

PUBLICATION

The Trump Administration Begins the Task of Selecting New Federal Antitrust Enforcers

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With every new administration, there is typically a change in the leadership of both the Federal Trade Commission and the DOJ Antitrust Division, the two regulators principally responsible for federal antitrust oversight. Not surprisingly, particularly given the significant differences in ideology between the Obama and new Trump Administrations, wholesale changes in leadership at both the FTC and the DOJ Antitrust Division have begun over the last two months, with more likely to follow.

At the FTC, shortly before the inauguration, FTC Chairwoman Edith Ramirez, who was appointed by President Obama, announced that she would be leaving the Commission effective February 10. To replace her, President Trump named current Commissioner Maureen Ohlhausen, a Republican appointee, as "Acting" Chairwoman. Whether President Trump will ultimately nominate Commissioner Ohlhausen to be Chair on a permanent basis remains unclear, with other names also being rumored to be in consideration for that role. However, despite the interim title, Commissioner Ohlhausen has already begun the process of refilling the senior leadership ranks at the FTC. On February 16, Ohlhausen announced the appointment of Abbott Lipsky as Acting Director of the FTC's Bureau of Competition (the division of the FTC responsible for antitrust enforcement), replacing Deborah Feinstein, who had also resigned. Lipsky previously served in a leadership role at the DOJ Antitrust Division as Deputy Assistant Attorney General during the Reagan Administration. Ohlhausen also announced that Thomas Pahl would serve as Acting Director of the Bureau of Consumer Protection. As of this time, it is unclear how long Lipsky and Pahl will serve in their respective roles, because if Ohlhausen does not ultimately get named permanent Chair, the new Chair could potentially replace them with new appointees. There are also three vacant Commissioner positions (the one vacated by former Chairwoman Ramirez and two others) that President Trump will need to fill, but he has not yet announced any nominees for any of these vacant positions as of yet.

At the DOJ Antitrust Division, significant changes in leadership have also occurred. On January 20, several of the most senior members of the Antitrust Division, including then-Acting Assistant Attorney General Renate Hesse, announced their resignations, effective immediately, leaving only one senior leader, Brent Snyder, in place. Snyder was quickly named the new Acting Assistant Attorney General. Since then, former senator Jeffrey Sessions has been nominated and confirmed as the new Attorney General, but a new head of the Antitrust Division (a post that also requires Senate confirmation) has yet to be nominated. (Notably, in contrast, President Obama nominated his first head of the Antitrust Division – Christine Varney – within two days of his inauguration). With no announcement of a nominee, as of yet, recent speculation has centered on former FTC Commissioner Joshua Wright, who served from 2013 – 2015 and often dissented from the views of the Commission during that time, and Makan Delrahim, former Chief Counsel to the Senate Judiciary Committee during the Bush Administration. With Attorney General Sessions now in place, a nominee to head the Antitrust Division will likely be announced in the next few weeks.

As the leadership at the FTC and Antitrust Division round into shape, the antitrust world will begin looking closely for clues in terms of potential changes in enforcement policy and priorities. Stay tuned.