

Biden-Era M&A Data Shows Continuity, Not Revolution

By **Ryan Quillian and Sarah Rutherford** (February 21, 2025, 5:15 PM EST)

The change in administrations offers the opportunity to take stock of the past and look forward to the future. The federal antitrust agencies under former President Joe Biden made broad claims about increasing merger enforcement activity.[1] The press has made similar statements,[2] with some going so far as to claim that the Biden administration has set records for merger enforcement.[3]

The Biden administration certainly took a number of steps to change the federal government's approach to merger enforcement, including moving away from accepting consent decrees to resolve competitive concerns with transactions and pursuing a broader strategy of deterring merger activity through stronger antimerger rhetoric, more aggressive policy positions, and longer and more intensive investigations.

This article focuses on a narrower question regarding the number of merger enforcement actions initiated by the administration.[4]

According to the data published by the agencies, the rate of merger enforcement actions during the Biden administration was the lowest in decades, and the number of litigated merger challenges did not increase much at all under Biden. In addition, the Biden administration overall had a lower success rate in merger litigation than the three administrations that preceded it.

Looking forward, there have been some suggestions that antitrust enforcement may be aggressive under President Donald Trump.

But other statements indicate that that may not be the case in all sectors of the economy, and the recent events that could affect staffing levels at the Antitrust Division of the U.S. Department of Justice and at the Federal Trade Commission indicate that it would be difficult for the agencies to support high levels of merger enforcement activity even if they wanted to do so.

In terms of substance, FTC Commissioner Melissa Holyoak predicts a "return to normalcy"[5] after the "antitrust revolution" that the Biden administration pursued for the prior four years.[6]

However, that may not entirely be the case given that the agencies have indicated that they are likely to focus on certain issues — such as diversity, equity and inclusion, or DEI, and censorship — that have not been central antitrust concerns in the past.



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The Rate of Merger Enforcement Actions: 2001-2024

Near the end of the Biden administration, the federal antitrust agencies published materials providing data on — among other things — their merger enforcement efforts: the "Federal Trade Commission Accomplishments June 2021–January 2025,"[7] and the Antitrust Division's workload statistics for fiscal years 2015-2024.[8]

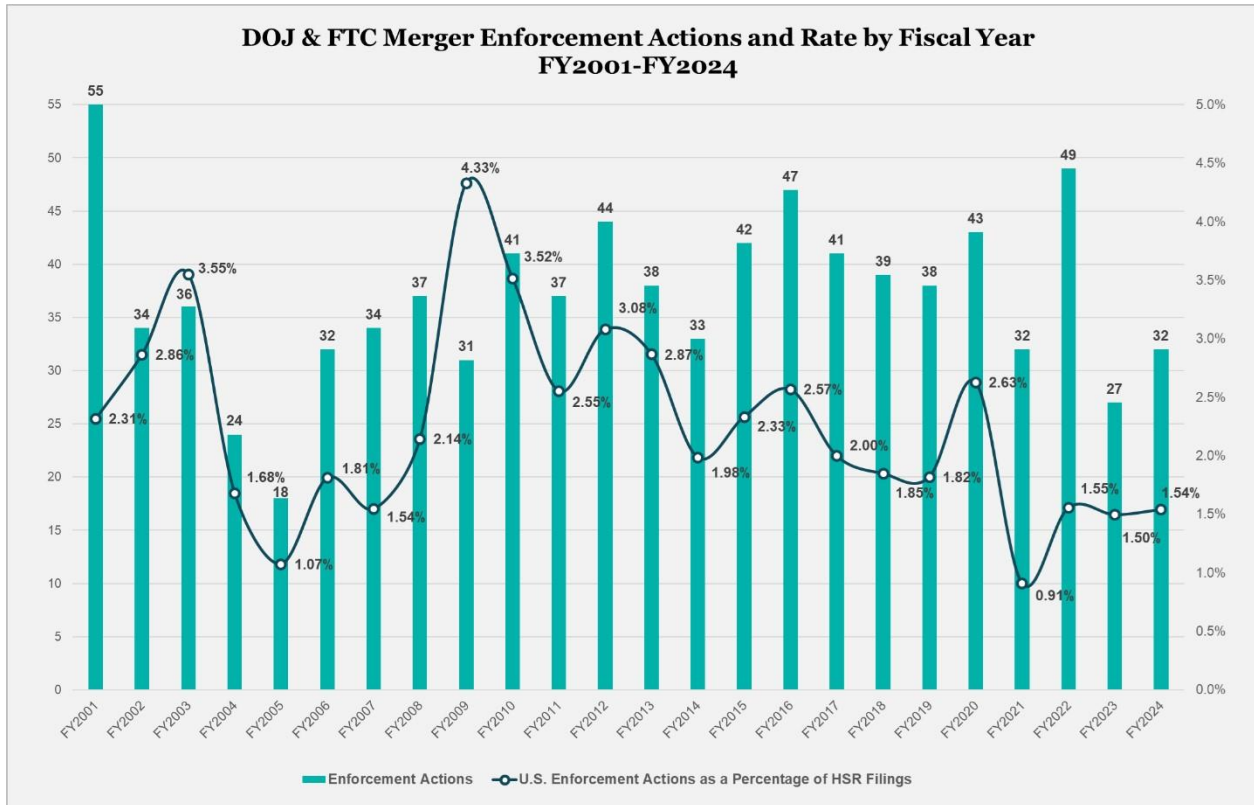
When combined with the agencies' existing Hart-Scott-Rodino reports, which are current through fiscal year 2023, the recently published data allows us to analyze merger enforcement activity by fiscal year from 2001 to 2024.

