

December 11, 2024

Trump's Anti-Trust Team Taking Shape

President-elect Trump's announcement last night that he intends to name current FTC commissioner Andrew Ferguson to chair the agency reinforces our long-held view that, in general, M&A / antitrust under Trump will be more market friendly than what we've seen the over the last four years.

However, we believe both Andrew Ferguson and Gail Slater, Trump's pick to head the DOJ antitrust division, will continue the Biden administration's tough take on **big tech**, which arguably started during the first Trump administration. We don't believe we are going back to the halcyon M&A days of President Bush (either one) or the Reagan era, but directionally, more deals will likely be approved and the DOJ /FTC to accept more remedies to effectuate their closing. We suspect both of their approaches to antitrust enforcement will hew more closely to past precedent than has been the case during the Biden administration.

We also suspect that DOJ / FTC will reverse course from the Biden administration's Hart-Scott-Rodino changes, which would mean M&A parties would have an easier path in antitrust review, in the sense that they would not have to fork over the additional – and ancillary – data regarding proposed acquisitions. Additionally, we suspect them to pull the revised merger guidelines that pushed the envelope on anticompetitive theories of harm and evaluation of potential deals, such as the bias against private equity firms, investor-owned parties, and real estate owners who want to buy a target OR the lens of serial acquisitions.

Ferguson opposed the current FTC's rulemaking that would make it easier to cancel subscriptions, which had wide-ranging implications across many sectors, as well as the rule on non-compete clauses in employment contracts, which a Texas court threw out.

Simply put, we see the FTC under Ferguson being less active in rulemaking, mirroring more traditional Republican positions, again, with big tech being an exception.

Healthcare

On the healthcare front, we doubt the FTC under his leadership pulls the antitrust challenge to **PBMs (UNH, CVS, CI)** regarding rebate practices, even though Ferguson recused himself from signing on to the challenge without any explanation. PBMs, like tech, are in the crosshairs of both Republicans and Democrats.

With regard to the **NVO / CTLT** deal, we continue to believe that the transaction will close before the Biden administration concludes on January 20. If we are wrong, however, and they file suit to block the deal, it is unlikely that the Trump administration/FTC would abandon that litigation altogether. While this does not preclude a pre-trial settlement – similar to AMGN / HZNP – we suspect the companies would walk away rather than fight the matter in court given recent comments from NVO management.

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UnitedHealth Group Incorporated (UNH)

Price:	\$535.20
52-Week High:	\$630.73
52-Week Low:	\$436.38

CVS Health Corp (CVS)

Price:	\$53.08
52-Week High:	\$83.25
52-Week Low:	\$52.71

Cigna Corp (CI)

Price:	\$296.54
52-Week High:	\$370.83
52-Week Low:	\$288.88

Novo Nordisk A/S (NVO)

Price:	\$110.26
52-Week High:	\$148.15
52-Week Low:	\$94.73

Catalent Inc (CTLT)

Price:	\$62.40
52-Week High:	\$62.50
52-Week Low:	\$36.74

Amedisys Inc (AMED)

Price:	\$85.48
52-Week High:	\$98.95
52-Week Low:	\$84.06

Finally, as a reminder, we do not see the healthcare sector more broadly as particularly vulnerable from the DOJ's new leadership. Slater is not known for having specialized expertise in the space or for having singled it out for concerns about anticompetitive behaviors.

We do *not* think she is likely to aggressively push for the reportedly ongoing monopolization investigation of **UNH**, though we don't necessarily expect it to quickly disappear, and we doubt she will go to the mat for the **UNH-AMED** but rather seek to encourage a revised settlement.

That said, she may not be a fan of PBMs, since we note that when she was an attorney advisor to FTC Commissioner Julie Brill (D) ten years ago, her boss held the dissenting view to the Express Scripts (now **CI**) acquisition of Medco.

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