

JULY 2023

Six Ways That Proposed Merger Guidelines Signal Government’s Commitment to Curtailing Unchecked Corporate Power

The DOJ and FTC’s proposed guidelines signal a ground shift in antitrust enforcement, and a clear direction for the antimonopoly movement.

INTRODUCTION

Today’s rampant corporate consolidation and virtually unchecked corporate power harms us all. Two years after President Biden signed a [historic executive order](#) to promote competition through a whole-of-government approach, the Department of Justice (DOJ) and Federal Trade Commission (FTC) delivered one of the critical pieces of policy for tackling America’s monopoly problem: a set of draft merger guidelines.

With the release of these guidelines, our antitrust enforcers are sending a clear message: They are serious about reining in concentrated corporate power to rebalance power in our economy. The DOJ and FTC’s proposed guidelines provide clear guidance to enforcers to prevent some of the worst abuses in our modern economy, like tech firms that preserve monopoly power by buying up incipient rivals, or private equity firms engaging in a string of small acquisitions to corner a market.

Here are six points in these draft guidelines that signal a ground shift in antitrust enforcement — and some thoughts on where we still need to go as the antimonopoly movement.

1. **The proposed guidelines show that democracy wins when we embrace antimonopoly action.** These draft merger guidelines stress accessibility

and transparency, through open comment periods and plain language, reflecting a renewed commitment to democratic processes. By ensuring

that the public can better understand what our antitrust enforcers consider in reviewing mergers, they send a message that the rules that dictate our economy and keep corporate monopolies in check are not just for technocrats — lawyers and economists — to interpret. By bringing the public back into these processes, our government is making it clear that they are serious about protecting workers, communities, and everyday people from monopoly power.

2. **Constituencies who are most affected by monopoly power advocated and organized effectively for these guidelines.** For the first time, workers are named explicitly as a key constituency that agencies must consider in merger review. This recognition is a testament to the antimonopoly [work](#) we've supported on behalf of workers, from litigation led by groups like [Towards Justice](#); to [academic scholarship](#) from experts like Brian Callaci, Hiba Hafiz, and Marshall Steinbaum showing the perils of corporate concentration on workers; to worker organizing led by groups like the [Athena Coalition](#).
3. **For too long, corporate power grew virtually unchecked under a framework that embraced market**

concentration as “more efficient.”

Now enforcers are serious about disentangling antitrust enforcement from decades of neoliberal structural hurdles. The draft guidelines show that enforcers are clear-eyed about the need to take a structural approach to understanding how power is distributed, exerted, and consolidated in markets. Gone is the notion that markets will self-correct or the idea that we must permit mergers for the sake of efficiency—all ideas that a neoliberal approach to antitrust enforcement normalized four decades ago.

4. **The draft guidelines set an enforcement paradigm that returns to the original intent of antitrust laws.** The draft guidelines restore Congress's original thinking on antitrust by clearly recognizing mergers as a key vehicle for corporations to amass even more power, and by acknowledging how growth via mergers—as opposed to internal, organic growth—smothers innovation. The proposed guidelines also opt to nip trends toward concentration as early as possible, including by reducing the threshold for presuming market concentration, reminding the field that legal

precedent set by United States v. Philadelphia National Bank and other antitrust cases still exist on the books. All of these changes make clear that the agencies plan to return to enforcing our antitrust laws with Congress's original intention: to disperse economic power and keep concentrated corporate power in check.

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5. **The draft guidelines mark a departure from the consumer welfare standard that narrowed merger review to focus overwhelmingly on price.** The outdated standard, a function of the neoliberal turn in antitrust enforcement, fails to account for the medley of harms that stem from Big Tech’s current dominance, particularly as it pertains to the labor

force. These draft guidelines rise up to meet the current moment by making it clear that the constituencies who have standing in merger review are not just limited to consumers, but include sellers too, including workers who are sellers of their own labor.

6. **The proposed guidelines represent a paradigm shift, but there’s much left to do.** The draft merger guidelines are a reminder that a different world is possible: one where everyday people, workers, and small businesses can thrive, instead of just those who seek to monopolize the market. To fully realize this vision, the antimonopoly movement must sharpen our collective understanding of how monopoly power impacts communities of color, and develop strategies to build power for those communities. For example, our partner [Liberation in a Generation](#) articulates a framework for understanding how monopoly power intersects with systemic oppression like structural racism, and has strengthened our understanding around the need for antimonopoly action to address harms experienced by communities of color. The critical next step is translating these ideas into policy interventions.

We're inspired that enforcers recognize that antimonopoly action is key to building a fair, egalitarian economy in our post-neoliberal world, and are starting to address the roots of our monopoly problem. But this is only the beginning. The fight ahead remains fraught, with corporate interests looking to prevent this sea change in economic thinking and instead lock in the neoliberal paradigm. We can't let that happen — the stakes are too high for workers, communities, small businesses, and everyday people. We look forward to ensuring that the strongest possible merger guidelines are secured to start us on a path toward deconcentration.

The Economic Security Project is a network of policymakers, academics, advocates and communicators working to end poverty and rebuild a strong middle class through a guaranteed income. The initiatives we organize and support focus on immediate opportunities to help families make ends meet and long-term strategies that promote a vision of economic dignity and freedom for all Americans. The Economic Security Project is a network of policymakers, academics, advocates and communicators working to end poverty.