

Insights

WITH ITS LATEST ANTITRUST NOMINATION, BIDEN ADMINISTRATION DOUBLES DOWN ON ITS BIG TECH ENFORCEMENT FOCUS

Jul 23, 2021

After leaving the position vacant for six long months, the Biden Administration announced that it would nominate Jonathan Kanter for the position of Assistant Attorney General for the Antitrust Division at the Department of Justice (“DOJ”). In a press release Tuesday, the White House touted Kanter’s twenty years of focused antitrust experience and noted his status as “a leading advocate and expert in the effort to promote strong and meaningful antitrust enforcement and competition policy.” While most recently Kanter founded his own “antitrust advocacy boutique” firm, the Kanter Law Group, Kanter spent years at a large law firm representing smaller rivals against Big Tech companies in private litigation. Prior to his private practice work, Kanter investigated and challenged mergers as an attorney for the Federal Trade Commission’s Bureau of Competition.

This announcement comes just a month after the White House tapped notable Big Tech critic [Lina Khan to Chair the Federal Trade Commission](#). Similar to Khan, Kanter has voiced strong criticism of several Big Tech companies. In a 2016 New York Times op-ed, he opined that a large search engine’s use of data and alleged abuse of its market position was harming present and future consumers. Notable Senators, including Amy Klobuchar and Elizabeth Warren, have both lauded the White House’s announcement. Senator Warren expects Kantar to “reinvigorate antitrust enforcement –both civil and criminal–and strengthen the DOJ’s scrutiny of the anticompetitive abuses.”

If confirmed by the Senate, Kanter will face challenges in his reinvigoration efforts. While Kanter has advocated for strictly enforcing the existing antitrust laws, unfavorable federal precedent and a conservative Supreme Court may limit the DOJ’s ability to transform existing law, as the recent dismissal of the FTC’s suit against Facebook may foreshadow. Moreover, Big Tech companies have already demanded FTC Chair Khan’s recusal from several Big Tech investigations based on her academic background; those same arguments will undoubtedly play a larger role with Kanter’s prior private litigation work. And, Kanter’s DOJ start date may be delayed until this fall if the Senate does confirm the nomination ahead of Congress’s August break.

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