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BLOG

Enforcement Priorities of the FTC and DOJ—Insights from Recent Antitrust Conferences

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CONTINUATION OF THE NEW ERA OF ANTITRUST ENFORCEMENT

The landscape of antitrust enforcement in the United States continues to undergo a significant transformation, as highlighted by recent remarks from leaders at both the Federal Trade Commission and the Department of Justice. At two major antitrust conferences this fall, senior officials from both agencies outlined their agencies' enforcement priorities, signaling a continuation of the renewed commitment to robust competition policy and a clear-eyed focus on the challenges posed by concentrated corporate power, digital markets, and new innovations begun under the Biden Administration. Officials from both agencies also noted the underutilization of Section 2 of the Sherman Act, and how clarity from the courts on doctrines such as *Trinko* would provide the agencies with more tools in their enforcement toolkits.

FTC: ANTITRUST AS A TOOL FOR ECONOMIC JUSTICE

Commissioner Mark R. Meador of the FTC, speaking at the 13th Bill Kovacic Antitrust Salon on September 15, emphasized the role of antitrust in a populist agenda, with its ability to address economic dignity and restore control to working people. Meador's remarks traced the historical roots of antitrust law, noting that the Sherman and Clayton Acts were born out of a democratic impulse to check unduly concentrated corporate power—an impulse that remains vital today.

Meador contended that decades of underenforcement have allowed the largest corporations to amass unprecedented power, often making decisions that affect ordinary Americans with little regard for their well-being. He positioned antitrust enforcement as a core part of the second Trump Administration's pro-worker agenda, stating that "antitrust enforcement is one of the most powerful, economy-wide tools available for helping restore dignity and freedom to working people who've felt powerless against the seismic economic forces that steer our national economy."

Then, Commissioner Meador expressed his belief that antitrust is not a partisan tool, but a legal mandate that must be enforced faithfully and objectively. He called the continued return to vigorous enforcement—and retreat from regulation—not as a novel development, but as a "course correction—a return to the place our laws should've led us in the first place." During his subsequent Q&A, Meador expanded on his view that the FTC's prior focus on regulation, as opposed to solely enforcement, is not aligned with the original intent of the antitrust laws. He also emphasized that

clarity from the courts on key issues in Monopolization law would allow for more enforcement actions in line with the original intent of the Sherman Act. The FTC, he said, was created to be the enforcer that ordinary citizens could not be, ensuring that concentrated economic power does not undermine American values or economic dignity.

DOJ: "POCKETBOOK ISSUES" AND THE INTERSECTION OF ANTITRUST AND IP

Also speaking at a fireside chat at the Antitrust Salon, Deputy Assistant Attorney General Dina Kallay of the DOJ's Antitrust Division discussed the Division's recent focus on criminal enforcement of antitrust laws, emphasizing the need for "white-collar" crime to be treated the same as "blue-collar" crime. As part of the Antitrust Division's prioritization of criminal enforcement, Kallay discussed the DOJ's new Antitrust Rewards program, where cartel whistleblowers can now receive part of any fine amount recovered as a result of their information. Mirroring the remarks of Commissioner Meador, Kallay also discussed the Division's prioritization of merger cases that impact "pocketbook issues" for everyday Americans, such as groceries, healthcare, and rent, rather than less transparent segments of the economy. Kallay posited that the Division's decision to settle more merger reviews short of contested litigation through consent decrees will allow the Division to streamline its resources and focus on these pocketbook issues. Kallay also mentioned that the Antitrust Division, similar to the FTC, is highly focused on Section 2 enforcement, and hopes to engage in more Section 2 litigation that will provide clarity and "more oomph" to the underdeveloped doctrine.

At the September 19 Concurrences Dinner during Fordham's Annual Conference on International Antitrust Law and Policy in New York, DAAG Kallay delivered a keynote address focused on the intersection of antitrust law and innovation, particularly in the context of intellectual property and industry standards. Kallay underscored that competition and innovation are "effectively synonymous," with both price and non-price competition (such as innovation) driving technological progress and consumer welfare.

A central theme of Kallay's remarks was the importance of F/RAND (Fair, Reasonable, and Non-Discriminatory) commitments in standards development. She highlighted the procompetitive benefits of collaborative industry standards, which promote interoperability and innovation, but warned of the risks when these standards are not F/RAND-assured. Kallay stated the DOJ is increasingly concerned about scenarios where open standards are adopted without F/RAND assurances, or where consortia dominated by large companies that use or build products based on an established technology standard impose mandatory, royalty-free cross-licensing that can stifle innovation and entrench market power. Kallay contends such situations are problematic because adequate royalties reflecting the value of a technology are a necessary incentive for companies to invest in R&D at optimal levels.

Kallay pointed to recent enforcement actions and policy statements, such as the DOJ's involvement in the *Radian v. Samsung*[1] case, as evidence of the Division's prioritization of anticompetitive conduct in standards development. She noted that closed, proprietary standards—especially those controlled by dominant market players—can raise serious antitrust concerns, including the risk of exclusionary practices and diminished incentives for R&D investment.

KEY TAKEAWAYS: A UNIFIED, ENFORCEMENT-HEAVY APPROACH

- The Trump Administration, at both the FTC and DOJ, continues to claim a commitment to continued robust antitrust enforcement in areas that align with its populist agenda.
- Commissioner Meador is focused on using his authority at the FTC to address the harms of concentrated corporate power and to restore economic agency to working people.
- The DOJ is prioritizing addressing "pocketbook issues" for everyday Americans, as well as the protection of innovation. This priority is most prominent in technology markets, where the interplay of antitrust and IP rights is most acute.

These recent statements by DOJ and FTC officials illustrate the agencies' stated policy to continue robustly enforcing antitrust laws in scenarios that will support the second Trump administration's populist agenda, particularly President Trump's "pro-worker" economic agenda. Whether the agencies will live up to their rhetoric remains to be seen.

Stay tuned to Competition Corner for continued updates on the evolving priorities and actions of the nation's top antitrust enforcers.

[1] Statement of Interest of the United States of America, *Radian Memory Sys. LLC v. Samsung Elecs. Co., et al.* (E.D. Tex. June 24, 2025), ECF No. 52.

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