatening to concentrate our markets further.

Lina Khan:

As president Biden noted in his executive order on promoting competition, industry consolidation and weakened competition have denied Americans the benefits of an open economy, with workers, farmers, small businesses, and consumers paying the price. While the current merger boom has delivered massive fees for investment banks evidence suggests that many Americans historically have lost out. With the diminished opportunity, higher prices, lower wages and lagging innovation. A lack of competition also appears to have left segments of our economy more brittle as consolidated supply and reduced investment in capacity can render us less resilient in the face of shocks.

Lina Khan:

These facts invite us to assess how our merger policy tools can better equip us to discharge our statutory obligations and help this trend. For over a century, Congress has codified a policy in favor of competition over consolidation. In 1890, as trust captured the sugar, steel, oil and railroad industries, lawmakers passed the Sherman Act, prohibiting among other practices monopolization, attempted monopolization and conspiracies to monopolize. Once it became clear that this statute was failing to permit monopolization through acquisition, Congress in 1914 passed the Clayton Act, prohibiting mergers whose effect may be substantially to lessen competition or to tend to create a monopoly.

Lina Khan:

When businesses began exploiting loopholes in the Clayton Act, Congress once again, stepped in passing the 1950, Celler–Kefauver Antimerger Act to ensure the law captured vertical and conglomerate deals, as well as acquisitions of assets. With each of these efforts, Congress redoubled its commitment to open markets and free and fair competition. The durability and public legitimacy of our antitrust regime depends on the ability of enforcers and courts to adapt. Remaining faithful to these legislative mandates, even as markets and business practices shift and evolve. Just as we must revise our theories and models to fit new facts and evidence, we must ensure that our merger guidelines accurately reflect the realities of the modern economy, matching our analysis to contemporary business strategy requires that our tools be dynamic and holistic rather than static and [inaudible].

Lina Khan:

Our request for information identifies a broad set of topics, while each of these is worthy of extensive study and discussion I'd like to spotlight three in particular. First, are the guidelines adequately attentive to the range of strategies and incentives that might drive acquisitions. Be it moat building or data aggregation strategies by digital platforms or roll up plays by private equity firms. More broadly, how should the guidelines analyze whether a merger may tend to create a monopoly including in its incipency or whether there is a trend toward concentration in the industry.

Lina Khan:

Second, do the guidelines adequately assess whether mergers may lessen competition in labor markets, thereby harming workers? Are there factors beyond wages, salaries, and financial compensation that the guidelines should consider when determining anti-competitive effects? And when emerge is expected to generate cost savings through layoffs or reduction of capacity should the guidelines treat this elimination of jobs or capacity as cognizable efficiencies?

Lina Khan:

Third are the guidelines unduly limited in their focus on particular types of evidence? Are there certain markets where the guidelines should provide a framework to assess direct evidence of market power? What types of indicia of market power should the guidelines consider and more generally, what types of evidence should the guidelines consider in evaluating non-price effects? A wealth of scholarship and empirical research over the last decade has delivered significant learning about the effects of mergers and acquisitions. Our review process will benefit immensely from this valuable work and from the insights of experts who have long studied these issues. But I want to take this opportunity to also encourage those beyond the antitrust community, including consumers, workers, entrepreneurs, startups, farmers, investors, and independent businesses to share feedback in evidence. The quality of our review, and any subsequent revisions to the guidelines will depend on robust public participation. And we are especially eager to hear from a broad set of market participants.

Lina Khan:

Lastly, I'd like to give deep thanks to both the FTC and DOJ staff for preparing the thoughtful set of questions that we are issuing today. This process has already benefited significantly from the experience and perspective of the staff that investigate mergers day after day, and who have carried a particularly heavy load during the merger surge of the last year. I'd now like to turn it over to Assistant Attorney General, Jonathan Kanter.

Lina Khan:

Since taking the helm less than two months ago, AAG Kanter has hit the ground running, bringing his wealth of experience and talent to bear on some of the most urgent questions we face. Defenders of open markets and free competition have a fierce champion and vigorous enforcer in AAG Kanter, and I'm grateful for our partnership and the close collaboration between our agencies.