The data shows that the merger enforcement rate during each year of the Biden administration was lower than in any year since 2007.

The merger enforcement rate is the number of merger enforcement actions in a given year divided by the total number of transactions reported to the agencies in that year. We use the agencies' own methodology for determining the number of merger enforcement actions.

In particular, for each fiscal year, we add up the number of litigation complaints filed, prelitigation consent agreements announced by the agencies, and transactions that the agencies state were either abandoned or restructured during ongoing investigations.[9]

The following chart shows how the number and rate of merger enforcement actions has changed since 2001.



As this graph shows, the merger enforcement rate was 1.55% or below during each year of the four years of the Biden administration (2021-2024) and hit a record low of 0.91% in 2021. Between 2001 and 2020 — i.e., prior to Biden — the merger enforcement rate had only reached 1.55% or below twice: in 2005 and 2007.

In prior articles, we explored the potential reasons for this seemingly counterintuitive conclusion, including the Biden administration's move away from accepting consent decrees to resolve competitive concerns with transactions and its apparent strategy of general deterrence to reduce merger activity across the board by using stronger antimerger rhetoric, more aggressive policy positions, and higher procedural hurdles.[10]

Analysis of Data on Litigated Merger Challenges

Some commentators have suggested that the federal antitrust agencies were more willing to litigate to block transactions during the Biden administration than they were in the past.[11] As it turned out, however, the agencies did not litigate significantly more under Biden than they did in prior administrations.

During the Biden administration, the federal antitrust agencies filed 29 litigated merger challenges, which is just two more than the 27 they filed during the first Trump administration.

Looking at each agency individually, the FTC under the Biden administration filed 20 merger litigation complaints, which is one more than the 19 it filed during the Trump administration, while the Antitrust Division under Biden filed 10 complaints, three more than the seven it filed under the Trump administration.

While the absolute number of merger litigations did not increase substantially, the federal antitrust agencies lost litigated merger challenges at a higher rate during the last four years than they did under prior administrations. This is true whether you look at all merger litigations or limit the data to cases where a court issued an opinion.

All Litigated Merger Challenges

We first look at the broader set of all litigated merger challenges brought by the federal antitrust agencies. We define a litigated merger challenge as a complaint filed in court to block a merger without an associated consent decree. We assign these challenges to a presidential administration based on the date the complaint was filed.

In "Accomplishments," the FTC defines "merger litigation win[s]" as "matters in which a preliminary injunction was granted by a district court, administrative proceedings were resolved in favor of the FTC, the parties abandoned their deal after the FTC filed a complaint in court, or the FTC and the parties reached a settlement after a complaint was filed that resolved competitive concerns." [12]

To calculate the agency win rate, we simply divided the number of wins by the total number of outcomes in litigated merger challenges by administration.

