How Will the FTC Evaluate Vertical Mergers?

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The Federal Trade Commission (FTC) has expressed concerns about the potential anticompetitive effects of vertical mergers, particularly in the context of recent high-profile transactions such as the T-Mobile-Sprint merger and the Nvidia-Arm acquisition. The FTC has recently withdrawn its vertical merger guidelines, leading to questions about how the agency will evaluate future transactions.

The FTC's concerns about vertical mergers are rooted in the idea that such deals can reduce competition by eliminating a potential competitor or by changing the competitive landscape. Vertical mergers occur when a firm acquires a supplier or customer of another firm, potentially allowing the acquiring firm to leverage its control over the downstream market to harm competition in the upstream market or vice versa.

The FTC's approach to evaluating vertical mergers often includes assessing whether the transaction would likely reduce competition or innovation. The agency may consider factors such as the market share of the firms involved, the presence of substitutes, and the potential for entry or exit.

However, the FTC's guidelines have been criticized for being overly broad and lacking a clear legal basis. The statutory language permits the FTC to challenge vertical mergers on the grounds that they may have anticompetitive effects, but it is not explicit how such effects should be measured or evaluated.

The FTC's guidelines also faced scrutiny for not explicitly recognizing the procompetitive effects of vertical mergers. Procompetitive effects refer to the potential benefits that arise from vertical mergers, such as increased innovation, economies of scale, and improved coordination between the merging parties. The lack of explicit recognition of procompetitive effects has led to concerns that the FTC is too focused on potential anticompetitive effects.

In response to these concerns, some antitrust scholars have called for a more thoughtful approach to evaluating vertical mergers. They argue that a balanced approach that recognizes both anticompetitive and procompetitive effects is necessary to ensure that the FTC is not overly cautious in its evaluations.

The FTC's withdrawal of its vertical merger guidelines raises questions about how it will proceed in evaluating future transactions. The agency may choose to adopt a more flexible approach that takes into account both anticompetitive and procompetitive effects. Alternatively, the FTC may continue to struggle with the issue, leading to uncertainty for businesses and policymakers.

In any case, the FTC's actions are likely to attract significant attention from businesses, policymakers, and antitrust scholars. The agency's approach to evaluating vertical mergers will have implications for the upcoming T-Mobile-Sprint merger and other high-profile transactions, shaping the policy landscape for years to come.

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