Jonathan Kanter:

Thank you so much, Chair Khan. It is truly a privilege to work alongside you. Your leadership at the FTC has been inspirational. And as an alum of the FTC, I cannot be prouder of the amazing work that the FTC, the entire commission staff is taking under your leadership to promote a fair and competitive economy. We're extremely grateful. Our teams are working together to support our critical shared mission. Together we support economic liberty, progress, opportunity and prosperity. The FTC and the DOJ are fighting on the front lines every day to preserve competitive markets which are absolutely essential to a vibrant and healthy democracy. Chair Khan your leadership has been invaluable and I look forward to our continued collaboration. And ultimately that's what today's announcement is really about, strengthening our joint merger guidelines to meet the challenges and realities of a modern economy.

Jonathan Kanter:

The Attorney General remarked just earlier this month, that too many industries have become too consolidated over time. We need to understand why and think carefully about how our merger analysis tools can do better to prevent this problem from getting even worse. And that's why today we are launching a call for public comment to revise and strengthen the merger guidelines. This initiative is so incredibly important. We have lived through changes in our economy on a level that rivals, if not exceeds the industrial revolution. The digital transformation has revolutionized not just the goods and services we buy, but the nature of industry in its core. Companies today, cooperate, compete, invest and invent in profoundly different ways than they did 20 years ago, let alone 50 or 75 years ago.

Jonathan Kanter:

Times have changed because the advent of digital economy has absolutely transformed our economy. The digital revolution has not only impacted new markets like tech, but markets across our economy. Many of which have been rebuilt from the inside out. The connections and interrelationships among companies and markets have increased by orders of magnitude. Just think about what happens when you check your weather forecast or purchase your morning coffee in seconds, whether you see them or not, you interact with dozens of distinct services. Many of these services have the ability to exploit and exercise market power. The supply chain no longer follows a simple upstream, downstream path.

Jonathan Kanter:

It's interconnected in complex and evolving ways. Understanding the function of markets has always been paramount and core to sound antitrust enforcement and competition policy. We absolutely need to ensure that our tools today allow us to fully understand the markets of today and the realities of how our markets function. We also see the harms of anti-competitive consolidation across the many dimensions of our modern economy. As the president's competition executive order underscores, concentrated market structures can harm downstream consumers and upstream workers at the same time they foster coordination or exclusion in adjacent markets.

Jonathan Kanter:

Everyone loses except the extractive, powerful firms in the middle. Justice therefore demands that we ensure our approach analyzing mergers is not one dimensional or even two dimensional, but captures the rich complexity of a modern economy. That will be how we prevent in their incipency all of the harms of unlawful consolidation. Through this review, we hope to take a meaningful step forward in that effort. I know we also share the view that we can't modernize our guidelines to fit the modern economy if we don't hear from a diverse group of stakeholders.

Jonathan Kanter:

We need to learn from market participants what is working and what is not. More and more we are hearing from affected stakeholders, and that's so incredibly valuable. Stakeholders, businesses, small businesses, farmers, entrepreneurs want more competition. The views of consumers, workers, innovators, farmers, and others on the ground feeling the harms of market concentration present an incredibly valuable perspective for our efforts. Here is our message to the entire American people. Please share your views. We need your input, and we absolutely care what you think. Our review will follow a rigorous, thoughtful, and inclusive process. After this initial comment period, we plan to release a draft of the updated guidelines and seek further comment before finalizing. Along the way, we'll engage frequently with state, federal, and international enforcers, partner agencies, stakeholders. We hope to finish this year, but we have a lot of work to do along the way. In addition to the public engagement process, I have to acknowledge just the extraordinary work of staff in support of this effort. It's going to require a lot of work in the coming months, and we are so grateful.

Jonathan Kanter:

We are ensuring that our staff attorneys and economists at the division and at the FTC play a key role in assessing our proposals and drafting potential revisions to the merger guidelines. They bring unique skill, expertise, and perspective to bear. All of the issues raised in the call for comments are important, but without excluding, anyway, I'd like to highlight just a few areas where we are really enthusiastic about learning more, just as chair Khan did. First, the statutory text of the Clayton Act prohibits mergers that, "May be substantially to lessen competition or tend to create a monopoly."

Jonathan Kanter:

So often, merger enforcement focuses on that first prompt, but it's worth considering if we are being truly faithful to the full language of the Clayton Act. For instance, in how we assess transactions by all firms that already have market power and monopoly power. Second, the guidelines have bifurcated horizontal and vertical analysis, yet often transactions don't neatly fit into either of these categories. Does the framing of horizontal vertical versus vertical analysis itself narrow us to a two-dimensional view of modern markets, which in reality are often multidimensional?

