

Antitrust Leadership and Policies Under The Trump Administration

Introduction

The Department of Justice [Antitrust Division](#) (ATR) and the [Federal Trade Commission](#) (FTC) are the two executive branch agencies charged with enforcing federal antitrust laws, including the Sherman Act, Clayton Act, and the Federal Trade Commission Act. Using these authorities, the ATR and FTC promote competition in the American economy, preventing consumers from falling prey to both anti-competitive and deceptive business practices. Under the Biden administration, the FTC and ATR have taken on a central role to bring prices under control, as the pandemic [gave cover](#) to companies to gouge prices. However, prior to the Biden Administration, antitrust enforcement was infamous for being a corporate-captured area of government. The ATR and FTC were considered to be “asleep at the wheel” for decades of both Republican and Democratic administrations, allowing rampant corporate consolidation to take hold of the economy to the detriment of consumers and workers. As we explored in a 2022 white paper, the [revolving door between enforcement and private interests](#) long served as a key anti-regulatory tool for monopolists seeking to avoid accountability.

The Personnel

Makan Delrahim

The Trump administration was a continuation of the “hands-off” style toward antitrust enforcement, and his corporate-aligned picks to lead the antitrust agencies revealed this from the jump. To lead the Antitrust Division at the Department of Justice, Trump nominated Makan Delrahim, who previously revolved from the Antitrust Division during the Bush Administration to BigLaw firm Brownstein Hyatt Farber Schreck, where he defended clients including [Google](#), [Comcast](#), Blue Cross Blue Shield, and Johnson & Johnson in merger investigations. In fact, Delrahim was forced to [recuse himself](#) from the ATR’s investigations into Google after Senator Elizabeth Warren raised concerns about potential conflicts of interest with his former clients [Google and Apple](#).

Joseph Simons

Trump’s nominees for the Federal Trade Commission included Joseph Simons for chair, who worked at [BigLaw firm Paul Weiss](#) after a stint at the FTC during Bush’s first term. His former clients included [Microsoft, Sony, and Mastercard](#).

To his credit, Simons balked at one of Trump's political demands to the FTC, [refusing to investigate](#) digital platforms for de-platforming extreme right-wing voices. His legacy at the FTC stands somewhat separate from his fellow Republican commissioners who were more overtly aligned with corporate interests: when Simons sought to bring an antitrust [case against Facebook in 2020](#), it was Democratic commissioners Rohit Chopra and Rebecca Kelly Slaughter who pushed it through, while Republicans Noah Phillips and Christine Wilson voted against it. (Under the Biden Administration, now-Chair Lina Khan [stood by the case](#) and refiled after it was dismissed.)

But otherwise, Simons' time at the helm didn't do much to shake up the sleepiness of the FTC. For most monopolistic corporations seeking to escape scrutiny, it was business as usual. Concerningly, Simon's staff had a habit of representing big corporations after leaving his office, including one former advisor that [joined Google](#), owner of Youtube, in 2020, soon after Simons "helped structure the weak YouTube settlement over child privacy violations," per Matt Stoller.

Noah Phillips and Christine Wilson

In keeping with the trend among Trump's personnel, his chosen Republican commissioners, Noah Phillips and Christine Wilson, also came to the FTC with extensive private law firm experience and an anti-regulatory streak. Joining the FTC from [Cravath, Swaine & Moore](#), Phillips was known for drawing a [bright line between competition and privacy](#) laws, believing that "using antitrust law to advance privacy protections 'will fail.'" His office had its fair share of revolvers too: [two of his staffers](#) joined Amazon in 2020, while the FTC [investigated](#) the company.

Wilson's first stint at the FTC was as Chief of Staff for former Chair Timothy Muris, one of the architects of the so-called "[economics-driven antitrust](#)" approach that ultimately [led](#) to the widespread corporate concentration we have today. Wilson left the FTC for Kirkland & Ellis, and later went in-house at Delta Air Lines before being appointed FTC commissioner by Trump in 2018. Her [nomination announcement](#) described Wilson as "an advocate of the fundamental principle that competition—not regulation—is the best protection for consumers." Her voting record reflects this anti-regulatory ethos—occasionally making her the [sole vote](#) not to block anti-competitive mergers. Her legacy at the FTC goes beyond the Trump administration, as she spent the first half of the Biden administration [complaining](#) about now-Chair Lina Khan's gumption to actually regulate. Unsurprisingly, she's now [back in BigLaw](#).

The Enforcement

Google and the DOJ (2020)

On the heels of the ground-breaking report from the House Judiciary Committee (spearheaded by then-subcommittee chair Cicilline and lead staffer, Lina Khan), the DOJ began an investigation into Big Tech giant Google. It did not start off well. Assistant Attorney General Delrahim, after intense public pressure, recused himself from the investigation due to a potential conflict of interest. Delrahim once lobbied for Google in support of its acquisition of Doubleclick, a merger that helped cement Google's dominance in the search market.

With Delrahim on the sidelines, the investigation was handed to associate deputy attorney general Ryan Shores and Alex Okuliar. Shores joined the DOJ from Shearman & Sterling specifically to oversee the Google case (and unsurprisingly, [returned to that same firm](#) when Trump's time in office was up.) Okuliar also had a [BigLaw pedigree](#): he joined the DOJ from the firm Orrick, Herrington & Sutcliffe.

