

FTC Chairman Simons Steps Down, Opening the Door for Biden to Appoint a Democratic Majority to the FTC

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As is now becoming customary of Federal Trade Commission chairs with a change in administration, FTC Chairman Joseph J. Simons announced his resignation from the Commission early this week.^[1] According to the [FTC's press release](#), Chairman Simons, along with a number of other senior staff from the Commission, will be stepping down on January 29, 2021. The senior staff members who will also be departing later this month include General Counsel Alden Abbott, Bureau of Competition Director Ian Conner, Bureau of Competition Deputy Directors Gail Levine and Daniel Francis, Bureau of Consumer Protection Director Andrew Smith, Bureau of Economics Director Andrew Sweeting, Officer of Public Affairs Director Cathy MacFarlane, and Office of Policy Planning Director Bilal Sayyed.

Simons has served as the chairman of the FTC since May 1, 2018. Since then, the FTC has brought a record number of cases challenging both mergers and anticompetitive conduct. The FTC has also focused on enforcement in the tech industry in particular during Simons's tenure, with the establishment of a [taskforce to investigate competition abuses by big tech companies](#), the negotiation of a \$5 billion [settlement with Facebook](#) regarding its privacy controls, and the recent filing of a [lawsuit against Facebook](#) alleging that the company is illegally maintaining its social-networking monopoly through a years-long course of anticompetitive conduct.

As discussed in a recent Competition Corner blog post, the most significant impact of the new administration with respect to antitrust policy and enforcement lies in the choices that President Biden will make in nominating leaders at the DOJ and FTC. See the Competition Corner blog post on what a Biden administration might mean for antitrust law and enforcement [here](#). In addition to nominating a new chair to replace Chairman Simons, President Biden will be nominating someone to fill the seat of Commissioner Chopra, who was recently tapped to lead the Consumer Financial Protection Bureau.^[2] As such, we will soon see the current Republican-majority FTC shift to a Democratic majority with a Democratic chair (particularly with a now Democratic-majority Senate more likely to approve President Biden's nominations). The terms of the remaining two Republican commissioners are not set to expire until September 2023 and 2025.

The new chair will also be tasked with setting the FTC's priorities for the next several years and will appoint new directors to the FTC's bureaus, who will be integral in implementing these priorities. It is currently unclear whom President Biden will select to replace Chairman Simons and Commissioner Chopra. Commissioner Slaughter, a Democrat, has been named acting chair and may even be nominated as the official chair. We therefore can expect a relatively quick shift to a progressive agenda. With a Democratic chair and Democratic majority, we may see increased creativity in the agency's use of its rulemaking authority under Section 5 of the Federal Trade Commission Act in an effort to supplement antitrust adjudication.^[3] We can also expect that the FTC's focus on the big-tech industry will continue with a Democratic majority, as the FTC continues its litigation against Facebook and future acquisitions of potential rivals come under increased scrutiny.

^[1] See FTC Chairman Simons Announces his Resignation and the Departure of Senior Staff, *available at* https://www.ftc.gov/news-events/press-releases/2021/01/ftc-chairman-simons-announces-his-resignation-departure-senior?utm_source=govdelivery.

^[2] See The Washington Post, Biden choices for CFPB, SEC signal pivot to robust enforcement, *available at* <https://www.washingtonpost.com/business/2021/01/18/chopra-cfpb-biden-transition/>.

^[3] See, e.g., Chopra, R. & L. Khan, The Case for "Unfair Methods of Competition" Rulemaking, *available at* https://www.ftc.gov/system/files/documents/public_statements/1568663/rohit_chopra_and_lina_m_khan_the_case_for_unfair_methods_of_co

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