Jonathan Kanter:

How should the guidelines account for these market realities? Relatedly, way too much has been made of the purported divergence between the DOJ and the FTC on the treatment of vertical mergers. The antitrust division shares the FTC substantive concerns regarding the vertical merger guidelines. Those guidelines overstate the potential efficiencies of vertical mergers and fail to identify important but relevant theories of harm. Market participants in court should therefore understand and view the vertical merger guidelines only in the context of the broad based review and overhaul, which we are launching today.

Jonathan Kanter:

Third. Market realities should drive the antitrust analysis, not merely market definition. In a dynamic multidimensional economy, the static formalism of market definition may not always be the most reliable tool for assessing the potential harms of mergers. We hope to learn more through this process about the additional tools that rely on direct sources of evidence, such as [inaudible] market power, a head-to-head competition between merging parties that may be more reliable in some situations than market definition.

Jonathan Kanter:

When we do focus on market definition, I also wonder whether we should do more to capture the dynamism of our economy. Stacks or clusters of component products and services often come together to drive both digital and physical supply chains. Should we more thoughtfully consider competition within a market or even for a market? I could go on. There are many important issues for us to consider, but I'll end where I began, however, with a focus on the need to strengthen our guidelines to ensure that they are fit for purpose in a modern economy.

Jonathan Kanter:

Associate attorney general, Gupta, explained our purpose and remarks earlier this year; To advance economic justice to ensure that everyone benefits from a free, fair, and competitive economy. Competition benefits consumers, workers, entrepreneurs, farmers, and innovators alike. To beat those objectives, our merger guidelines need to be a lens on the markets that consumers, workers, businesses, farmers actually interact with on a daily basis. We need to be thoughtful about having the right tools for the job. We likewise need guidelines that are tractable and accessible to all. I'm eager to hear how we can better serve and protect our public. I look forward to working with our colleagues at the FTC as we embark on this historic initiative. I look forward to hearing from you. Thank you.

Speaker 1:

Thank you. We will now turn it over to Lindsay Kryzak.

Lina Khan:

I am now pleased introduce John Kwoka, Ken Merber, and David Lawrence from the FTC and the DOJ. We're going to work with our reporters this morning. I want everyone to know if we cannot get to everyone's question, please know you can reach out to DOJ and FTC [inaudible], and we'll be able to get to everyone through the course of the day. We're going to start with on-topic questions, and a couple of you did send a few to me in advance. I want to get to those people first, and then we are going to use the hand raise feature for everyone we can get to in the allotted time, so thank you for your patience, everyone. First, we're going to go to Ben Remaly with Global Competition Review. Ben?

Ben Remaly:

Hey. Thank you for doing this call. I have a question about how effective and what challenges you envision convincing the courts to sort of accept these updated guidelines? Do you think you guys will be able to do it on your own? Do you think you're going to need help from Congress?

Dave Lawrence:

Dave Lawrence, DOJ. Maybe I'll jump in and see if my FTC colleagues have additional thoughts. Now, I think as the chair, and [inaudible] talked about, the purpose of this effort is to ensure the guidelines are fit for a purpose, applying the law, of course, as it's written by Congress and interpreted by the courts. Nothing's been decided about the content of the ultimate revisions, except that we really care about having a robust public process. Of course, ultimately all our cases wind up before the courts.

Kenneth Merber:

Hi. This is Ken Merber from the FTC. I agree with that. The guidelines have historically been viewed as persuasive by the courts in many instances, because they've reflected a very thoughtful, careful process that reflects the agency's experience in investigating mergers, and we intend to follow a similar process in this go around.

Ben Remaly:

Thank you.

Lina Khan:

Thanks Ken, and thanks to you, Ben. Next, Jeff Bliss, Capitol Forum?

Jeff Bliss:

Hi. Thanks so much for taking my question. I know there's a lot going on here, but I guess one of the most interesting parts is what you want to do with market definition. I'm wondering how you guys expect revising that aspect of the guidelines will change investigations in the mergers, and how you try cases of mergers you want to block?

Dave Lawrence:

Maybe I'll just start again here. Jeff, I think the question you asked is

Dave Lawrence:

Is one that's in the RFI that we're issuing to the public today. We're very interested in hearing from a wide group of stakeholders on issues just like that. And having made decisions about where the guidelines will go, but I think it's a really important issue to be thinking about.

