



The Revolving Door In Federal Antitrust Enforcement

By Andrea Beaty

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**REVOLVING
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Executive Summary

For the better part of the last four decades, federal antitrust enforcers were punching the clock but they were not working for the American people. Under administrations of both parties, antitrust agencies allowed mergers to proceed unchecked and failed to impose consequences when corporations engaged in anti-competitive behavior. The predictable result has been accelerating corporate consolidation, with noxious effects for consumers, workers, small businesses, and our democracy.

Today, this extreme monopolization is pushing our economy to the breaking point and inspiring a growing movement to break up consolidated companies and rebalance economic and political power in this country. To win that fight and build a more resilient enforcement infrastructure that can safeguard competition over the long run, the anti-monopoly movement has been working to develop a thorough understanding of the forces that precipitated and maintained the decades-long dearth of antitrust enforcement.

Although no one factor is solely responsible for these trends, many researchers and advocates have honed in on *who* has been driving antitrust enforcement to help explain how the country arrived at this point. In recent years, research from Public Citizen, ProPublica, and others has revealed that for those who have led these agencies in recent decades, passing through the revolving door between antitrust enforcers and corporate monopolies is not the exception, but the rule.

In this report, Revolving Door Project builds off of that research to demonstrate that this problem reaches far deeper into the agencies' ranks. Through Freedom of Information Act requests, RDP obtained lists of staff who departed the Antitrust Division's civil merger enforcement section and the Federal Trade Commission's Bureaus of Competition and Economics. Our analysis found that over 60 percent left the antitrust agencies for employment in large and highly-profitable legal firms that principally represent corporations – often referred to as “BigLaw” firms – merger-driven corporations, and economic consulting firms. Over 50 percent of the DOJ's civil merger enforcement attorneys and the FTC's competition attorneys took jobs in BigLaw after leaving public service. Almost 50 percent of the departing economists we tracked at both agencies went on to jobs in merger-driven corporations – including some to Amazon, Facebook, and Apple – and economic consulting firms.

In addition to shedding light on the revolving door at the staff level, RDP has added additional detail to previous findings of the revolving door's prevalence among leadership. Specifically, we found that 85 percent (17 of 20) of those who most recently held the position of Deputy Assistant Attorney General for Economic Analysis went on to work for an economic consulting firm after their government service.

Often drawing on monopolistic corporations' and their lawyers' own words, the report details how these hires help stack antitrust outcomes against the public interest. Merging corporations seek out former antitrust officials to access inside knowledge about any agency's processes and to benefit from their personal connections with current agency staff, factors that can help ease the road to an approval for their deals. More subtly, the fact that BigLaw firms and monopoly-driven corporations alike are continually making clear that lucrative private sector positions await former regulators may incentivize *current* regulators to adopt a lighter touch.

To his credit, President Biden eschewed the customary, bipartisan reliance on the revolving door in selecting his antitrust leadership. This report makes clear, however, that turning the tides of consolidation will require more than just a change at the very top. To support an ambitious antitrust agenda and quell undue influence, the President, agency leadership, and Congress should take action to slow the revolving door to industry at all levels and to reinvigorate agency capacity and staff morale. There is still work to be done to ensure that monopolistic corporations are not able to weaponize hiring to undermine the public interest.

Recommendations to Slow the Revolving Door to Industry

Tightening restrictions on both sides of the revolving door (White House, Congress, Office of Government Ethics, Federal Trade Commission and Department of Justice).

1

Through one or more of several available avenues (a new Executive Order on ethics, new ethics legislation, or new ethics regulations from the Office of Government Ethics, Federal Trade Commission, or the Department of Justice), leaders should restrict the hiring of lawyers with deep ties to corporations accused of anti-competitive conduct and tighten and extend post-employment restrictions for agency leadership and staff.

Prosecuting those who violate ethics restrictions. (Department of Justice)

2

Ethics rules are meaningless without enforcement. Any new measures must be accompanied by a credible threat of vigorous enforcement.

Increasing the antitrust agencies' budgets. (Congress)

3

To quickly and effectively beat back the forces of economic consolidation, the Federal Trade Commission and the Antitrust Division need more resources. Although both agencies recently received a mild boost to their budgets under the terms of the FY 2022 government funding agreement, those increases were not enough to reverse the last decade of under resourcing, let alone match the growing scale of the agencies' responsibilities. As it begins negotiating the FY 2023 budget, Congress should consider the funding levels Biden proposed in his recent budget request as the minimum acceptable increase.

Deploying new resources to rapidly expand hiring and better support existing staff. (Federal Trade Commission and DOJ Antitrust Division).

