

MEMO# 34124

April 28, 2022

ICI Submits Comment Letter to DOJ and FTC on Common Ownership

[34124]

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TO: Global Regulated Funds Committee

SEC Rules Committee RE: ICI Submits Comment Letter to DOJ and FTC on Common Ownership

ICI submitted a comment letter on April 21 to the US Department of Justice Antitrust Division (DOJ) and the Federal Trade Commission (FTC) in response to their Request for Information (RFI) on the merger guidelines.[\[1\]](#) The purpose of the RFI is to obtain public comments on "developments in the modern economy and new evidence of mergers' effects on competition to inform potential revisions to the guidelines." Among the dozens of questions included, the DOJ and FTC requested comment on whether common ownership should be considered in the course of reviewing a merger or acquisition.[\[2\]](#)

ICI's letter focuses this question and states that the guidelines should not and do not need to be revised to account for common ownership when analyzing proposed mergers or acquisitions. Among other points, the letter emphasizes that

- Attempts to prove correlation between measurements of common ownership and certain observations have not proven an effect on competition to date; and
- Neither the DOJ nor the FTC have yet to identify real-world evidence to substantiate common ownership concerns in the course of their merger reviews and investigations, as well as in their own work related to the hypothesis, and have not pursued an enforcement action or other action based on harms to competition arising from common ownership.

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endnotes

[1] US Department of Justice and US Federal Trade Commission, Request for Information on Merger Enforcement (Jan. 18, 2022), <https://www.justice.gov/opa/press-release/file/1463566/download>.

[2] Question 12.h. of the RFI asks: "Is the guidelines' approach to common ownership and horizontal stockholding adequate? If not, what changes should be made?"

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