

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Rules of the Road: Experts Worried About New Merger Guidelines

The **FTC** and **DOJ** released a new set of draft merger guidelines over the summer, and thus far, stakeholders are more concerned than ever about government challenges to combinations across all areas of business.

That's largely because there is a lot of change in this round of revisions of the guidelines, but not a lot of clarity around exactly what sorts of deals would cause a level of alarm that would lead to a challenge from federal entities. During a public workshop Thursday on the draft guidelines, **WilmerHale** Partner *Dominic Vote* voiced concerns that the newly proposed backbone for merger reviews will significantly complicate things for mergers that don't raise any antitrust or competitive issues at all.

He and others, including former Deputy Director for Healthcare and Antitrust in the FTC's Bureau of Economics *Leemore Dafny*, said that a lack of examples within the draft merger guidelines will force litigators and those within the court system to dive down several rabbit holes and conduct a huge amount of analysis even on deals that clearly won't cause antitrust or competitive problems. That could scare some players away from even the most inconsequential of mergers.

"There is a problem that there are so many new things that people like me are going to have to counsel our clients on, on deals that we would have spent just a few hours thinking about, made the filing and they probably clear and nobody

would ever have thought about them. I think there's a real concern there," Vote said. "It seems to be much more about providing more tools for the government to challenge more mergers and not providing a lot of hard guardrails where you don't need to worry too much about this."

Harvard Law School Professor *Louis Kaplow* also believes that guidelines that speak clearly and directly will create significant improvements in how cases are litigated and prevent confusion in the courtroom over how to examine the potential harms and benefits of each merger.

"I think by making it all more direct and clear, ambiguities will be more often resolved the way you would like them to be resolved. They will provide clear guidance to clients. They will be more useful in court, more useful internally and if you get to something that's hard and people disagree about, it's a little harder to fudge it," he said.

This time around, the FTC and DOJ established a separate guideline, Guideline 10, aimed directly at vertical and horizontal mergers within the platform business in an effort to provide rules of the road for how to examine combinations across Big Tech and the like. A separate panel battled over how the agencies approached the platform problem and whether there is a real need for specificity when it comes to these emerging platforms or if they should be evaluated in the same way as any other merger.

"Guideline 10 is best understood as just being an application of guidelines to define traditional horizontal and vertical

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theories for some platform businesses,” NYU Assistant Professor of Law and former Deputy Director of the FTC’s Bureau of Competition *Daniel Francis* said. “The concern I have... is that a lot of the musings of Guideline 10 suggest that there might be special theories of harm in the platform context or special presumptions of harm in the platform context, and I think that’s really wrong.”

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NET NEUTRALITY BATTLE ROYALE

As we draw closer to the FCC’s Oct. 19 vote to open a proceeding on Title II, the tug-of-war has already started. Republican Senators, led by *John Thune* (R-SD) and *Ted Cruz* (R-TX), urged FCC Chairwoman *Jessica Rosenworcel* to abandon pursuing her “hyper-partisan, politicized rulemaking.” “Our country faces real challenges. A lack of public-utility regulations for the internet is not one of them,” said today’s letter signed by more than 40 members of the GOP caucus. “Instead, the FCC and the *Biden* administration should be focusing on bipartisan efforts to address real problems, such as addressing rampant waste, fraud, and abuse in the federal government’s broadband subsidy programs, and regulatory and permitting obstacles to broadband deployment, both of which divert funds and resources from the goal of connecting unserved Americans.” Meanwhile, Rosenworcel’s office released what it called a fact sheet declaring that the lack of specific authority over broadband leaves open a national security loophole. “Currently, no federal agency can effectively monitor or address broadband outages that threaten jobs, education, and public safety,” the missive began. “Reclassifying internet access as a Title II

service would allow the FCC to require broadband providers to report and address internet outages, like the FCC does for voice service today, and ensure that response personnel know when service is impacted, especially during emergencies. Reclassification would also allow the FCC to deny companies controlled by hostile foreign governments access to our broadband networks.” As with just about everything involving Title II, there is plenty of disagreement (see this *Washington Post* [piece](#) with cybersecurity and legal experts questioning the rationale of Title II helping with national security). **International Center for Law & Economics** Senior Scholar *Eric Fruits* penned a [blog](#) this week that declares the difference between this year’s open internet order and 2015’s is that national security replaces net neutrality as the cause de jour for Title II regulation. “In 2015’s order, ‘net neutrality’ was mentioned nearly 70 times. In contrast, the recent NPRM uses the term only a half-dozen times: once in the text and the rest in only two footnotes. The Open Internet Order mentioned ‘national security’ only three times, while the NPRM uses the term 62 times,” he wrote.

