

FTC Confirms Vertical Mergers Remain a Priority Despite DOJ's Loss in AT&T/Time Warner Challenge

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The U.S. antitrust agencies have struggled for decades to provide comprehensive guidance on the antitrust treatment of so-called vertical mergers—generally, mergers of two companies at different levels of the distribution chain. Recent developments suggest a new effort to articulate the legal and economic bases for the assessment of vertical mergers. While the specifics have not yet been articulated, it is anticipated that the guidance will address theories of unilateral and coordinated harm, the treatment of efficiencies, and the evaluation of whether remedies are sufficient to address competitive harms. It remains to be seen, however, whether these efforts will provide greater predictability and consistency in vertical merger enforcement.

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