

FTC Articulates Enforcement Policy Against “Unfair Methods of Competition,” Fine-Tunes Merger Review Process

August 17, 2015 | Client Update

The Federal Trade Commission commits to weighing costs and benefits of conduct at issue before bringing actions against “unfair methods of competition” under Section 5 of the FTC Act, and updates merger review procedural guidance to reflect current best practices.

Summary

The Federal Trade Commission (“FTC”) issued a statement on Thursday that sets forth its basic approach to challenging business conduct as an “unfair method of competition” under Section 5 of the FTC Act—its first formal articulation of Section 5 policy in the agency’s history. The Commission will evaluate whether business conduct is anticompetitive, consider any countervailing benefits of the conduct at issue, and seek to rely on Section 5 only if the antitrust laws do not sufficiently address anticompetitive harm. On the whole, the FTC’s policy statement echoes rationales for the agency’s recent enforcement involving industry standard-setting, invitation-to-collude, and monopolistic conduct cases. The Commission’s vote was 4-1, with Commissioner Josh Wright, who had pushed for such guidance, joining the majority, and Commissioner Maureen Ohlhausen dissenting.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Arthur F. Golden

+1 212 450 4388
arthur.golden@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[Read the full update](#)