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MEDIA REQUESTS CAMERAS IN COURT FOR TRUMP TRIAL

A group of media orgs—including **C-SPAN, CNN, NAB, The NY Times Company, TEGNA** and **Univision**—are requesting that cameras be allowed access to former President *Donald Trump*’s upcoming trial in U.S. District Court for DC. The trial date is currently set for March 4. The coalition also has asked the Federal Judicial Conference to grant an exception to its

The banner features a purple and blue background with a geometric pattern of overlapping lines. On the left, it says 'SCTE CABLE-TEC EXPO 23' with 'OCTOBER 16-19, 2023 • DENVER, CO' and 'CELEBRATING 40 YEARS' below it. On the right, the 'EXPOntial' logo is displayed with the tagline 'Connect. Collaborate. Innovate.' The central text reads 'Register Today!' in large white letters, with the URL 'expo.scte.org/attendee-registration' below it. At the bottom, it includes 'expo.scte.org • #cabletecexpo'.

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ban on cameras in federal criminal cases. They aren't the only ones advocating for cameras. During a July interview on *Fox News*, Trump's attorney *John Lauro* said: "If I appear in court, I'm going to be representing not only the President of the United States, but the sovereign citizens of this country, who deserve to hear the truth. The first thing we would ask for is let's have . . . cameras in the courtroom, so all Americans can see what's happening in our criminal justice system." The coalition of media companies also filed a motion Thursday requesting to record and telecast the trial by the media or by the Court publishing its own livestream on YouTube or releasing video/audio at the end of each trial day.

TGL COMING TO ESPN

It's not the **PGA**, nor is it **LIV Golf**, but **ESPN** is getting the rights to a new golf league starting in January. The network has entered a multi-year partnership with the **TGL**, a high-tech team golf league created by *Tiger Woods* and *Rory McIlroy's* TMRW Sports in partnership with the PGA Tour. The matches will take place from the TGL's purpose-built arena in Palm Beach Gardens, Florida. All matches will air on either ESPN or **ESPN2** and be simulcast on **ESPN+**. The inaugural match will air January 9—the night after the College Football Playoff championship game—at 9pm on ESPN and ESPN+, with Week 2's match taking place January 16 at 7pm on ESPN and ESPN+. The "TGL Preview Show" will air on **ABC** on December 30. More information about the teams will be unveiled later this year, but confirmed participants include Woods, McIlroy, Jon Rahm, Justin Thomas and several other high-profile golfers.

B/R SPORTS ADD-ON GOES LIVE

Max's live sports add-on has been officially rolled out. The Bleacher Report Sports Add-On tier is available for a promotional price of \$0 for subscribers until Feb. 29 before rising to \$9.99/month afterward. It'll feature all live games that air on a **Warner Bros. Discovery** linear network, starting with Game 1 of the **MLB** NLDS between the Phillies and Braves on Saturday at 6:07pm. Diamondbacks vs Dodgers will follow at 9:20pm. Both will air on **TBS**. The rollout also comes ahead of Wednesday's start of the **NHL** regular season as well as **NBA's** tipoff on Oct. 24.

ESPN READY FOR WNBA FINALS

The 2023 **WNBA** season is coming to a close with the Liberty and Aces meeting in the finals beginning Sunday. The best-of-five series will be on **ESPN** and **ABC**, with the broadcast net taking Games 1 and 3 and the remaining games on ESPN. ESPN's production crew will have nearly 20 cameras for the series as well as player microphones. What's different about this year's championship series is a more spaced-out format between games. ESPN VP/Production *Sara Gaiero* said the schedule and widespread availability will benefit in terms of grabbing the attention of casual fans. "Our programming

department works hand in hand with the league, as well, and as I suggested at the beginning, I'm pleased with the programming windows that we have received," Gaiero said on a call with media Wednesday. "I think from a production standpoint, time between games just benefits us and allows us to just plan and move around the country from site to site with better success, to be honest with you. So for us, it works out really well." Last season, the network debuted "WNBA Countdown" during the playoffs. The program's success led to it being expanded to air throughout the 2023 regular season. Host and analyst *LaChina Robinson* said the show's ability to spotlight stories throughout the league also plays a key role in cultivating a larger fanbase for the WNBA. "We all know how important it is to educate the fan, to deliver storylines, to connect the fans to these amazing players and to the product in various mediums," Robinson said. "But we have to keep the conversation going. We have to invite the fan in, and especially the casual fan as the WNBA is growing, and give them things to watch and players to keep their eyes on, great analysis."

PROGRAMMING

"Kennedy," an eight-part docuseries about the life, legacy and leadership of former President *John F. Kennedy*, will premiere Nov. 18 at 8pm on **History Channel** with three subsequent one-hour episodes. The next three episodes will air Nov. 19 before the final two go live Nov. 20 at 8pm. – **NBCUniversal** reached a deal with **BroadwayHD** for the U.S. streaming rights for its musical productions. BroadwayHD subscribers will now have access to "Hairspray Live!," "The Sound of Music Live!," "Jesus Christ Superstar Live in Concert" and more. BroadwayHD is available for 11.99/month or \$129.99/year and can be found on **Roku**, **Amazon** Firestick, **Samsung**, **LG** and **Android** smart TVs. – It's almost time for college hoops, and **Peacock** will have more than 50 exclusive Big Ten games across men's and women's basketball this upcoming season. The men will have 34 games on the platform starting with Princeton vs Rutgers on Nov. 6. The first conference battle on Peacock will come Dec. 5 with Wisconsin vs Michigan State, which will be followed by Indiana vs Michigan at 9pm. On the women's side, Peacock will have 22 contests beginning with Michigan vs *Caitlin Clark* and Iowa on Jan. 2 at 9pm. Peacock will also carry two Big Ten Tournament games for both the men's and women's.

