

UPDATE: Antitrust Leadership Changes

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One official update and one all-but-official update.

On Friday, March 5, 2021, President Biden announced [Tim Wu](#) as a competition and technology advisor on the National Economic Council. Wu had been a professor at Columbia University Law School and is known in tech circles as the man who coined the term “net neutrality” in the early 2000s. He previously served as senior enforcement counsel to the New York Attorney General and as a senior advisor at the FTC. The White House announced that Wu will “help advance the president’s agenda, which includes addressing economic and social challenges posed by the growing power of tech platforms, promoting competition and addressing monopoly and market power issues, expanding access to broadband for low income and rural communities across the country.”

Separately, it has been credibly reported that President Biden will nominate [Lina Khan](#) to the Federal Trade Commission. Khan is currently a professor at Columbia University Law School and previously served as an aide to the House Judiciary antitrust subcommittee’s probe into antitrust and major tech platforms including Amazon, Apple, Google and Facebook. As part of the investigation, Khan honed in on Google’s conduct in the online search market. Before that she was legal fellow at the FTC for outgoing Commissioner Rohit Chopra and argued for the agency to adopt rules that would more clearly spell out when companies violate competition law. During law school at Yale, Khan authored a groundbreaking paper, “[Amazon’s Antitrust Paradox](#),” exploring how the online retail giant’s conduct, particularly its pricing practices, could violate antitrust law even as consumers enjoyed lower prices.

The appointments of Wu and Khan signals that the Biden Administration may be taking a more aggressive approach to antitrust theory, especially with regards to Big Tech. Wu and Khan have both been teaching at Columbia University Law School and have been explicit about their aspirations of starting a new antitrust movement in opposition to the Chicago School. The Chicago School, which continues to hold sway in mainstream antitrust enforcement, contends that consumer welfare should be the sole focus of antitrust enforcers. As long as prices are low, quality is good, and there are sufficient choices, there is no competitive harm. In contrast, Wu and Khan’s new school of antitrust—sometimes dismissively referred to as “hipster antitrust”—is also concerned with privacy, freedom of the press, civil liberties and other issues beyond just prices that may be constrained by dominant companies.

Khan’s appointment to the FTC will fill one of the, at least, two openings on the Commission and it is unclear who the next nominee might be. In addition, over at the DOJ there have been lots of rumors, but it remains unclear who might be appointed to be the Assistant Attorney General for Antitrust. While there is no definitive timeline for those appointments, the [ABA Antitrust Section’s Spring Meeting](#) is scheduled for the end of March and announcements are often timed for the beginning of the meeting to maximize impact. Even if President Biden does not announce any new appointments, the Spring Meeting will be an opportunity for the current, albeit acting, leadership at the DOJ and the FTC to describe their current priorities and what we should expect from the enforcement agencies at least until the permanent leadership is in place.

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