

# THE LATEST: FTC's New "Technology Task Force" Has Broad Mandate Including Review of Consummated Transactions

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The US Federal Trade Commission's (FTC) Bureau of Competition announced the launch of a new Technology Task Force that will investigate anticompetitive conduct, review past transactions, as well as contribute to pending merger reviews. The FTC's investigation of consummated transactions will not be limited to large transactions that meet the HSR filing thresholds, but will also include so-called "non-reportable" transactions. The launch of this task force along with the ongoing FTC Hearings on Competition and Consumer Protection in the 21st Century is further evidence of US antitrust enforcers' increasing focus on the technology sector.

## WHAT HAPPENED:

- On February 26, the FTC's Bureau of Competition announced the creation of a Technology Task Force dedicated to monitoring competition in US technology markets. The mandate is expansive allowing for investigations of anticompetitive conduct, mergers and industry practices.
- Importantly, the task force is not only charged with aiding in the review of prospective mergers, but also investigating consummated mergers of any size. For consummated mergers, the task force has the authority to reconsider prior matters and seek the full set of remedies (e.g., divestiture, licensing, etc.) that would be available during the review of a prospective transaction.
- Patricia Galvan, currently the Deputy Assistant Director of the Mergers III Division, and Krisha Cerilli, currently Counsel to the Director, will lead the task force. Their team includes approximately 17 existing staff attorneys with experience in complex technological markets such as online advertising, social networking and mobile operating systems.
- Bureau of Competition Director Bruce Hoffman explained that "by centralizing [the FTC's] expertise and attention, the new task force will be able to focus on these markets exclusively—ensuring they are operating pursuant to the antitrust laws, and taking action where they are not."

## WHAT THIS MEANS:

- The launch of the Technology Task Force together with the ongoing FTC Hearings on Competition and Consumer Protection in the 21st Century highlights the FTC's and DOJ's increasing focus on maintaining "free and fair competition" in the technology sector.
- FTC Chairman Joseph Simons's prior work at the FTC involved launching the Merger Litigation Task Force, which focused on hospital merger retrospectives, and sharpened the FTC's approach in challenging health care transactions. This appears to be a similar move to sharpen the FTC's knowledge and approach, but now directed at the technology sector.
- Technology companies that have recently completed mergers should take care not to draw scrutiny from antitrust enforcers.
- Typically, investigations of consummated transactions and anticompetitive conduct will begin with a review of publicly available materials before burdening targets with compulsory process and seeking information from customers, competitors and industry experts.
  - Upon receiving information requests from the FTC, targets of the investigations should engage quickly to understand the scope and focus of the investigation. An information request likely means the FTC investigation has progressed beyond the initial phase.
  - Industry participants (competitors, customers) could also receive significant information associated with FTC investigations. Those parties should also engage with the FTC quickly to jointly develop a reasonable plan for addressing the FTC's information requests.

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