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Federal Trade Commission/U.S. Department of Justice
Draft Merger Guidelines for Public Comment
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The proposed merger guidelines from the Federal Trade Commission and U.S. Department of Justice are disconcerting and indeed dangerous because they are so broad and hostile to business combinations that lead to economic growth, substantial innovation, job creation, and reward risk-taking.

For example, Guideline 2 says, "Mergers Should Not Eliminate Substantial Competition between Firms," which, of course, is inherent in most transactions. Similarly, Guideline 3 says, "Mergers Should Not Increase the Risk of Coordination." Yet coordination is an inherent benefit of mergers.

These arbitrary constraints supersede focusing on the impact on consumer welfare and whether the combined entity will be able to withstand foreign competitive pressures and be better able to develop innovative new products and services.

There are also major omissions in the guidelines. Nowhere is there any discussion about how mergers and acquisitions can be exceptionally good for the U.S. economy and that this should be understood and even encouraged by regulators.

The guidelines do not discuss risk-taking by entrepreneurs who establish new businesses, often with the aim of an eventual sale, nor does it mention the employees who take major chances on joining these entrepreneurial leaders. Both serve the public interest.

The word "China," America's primary economic competitor, does not even appear in the 51-page guidelines, nor does the word "shareholder." There is not even a basic acknowledgment that often it is by combining operations that companies can have the synergies and scale to grow – and serve the public good.

The upshot is that the guidelines would turn back the clock 40 years to a time when American innovation was stifled, and businesses significantly regulated.

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It also merits mentioning that Larry Summers, Treasury Secretary in the Clinton Administration and Director of the National Economic Council in the Obama Administration, also recognizes the dangers of this approach. He told Fortune.com that he is "disappointed" with the merger guidelines as they show the administration is choosing to "double down on what sometimes seems like a war on business."

Given the above, the guidelines should be withdrawn and terminated.