While Okuliar and Shores made good on their investigation (the DOJ filed a lawsuit against Google in October 2020 for "its [monopoly power](#) to tie up distribution channels for online search and related markets,") the fact that that a cornerstone lawsuit against one of the largest monopolists of our time ended up being a game of hot potato among Trump's chosen enforcers epitomizes Trump's unwillingness to stop the cycle of corporate capture at the Antitrust Division. Despite their actions to rein in Google's online search dominance, Trump's Antitrust Division still allowed Google's acquisition of [Fitbit to proceed](#) under their watch.

Telecoms and the DOJ (2017)

In 2017, AAG Delrahim led the Justice Department to [block AT&T's acquisition of Time Warner](#). It was a rare challenge of a vertical merger—a merger between two companies that don't compete directly but are in related industries at different points along the same supply chain. Unfortunately, AT&T [won approval](#) for the lawsuit in court, a result that ended up being a "[disaster](#), causing layoffs, acrimony among artists, and eroding the HBO brand, which was one of the highest quality brands in Hollywood." Despite the swing and miss (which, to be clear, is better than no swing at all), anti-monopoly advocates were hopeful that the case would open the door for future bold challenges.

However, Delrahim's leadership was puzzlingly different when another telecoms merger came across his desk. When T-Mobile announced its \$26 billion dollar acquisition of Sprint in 2020, AAG Delrahim [personally moved mountains](#) to get the deal approved. Despite the general antitrust rule that 4-to-3 mergers (a transaction that reduces the number of competitors in a market from four to three) in a market as major as cellular

communication should be closely scrutinized, if not outrightly blocked, and the fact the Obama administration had [rejected](#) an earlier version of the deal, it appears it protecting Americans from the economic ramifications of the merger never crossed Delrahim's mind. He connected company executives to relevant government figures, including members of Congress and then-chair of the Federal Communications Commission, Ajit Pai. He also personally facilitated negotiations between T-Mobile and Dish, the company that bought the [ineffective divestitures](#) the DOJ required in exchange for approval. As [antitrust experts later observed](#), Delrahim's plan to make Dish into a new telecoms competitor quickly fell apart, and the deal's main legacy is the transfer of "billions of dollars in wealth from average Americans to the T-Mobile/Sprint shareholders."

Vertical Merger Guidelines

In June of 2020, the FTC and DOJ Antitrust jointly issued [new Vertical Merger guidelines](#) for the FTC to follow in investigations. The FTC vote came down to party lines, with the three Republican commissioners (Simons, Phillips, and Wilson) voting in favor of the guidelines, while Democrats Chopra and Slaughter dissented. Chopra stated that the guidelines [ignored the realities](#) of modern markets in favor of "assumptions based on contested economic theories and ideology." In particular, Chopra criticized the guidelines for maintaining the "status-quo ideological belief that vertical mergers are presumptively benign, and even beneficial," even while the digital economy, with a small handful of companies regularly purchasing start-ups in "killer acquisitions," proved that is not the case.

Instead of issuing guidelines that placed the FTC in a position to regulate and protect markets from anti-competitive behavior, the Republican FTC commissioners and AAG Delrahim tried to knee-cap antitrust enforcement by presuming that vertical mergers are not only less of a competitive threat than horizontal mergers, but that they are often [procompetitive](#).

Just a year after the guidelines were finalized by Trump's picks, Lina Khan [withdrew the guidelines](#) in one of her first actions as FTC Chair "to prevent further industry or judicial reliance on certain flawed provisions."

Ticketmaster and the DOJ (2020)

Despite being one of the most reviled monopolists in the U.S., Ticketmaster has a long history of escaping harsh sentences from antitrust enforcers. Trump's Antitrust Division was no different. In 2020, [Makan Delrahim stated that](#) "Live Nation broke the promises they made to the court and the American people when they merged with Ticketmaster in 2010," yet, his proposed solution was simply to extend the decree under which Live Nation and Ticketmaster were able to merge, a proposal the [American Antitrust Institute \(AAI\) said](#) "does little or nothing to deter further anticompetitive conduct." Rather than a

weak modification of an already-weak decree, Delrahim could have led the ATR to break up Ticketmaster from Live Nation in order to restore competition, as the AAI encouraged. (Four years later, [Biden's DOJ moved to do just that](#).) Instead, Americans received no relief from a monopoly that continued to exert unprecedented power over artists, promoters, venues, and fans.

“Enforcers” With Private Interests At Heart

For a long time, the bar for federal antitrust enforcement was low. Antitrust lawyers moved freely between enforcing the law and helping their corporate clients skirt the law. Corporations, armored with well-paid former enforcers, got their mergers rubber stamped time and time again, allowing unbridled corporate consolidation to take hold across the American economy. Trump initially campaigned as a populist—a figure that returns power to the people from the hands of elites. But as this series proves, Trump was in fact a rampant corporatist, and his chosen executive branch officials, plucked from elite law firms, had no interest in real enforcement. Instead of making strides to rein in corporate consolidation and put a stop to anticompetitive and deceptive business practices, Trump’s antitrust enforcers advocated for a status quo that allowed corporations to amass monopoly power—an approach they were undoubtedly rewarded for once they were forced out of government posts.

In the years since, the DOJ Antitrust and FTC under Biden’s enforcers Kanter and Khan have led the kind of reckoning of corporate power that Trump’s officials were terrified of. American consumers and workers have now seen what a motivated and bold executive branch can do to return economic power from the corporations that dominate our economy. A return to the Trump administration would mean letting corporations regain that power.