

AN FTC GUIDE TO THE ENFORCERS

THE FEDERAL GOVERNMENT, STATES, AND PRIVATE PARTIES

THE FEDERAL GOVERNMENT

Both the FTC and the U.S. Department of Justice (DOJ) Antitrust Division enforce the federal antitrust laws. In some respects their authorities overlap, but in practice the two agencies complement each other. Over the years, the agencies have developed expertise in particular industries or markets. For example, the FTC devotes most of its resources to certain segments of the economy, including those where consumer spending is high: health care, pharmaceuticals, professional services, food, energy, and certain high-tech industries like computer technology and Internet services. Before opening an investigation, the agencies consult with one another to avoid duplicating efforts. In this Guide, “the agency” means either the FTC or DOJ, whichever is conducting the antitrust investigation.

Premerger notification filings, correspondence from consumers or businesses, Congressional inquiries, or articles on consumer or economic subjects may trigger an FTC investigation. Generally, FTC investigations are non-public to protect both the investigation and the individuals and companies involved. If the FTC believes that a person or company has violated the law or that a proposed merger may violate the law, the agency may attempt to obtain voluntary compliance by entering into a consent order with the company. A company that signs a consent order need not admit that it violated the law, but it must agree to stop the disputed practices outlined in an accompanying complaint or take certain steps to resolve the anticompetitive aspects of its proposed merger.

If a consent agreement cannot be reached, the FTC may issue an administrative complaint and/or seek injunctive relief in the federal courts. The FTC’s administrative complaints initiate a formal proceeding that is much like a federal court trial but before an administrative law judge: evidence is submitted, testimony is heard, and witnesses are examined and cross-examined. If a law violation is found, a cease and desist order may be issued. An initial decision by an administrative law judge may be appealed to the Commission.

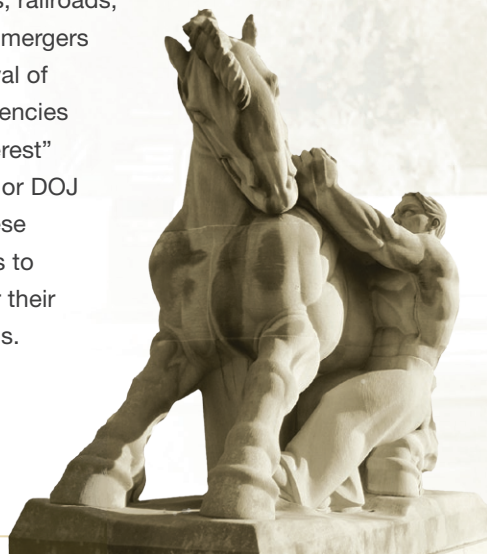
Final decisions issued by the Commission may be

appealed to a U.S. Court of Appeals and, ultimately, to the U.S. Supreme Court. If the Commission’s position is upheld, the FTC, in certain circumstances, may then seek consumer redress in court. If the company violates an FTC order, the Commission also may seek civil penalties or an injunction.

In some circumstances, the FTC can go directly to federal court to obtain an injunction, civil penalties, or consumer redress. For effective merger enforcement, the FTC may seek a preliminary injunction to block a proposed merger pending a full examination of the proposed transaction in an administrative proceeding. The injunction preserves the market’s competitive status quo.

The FTC also may refer evidence of criminal antitrust violations to the DOJ. Only the DOJ can obtain criminal sanctions. The DOJ also has sole antitrust jurisdiction in certain industries, such as telecommunications, banks, railroads, and airlines. Some mergers also require approval of other regulatory agencies using a “public interest” standard. The FTC or DOJ often work with these regulatory agencies to provide support for their competitive analysis.

THE FTC DEVOTES MOST OF ITS RESOURCES TO SEGMENTS OF
THE ECONOMY WHERE CONSUMER SPENDING IS HIGH.



STATES

State attorneys general can play an important role in antitrust enforcement on matters of particular concern to local businesses or consumers. They may bring federal antitrust suits on behalf of individuals residing within their states (“parens patriae” suits), or on behalf of the state as a purchaser. The state attorney general also may bring an action to enforce the state’s own antitrust laws. In merger investigations, a state attorney general may cooperate with federal authorities. For more information on joint federal-state investigations, consult the *Protocol for Coordination in Merger Investigations*.

PRIVATE PARTIES

Private parties can also bring suits to enforce the antitrust laws. In fact, most antitrust suits are brought by businesses and individuals seeking damages for violations of the Sherman or Clayton Act. Private parties can also seek court orders preventing anticompetitive conduct (injunctive relief) or bring suits under state antitrust laws. Individuals and businesses cannot sue under the FTC Act.

ISSUES OF INTERNATIONAL JURISDICTION

U.S. and foreign competition authorities may cooperate in investigating cross-border conduct that has an impact on U.S. consumers. For more information on the application of U.S. antitrust laws to businesses with international operations, consult the 1995 *Antitrust Enforcement Guidelines for International Operations*. In addition, as more U.S. companies and consumers do business overseas, federal antitrust work often involves cooperating with international authorities around the world to promote sound competition policy approaches. There are now more than 100 foreign competition agencies. For more information on the agency’s work with these authorities, visit the Office of International Affairs web pages.