Those metrics show that the Antitrust Division and the FTC had a lower merger litigation win rate — 74.1% — during the Biden administration than they did during Trump's first term or during either of President Barack Obama's terms. The following table summarizes the data:[13]

Antitrust Division & FTC Merger Litigation Outcomes January 2009—January 2025				
Administration	Agency Merger Litigation Win	Agency Merger Litigation Loss	Total Agency Outcomes	Agency Win Rate
Obama 1	17	1	18	94.4%
Obama 2	21	2	23	91.3%
Trump 1	21	6	27	77.8%
Biden ¹⁴	20	7	27	74.1%

Of course, this data does not include the outcomes in the Antitrust Division's challenges to UnitedHealth Group Inc.'s proposed acquisition of Amedisys Inc. — filed in the U.S. District Court for the District of Maryland on Nov. 12, 2024 — or to American Express Global Business Travel Group Inc.'s proposed acquisition of CWT Holdings LLC — filed in the U.S. District Court for the Southern District of New York on Jan. 10, 2025.

Neither of those cases has reached an outcome — i.e., abandonment, mid-litigation consent or court opinion.

Looking at the data by agency yields similar results to the aggregated table above. The following table summarizes outcomes in all merger litigations brought by the FTC:

FTC Merger Litigation Outcomes January 2009—January 2025				
Administration	Agency Merger Litigation Win	Agency Merger Litigation Loss	Total Agency Outcomes	Agency Win Rate
Obama 1	10	1	11	90.9%
Obama 2	10	2	12	83.3%
Trump 1	16	4	20	80.0%
Biden	15	4	19	78.9%

As the table above shows, the FTC filed one fewer merger challenge during the Biden administration than it did under the first Trump administration. And the FTC's win rate was lower than it was for the previous three administrations, but it was largely consistent with the win rate during Trump's first term.

We are aware that in "Accomplishments," the FTC claims that "[b]etween 2021-2025, the FTC had an overall merger litigation win rate of 93.75%." [15] However, that figure appears to omit three losses during the Biden administration. [16]

First, the FTC does not count its loss in challenging Microsoft Corp.'s proposed acquisition of Activision Blizzard Inc., which it filed in its administrative court on Dec. 8, 2022, and in the U.S. District Court for the Northern District of California on June 12, 2023.

In that case, the federal district court denied the FTC's motion for a preliminary injunction, both the district court and the U.S. Court of Appeals for the Ninth Circuit denied the FTC's emergency motions for a stay pending appeal and the parties closed the deal — although the FTC's appeal is still pending in the Ninth Circuit.

Second, the FTC omits its challenge to the proposed acquisition by Louisiana Children's Medical Center — now LCMC Health Co. — of three hospitals from HCA Healthcare Inc., which the agency originally filed in the U.S. District Court for the District of Columbia on April 20, 2023, but which the court transferred to the U.S. District Court for the Eastern District of Louisiana on June 5, 2023.

This was not a postinvestigation litigation; rather, the FTC sought to force the parties to comply with the HSR Act and the applicable waiting period. Nevertheless, the FTC asked the court to issue a temporary restraining order and a preliminary injunction to prevent the parties from merging.

On Sept. 27, 2023, the district court granted the merging parties' motion for summary judgment and dismissed the FTC's claims with prejudice.

Third, the FTC's data does not include the agency's loss in its challenge to Tempur Sealy International Inc.'s proposed acquisition of Mattress Firm Inc., which it filed in its administrative court and in the U.S. District Court for the Southern District of Texas on July 2, 2024.

In that case, the district court denied the FTC's motion for a preliminary injunction, and the parties subsequently consummated the transaction — but those events occurred after the agency published the "Accomplishments."

Including Microsoft-Activision, LCMC-HCA, and Tempur Sealy-Mattress Firm in the data shows that the FTC's merger litigation win rate under the Biden administration was 78.9% rather than 93.75%.

The Antitrust Division's merger litigation win rate was 100% under Obama, dropped to 71.4% under Trump, and then fell to 62.5% under Biden, as summarized in the chart below.

