

Antitrust Under Trump: Initial Policies and Actions

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As the Trump administration's approach to antitrust takes shape through political appointments, policy statements, speeches, and enforcement actions, our team is tracking new developments and will provide important updates on issues pertinent to clients. This client alert is not intended to be a comprehensive review of specific actions or cases, but rather an at-a-glance review of relevant policies as they are being created.

In Depth

NOMINATIONS AND CONFIRMATIONS

Appointment of Federal Trade Commission (FTC) Chairman

- President Donald Trump appointed FTC Commissioner Andrew Ferguson as the new chairman of the FTC on January 20, 2025.
- Ferguson views antitrust enforcement as a facilitator of innovation and believes that because markets are not self-correcting, government intervention on behalf of human flourishing and the protection of workers is necessary.
- Despite his intention to “reverse” former Chair Lina Khan’s war on mergers and anti-business agenda, Ferguson has expressed concern with the market power of Big Tech and other large companies being leveraged to gain social or political control.

Confirmation Hearing for AAG Nominee Gail Slater

- President Donald Trump nominated Gail Slater as the Assistant Attorney General (AAG) of the US Department of Justice’s (DOJ) Antitrust Division on December 4, 2024.
- On February 12, 2025, Slater appeared before the Senate Judiciary Committee for her nomination hearing. The committee advanced her nomination on February 27 with a vote of

20-2.

- Slater has expressed a desire to continue enforcement actions against Big Tech and to return to using merger remedies in the form of consent decrees and settlements to address competitive harm.

Confirmation Hearing for FTC Commissioner Nominee Mark Meador

- President Trump appointed Mark Meador to the FTC on December 10, 2024.
- On February 25, 2025, Meador appeared before the Senate Committee on Commerce, Science, and Transportation for his confirmation hearing.
- He echoes Slater's view that pursuit of Big Tech should remain a priority for the agencies, as should combatting noncompete agreements that overly burden workers and prevent employees from leaving to work for a competitor.

GENERAL UPDATES

Musk Supports Consolidating Antitrust Enforcement Agencies

- Responding to a comment by Sen. Mike Lee (R-Utah), who expressed hope that the new administration would consider consolidating the FTC and DOJ, Elon Musk said, "Sounds logical," appearing to agree with the idea.
- Lee referenced the One Agency Act, a bill he proposed in 2021 that would strip the FTC of its antitrust authority and transfer it to the DOJ. When discussing the bill, Lee has compared the current two-agency system to having two presidents.

Agencies Keep 2023 Merger Guidelines

- FTC Chairman Ferguson and Omeed Assefi, Acting Assistant Attorney General of the DOJ's Antitrust Division, announced on February 18, 2025, that the FTC and DOJ will continue to use the 2023 Merger Guidelines as the framework for their merger review process.
- Ferguson cited the time and expense associated with creating new guidelines, as well as his desire to create stability for the parties and the agencies, as the rationale for adhering to the 2023 Guidelines. He did note that "no Guidelines are perfect" and indicated portions could be revisited later.

Ferguson Supports New Hart-Scott-Rodino (HSR) Rules

- FTC Chairman Ferguson expressed his support for the new HSR rules, stating that "updates were long overdue" and would "prevent unlawful deals from slipping through the cracks."
- He has previously stated his approval of the new rules, calling them a "lawful improvement over the status quo" in his concurring statement accompanying the rules' announcement.

Holyoak Sets Out FTC Goals for New Administration

- In remarks at the GCR Live conference on January 30, 2025, FTC Commissioner Melissa Holyoak outlined three areas of focus for antitrust under the Trump administration. She explained that the FTC will focus on (i) making the merger review process better and more predictable, (ii) ensuring that antitrust concerns will not impede artificial intelligence innovation, and (iii) fighting against Big Tech censorship.
- In later remarks, Holyoak said that she expects the return of early termination, improving staff

communication and transparency with the parties in the merger review process, bringing back remedies as a method of resolving merger issues – as well as continuing enforcement actions against Big Tech – and abandoning FTC rulemaking authority.

Meador Targets Anticompetitive Effects of Vertical Mergers

- At his confirmation hearing on February 25, 2025, FTC Commissioner nominee Meador indicated that he would address the consumer welfare issues raised by vertical mergers. He noted that vertical integration can allow for increased prices, a reduction in quality, and market foreclosure. He went on to say that he would address these concerns where they arise.

FTC Will Continue to Fight Anticompetitive Behavior in Labor Markets

- FTC Chairman Ferguson has emphasized a continuing priority of protecting workers using antitrust laws.
- He cited no-poach, wage-fixing, and noncompete agreements, as well as deceptive or misleading hiring practices, as examples of conduct the FTC will fight against to combat labor monopsonies and general harm to workers.
- The FTC will approach these issues based on individual cases, not rulemaking (like the Biden administration's noncompete ban).

Agencies Indicate Return of Merger Remedies

- Statements from FTC Commissioner Holyoak and AAG nominee Slater indicate that both the FTC and DOJ will become more open to evaluating merger remedies under the new administration.
- Holyoak has stated that the agencies should consider remedies like divestitures when such remedies can successfully preserve competition lost by a merger. Similarly, Slater has stated that when merger remedies are “done right,” they can remove competitive harm from a merger.

FTC Issues Policy to Avoid Staff Participation in the American Bar Association (ABA) Antitrust Section Activities

- In response to the ABA's criticism of the new Trump administration's recent actions, on February 14, 2025, FTC Chairman Ferguson prohibited FTC political appointees from holding leadership positions in the ABA, participating in or attending ABA events, and renewing ABA memberships.
- Ferguson pointed to several historical examples of what he asserts have been ABA political partisanship and leftist advocacy to support his decision, as well as views on the ABA's loyalty to the interests of Big Tech.

Ferguson Intends to Pursue Diversity, Equity, and Inclusion (DEI), Environmental, Social, and Governance (ESG) Collaborations as Section One Violations

- In a document laying out his policy priorities created prior to his appointment to chairman, FTC Chairman Ferguson explained he intends the FTC to “investigate and prosecute collusion on DEI, ESG, advertiser boycotts, etc.,” suggesting the agency may focus its investigations on companies participating in industry groups or other collaborative ventures

intended to address social issues or manage industry risks associated with environmental, labor, or diversity issues.

Uncertainty Prevails Over Future FTC Enforcement of the Robinson-Patman Act

- FTC Commissioner nominee Meador has written favorably of federal enforcement of the Robinson-Patman Act, a statute prohibiting discriminatory pricing which was largely ignored until the last years of the Biden administration.
- Meador suggested that the law should be enforced, particularly in the grocery and consumer packaged goods industries. Ferguson and Holyoak have written in recent FTC dissents that the FTC's resources would be better served by enforcing the law in appropriate cases where the alleged price discrimination harms competition (e.g., involving actors with market power using price discrimination to monopolize).
- Until Meador is confirmed, it is uncertain whether and how Robinson-Patman will be enforced.

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