Jeff:

Well, can you give me any speculation about where this might go?

Dave Lawrence:

I think where this is going now is hopefully to a really broad set of comments from the public. We're really eager to learn. Meanwhile, the staff at the DOJ and FTC who have been collaborating on this RFI, are going to shift to thinking about just those questions. But I don't have any answers for you today.

Lina Khan:

Thanks guys. And I let Jeff sneak an extra question in there, but I'm trying to get to everybody. I know we have a lot of hands up. I do see Steven Levy from Wired.

Steven Levy:

Yeah. Thanks for doing this. When you come out here, isn't it going to be something that you could have done without the review process? And the questions that [inaudible] asked, seemed to me to be the things that you would've asked all along, right?

Steven Levy:

To do that, I'll put the video on. And so couldn't some of these decisions have been made? Because obviously the staff and the leaders here thought about this quite a lot without the review process.

Ken:

So-

Dave Lawrence:

Oh go ahead, Ken.

Ken:

Sure. So of course the agencies are extremely experienced in thinking about these questions through their general work. But in past updates to the merger guidelines, we've found it to be beneficial to also get outside perspectives through a process much like this one, which was also used 10, 12 years ago when the 2010 guideline update was published.

Ken:

So you're right, we have thought about the questions ourselves, but we do view the public engagement process as valuable.

Steven Levy:

And in the interim, if you're looking at current mergers, we just heard one today. Do you feel you're hampered without having these updated guidelines?

Dave Lawrence:

So first I'll say, I agree with Ken in general that having a robust public process is a prudent thing to do. It's what we've historically done. And that's how we're proceeding here.

Dave Lawrence:

In terms of particular transactions, not in a position to comment on any particular transactions today. It's always been the case. And I think we've said this many times before, that particular transactions are reviewed on their merits. And there are times where what we wind up with in the guidelines evolves as a result of the very thoughtful analysis that goes into [inaudible].

Steven Levy:

Thank you.

Lina Khan:

Thanks. Cecilia from the Times.

Cecilia:

Thank you for taking this question. So when a lot of the areas that are of focus in this review process seem to be directed at the technology industry. When you talk about nascent rivals, you talk about zero cost services, that kind of thing.

Cecilia:

Can you talk about to what extent this is aimed at technology and the technology industry? And secondly, this figure that chair con mentioned about the 5.8 trillion dollars in deal making. Can you break that down a little bit? Like what percentage of that is tech or other industries? And actually, another way of asking that first question is what other industries do you see as problematic beyond the technology industry? Thank you.

Dave Lawrence:

Yeah, sure. So appreciate the question. As Isiah G. Cantor, I think talked about in his remarks, there are consumer facing technology industries, and then there's every other industry or nearly every other industry that has been rebuilt from the inside out as a result of the digital revolution.

Dave Lawrence:

And so the questions are really directed towards assessing our merger enforcement policy overall, but with an eye towards making sure that they're fit for purpose, given all of the changes we've seen across the economy.

Dave Lawrence:

So hopefully that answers your first question, Cecilia.

Dave Lawrence:

And as to the second, I don't have more further broken down statistics in front of me on that. But I don't know if Ken or John do.

John:

Let me just add, particularly to your first question. One of the focuses, as you rightly say, of the request for information has to do with digital markets. And it is because when the last guidelines were issued 12 years ago now, there are a certain number of issues that were much less important in the overall economy than they clearly have been the last decade or more. And the request directs a lot of questions at those areas, that by virtue of focus simply were under investigated in the preceding guidelines.

John:

So for example, labor markets and [inaudible] power did not appear as an important issue, though they should have. And digital markets did not in the 2010 guidelines.

John:

And so we are interested in developing an equally fulsome set of comments and records for how we should be approaching those areas that simply had not been fully explored in the preceding guidelines.

John:

I don't have the answer to your second question either, but that's something that we can work on for you.

Lina Khan:

Thanks, John. Jonathan from Reuters.

Jonathan:

Thank you so much. So chair con mentioned bringing into the analysis, labor markets. A major criticism of kind of antitrust enforcement in the US right now is an overly narrow focus on simply the effects on prices for final consumers. I was just wondering if you could speak to whether this process is seen as a way to kind of further the focus away just from final consumer prices. And B, if the guidelines do end up affecting that and kind of changing that focus, will that change how the FTC approaches litigating mergers in court?

