



The Daily Dish

Secrets of the FTC Temple

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This past Thursday, AAF hosted an event entitled “Assessing Today’s FTC” whose keynote and panel featured a former chair of the Federal Trade Commission (FTC) and two former commissioners among the participants. The goal was to provide context and insider viewpoints to the controversial agency and its head, Chair Lina Khan. If you did not attend (you know who you are), the entire event can be viewed [here](#).

There were myriad insights, but three stood out (at least to Eakinomics). The first was the radical departure from norms of process highlighted by former Chair Tim Muris (see the remarks beginning at 54:00 of the stream). He noted that there have been three occasions on which a new administration arrived with a plan for large changes at the FTC. In the first two, there was bipartisan agreement that change was needed, but not in the case of the Biden Administration. Indeed, the appointment of Khan as the chair was a large departure from norms. Typically, the president informs the Senate that he intends to make a commissioner-nominee the chair (the president gets to designate the chair) before the individual is confirmed. President Biden did no such thing, naming Khan only after she was confirmed.

Upon becoming chair, Khan cleaned house in the chair’s office staff, replacing people with knowledge of the FTC and managerial experience with policy advocates from the staff of Commissioner Chopra (now the head of the Consumer Financial Protection Bureau). Internal dysfunction ensued.

Finally, there was a series of insults, the most notable and ham-handed being the president introducing Khan and informing the FTC staff that they were part of a “failed 40-year experiment.” But the insults also included not permitting the staff to attend important meetings and telling them they were not permitted to speak in public – and had to lie about the reason why. Not exactly a chapter from “How to Win Friends and Influence People.”

The second eye-opener was the fact that there was a Memorandum of Understanding (MOU) between the FTC and the National Labor Relations Board (NLRB). Former Commissioner Wilson (see the discussion starting at 41:00 on the stream) described the MOU as calling for “cross-pollination” for the agencies. She then went on to note that the purpose of the FTC was to protect consumers, while the goal of the NLRB was very different. If one “cross-pollinates” by making labor a focus of the FTC, the results will be bad for consumers. Eakinomics was a little uncomfortable with a public discussion of pollination. This just made it worse.

The final, related point was more evidence about the degree to which the Biden Administration is a wholly owned subsidiary of the unions. Former Commissioner Wilson noted the new FTC’s emphasis on considering labor as an input in the new [guidelines](#) for mergers and acquisitions. Now, analyzing the impact on labor is not new, but she focused on two sentences in the new guidelines: “The level of concentration at which competition concerns arise may be lower in labor markets than in product markets, given the unique features of certain labor markets. In light of their characteristics, labor markets can be relatively narrow.”

This looks like setting up the use of labor considerations to block mergers. Recall, if the market is defined narrowly enough, somebody will have a large concentration of the activity, and the FTC is already blocking mergers at lower levels of concentration.

Other attendees will doubtless have their own top three moments. The event was a rich and wide-ranging discussion of today’s FTC.