



The Daily Dish

Whither Competition Policy?

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Under the Biden Administration, competition policy - and the Federal Trade Commission (FTC) in particular - generated enormous amounts of attention. Led by a Tasmanian devil of a chair, Lina Khan, the FTC rewrote the rules of the road, threw sand in the gears of mergers and acquisitions, and sued any time two moderately sized firms approached a deal. Hell, if two NFL linemen shook hands, they ran the risk of an FTC lawsuit. With the recent switch of administrations, what did the FTC produce?

Crickets.

With not much explanation or defense, the Trump FTC continued the use of the Khan-era [Merger and Acquisition Guidelines](#) that had controversially jettisoned the consumer welfare standard as the North Star of competition analysis. No decision appears to have been made on the further appeal of the wrong-headed [non-compete clause rule](#). No high-profile lawsuits have emerged.

There has been some news, but that has been made by the president. Consistent with his executive order "[Ensuring Accountability for All Agencies](#)," President Trump asserted his authority over the FTC and [fired](#) the two sitting Democratic commissioners Rebecca Kelly Slaughter and Alvaro Bedoya. The remaining commissioners, including Chair Andrew Ferguson, are Republicans. Expect a lawsuit contesting the firings in which the administration hopes to overturn the [Humphrey's Executor](#) precedent.

But there is a [larger issue](#) involved in the Trump executive order. With this order, independent agencies now fall under the regulatory umbrella of the executive, including review of major rules by the Office of Information and Regulatory Affairs.

FTC rulemaking has long been controversial, but this would represent a sea change in its regulatory activities.

So, at this point, one has little information about what the FTC is going to do. But it looks like it may involve a different cast of characters and ways of doing business.