John:

I can't speak to the litigation issue. I'll turn that back to Ken and David, but it certainly is true that the guidelines as written, direct attention to price outcomes and consumer price outcomes in particular. That's quite clear that that lens may have been unduly narrow. That there are both labor market effects from many of the mergers that we are witnessing. And there also are many non-price effects accompanying product market price increases that we need to be equally concerned about.

John:

And so we're concerned about quality issues that may not track identically what happens to price. We're interested in innovation and how that needs to be more fully addressed. So they're all of those as well. And the guidelines direct a fair number of questions at those. The RFI at those questions, so that we get input on all of those. But let me turn the question about enforcement back to Ken.

Ken:

Yeah. Thank you. So on labor market issues, I think the current guidelines have some discussion of monopsony issues. And it has always been understood that monopsony issues are an appropriate subject of concern in merger review and antitrust generally. I do think the agencies have in their enforcement programs increasingly become focused on labor market issues. And I think the guidelines should begin to reflect that.

Dave Lawrence:

I'll just note the concurrence from the DOJ side, that in generally speaking, ensuring that workers benefit from competition is a significant priority for us.

Lina Khan:

Okay, great. Cat from the Post.

Cat:

Thanks so much for taking my question. Just as we're talking about mergers in digital markets, I specifically wanted to ask about the Activision Blizzard deal that was announced today.

Cat:

Does the FTC or DOJ have any comment on Microsoft's announcement that it's planning to acquire Activision? And just broadly, how do you plan to balance this review process with just handling this onslaught of mergers that you've repeatedly cited? If this is going to be a process that takes up to a year.

Dave Lawrence:

So I'll-

Lina Khan:

I'll just note the first half of that question might be tricky for this group, because it is off topic and I did promise on topics only, but the second half is certainly relevant.

Dave Lawrence:

Yeah. So I'll just want to be very clear that we don't have any comment on any particular enforcement matter pending or contemplated. Or any potential investigation or any merger out there. So none of this relates to any particular transaction.

Dave Lawrence:

In terms of the general guidelines review, it is a lot of work and we have a good team. I think there's a tremendous interest among folks at the staff of the antitrust division. I believe so as well at the FTC. But part of why a robust public comment process is so helpful is that we are very hopeful we'll get a wide range of views. We'll get thoughtful views. And working through those materials and thinking about them is a really useful way to drive the analysis forward.

Ken:

And that I

Ken:

I would just concur that... I can confirm as Dave suggested that there's wide interest at the FTC in the process, and that, likewise, we cannot comment on any active or potential investigations.

Lina Khan:

Thank you. Brian, Konik law360?

Brian:

Good afternoon. Wondering about vertical merger guidelines, FTC, it actively withdrew these guidelines. DOJ is still using them, at least theoretically. And I understand that AAG Kanter just said that courts need to consider those guide... consider the revisions while... even before they've come out. But DOJ is theoretically still operating under them, why not withdraw them entirely?

Dave Lawrence:

Yeah. To be clear, the vertical guidelines are actively under review and we're working together to address the issues that AAG Kanter talked about, that the DOJ and FTC have talked about previously. We're committed to working together on a replacement document. I should underscore, some of this

is... gets into the weeds, but these are two different agencies with sort of different systems in place and procedures. And so, one area that I think has been lost in this is even the prior out of date, vertical merger document, the 1984 document that was on the books for, I think, 36 years without the FTC ever joining. And so for 37 of the last 38 years, we've been in the position we're in today, where the DOJ has a document formally on the books, the FTC does not. But what we're focused on is making sure that we can put together a joint document that will really stand the test of time, because we think it's very important to both of our agencies and to then broader American public that we have, of course, at consistent vision on all this, and a publicly explained one.

Lina Khan:

Thanks, David. I do want to get to everybody. So Ken, I'm cutting you off there, sorry. Just in the interest of time, Curtis, April, Berger, and Max.

Speaker 2:

Hi, David. I have one question for you. You say you want to hear from everybody, but is it possible to get a middle ground on something like this? In other words, how do you ensure the changes you make today aren't erased by another comment period, another rewrite, and the very next administration popping back and forth between whoever's in charge at the time? How does submitters have confidence in the system without new laws that, crafting rules that can be changed are going to have any kind of same power?

