



Attorney General Phil Weiser says antitrust enforcement at a critical juncture as modern market forces push antitrust law into new territory

April 21, 2022 (DENVER) – Attorney General Phil Weiser today joined Nebraska Attorney General Doug Peterson in submitting joint comments on the Federal Trade Commission and U.S. Department of Justice’s joint initiative to revise the Horizontal Merger Guidelines, which was announced earlier this year. The attorneys general emphasize that antitrust enforcement is at a critical juncture as modern market forces push antitrust law into new territory.

The Horizontal Merger Guidelines are used by the federal antitrust agencies, state attorneys general, and courts to review proposed mergers and acquisitions and assess competitive effects. These guidelines also serve as a legal framework that not only informs the analysis of transactions affecting millions of consumers every year, but also shapes merging parties’ behavior. The current guidelines were last updated in 2010.

“Our market landscape shifted significantly in the past 10-20 years, and the guidelines must take account of those changes,” Weiser said. “We need the right tools to stop anticompetitive behavior and ensure mergers do not decrease competition and harm consumers.”

In the comments, the Colorado and Nebraska attorneys general highlight key issues affecting modern competitive dynamics in the United States, including digital markets and nascent

competitors, and offer important context on marketplace realities that are driving the need to update these guidelines.

The attorneys general recommend that the FTC and DOJ clarify in the guidelines that effective merger review must consider a variety of evidence and reexamine standards that are described in the guidelines to ensure effective antitrust enforcement. They also note that the elimination of nascent competition, or new competition that threatens to oust long-standing companies, is a growing concern that needs to be addressed in the guidelines.

“State attorneys general are uniquely situated to monitor local anticompetitive behavior,” Weiser said. “In Colorado, for instance, we protected Medicare-eligible residents in the Colorado Springs area against an anticompetitive merger proposed between DaVita and UnitedHealth Group and stopped the Bass Pro/Sportsman’s Warehouse merger. Improving the merger guidelines can help us continue this important work.”

Weiser and Peterson are the co-chairs of the National Association of Attorneys General Antitrust Committee.

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