



FOR IMMEDIATE RELEASE

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WLF Urges FTC and DOJ To Issue Merger Guidelines Consistent With Current Law

(In re Merger Guidelines)

“The FTC and DOJ continue to show contempt for the antitrust laws and Supreme Court decisions interpreting them.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today warned the two federal agencies responsible for antitrust enforcement not to bypass Congress. In formal comments filed with the Federal Trade Commission and Department of Justice’s Antitrust Division, WLF highlighted the flaws in the premises behind the agencies’ request for information.

Over the past fifty years, the Supreme Court has properly interpreted our nation’s antitrust laws. This caselaw focuses on competition rather than competitors. Yet the FTC and DOJ pretend that the past 50 years of antitrust jurisprudence does not exist. They take this approach because they understand that the law is not on their side. The agencies therefore seek to legislate through guidelines—not the political process.

WLF’s comments explain that the first step in any antitrust analysis is market definition. The FTC’s and DOJ’s attempt to avoid this step is troubling. WLF also describes the benefits of using econometric analysis in antitrust enforcement. Finally, the comments caution against moving too fast against quickly evolving digital markets. At bottom, the FTC and DOJ should remember that Congress, not unaccountable bureaucrats, makes the laws.

Celebrating its 45th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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