Dave Lawrence:

Yeah, I appreciate the question. I guess I would say we're at the beginning of this review process, and all we can do is try to seek the broadest set of public comments we can, have the most thoughtful analysis we're able internally, and be the most careful we can about the revisions as we undertake.

Lina Khan:

Lauren, [inaudible]

Lauren:

Hi, thanks so much for taking my question. I was wondering in the section about digital markets, it talks about whether there should be different guidelines specific to digital markets. And I was wondering if you could talk a little bit about what that would look like, to have specific guidance on a particular industry or type of market. And if you have any concerns about whether courts would look favorably upon a set of guidelines geared toward a specific industry? Thanks.

Dave Lawrence:

John, do you want to go first on this one?

John:

Apologies for that. I want to just say that we are, of course, trying to establish a full foundation of how to think about digital markets, is they do raise some different issues. And I think the RFI suggests them. They're subject to tipping. Many of them have zero price issues, and data aggregation is an issue that arises most distinctly in digital mergers. So these are matters that weren't fully addressed. I think it's fair to say in the 2010 guidelines. And so we are looking to be sure that the agencies are equipped, and can

inform the courts about how it is that the same fundamental principles would be applied to these somewhat different settings. So I think it's not going to be a altogether different set of guidelines so much as, and adaptation to deal with the specific characteristics of digital markets and mergers amongst those companies.

Lina Khan:

Thanks, John. Kathleen Murphy, FTC watch?

Kathleen Murphy:

Hi, thank you for taking my question. FTC watch looked at merger divestitures listed on the agency's website for a three year span, and couldn't find a single asset that was divested to a black investor, business owner or corporation with a majority African American board. Is this, at all, part of your focus and what you have called today? Modernizing enforcement of the antitrust laws regarding mergers and learning about where the earlier guidelines may underemphasize or neglect important aspects of competition?

Dave Lawrence:

I would say either a number of very specific questions listed in the RFI, but it's a broad call for a public comment, and this is an opportunity for any of the commenters to share issues that they think are important. And as AAG Kanter said, we're eager to hear those views, and we're going to be very thoughtful about them.

Lina Khan:

Josh Cisco, the information?

Josh Cisco:

Hi, thanks for taking the question during the call. Over the last, seven or eight months, the FTC has made a bunch of statements about how it's been sort of underwater with just the kind of sheer amount of mergers that has to review. I'm wondering if the DOJ has similar concerns, that it's having difficulty getting to all, to look at every issue and every deal in the initial 30 day timeframe. And then along those lines, is the DOJ going to adopt similar processes around prior approvals in merger settlements, the FTC recently did? Thanks.

Dave Lawrence:

Sure. Thank you. So I'll start with the second question. And today we're here to discuss the merger guidelines. I don't have any other particular announcements to raise. As to the first question, I think Chair Khan gave some of the statistics. The merger surge is real. You don't have the number of merger filings more than double without putting an enormous burden on the workload of staff at both agencies. And we're certainly feeling that at the justice department.

Lina Khan:

Thanks. And in the interest of time, I apologize. I'm going to take one more question from Kushida Vissani. I know a couple of you just put your hands up. I will get to you guys later, but I do want to thank everyone. Kushida?

Kushida:

Thanks, Lindsay. Hi, thanks for taking my question. I actually have two. The first one, is will the new guidelines move away from defining relevant markets, and consider the size of companies? And secondly, in the section about innovation and intellectual property, could you perhaps talk a bit about that? Specifically, do you have concerns about gasoline refining markets? Because the FTC has talked about abusive factors in recent... when it comes to gasoline refining patents? Thank you.

Ken:

So on the first question, as the RFI describes, we're interested in exploring and receiving input from the public on where market definition analyses might be adjusted or revised. And when the ultimate inquiry that we're engaged in, which is identifying whether or not a merger will lead to a substantial lessening of competition, is best served by more or less focus on the sort of subsidiary question of market definition. And on your second question, as John was alluding to with the earlier question about digital markets, I think the RFI is not focused on a particular industry so much as particular features of markets that may exist across multiple different industries.

Lina Khan:

Thank you everyone. Thank you... Everyone who's joining, on the live stream, members of the press, thank you for joining here. If we were not able to get to your question again, public affairs at the FTC and DOJ are going to reach out to everyone who we missed and try to get to your questions as quickly as possible, today. Thank you again to Chair Khan, Assistant AG Kanter, and we look forward to doing this again with all of you. Thank you.