



Trump 2.0 Antitrust Policy Is Likely To Be More Predictable but Not Lax

- Strong antitrust enforcement is expected to continue, but without the use of the novel and untested legal theories that defined the Biden administration approach.
- Regulators are likely to continue to focus on Big Tech.
- The agencies are likely to be more willing to settle and engage in discussions about remedies rather than litigating on an all-or-nothing basis.
- Merger reviews may be more predictable, and the agencies are less likely to use their processes to hold up or disincentivize transactions.
- Antitrust theories may be employed to challenge ESG initiatives.

Enforcement Will Continue, but Under More Traditional Antitrust Theories

The hallmark of Biden-era antitrust enforcement was aggressive merger enforcement based on expansive and often untested views of antitrust law. Under the second Trump administration, companies should not expect enforcement to be lax, but the Department of Justice (DOJ) and Federal Trade Commission (FTC) will likely rely on more traditional interpretations of antitrust law.

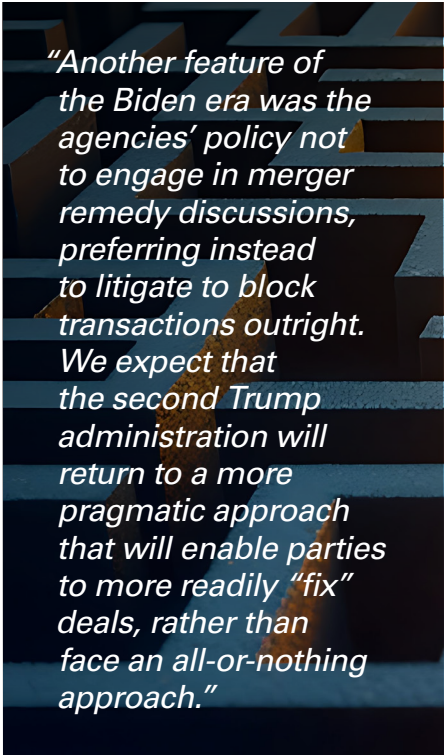
It remains to be seen whether the Trump Administration will formally rescind or modify antitrust guidance documents issued during the Biden Administration, such as the controversial 2023 Merger Guidelines, which lowered the thresholds at which deals could be considered anticompetitive and targeted transactions that would not have been problematic under long-standing doctrine.

A return to more traditional theories may make it easier for companies to predict outcomes.

Continued Focus on the Technology Sector

One theme of President Trump's campaign was a continued focus on antitrust enforcement in the technology sector. Several major enforcement actions against large technology industry companies (some launched under the first Trump Administration) were pending in the courts at the time of the inauguration, including two cases against Google, one against Meta and one against Amazon. The new administration is likely to continue to pursue those cases, but may be more receptive to settlements than was the prior administration.

In addition, on January 30, 2025, the Trump DOJ sued to block the \$14 billion acquisition of Juniper Networks



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by Hewlett Packard Enterprise, a case that had been investigated during the Biden administration.

The new administration may also seek to use the antitrust laws and investigative powers to counter what it views as free-speech restrictions on online platforms. In a concurring opinion in a FTC matter in December 2024, Commissioner Andrew Ferguson, who President Trump elevated to FTC chair, stated that collusion among online platforms to set shared censorship policies “would be tantamount to an agreement not to compete on contract terms or product quality.” Ferguson also called out advertiser boycotts of particular online platforms as a potential antitrust concern. These sentiments reflect the populism that factored significantly into the first Trump administration’s approach to antitrust enforcement.

Artificial intelligence (AI) may also come in for scrutiny. The Biden administration launched recent investigations into AI-related markets, including inquiries into leading AI chipmaker Nvidia and the large investments and practices of Big Tech in the AI space, and scrutiny of AI markets under the Trump administration is expected to continue.

However, it is not clear how these antitrust investigations will play out alongside the new administration’s executive order promoting U.S.-based AI, and its declaration that it will revoke “certain existing AI policies and directives that act as barriers to

American AI innovation, clearing a path for the United States to ... retain global leadership” and will potentially implement tariffs on semiconductors manufactured in Taiwan. Trade and national security policies, as well as global investment trends, will all factor into the competitive landscape for AI and semiconductors and may impact the way antitrust authorities approach these markets.

Greater Openness to Settlement and Remedy Discussions

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‘Merger Tax’ Reduction

Under the Biden administration, companies increasingly saw merger investigations bogged down by the agencies’ processes, resulting in delays that sometimes forced the abandonment of transactions. We expect that regulators will be less likely to use procedural delays to achieve outcomes in second Trump administration.

The new administration also may rescind or modify the proposed revisions to the Hart-Scott-Rodino

merger notification requirements published last year. President Trump's January 20, 2025, "Regulatory Freeze Pending Review" executive order did not prevent the new HSR rules from taking effect on February 10, 2025, and they are expected to significantly increase the burden on companies making HSR filings. The rules have been challenged in federal court by the U.S. Chamber of Commerce, but that litigation remains pending. Companies contemplating mergers should monitor whether the FTC implements a freeze and, if so, whether that results in changes to the filing requirements.

Use of Antitrust To Challenge ESG Initiatives

The Trump administration's antitrust agenda may also include challenging collaboration on social justice initiatives as potential antitrust violations. Over the past several years, the Republican-led House Judiciary Committee and several Republican state attorneys general have asserted that collaboration among

investors to achieve environmental, social, and governance (ESG) goals could potentially violate the antitrust laws. Last fall a group of Republican state attorneys general sued several large institutional investors, alleging that they used their shareholdings in publicly-traded coal companies to jointly urge lowering of carbon emissions through reduced output in violation of the antitrust laws.

It remains to be seen whether the Trump Administration will use the antitrust laws to deter collaboration in the ESG space or on other social justice issues. But companies should be mindful of potential antitrust concerns when collaborating on such issues given the administration's opposition to many such initiatives.

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