Antitrust Division Merger Litigation Outcomes January 2009—January 2025				
Administration	Agency Merger Litigation Win	Agency Merger Litigation Loss	Total Agency Outcomes	Agency Win Rate
Obama 1	7	0	7	100%
Obama 2	11	0	11	100%
Trump 1	5	2	7	71.4%
Biden ¹⁷	5	3	8	62.5%

As discussed above, the data for the Antitrust Division is necessarily incomplete because UnitedHealth-Amedisys and Amex GBT-CWT are still pending. But even if the Antitrust Division wins both of those cases, its win rate under Biden would be 70%, still lower than the prior three administrations.

It is also interesting that the Antitrust Division under Biden brought most of its litigated merger challenges

between June 2021 and March 2023. The agency filed eight merger litigation complaints in that 22-month period but did not challenge a transaction in court again until November 2024.

In other words, the Antitrust Division did not file a litigated merger complaint for more than 19 months between April 2023 and October 2024.

Court Opinions in Litigated Merger Challenges

Limiting the data to those litigated merger challenges in which a court issued an opinion shows that, although the federal antitrust agencies fully litigated more cases under the Biden administration, they also suffered more losses than under prior administrations. The following chart summarizes the data for both agencies combined.

Court Opinions in Merger Litigation—Antitrust Division & FTC January 2009—January 2025				
Administration	Agency Win	Agency Loss	Total Opinions	Agency Win Rate
Obama 1	5	1	6	83.3%
Obama 2	9	1	10	90.0%
Trump 1	7	6	13	53.8%
Biden ¹⁸	7	7	14	50.0%

As this table shows, the Antitrust Division and the FTC under the Biden administration lost more court decisions than any of the prior three administrations. If the Antitrust Division obtains favorable court decisions in UnitedHealth/Amedisys and Amex GBT-CWT, the agency win rate under the Biden administration would increase to 56.3%; if courts rule against it in both cases, the win rate would drop to 43.8%.

The following table summarizes the data for fully litigated merger challenges brought by the FTC:

Court Opinions in Merger Litigation—FTC January 2009—January 2025				
Administration	Agency Win	Agency Loss	Total Opinions	Agency Win Rate
Obama 1	3	1	4	75.0%
Obama 2	5	1	6	83.3%
Trump 1	6	4	10	60.0%
Biden	5	4	9	55.6%

As this table shows, the FTC under the Biden administration fully litigated one fewer case compared to the first Trump administration and had a lower win rate than the prior three administrations.

Looking more closely at the data on the FTC's fully litigated merger challenges, the agency's record improved

significantly over the course of time. In particular, three of the four FTC losses occurred in transactions that were challenged early in the administration — i.e., between January 2021 and April 2023.

The agency won only one of the four fully litigated merger challenges filed during that period — a win rate of 25%.

The data presents a different picture for the remainder of the administration: The FTC won four of the five fully litigated merger challenges it filed after May 2023 (a win rate of 80%).

The Antitrust Division had more fully litigated merger challenges under Biden than in prior administrations, but it also lost more times than the prior three administrations combined. The following table summarizes the data for the Antitrust Division:[19][20]

Court Opinions in Merger Litigation—Antitrust Division January 2009—January 2025				
Administration	Agency Win	Agency Loss	Total Opinions	Agency Win Rate
Obama 1	2	0	2	100%
Obama 2	4	0	4	100%
Trump 1	1	2	3	33.3%
Biden ²⁰	2	3	5	40%

If courts grant the Antitrust Division's motions to enjoin UnitedHealth-Amedisys and Amex GBT-CWT, the agency's win rate under Biden would increase to 57.1%, which would put it well ahead of the Antitrust Division during the first Trump administration, but still significantly behind the Obama administration.

If courts rule against the Antitrust Division in UnitedHealth-Amedisys and Amex GBT-CWT, the agency's win rate under Biden would drop to 28.6%, putting it below the prior three administrations.

