Insight

Trump's Antitrust Agencies: Will It Be Biden-lite?

FRED ASHTON | JUNE 24, 2025

Executive Summary

- While the Biden Administration's "big is bad" approach to competition policy promoted an antitrust regime designed to quash merger activity and push the boundaries of antitrust law, the Trump Administration – while largely expected to reestablish the long-held consumer welfare standard as its guiding principle – has kept many of these policies in place.
- In the early months of the Trump Administration, new leadership at the Federal Trade Commission (FTC) and Department of Justice jettisoned some of the Biden policies to provide more predictability in merger review while selectively leaving policies that promote robust enforcement and an expanded interpretation of the FTC's authority in place.
- This mix suggests the Trump Administration's merger enforcement will likely incorporate a traditional consumer welfare approach blended with a heavy dose of targeted enforcement designed to achieve certain ideological objectives aligned with "conservative" goals.

Introduction

The Biden Administration's "big is bad" approach to competition policy promoted an antitrust regime designed to quash merger activity and push the boundaries of antitrust law. The Trump Administration – while largely expected to reestablish the long-held consumer welfare standard as its guiding principle – has kept many of these policies in place.

Just months into his term in office, President Biden issued the "Executive Order on

Promoting Competition in the American Economy (EO)," which upended the competition regulatory apparatus that had been in place for more than 40 years. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division worked to replace the consumer welfare standard with a big-is-bad approach focused on market concentration and implemented several policies designed to raise the cost of mergers and acquisitions and chill such firm activity.

New Trump Administration leadership at the FTC, led by Chair Andrew Ferguson, and the DOJ, headed by Assistant Attorney General (AAG) Gail Slater, quickly scrapped several Biden-era policies that raised the cost of merger activity. The agencies ended the years-long moratorium on early terminations and restored remedies as a tool to resolve competitive concerns in merger investigations. They also vowed several procedural changes that would provide more predictability in merger reviews, suggesting that the agencies would adopt a less hostile approach.

The agencies, however, left in place the 2023 Merger Guidelines, which raised the bar for prospective mergers to be deemed legal; the 2022 Section 5 policy statement, which expanded the agency's interpretation of its authority; and the new rules governing the Hart-Scott-Rodino (HSR) Act premerger notification program, which raised the cost of merger activity.

These actions – and inactions – suggest that the FTC and DOJ are still committed to the robust and targeted merger enforcement that will likely employ a mix of the traditional consumer welfare-focused approach and the boundary-pushing of the Biden-era, designed to achieve certain ideological objectives aligned with "conservative" goals.

Background

President Biden's EO on competition policy sought to upend a competition regime focused on consumer welfare that had been in place for more than 40 years. The order contained a laundry list of directives designed to remedy the alleged harm caused by industrial consolidation and corporate power. The president instructed the country's trustbusters to adopt a big-is-bad approach to competition policy and antitrust enforcement. Previous American Action Forum research dispelled the theory that industries have become more concentrated over time,

Under the directive of FTC Chair Lina Khan and DOJ Antitrust Division AAG Jonathan Kanter, the agencies took a series of steps to trade the consumer welfare standard for a populist approach designed to target big business. Several policy changes implemented during the Biden-era sought to raise the cost of merger activity and sow uncertainty

designed to deter merger activity.

Some Things Change…

Early Termination

In February 2021, the FTC – with support from the DOJ – indefinitely suspended early termination, which is the process allowing mergers and acquisitions that posed no threat to competition to close prior to the mandatory 30-day waiting period under the HSR Act. The American Action Forum previously explained how this needless and costly burden delays the consummation of mergers that present no threat to competition.

Prior to the suspension, the agencies granted between 73–81 percent of early termination requests. But just a few months into fiscal year 2021, that share dropped to 20 percent. With the suspension in effect for the entirety of fiscal year 2022, the agencies granted just 0.4 percent of early termination requests and zero in 2023.

Then-acting FTC Chair Rebecca Kelly Slaughter pointed to "historically unprecedented volume of filings during a leadership transition amid a pandemic" as reason for the "temporary suspension." Yet the moratorium was left in place for more than three and a half years. On October 10, 2024, the agency announced it would lift the suspension when the new rules governing the HSR Act went into effect in February 2025. Since the ban was lifted, the FTC has resumed granting early terminations.

