RESOLUTION

REVISIONS TO THE HORIZONTAL MERGER GUIDELINES OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

WHEREAS, the National Association of Attorneys General adopted Horizontal Merger Guidelines on March 29, 1987 in Washington, D.C.; and

WHEREAS, on April 2, 1992, the United States Department of Justice and the Federal Trade Commission issued joint Horizontal Merger Guidelines, revising the 1984 Department of Justice Merger Guidelines; and

WHEREAS, it is the sense of the Association that the 1992 federal guidelines are a significant improvement, but that the new federal guidelines may make it more difficult for merging parties to determine the weight that certain types of evidence will be given by federal enforcers; and

WHEREAS, the Chair of the Antitrust Committee invited all states to participate in a review of the 1987 NAAG Horizontal Merger Guidelines for the purpose of revising the Guidelines to state clearly the Attorneys General methodology for evaluating mergers, to clarify the types of evidence merging parties would be expected to produce to justify a merger, to specify the weight various types of evidence would be given, and to harmonize the NAAG and DOJ-FTC Merger Guidelines to the maximum extent feasible; and

WHEREAS, over 15 states participated in, or provided substantive comments to, a Guidelines Revision Committee; and

WHEREAS, the proposed revisions to the NAAG Guidelines prepared by the Revisions Committee were released for public comment on September 3, 1992 at the direction of the Antitrust Committee; and

WHEREAS, all comments received were reviewed by the Revision Committee and taken into consideration in the preparation of the final version of the Guidelines; and

WHEREAS, the Attorneys General have considered the proposed revisions to the NAAG Horizontal Merger Guidelines and have determined that these revisions would improve the Guidelines;
NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. Adopts these revised Horizontal Merger Guidelines as a statement of the general enforcement policy of the Attorneys General who comprise the Association, subject to the exercise of their individual prosecutorial discretion, and variations or supplementations to allow for variations in precedents among the federal circuits and differences in individual state or common law; and

2. Authorizes its Executive Director and General Counsel to transmit these views and Horizontal Merger Guidelines to appropriate members of the Administration, Congress, and other interested individuals and associations.