



REQUEST FOR PUBLIC COMMENT

Regulated Industries

(Comments Requested by July 15, 2005)

1. What role, if any, should antitrust enforcement play in regulated industries, particularly industries in transition to deregulation? How should authority be allocated between antitrust enforcers and regulatory agencies to best promote consumer welfare in regulated industries?
2. How, if at all, should antitrust enforcement take into account regulatory systems affecting important competitive aspects of an industry? How, if at all, should regulatory agencies take into account the availability of antitrust remedies?
3. What is the appropriate standard for determining the extent to which the antitrust laws apply to regulated industries where the regulatory structure contains no specific antitrust exemption? For example, in what circumstances should antitrust immunity be implied as a result of a regulatory structure?
4. How should courts treat antitrust claims where the relevant conduct is subject to regulation, but the regulatory legislation contains a “savings clause” providing that the antitrust laws continue to apply to the conduct?
5. Should Congress and regulatory agencies set industry-specific standards for particular antitrust violations that may conflict with general standards for the same violations?
6. When a merger or acquisition involves one or more firms in a regulated industry, how should authority for merger review be allocated between the antitrust agencies (DOJ and FTC) and the relevant regulatory agency?
 - a. Are there additional costs and delay when two agencies (one antitrust, one regulatory) both analyze the antitrust effects of the same merger? Are there benefits to such dual review?
 - b. Should regulatory agencies defer to antitrust analysis by the antitrust agencies, or should both the antitrust and regulatory agencies conduct separate antitrust analyses in performing merger reviews? Should the antitrust agencies have primary responsibility or simply an advisory role with respect to antitrust analysis in merger review?

In your response, please refer specifically to the following contexts:

- i. Mergers or acquisitions involving financial institutions. *See* 12 U.S.C. §§ 1467a, 1828, 1842.

- ii. Mergers or acquisitions involving certain media companies (*e.g.*, radio or television broadcasters, satellite, and cable companies) and common carriers. *See* 47 U.S.C. §§ 214, 310.
- iii. Mergers or acquisitions of rail carriers subject to approval by the Surface Transportation Board. *See* 49 U.S.C. §§ 11321, 11323-24.
- iv. Mergers or acquisitions involving motor carriers of passengers. *See* 49 U.S.C. § 14303.
- v. Pooling agreements among certain motor carriers. *See* 49 U.S.C. § 14302.
- vi. Certain agreements involving domestic and foreign airlines. *See* 49 U.S.C. §§ 41308-09.
- vii. Acquisitions of assets of natural gas companies. *See* 15 U.S.C. § 717f.
- viii. Mergers or acquisitions of electric power companies. *See* 16 U.S.C. § 824b.
- ix. License applications subject to the approval of the U.S. Nuclear Regulatory Commission. *See* 42 U.S.C. § 2135.
- x. Issuance of federal coal leases. *See* 30 U.S.C. § 184(*l*).
- xi. Issuance or transfer of licenses for exploration of hard minerals in deep seabed sites. *See* 30 U.S.C. § 1413(d).
- xii. Issuance of oil and gas leases on submerged lands of the Outer Continental Shelf. *See* 43 U.S.C. § 1337(c).

Source: 70 Fed. Reg. 28902–28907 (May 19, 2005)