In his May 15, 2025, written testimony before the House Appropriations Subcommittee on Financial Services and General Government, FTC Chair Ferguson noted that the agency "has resumed granting early termination" and added that "the Commission has no interest in being a roadblock or even a speed bump for M&A [merger and acquisitions] transactions that do not present competition issues."

Merger Remedies

The Biden-era trustbusters implemented an enforcement regime that was largely skeptical of remedies. These remedies are concessions made by merging firms to preserve or restore post-merger competition and are either structural – often involving the divestiture of assets – or behavioral – which focuses on restricting certain conduct to prevent exercising market power. These are typically negotiated with the antitrust enforcement agencies.

Chair Khan voiced concerns over remedies saying, "That is not work that the agency should have to do," adding that the agency was "going to be focusing our resources on litigating, rather than settling." The agency adopted this position despite a 2017 FTC report that found

remedies were overwhelmingly successful in maintaining or restoring competition.

FTC Commissioner Melissa Holyoak recently criticized this policy position, stating "From August 2023 until the end of Biden's term, the FTC did not enter a single divestiture consent decree to remedy a merger." She also highlighted that the last remedy came shortly before a letter from Senator Elizabeth Warren (D-MA) urged the FTC to "reject the use of remedies – both behavioral and structural – in merger review." Moreover, she noted that the DOJ "only resolved one merger investigation by a consent decree containing a divestiture" under Kanter's leadership. Holyoak called for a "return to normal operations with regard to divestitures."

Commissioner Holyoak's call was answered. On May 28, 2025, the FTC proposed a divestiture order to preserve competition in a merger between Synopsys, Inc. and Ansys, Inc. In an accompanying statement to the divestiture proposal from Chair Ferguson and Commissioners Holyoak and Mark Meador, the agency announced it would publish a policy statement "on its understanding of the role of remedies."

A week later, on June 2, the DOJ announced a proposed settlement that would require Keysight Technologies to divest assets for its acquisition of Spirent Communications to proceed.

The recent remedy proposals from both agencies make it clear that the anti-remedy policy of the Biden Administration has been tossed aside.

Procedural Changes

In addition to these policy changes, a notable procedural change to the merger review process sought to sow uncertainty among, and perhaps deter, firms seeking to merge.

Under the HSR Act, firms are required to alert the antitrust agencies of a merger or acquisition if the value of the transaction exceeds a certain threshold, currently set at $126.4 million. HSR also mandates a waiting period of 30 days before the transaction can close to afford the enforcement agencies time to review the deal for anticompetitive harm. Yet in 2021, the FTC – citing a surge in merger filings – began to send letters warning companies consummating the transaction prior to a complete investigation do so "at their own risk," even if the statutory waiting period had expired.

Commissioner Holyoak derided this policy, stating that it "inject[ed] unjustifiable uncertainty into merger review," and called for it to end.

...While Others Stay the Same

Merger Guidelines

Perhaps the most significant and controversial policy shift during the Biden Administration was the jointly published 2023 Merger Guidelines that replaced the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines. The 2023 Merger Guidelines jettisoned the consumer welfare standard, which relied on measuring the economic effects of mergers and reverted to past iterations of the guidelines that largely centered on market concentration. The new guidelines reintroduced a structural presumption whereby a certain post-merger level of concentration and change in the level would be deemed illegal. The guidelines also prohibit mergers that result in the merged firm's market share exceeding 30 percent and a change in the Herfindahl-Hirschman Index – a measure of market concentration – greater than 100.

There are signs that the structural presumption included in the 2023 Merger Guidelines has quickly fallen out of favor in the new administration. In a recent speech, Deputy Assistant Attorney General Bill Rinner said, "it is…imperative that antitrust enforcers recognize that the structural presumption is not a bright line rule that mandates enforcement to deter all mergers in concentrated industries."

Even as new leadership casts doubt on the structural presumption, Chair Ferguson announced that the 2023 Merger Guidelines would remain in effect "and will serve as the framework for the FTC's merger-review analysis," stating that "stability is good for the enforcement agencies."

