

## Antitrust Leadership Changes With Biden Administration

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As expected, on Tuesday, January 19, 2021, Makan Delrahim, the Assistant Attorney General (AAG) for the Antitrust Division of the U.S. Department of Justice (DOJ), stepped down and Joseph Simons, the Chairman of the Federal Trade Commission (FTC), announced that he would step down from the Commission entirely on January 29, 2021, clearing the way for President Biden to appoint new leadership at both Federal antitrust agencies. In addition, Chairman Simons announced the departure of a number of other senior staff from the FTC, including General Counsel Alden F. Abbott; Bureau of Competition Director Ian Conner; Bureau of Competition Deputy Directors Gail Levine and Daniel Francis; Bureau of Consumer Protection Director Andrew Smith; Bureau of Economics Director Andrew Sweeting; Office of Public Affairs Director Cathy MacFarlane; and Office of Policy Planning Director Bilal Sayyed.

President Biden has not named the new FTC leadership. However, he has designated Rebecca Slaughter as the acting Chair of the FTC and announced that he intends to nominate FTC Commissioner Rohit Chopra to lead the Consumer Financial Protection Bureau. Ms. Slaughter may seem to have the inside track to become the permanent Chair, but there are no guarantees. In the history of the FTC, no one has ever made the transition from acting Chair to permanent Chair. Maureen Ohlhausen was in a similar position under the previous administration, but ultimately left the Commission and instead Joseph Simons was tapped as the permanent Chair. Maureen Ohlhausen was in a similar position under the previous administration, but ultimately left the Commission and instead Joseph Simons was tapped as the permanent Chair. With Mr. Chopra's anticipated departure, there will be two openings on the Commission. While there have been no reports regarding who might fill those vacancies, President Biden is unlikely to leave those seats empty for long. In the meantime, the Commission will be deadlocked at 2-2, until Commissioner Chopra steps down when the Republicans would gain the majority and the FTC will be unable to take any action without support from at least one of the Republican Commissioners.

President Biden has also announced the interim leadership at the DOJ, but has not yet nominated a permanent AAG. Richard Powers, who currently serves as the Deputy Assistant Attorney General for Criminal Enforcement, has been designated the Senior Supervisory Official of the Antitrust Division. In addition, Gene Kimmelman, who was chief counsel for the antitrust division in the Obama administration, announced that he would be serving, for a limited duration, as Senior Counselor for President Joe Biden's, as of yet unnamed, AAG for the Antitrust Division.

As for who will be nominated to become the AAG, it has been reported that Biden loyalist and former FTC commissioner Terrell McSweeney has removed herself from consideration. Currently, the leading candidates for the AAG position are two former Justice Department officials, Renata Hesse, who served as acting AAG from mid-2016 to January 2017, and Juan Arteaga, who served as the Deputy Assistant Attorney General for Civil Enforcement from mid-2016 to January 2017. Others that are being considered include Jonathan Kanter, who co-chaired the antitrust department at Paul Weiss and now runs his own boutique firm, and Sonia Pfaffenroth, who served as Deputy Assistant Attorney General for Operations and Deputy Assistant Attorney General for Civil Enforcement in the Obama administration and is now a partner at Arnold & Porter. While both may still be in consideration for the AAG position, they are more likely to be considered for other senior positions such as Deputy Assistant Attorney General positions and Senior Counselor positions similar to Mr. Kimmelman.

Without knowing who President Biden will nominate to permanent leadership positions at the two antitrust agencies, it remains difficult to predict the new antitrust enforcement priorities. However, if anything can be gleaned from Commissioner Chopra's nomination to lead the CFPB and the nomination of Gary Gensler, the former chairman of the Commodities Futures Trading Commission, to run the Securities and Exchange Commission, it's that the Biden administration intends to pivot towards more aggressive enforcement after four years of deregulation and light-touch enforcement under the Trump administration.

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