Merger Enforcement Under the New Administration

There are some indications that antitrust enforcement under the current Trump administration will be aggressive at least in some areas. For example, in December, Trump said that his choice for assistant attorney general of the Antitrust Division "will help ensure that our competition laws are enforced, both vigorously and FAIRLY." [21]

FTC Chairman Andrew Ferguson echoed that sentiment, noting that he "want[s] vigorous antitrust enforcement." [22] And the Antitrust Division's recent decision to challenge Hewlett Packard Enterprise's proposed acquisition of Juniper Networks Inc. — filed in the Northern District of California on Jan. 30 — could be seen as a signal that the Trump administration will pursue an aggressive merger enforcement policy. [23]

However, there are several reasons to think that the Antitrust Division and the FTC will take a different approach to merger enforcement under the current administration. For example, Ferguson reportedly said that part of his "Agenda for the FTC" is to "[s]top Lina Khan's war on mergers" because "[m]ost

mergers benefit Americans and promote the movement of the capital that fuels innovation." [24]

He stated that the FTC should focus its "resources on the mergers that harm competition and hinder innovation, while permitting mergers that keep capital flowing to innovators." [25]

In addition, it has been reported that the Antitrust Division and FTC have implemented a hiring freeze, have rescinded offers to incoming entry-level attorneys, may fire attorneys who are in their probationary period, and could reduce the workforce to "essential employees" as defined in agency contingency plans for government shutdowns. [26]

Some attorneys may also take the offer to resign from the agencies. [27] Leaders of the federal antitrust agencies from both political parties have repeatedly said that their resources are already stretched thin and that they need additional resources to maintain the current level of antitrust enforcement. [28]

And Gail Slater — Trump's nominee to lead the Antitrust Division — said recently that it is important for the agencies to have sufficient resources because antitrust litigation is very costly. [29]

As a result, a freeze on hiring and a reduction in the current workforce would make it harder for the agencies to pursue a broad policy of aggressive antitrust enforcement even if that were the administration's goal.

Beyond the generalized discussion of whether or not antitrust enforcement will be aggressive, Holyoak has provided some indication of what companies can expect — at a practical level — under the current administration: the return of early termination in appropriate situations, an increased willingness to accept pre-litigation consent decrees to resolve competition concerns with transactions, and a focus on more traditional theories of harm. [30]

She summarized this approach as a "return to normalcy" and said that "if the documents, testimony, and economics demonstrate a violation of the law, then we will enforce the law." [31]

That said, statements from both Ferguson and Holyoak — the FTC's two Republican-appointed commissioners — suggest that there likely will be different areas of focus for antitrust enforcement under the new administration. For example, Ferguson has reportedly said that he will "[i]nvestigate and prosecute collusion on DEI, ESG, advertiser boycotts, etc.," [32] and his first act as chairman of the FTC was to announce the end of the "scourge" of DEI at the FTC. [33]

In addition, Ferguson, Holyoak and Slater have indicated that censorship will be a central part of their enforcement agenda. [34] As a result, the next four years may not entirely be a return to normalcy.

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[1] See, e.g., Dep't of Justice, Assistant Attorney General Jonathan Kanter Delivers Remarks at the American Economic Liberties Project 2024 Antimonopoly Summit (May 21, 2024), <https://www.justice.gov/archives/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-american-economic-liberties> ("[T]he measure of the success of policy development is whether our frameworks lead to results for our clients.... To see those results, you need look no further than the 20 plus mergers abandoned in response to division concerns in the last two and a half years.... There are too many more to list."); Testimony of Chair Lina M. Khan Before the House Committee on Appropriations, Subcommittee on Financial Services and General Government, at 22-28 (May 15, 2024), <https://docs.house.gov/meetings/AP/AP23/20240515/117306/HHRG-118-AP23-TTF-KhanL-20240515.pdf> ("Prioritizing Vigorous Merger Enforcement to Combat Consolidation"); Letter from FTC Chair Lina M. Khan to The Honorable Thomas P. Tiffany, U.S. House of Representatives (Nov. 3, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023.11.3_chair_khan_letter_to_rep_tiffany_re_merger_challenges.pdf ("By any measure, the FTC has been extremely successful with its merger enforcement program under my leadership"); see also Fed. Trade Comm'n Accomplishments, June 2021-Jan. 2025, at 12 (Jan. 19, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ftc-accomplishments-june-2021-january-2025.pdf [hereinafter "Accomplishments"] ("Between 2021-2025, the FTC had an overall merger litigation win rate of 93.75%").