Ferguson, however, did leave the door open to revising certain aspects of the guidelines, stating, "there are some things in the guidelines that I would be open to reforming." Commissioner Melissa Holyoak echoed this sentiment, saying that she "would strongly consider rescinding or revising them."

2022 Section 5 Policy Statement

In November 2022, the FTC published a policy statement broadening the agency's interpretation of its authority to challenge "unfair methods of competition" under Section 5 of the FTC Act. This statement replaced an earlier statement that the FTC issued in 2015 during the Obama Administration. This was a monumental shift in enforcement policy that reflected the Biden Administration's commitment to a more aggressive antitrust enforcement regime. The policies outlined in the statement directly conflicted with previously issued agency guidance and abandoned the consumer welfare standard in favor of a "fairness" standard.

Then-Commissioner Christine Wilson dissented, describing the new policy as an "'I know it

when I see it' approach…[that] provides no methodology…[and] no meaningful guidance for courts and businesses to analyze unfair methods of competition." Wilson said the new policy was analogous to the board game Monopoly, in which "the respondents essentially will be told, 'Go to jail. Go directly to jail. Do not pass go. Do not collect $200.'"

Current leadership, however, has not yet pulled support from this policy statement. It is unclear how, and if, the FTC and DOJ will use the expanded interpretation to advance their "conservative" agenda.

Hart-Scott-Rodino Act Reporting Form

In October 2024, the FTC, in collaboration with the DOJ, released finalized changes to the premerger notification form and rules implementing the HSR Act. HSR established the federal premerger notification program and requires businesses involved in a merger or acquisition exceeding a certain dollar threshold to notify the agencies before closing the deal to afford the agency time to determine if the deal could violate antitrust laws. The finalized rule significantly increased the scope of the information necessary to provide the agencies and is intended to help them better screen for anticompetitive mergers. Yet the expanded information required by the agencies comes with an additional cost of $39,644 per filing, on average.

Then-Commissioner Andrew Ferguson issued a concurring statement after voting to approve the new HSR form and said that "were I the lone decision maker, the rule I would have written would be different." Despite the increased cost, the agencies have left the new filing form in place.

Targeted Enforcement

While Chair Khan largely had the support of the Democratic party, she also enjoyed the backing of several Republicans who were equally skeptical of concentrated corporate power. Senator Josh Hawley (R-MO) and former Representative Matt Gaetz (R-FL), dubbed "Khanservatives" by *The Wall Street Journal*, were among the Republicans who voiced support for Khan's aggressive actions against large firms, including Big Tech.

Early indications from the FTC and DOJ leadership suggest that the agencies will continue to deploy resources to combat the corporate power of Big Tech. While the target might be the same, the aim is different. *The Wall Street Journal* noted that "when [Ferguson] was campaigning internally for Trump's nod as chairman, Ferguson circulated a proposed agenda in which he pledged to 'fight wokeness,'" suggesting that there may be a political bend to some of the enforcement. Most notably, the antitrust agencies have their sights set on censorship and political bias against conservatives.

On February 20, 2025, the FTC launched a public inquiry "to better understand how technology platforms deny or degrade users' access to services based on the content of their speech or affiliations, and how this conduct may have violated the law." They added that consumers may have been harmed because of unfair or deceptive acts or practices, or potentially unfair methods of competition.

In an interview with CNBC, Chair Ferguson confirmed that "big tech is one of the main priorities of the Trump-Vance FTC." Similarly, in remarks delivered at GCR Live, Commissioner Holyoak stated that "dominant social media companies have suppressed certain speech, viewpoints, and speakers." She added that "we should use our existing statutory tools to address this problem and ongoing harm."

Agency leadership promises to push the envelope and could, perhaps, develop novel theories of harm to combat social media bias using the antitrust laws.

Conclusion

New leadership at the FTC and the DOJ Antitrust Division rescinded several Biden-era policies that were designed to quell merger activity, suggesting the agencies may adopt a less hostile approach to such firm behavior. But much, however, can also be interpreted by what the agencies have not done. This mix suggests the Trump Administration's merger enforcement will likely incorporate a traditional consumer welfare approach blended with a heavy dose of targeted enforcement designed to achieve certain ideological objectives aligned with "conservative" goals.