

Supplemental Regulated Industries Discussion Outline

Note: Italicized text is based on the Commission's questions for public comment.

I. <i>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 and the relevant regulatory agency?</i>

[1] The federal antitrust enforcement agencies should have the exclusive authority to review and challenge mergers or acquisitions of regulated firms, and the relevant regulatory agency should have only an advisory role, and no independent authority to review and challenge mergers or acquisitions of regulated firms.

[2] The federal antitrust enforcement agencies and relevant regulatory agency should have dual, concurrent authority to review and challenge mergers or acquisitions of regulated firms.

If so:

[a] The antitrust agency's conclusion regarding the merger's effect on competition would be binding on the regulatory agency, and the regulatory agency could prohibit or impose conditions on the merger only if it clearly articulated why other public interest considerations outweighed the antitrust agency's conclusion regarding competitive effects. The antitrust agency would retain the separate authority to challenge the merger.

[b] The antitrust agency's conclusion regarding the merger's effect on competition would be given presumptive weight by the regulatory agency, and the regulatory agency could prohibit or impose conditions on the merger only if it clearly articulated why it reached a different conclusion regarding competitive effects or why other public interest considerations outweighed the antitrust agency's conclusion regarding competitive effects. The antitrust agency would retain the separate authority to challenge the merger.

[c] The regulatory agency would determine how much weight to give the antitrust agency's conclusion regarding the merger's effect on competition, and the regulatory agency could prohibit or impose conditions on the merger based on competition concerns or based on the public interest. The antitrust agency would retain the separate authority to challenge the merger.

[3] The regulatory agency should have exclusive authority to prohibit or impose conditions on a merger or acquisition. The antitrust agency could participate in the regulatory agency's review, and any assessment of competitive effects that it provides could be given preclusive, presumptive, or no particular weight. The antitrust agency would have no authority to challenge the merger or acquisition.