

US Antitrust Policy Under the Trump Administration

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This Afternoon's Agenda

- Why Should Europeans Care?
- First 19th Months
- The Next 29 (77?) Months
- Personal Views Only
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Why Should Europeans Care?

- Cross-Border Transactions
 - Cartel prosecutions and merger control
 - Spillovers: CFIUS, trade
- International Engagement
 - ICN, OECD, UNCTAD, WTO
- International Standards
- Technical Assistance

Status Quo January 2017

- General: Declining US Brand
- Public Enforcement: Single-Firm Conduct
 - DOJ 2009-2016
 - FTC: Google
- Sharpened Discourse
 - Obama Interview
 - US Treasury Memo on Apple State Aid Case

Trump Policy Themes

- Drain the Swamp
- Get Government Off the Back of Business
- Get Government On the Back of Business
- Suspicion of International Institutions
- Reform Trade and Investment Rules

Policy Impulses

- “Traditional” Republican Themes
 - Economic deregulation
 - Smaller government
 - Judicial appointments: regulation skeptics
- Populism/Nativism
 - Trade
 - Immigration
 - Large corporate enterprises

The Political Dimension

- Is There Politics in Competition Policy?
 - Whether vs. how much
- Expanded Political Influence Under Trump?
 - Perceptions and legitimacy (especially abroad)
 - Amazon, ATT/TW, Google
 - Typical Washington grudge-keeping, or more?
 - Appointments: Ohlhausen as FTC Acting Chairman
 - Twitter wild cards

First 19 Months

- Drain the Swamp?
- Trump Appointees to FTC and DOJ
 - All swamp creatures
 - DOJ: Makan Delrahim and front office
 - FTC
 - Commissioners: Joe Simons, Noah Phillips, Christine Wilson, Rohit Chopra, Rebecca Slaughter
 - Key Operating Units: Alden Abbott, Bruce Hoffman, Bruce Kobayashi, Bilal Sayed, Andrew Smith

Initial Expectations

- Public Enforcement Quiescence
- Simons at FTC 2001-2003
- Delrahim at DOJ and as Senate Aide

Notable Program Elements to Date

- Simons and Delhrahim Testimony
- DOJ and Behavioral Remedies
- Review of DOJ Consents
- ATT/Time Warner
- AbbVie
- FTC Hearings

Next 19 Months: To Watch

- ATT/TW Appeal
- AbbVie Appeal
- Qualcomm
- Hearings and Guidelines
- Facebook Consent Violation Proceedings
- New Tech Cases at DOJ and FTC?
- Civil Service
- Leadership Changes

The Courts

- Composition of Courts January 2017
- Trump Appointments
- Supreme Court
 - Gorsuch
 - Kavanaugh
- Impact: Goals and Doctrine

International Engagement

- Diminished Influence
- Speeches
 - Numerous texts
 - Example: “Good process”
- Major Networks
 - ICN, OECD, UNCTAD
- Technical Assistance
 - Examples: Latin America and Ukraine

Conclusion: Forecast

- DOJ and FTC Programs
- Agency Leadership
- Courts
- Interntional Role