

Aggressive Enforcement Is Unlikely To Vanish Under Trump's Top Antitrust Officials

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On December 10, 2024, President-elect Donald Trump selected Commissioner Andrew Ferguson to succeed Lina Khan as chair of the Federal Trade Commission (FTC). The same day, he announced his nomination of Mark Meador, a partner at the antitrust firm Kressin Meador Powers, to the commission's fifth seat. Coupled with Trump's recent nomination of Gail Slater, an antitrust and economic advisor to Vice President-elect J.D. Vance, for head of the Department of Justice (DOJ) Antitrust Division, these announcements round out Trump's picks for top antitrust agency leadership.

While these nominations suggest that merger review will return to traditional consumer welfare principles, aggressive antitrust enforcement is unlikely to disappear altogether, particularly in light of the populist approach that defined the first Trump administration. In addition, Chair Khan's interventionist approach has garnered bipartisan approval amongst "Khanservative" Republicans, and Trump's selections have expressed particular interest in regulating "big tech" — a key enforcement focus of the president-elect's first term that carried through the Biden administration.

Reshaping the Regulators

Andrew Ferguson has served as a Republican commissioner on the FTC since April 2024. Before his appointment, he worked in both private practice and government, including a stint as Virginia's solicitor general. As commissioner, Ferguson has publicly resisted the leftward, progressive shift of the Khan era, dissenting from several high-profile decisions like the commission's near-total ban on noncompete agreements. Ferguson has, however, vowed to "end Big Tech's vendetta against competition and free speech" as chair. Earlier this month, he similarly emphasized the potential for antitrust to address censorship, writing, "We must vigorously enforce the antitrust laws against any platforms found to be unlawfully limiting Americans' ability to exchange ideas freely and openly."

Despite these proclamations, stocks of major tech companies have soared since news of Ferguson's selection.

Before his current role at Kressin Meador Powers, Mark Meador worked at the FTC, in private practice and in the U.S. Senate, where he served as antitrust counsel to Sen. Mike Lee (R-Utah). While at Lee's office, Meador drafted a bill targeting Google's ad tech business, which is now the focus of antitrust litigation brought by DOJ. Meador has also voiced support for antitrust regulators deploying underused and unorthodox enforcement tactics. In July he called for a revival of the Robinson-Patman Act (RPA), a long-disregarded discriminatory pricing law, writing, "A blanket refusal to enforce RPA not only offends the rule of law, it throws the baby out with the bathwater and leaves helpless those consumers who are harmed."

Given these statements, some predict that Meador will assume a more populist approach to antitrust enforcement. Notably, Chair Khan has also supported reviving Robinson-Patman enforcement.

Once his nomination is approved by the Senate, Meador's appointment will tip the FTC's partisan balance in the Republicans' favor; rounding out the impending three-seat majority is Commissioner Melissa Holyoak, who assumed her position in April 2024.

Like Ferguson, Holyoak has opposed the FTC's broad regulatory approach under Khan, publicly criticizing "the current Commission's expansive rulemakings based upon debated assertions of authority and other ill-advised efforts." And in an October webinar hosted by George Mason University, Holyoak similarly expressed concerns over the 2023

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Merger Guidelines and their reliance on “a lot of old case law,” stating, “I would strongly consider rescinding or revising them.”

At DOJ, Gail Slater is poised to replace Jonathan Kanter as head of the Antitrust Division. Previously a staff attorney at the FTC — where she spearheaded the agency's efforts to block Whole Foods's acquisition of competitor Wild Oats — Slater gained private sector experience before serving in Trump's first administration as special assistant to the president for technology, telecommunications and cybersecurity. The Antitrust Division's scrutiny of large tech companies is expected to continue under Slater's leadership, with advocacy groups describing her as a “strong candidate to continue [the] work” of Kanter.

Potential Impact of Nominees

It is unclear how soon the influence of the new leadership will be felt at the agencies. While Trump can shift chairmanship to Ferguson on the first day of his administration, Democrats will still have three votes on the commission until Khan steps down or Meador is confirmed to replace her. So far, Khan has not indicated whether she will leave prior to Meador's confirmation, which could take several months. Should Khan step

down in January, the commission would be evenly split between Republicans and Democrats until Meador takes his seat.

It remains to be seen whether Trump's selections will reverse the Biden administration's boldest antitrust moves, including the 2023 Merger Guidelines. Additionally, whereas Biden officials have viewed antitrust enforcement as a means for addressing broader societal goals, merger review under Trump is expected to return to historic consumer welfare norms. And while Biden's administration has often resisted traditional merger remedies — preferring, instead, to block deals — Trump's officials will likely be more receptive to remedies.

Nevertheless, Trump is expected to once again assume a more aggressive antitrust stance than previous Republican presidents. Consistent with the actions of his first administration — which included antitrust lawsuits against Google and Meta, creation of a permanent Technology Enforcement Division within the FTC and an investigative study into ten years of non-HSR reportable transactions by the largest technology companies — hawkish oversight of large tech companies is likely to persist in Trump's second term, even if his administration presents a friendlier deal climate than his predecessor's.