

Trump No Threat To Antitrust Policy, Former Officials Say

By Eric Kroh

Law360, Washington (March 30, 2017, 6:43 PM EDT) -- Although some observers have suggested that the government's antitrust and merger enforcement could be subject to radical shifts under the direction of President Donald Trump, competition policy has traditionally been shielded from politics, and that should continue under the new administration, recently departed government officials said Thursday.

There may be small changes at the margin to the approach the government takes to policing cartels and challenging mergers, but that is to be expected during any presidential transition, said the officials, who headed up the competition teams at the U.S. Department of Justice and Federal Trade Commission under President Barack Obama. They were speaking at a panel at the spring meeting of the ABA antitrust section in Washington, D.C.

"I actually don't worry a lot about change," said Renata B. Hesse of Sullivan & Cromwell LLP, former acting assistant attorney general at the DOJ's antitrust division. "As a general matter I think antitrust enforcement and transparency and the principled way in which the agencies enforce the antitrust laws, I think that's going to stay the same."

Deborah L. Feinstein, who was director of the FTC's bureau of competition until just weeks ago, said the goals of Republicans and Democrats on the commission have mostly been in alignment and they have issued very few split decisions over the years.

"Historical commission actions are great predictors of future commission actions," Feinstein said. "There's tremendous consensus about where antitrust is and where we want to be and want to go."

Thomas O. Barnett of Covington & Burling LLP, who served as assistant attorney general of the DOJ antitrust division under President George W. Bush, recalled that one of the first competition policy acts of the Obama administration was to formally withdraw the contentious report on monopoly conduct under Section 2 of the Sherman Act that had just been issued at the end of the Bush administration.

That was a dramatic act, but enforcement of monopolies under the Obama administration was not drastically out of line with what had come before it, Barnett said.

"When it was pulled, it didn't actually change anything," he said.

Barnett added that if he were to give advice to the Trump administration, it would be to make clear up

front that the bipartisan antitrust principles that have been enforced for the previous generation are still in place.

During the presidential campaign, Trump raised questions about whether he would wield antitrust enforcement as a cudgel after he publicly declared he would not allow AT&T's proposed \$84.5 billion merger with Time Warner to go through and said Amazon CEO Jeff Bezos, who owns The Washington Post, has a "huge antitrust problem."

So far, however, Trump's picks to head competition policy at the DOJ and FTC have not signaled a significant departure in antitrust priorities. Earlier this week, Trump fleshed out his antitrust team with the nomination of White House deputy counsel Makan Delrahim to lead the U.S. Department of Justice's Antitrust Division.

Trump has not tapped a permanent head at the FTC, but in January he appointed Commissioner Maureen K. Ohlhausen to be acting chairman of the commission.

--Editing by Brian Baresch.