

## DOJ and FTC release final merger guidelines

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On December 18, 2023, the Department of Justice and the Federal Trade Commission issued the final version of their revised merger guidelines, which include modest changes from the agencies' July 2023 draft guidelines. The changes include a softening of the language on structural presumptions with respect to vertical mergers and dominant firms and a more prominent acknowledgement of the role of rebuttal arguments and evidence of efficiencies in the agencies' analyses of competitive harm.

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<sup>1</sup> Merger Guidelines, DOJ and FTC (Dec. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023\\_merger\\_guidelines\\_final\\_12.18.2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf).

## Summary of key changes

**Guideline 3: Mergers can violate the law when they increase the risk of coordination.**

**Guideline 5: Mergers can violate the law when they create a firm that may limit access to products or services that its rivals use to compete.**

**Draft Guideline 6 was deleted, however key substance was moved elsewhere.**

**Final Guideline 6: Mergers can violate the law when they entrench or extend a dominant position.**

**Draft Guideline 13 was deleted, however its substance remains elsewhere.**

**Section 3: Rebuttal evidence showing that no substantial lessening of competition is threatened by the merger.**

## **Conclusion and practical implications**

<sup>2</sup> For an in-depth analysis of the Guidelines, see *DOJ and FTC Release Draft Merger Guidelines*, Davis Polk & Wardwell LLP (July 21, 2023), <https://www.davispolk.com/insights/client-update/doj-and-ftc-release-draft-merger-guidelines>.

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<sup>3</sup> *Id.*

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