

Insights

BLOCKING THEIR OWN SHOT: FTC'S RECENT ARGUMENTS COULD IMPACT IF AND HOW FTC INVESTIGATIONS ARE CONDUCTED

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SUMMARY

In *Media Matters v. Federal Trade Commission*, the Federal Trade Commission (FTC) suggested that issues surrounding the scope, validity, and enforceability of a civil investigative demand (CID) should be addressed during an enforcement action. This position could have significant implications for the FTC's ability to conduct investigations due to the public nature of enforcement actions, limited FTC resources, and the potential for an increased number of challenges to the FTC's authority to start investigations in the first place.

As any recipient of a government subpoena knows, the details of the subpoena's statutory authority can get lost in figuring out how to respond to the government agency. This particular issue was highlighted in the recent preliminary injunction briefings in *Media Matters v. Federal Trade Commission*, where the agency took a curiously different posture than it took in *Federal Trade Commission v. Total Wine & More*.

On July 14, 2025, Media Matters filed for a preliminary injunction against the FTC to challenge a CID sent by the agency. When the FTC conducts antitrust or consumer protection investigations, it issues CIDs to targets of the investigation and third parties under the FTC Act (15 U.S.C. § 57b-1(e)). While these CIDs are technically not self-enforcing (i.e., if the FTC wants to enforce compliance, the agency must file an enforcement action in a federal district court against the CID recipient), in the ordinary course the expectation and outcome is that the recipient will comply with the CID. The FTC's regulations contemplate CID recipients will engage with Commission staff regarding the nature and scope of the information demanded by the CID, and parties usually do engage in productive discussions with FTC staff in efficiently responding to a CID. Generally, the FTC and CID recipients treat the agency's CIDs as imposing legal obligations upon the recipients. In the FTC's enforcement action against Total Wine (filed in October 2023), for example, it [described](#)

the CID to Total Wine in mandatory terms (“The CID **requires** Total Wine to respond...”; “**obligations** under the CID”) (emphasis added).

In the [FTC’s opposition](#) to Media Matters’ motion for a preliminary injunction, however, the agency takes a starkly different tack. The FTC argued, contrary to its position in *Total Wine*, that “[t]he CID imposes **no legal obligations** on Media Matters unless and until the FTC seeks to enforce it in district court.” Opp’n at 1 (emphasis added); *see also* Opp’n at 22 (“until [the FTC petitions for enforcement of the CID], Media Matters has no legal obligations to comply with the CID.”). Rather, the proper vehicle for “issues concerning the validity, scope, and enforceability of FTC CIDs [is] an enforcement action.” Opp’n at 21. While the district court rejected the agency’s argument, the [FTC filed an appeal](#) reiterating this argument. This position is a significant departure from the FTC’s prior position (as articulated in *Total Wine*). If a CID recipient decides to take the agency at its word in *Media Matters*, there are significant ramifications for the FTC’s ability to conduct its usual pre-complaint investigations.

At a basic level, the FTC’s investigations are generally nonpublic, but district court filings are generally public. The non-public nature of the FTC’s investigations is often beneficial for all involved: the FTC can ask as many questions as it wants, without worrying about going down “blind alleys”; targets of investigations will not suffer public judgment from being the subject of an investigation, which may result in no further action; and third parties feel more free to provide confidential information. If the FTC is required to file more enforcement actions, the natural result is that more of the agency’s investigations will become public. This could create a chilling effect on third parties complaining to or cooperating with the agency.

This is particularly important for third parties, on which FTC investigations are highly reliant. Understanding antitrust concerns requires thorough knowledge of an industry’s competitive dynamics. Consumer protection investigations similarly require the Commission to determine how a target company’s behavior impacts consumers.

However, third parties are typically very concerned about retaliation by targets who find out the third parties are talking to the FTC. If it becomes obvious through public court filings which third parties are cooperating or not cooperating, fewer third parties (often those most impacted by illegal behavior) will be willing to cooperate with the agency.

Next, the agency’s new position risks increasing the resources necessary to complete an investigation. CID enforcement actions take a substantial amount of agency resources. This is particularly acute for antitrust merger investigations, where the agency is bound by strict timelines under the Hart-Scott-Rodino Act. It is difficult to see how the FTC will be able to file enforcement actions against third parties in time to assist in a merger review.

In the end, more enforcement actions in district court could mean the FTC will face more challenges to the FTC’s statutory authority and constitutionality. The agency essentially invited

these arguments by stating that “there is no doubt that, should the Commission decide to enforce the CID, Media Matters can raise all of its constitutional claims before the district court hearing the CID enforcement action.” Opp’n at 23.

It remains to be seen how the agency will deal with the ramifications of its position on CID enforcement. But for CID recipients, there are plenty of new factors to consider when determining how best to respond to the FTC.

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