PEOPLE

Public Knowledge made a pair of appointments: *L'Allegro Smith* as Government Affairs Policy Advocate and *Glenda Windsor* as Office Manager. Smith was most recently Director, Community and Government Relations for HeadWaters Resort & Casino and was previously a Legislative Assistant to Rep. *Robert Scott* (D-VA). Additionally, Public Knowledge promoted *Charlotte Slaiman* from Competition Policy Director to VP. Her new role will have Slaiman oversee the policy team that encompasses all issue advocacy, as well as leading the organization's competition policy.

PROGRAMMER'S PAGE

Plenty of Nostalgia in ESPN's 'Toy Story' Telecast

It's already a spectacle whenever the NFL packs its bags and heads to Europe, but Sunday's Jaguars vs Falcons game came with a lot of fervor for a different reason. **ESPN, Disney** and the league collaborated to put together the "Toy Story Funday Football" alternate telecast on **ESPN+**. It was the first telecast of its kind to offer a fully animated recreation of the game in real time, packed with themes from the beloved "Toy Story" franchise. Viewers who tuned in to the Toy Story telecast were taken to Andy's room to find Woody, Buzz Lightyear and other characters incorporated into the telecast (like Slinky Dog being used as the first down chains and the infamous Claw machine helping spot the ball after each down). "Ultimately, you're trying to bring in new fans in a different way," *Michael Szykowny*, ESPN Senior Director, Animation, Graphics Innovation & Production Design, told **CFX**. "They want different experiences. They want personalization. They want something that they can feel close to ... True football fans hung around because it was entertaining, or they were sitting watching with people who didn't let them change the channel because it was just so much fun." The question many had when ESPN first announced the telecast was "How is this possible?" The production team used single-point tracking, which uses chips in players' shoulder pads and other areas to track where their bodies are moving. That let them utilize animations on each specific character. Then it added optical limb tracking—which was done by the Hawkeye Group—to track arms and legs. To combine those two, ESPN worked with Beyond Sports to provide its software and algorithms in order to get body position and movements correct. While it wasn't totally smooth sailing and there were moments when the data required to make the animations work weren't transpiring as planned, Szykowny lauded the crew's calm demeanor to solve issues on the fly. "It was a lot of problem solving [for] what could go wrong, but when it was right, it was so good," he said. — *Noah Ziegler*

REVIEWS

"Wilderness," **Amazon Prime**. Readers of this column are familiar with our penchant for sometimes recommending television as an escape from the quotidian, with its seemingly daily dose of distressing political and economic news (and have you noticed an uptick in COVID infections lately?) Amazon's new "Wilderness" fits the bill as a somewhat mindless escape. Viewers understand how un-seriously to consider Wilderness when its protagonist Liv (*Jenna Coleman*), a newlywed who has given up her career and moved across the world for her spouse discovers he's cheated, repeatedly, and she stays with him. Fortunately, Liv comes to her senses eventually and 'loyalty' for scoundrel/husband Will (*Oliver Jackson-Cohen*) becomes crucial to her character's motivation, as does projecting a sense of normalcy. Of course, her divorced mum Caryl (*Claire Rushbrook*), whose husband cheated on her too, senses something's amiss, even from across the pond. Viewers won't find this compelling drama, but the series' light entertainment and strong camera work (gorgeous scenes of NYC and, of course, the wilderness) will occupy your mind, barely, for some minutes of escape. — "Above Suspicion," **Netflix**. This film from 2019 isn't high drama, yet it's entertaining, particularly *Emilia Clarke* as a petty criminal in a depressing Kentucky backwater. The role is miles from "Game of Thrones," which is why it's a pleasure to watch her work here. — *Seth Arenstein*

BASIC CABLE		
P2+ PRIME RANKINGS*		
(09/25/23-10/01/23)		
MON-SUN	MC	MC
	US	US AA
	AA%	(000)
FNC	0.673	2122
ESPN	0.646	2037
MSNBC	0.468	1474
HGTV	0.237	746
HALL	0.225	708
TLC	0.190	599
INSP	0.189	595
CNN	0.180	567
FOOD	0.171	538
USA	0.159	500
TBSC	0.155	487
DISC	0.154	485
TVLAND	0.145	458
ID	0.134	421
HMM	0.127	400
ESPN2	0.121	382
HIST	0.116	365
LIFE	0.110	346
A&E	0.105	330
WETV	0.101	320
NWSMX	0.099	311
BRAVO	0.097	306
REELZ	0.093	292
GSN	0.092	289
FS1	0.082	258
OXY	0.081	254
FBN	0.079	250
AMC	0.079	248
ADSM	0.077	242
FX	0.076	239
NATGEO	0.076	238
TNT	0.074	232
FETV	0.069	218
BET	0.065	205
NFL	0.065	205

*P2+ L+SD rankers are based on national Nielsen numbers, not coverage.

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