[2] See, e.g., Justin Wise & Mahira Dayal, Failed Deals Climb as Antitrust Enforcers Push Aggressive Agenda, *Bloomberg Law* (Sept. 23, 2024), <https://news.bloomberglaw.com/antitrust/failed-deals-climb-as-antitrust-enforcers-push-aggressive-agenda>; Josh Eidelson & Max Chafkin, Lina Khan Is Just Getting Started (She Hopes), *Bloomberg* (Oct. 9, 2024), <https://www.bloomberg.com/news/features/2024-10-09/lina-khan-on-a-second-ftc-term-ai-price-gouging-data-privacy>; Leah Nysten & Sara Forden, Biden's Antitrust Cop Refuses to Yield After Chilling M&A Deals, *Bloomberg Law* (Sept. 30, 2024), <https://news.bloomberglaw.com/antitrust/bidens-antitrust-cop-refuses-to-yield-after-chilling-m-a-deals>.

[3] Josh Sisco & Leah Nysten, Lina Khan's Replacement at FTC to Be Vetted by an Aide to Vance, *Bloomberg* (Nov. 9, 2024), <https://www.bnnbloomberg.ca/business/company-news/2024/11/09/lina-khan-replacement-to-be-vetted-by-this-oxford-trained-lawyer/>.

[4] It is harder to measure the number of mergers—including potentially procompetitive transactions—that merging parties decided not to pursue because of the Biden administration's approach.

[5] Melissa Holyoak, A New Season at the FTC, Remarks at GCR Live: Law Leaders Global 2025, at 5 (Jan. 30, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2025-02-04-holyoak-remarksr-for-global-competition-review-event.pdf.

[6] Daniel Francis, After Neo-Brandeis, ProMarket (Nov. 25, 2024), <https://www.promarket.org/2024/11/25/after-neo-brandeis/>.

[7] See Accomplishments, *supra* note 1.

[8] Dep't of Justice Antitrust Division, Workload Statistics FY 2015-2024 (Jan 17, 2017), <https://www.justice.gov/atr/media/1385421/dl?inline>.

[9] See, e.g., Fed. Trade Comm'n & Dep't of Justice, Hart-Scott-Rodino Annual Report, Fiscal Year 2022, at 2-3, n.2 (corrected Sept. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/fy2022hsrreportcorrected.pdf.

[10] See, e.g., Ryan Quillian & Pegah Nabili, Three years running: Merger enforcement activity continues at historically low levels according to the agencies' most recent HSR report, *Westlaw Today* (Oct. 23, 2024), <https://today.westlaw.com/Document/lfc1eed4a916e11efb5eab7c3554138a0/View/FullText.html>; Ryan Quillian & John Kendrick, What Cos. Evaluating M&A Can Glean From Latest HSR Report, *Law360* (Feb. 5, 2024), <https://www.law360.com/articles/1793506>; Ryan Quillian, Biden Admin's M&A Rhetoric Outpaces Enforcement Numbers, *Law360* (Oct. 30, 2023), <https://www.law360.com/articles/1737934>.

[11] See, e.g., Matt Stoller, In Lake Wobegon, All Antitrust Enforcers Are Above Average (Mar. 19, 2024), <https://www.thebignewsletter.com/p/in-lake-wobegon-all-antitrust-enforcers>.

[12] Accomplishments, *supra* note 1, at 12, n.4 (Jan. 19, 2025).

[13] The data takes a relatively conservative approach to categorizing several ambiguous outcomes during prior administrations. For example, we treat the FTC's 2015 challenge to Cabell Huntington Hospital's proposed acquisition of St. Mary's Medical Center as a "loss" under Obama's second term because the parties merged as a result of the passage of a state law that immunized the transaction from federal scrutiny. Similarly, the FTC's 2020 challenge to Altria's acquisition of a 35% stake in JUUL, is considered a "loss" under Trump's first term given the Administrative Law Judge's Initial Decision dismissing the complaint even though Altria subsequently relinquished its investment in Juul during the appellate process.

