

Axinn Associates at the Antitrust Spring Meeting

Antitrust Under Trump: Redo of the First Term, or Something New?

3 MIN READ

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The Spring Meeting is the largest gathering of competition, consumer protection, and data privacy professionals globally, with lawyers, academics, economists, enforcers, journalists, and students from around the world. During the Spring Meeting, Axinn associates attended thought leadership panels to capture key insights. Below are the top takeaways from the “Back to the Future? Antitrust Under Trump” panel that businesses should keep on their radar.

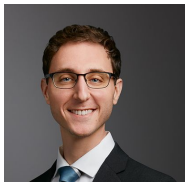
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The second Trump administration is almost at the three-month mark. The “Back to the Future” panelists discussed the many developments that have taken place in this short time. Antitrust enforcers have made commitments to keep some Biden-era antitrust policies in place. But there have also been signs of returning to pre-Biden policies, as well as the possibility of significant departure from decades-long practice.

- **Here to stay: the 2023 Merger Guidelines and 2025 HSR Rules.** On February 18, 2025, Federal Trade Commission (“FTC”) Chairman Ferguson announced that the joint 2023 Merger Guidelines would remain in effect. Although the Guidelines are a product of the Khan-led FTC and Kanter-led Department of Justice (“DOJ”) Antitrust Division under President Biden, Chairman Ferguson emphasized the importance of “[s]tability across administrations of both parties.” While the FTC and DOJ are now Republican-led, and specific enforcement priorities may shift, it is almost certain that the Merger Guidelines and Hart-Scott-Rodino (“HSR”) rules will not.
- **Likely here to stay: Sherman Act Section 2 enforcement.** Section 2 cases — focusing on unilateral conduct and alleged monopolization — appear to be a bipartisan mainstay in the modern era. Many of the Section 2 lawsuits brought under the Biden administration began with investigations launched during the first Trump administration. Technology firms, such as those operating social media or speech platforms, are particularly likely to remain targets for enforcement in the second Trump administration.
- **Likely here to stay: State Attorneys General emphasizing antitrust enforcement.** In recent years, States have often brought suits as co-plaintiffs, or in parallel with, the FTC and DOJ. While it appears State Attorneys General still have an appetite for such coordination, States may also be prepared to bring such actions without the federal government. Colorado, for example, in 2024 brought an independent suit against the Kroger-Albertson’s merger, which was separately challenged by the FTC.
- **Potential return to form: greater appetite for divestitures and conduct remedies in merger enforcement.** Although the 2023 Merger Guidelines have survived, panelists expressed some uncertainty over the shape that the agencies’ merger enforcement agendas will take. The Biden agencies made a point of advertising their preference to litigate rather than negotiate remedies, but panelists seemed to expect this preference not to last. Panelists expressed the view that the agencies under Trump appear more likely to be amenable to negotiated solutions, representing somewhat of a return to pre-Biden norms.
- **Potential shakeup: 90-year-old Supreme Court precedent governing the structure of the FTC.** On March 18, 2025, President Trump dismissed Democrat FTC Commissioners Rebecca Slaughter and Alvaro Bedoya. Since then, both have brought suit alleging the firings were illegal under the 1935 precedent *Humphrey’s Executor*. The outcome of the litigation remains to be seen. But the panelists speculated that if the *Humphrey’s* precedent is overturned and the firings stand, the FTC’s enforcement agenda may be prone to direct political control by the President. Alternatively, there may be renewed interest in the One Agency Act, a version of proposed legislation that would fully or partially consolidate the FTC into the DOJ.



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