[14] This row does not include the Antitrust Division's challenges to UnitedHealth/Amedisys or Amex GBT/CWT, neither of which has reached an outcome.

[15] Accomplishments, *supra* note 1, at 12 (Jan. 19, 2025).

[16] Accomplishments also appears to omit one of the FTC's "merger litigation wins" — its challenge to HeidelbergCement's proposed acquisition of Keystone Cement Company, which the FTC filed in its administrative court on May 20, 2021 ("Heidelberg/Keystone"). See Fed. Trade Comm'n, Statement of Acting Bureau of Competition Director Maribeth Petrizzi Regarding Decision of Pennsylvania Cement Producers Lehigh Cement Company LLC and Keystone Cement Company to Abandon Their Proposed Merger (June 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/statement-acting-bureau-competition-director-maribeth-petrizzi-regarding-decision-pennsylvania>; cf. Accomplishments, *supra* note 1, at 24-28 (omitting Heidelberg/Keystone from the "Challenging Illegal Mergers and Acquisitions" section of the agencies' "Enforcement Matter Index"). The merging parties abandoned the proposed transaction on June 3, 2021. Our data corrects this omission and includes Heidelberg/Keystone as a "merger litigation win" for the FTC under Biden.

[17] This row does not include the Antitrust Division's challenges to UnitedHealth/Amedisys or Amex GBT/CWT.

[18] This row does not include the Antitrust Division's challenges to UnitedHealth/Amedisys or Amex GBT/CWT.

[19] Note that one of the losses under Trump was the Antitrust Division's challenge to Sabre's proposed acquisition of Farelogix (filed in the District of Delaware on August 20, 2019), which the merging parties abandoned—despite a decision in their favor by the district court — because the United

Kingdom's Competition and Markets Authority blocked deal. And the one win under Trump was written by an arbitrator (not a court) in the Antitrust Division's challenge to Novelis's proposed acquisition of Aleris (filed in the Northern District of Ohio on September 4, 2019). After the arbitrator's ruling in the latter case, the parties quickly reached a consent agreement with the Antitrust Division. Finally, one of the wins during Obama's second term was a temporary restraining order (i.e., not a ruling on a motion for a preliminary injunction) issued by the court in the Antitrust Division's challenge to Tribune Publishing Company's proposed acquisition of Freedom Communications after bankruptcy — filed in the Central District of California on March 17, 2016 — that resulted in the bankruptcy court selecting a buyer other than Tribune.

[20] This row does not include the Antitrust Division's challenges to UnitedHealth/Amedisys or Amex GBT/CWT.

[21] Truth Social Post by Donald J. Trump (@realDonaldTrump) (Dec. 4, 2024, 12:21 PM), <https://truthsocial.com/@realDonaldTrump/posts/113595703893773894>.

[22] Curtis Eichelberger & Flavia Fortes, US FTC chairman's M&A views have been conservative, but far from extreme, MLex (Jan. 29, 2025), <https://content.mlex.com/#/content/1627416/us-ftc-chairman-s-m-a-views-have-been-conservative-but-far-from-extreme>.

[23] See, e.g., In Challenging Juniper Acquisition, Acting DOJ Antitrust Chief Assefi Defies Expectations, Continues Aggressive Approach, The Capitol Forum (Feb. 5, 2025), <https://library.thecapitolforum.com/docs/8bdqwu5duj1>.

[24] FTC Commissioner Andrew N. Ferguson for FTC Chairman, Punchbowl News, at 1, <https://punchbowl.news/wp-content/uploads/FTC-Commissioner-Andrew-N-Ferguson-Overview.pdf>.

[25] Id.

[26] See e.g., Sadie Gurman & C. Ryan Barber, Trump Officials Waste No Time in Justice Department's Rightward Shift, MSN (Jan. 26, 2025), <https://www.msn.com/en-us/news/politics/trump-officials-waste-no-time-in-justice-department-s-rightward-shift/ar-AA1xTtAE>; Jason Miller, OPM asks agencies to justify keeping probationary employees, Fed. News Network (Feb. 4, 2025), <https://federalnewsnetwork.com/workforce/2025/02/opm-asks-agencies-to-justify-keeping-probationary-employees/>; Khushita Vasant & Chris May, US FTC compiling list of probationary employees as government eyes cuts, MLex (Feb. 15, 2025), <https://content.mlex.com/#/content/1631832/us-ftc-compiling-list-of-probationary-employees-as-government-eyes-cuts>; Executive Order, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-government-efficiency-workforce-optimization-initiative/>.

[27] See U.S. Office of Personnel Management, Fork in the Road (Jan. 28, 2025), <https://www.opm.gov/fork>; Mark Sherman & Will Weissert, Trump offering federal workers buyouts with about 8 months' pay in effort to shrink government, AP News (Jan. 28, 2025), <https://apnews.com/article/trump-buyouts-to-all-federal-employees-f67f5751a0fd5ad8471806a5a1067b5e>.

[28] See, e.g., Testimony of FTC Chair Lina M. Khan before the House Subcommittee on Innovation,

Data, and Commerce, at 2 (July 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/chair-khan-testimony_7-9-2024.pdf ("[T]he FTC's current budget, as well as proposals for future funding, cannot sustain our current personnel levels and would mean far fewer resources to support the Commission's critical work."); id. at 23 ("The work that the FTC does to prevent unlawful consolidation is enormously demanding, resource-intensive, and critically important.... Commission staff and resources are still strained by the short statutory deadlines and the scale, volume, and complexity of mergers."); Prepared Statement of the Fed. Trade Comm'n: Oversight of the Fed. Trade Comm'n, Before the Senate Committee on Commerce, Science, and Transportation, at 31-32 (Aug. 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1578963/p180101testimonyftc_oversight20200805.pdf ("[O]ur resources continue to be stretched thin."); Prepared Statement of the Fed. Trade Comm'n, *The FTC Act at 100: Where Do We Go from Here?*, Before the House Subcommittee on Commerce, Manufacturing, and Trade, at 7 (Dec. 3, 2013), https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-ftc-100-where-do-we-go-here/131203ftcat100.pdf ("Resource constraints, despite a growing workload, remain a constant challenge."); Testimony of Timothy J. Muris, *Challenges Facing the Federal Trade Commission*, Hearing before the House Subcommittee on Commerce, Trade, and Consumer Protection, at 12 (Nov. 7, 2001), <https://www.govinfo.gov/content/pkg/CHRG-107hrg76308/pdf/CHRG-107hrg76308.pdf> ("[T]he FTC has shouldered an increasing workload despite only modest increases in resources."); see also U.S. Dep't of Justice, Assistant Attorney General Jonathan Kanter of the Antitrust Division Testifies Before the Senate Judiciary Committee Hearing on Competition Policy, Antitrust, and Consumer Rights (Sept. 20, 2022), <https://www.justice.gov/archives/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-testifies-senate-judiciary> ("Litigating mergers is no simple task. It takes up enormous resources, requiring the Division's staff to face down the most well-resourced and well-represented companies in the world.").

[29] See Courtney Bubl , *Gail Slater Plans Antitrust 'Scalpel' To Protect Competition*, *Law360* (Feb. 12, 2025), <https://www.law360.com/mergersacquisitions/articles/2296778>.

[30] See Holyoak, *A New Season at the FTC*, *supra* note 5, at 2-5.

[31] Id. at 5.

[32] FTC Commissioner Andrew N. Ferguson for FTC Chairman, *supra* note 24, at 1.

[33] Press Release, *FTC Chairman Ferguson Announces that DEI is Over at the FTC*, Fed. Trade Comm'n (Jan. 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-chairman-ferguson-announces-dei-over-ftc>.

[34] See, e.g., FTC Commissioner Andrew N. Ferguson for FTC Chairman, *supra* note 24, at 1 (stating that Ferguson will "[f]ocus antitrust enforcement against Big Tech monopolies, especially those companies engaged in unlawful censorship."); Holyoak, *A New Season at the FTC*, *supra* note 5, at 8-10; Ben Remaly, *Slater: advertiser group's conduct "quite troubling," GCR* (Feb. 12, 2025), <https://globalcompetitionreview.com/gcr-usa/article/slater-advertiser-groups-conduct-quite-troubling>.