4

Antitrust leadership should use recent increases in its agencies' budgets to quickly expand its workforce to help it meet new challenges. It should seek to capitalize on growing interest and energy in the anti-monopoly movement to bring on a wave of hires excited about the antitrust agencies' new, more aggressive chapter. At the same time, leadership should look to deploy new resources to support existing agency staff, through raises and other benefits. "While government salaries will never be able to compete with the lavish incomes on offer at the BigLaw firms and lobbying shops to which officials have traditionally revolved, increases could help encourage committed public servants to stick with the agency over the long-term."

Promoting from within the antitrust agencies and cultivating in-house expertise. (Federal Trade Commission and DOJ Antitrust Division).

5

For too long, the antitrust agencies have principally looked outwards, not their own ranks, when hiring for senior positions and searching out specialized expertise. When it comes to hiring, the incentives are clear – to get ahead, agency staff need to take a turn through the revolving door. The reliance on outside consultants, meanwhile, has created damaging conflicts of interest. To revitalize agency capacity and enforcement, leaders should work to celebrate and reward public service by promoting from within and building out in-house expertise.

Part One: The Revolving Door In The World of Antitrust Enforcement

Antitrust Enforcement Inaction Has Allowed Monopolistic Corporations to Extract Wealth From Small Businesses, Consumers And Workers

American antitrust enforcement over the past few decades can be surmised in one word: lax. In their 2020 report on the state of enforcement, the American Antitrust Institute [found](#) that “long-term inaction has compromised the effectiveness of the U.S. antitrust laws.” The symptoms of this inaction [include](#) “unprecedented levels of market concentration” in major industries such as healthcare and telecommunications as well as increasingly common and lucrative mega-mergers. The result of consolidation, unchecked by the federal government both during Republican and Democratic administrations, has been devastating to small businesses, consumers and workers alike.

The rise of monopolies has wreaked havoc on small businesses across the country. The Institute for Local Self-Reliance [documented](#) how the American industries were once a “robust mix of businesses of different sizes, including some large firms and a multitude of small ones.” That ecosystem had tangible benefits for communities – according to the ISLR, small businesses often outperform bigger businesses in “providing better services, higher-quality products, and even lower prices” and offer a path to building wealth for immigrants, communities of color and rural communities. But now, the business landscape has changed, with fewer new businesses opening and existing ones folding. In turn, consumers face higher prices for worse quality goods and services from the monopolies they are forced to do business with. Workers also suffer under these conditions – aside from the [layoffs](#) that are a hallmark of mergers, monopolistic companies seek to squash new competitors, further preventing new job formation. According to Open Markets, consolidated industries put [downward pressure](#) on wages as fewer employers compete for each worker. As groups like Liberation in a Generation are researching, the [threat](#) monopoly power poses to small business, workers and consumers is compounded by existing racial inequities, further disenfranchising communities of color.

As laid out by Sarah Miller, director of the American Civil Liberties Project, monopoly power [allows](#) corporations “to extract wealth from workers, consumers, entrepreneurs, small businesses, and, through tax breaks, subsidies, and contracts, our government itself.”

The House Subcommittee On Antitrust Found The FTC And DOJ Culpable For Tech Monopolists’ Rise To Power

The anti-monopoly movement has gained significant traction for working to curtail the power of Silicon Valley robber barons, known as Big Tech. These firms – Amazon, Google, Facebook, and Apple, among others – have gained monopolistic economic power in their respective fields (e-commerce, search, social media, and app distribution) through anticompetitive means, and many groups have undertaken research to understand the role of the DOJ and FTC in Big Tech’s accumulation of power. The House Subcommittee on Antitrust’s *Investigation of Competition In Digital Markets*, released in October 2020, is arguably the most crucial report on Big Tech’s monopoly power, and the report’s authors lay Big Tech’s monopoly power squarely at the feet of the antitrust enforcement agencies.

The [report](#), colloquially referred to as the Cicilline Report after House Antitrust Subcommittee chairman David Cicilline, uncovered evidence that “the antitrust agencies failed, at key occasions, to stop monopolists from rolling up their competitors and failed to protect the American people from abuses of monopoly power” (p. 7). The scope of the FTC and DOJ’s failure to challenge Big Tech acquisitions [illustrates](#) this failure – in total, the four firms in question have purchased over 500 companies since 1998, and yet “the antitrust agencies did not block a single acquisition” (p. 392).

The report also found [direct evidence](#) that Amazon and Facebook saw companies as competitive threats before acquiring them. The subcommittee staff found that Facebook acquired Instagram in 2012 “to neutralize a nascent competitive threat” (p. 151). At the time, the FTC opened an investigation into the \$1 billion acquisition, but closed it without taking any action. That investigation was the [only acquisition probe](#) into Facebook out of the almost 100 deals identified in the Cicilline Report (p. 11). [Two months after](#) the Cicilline Report was released, the FTC sued Facebook in a case centered on the company’s strategic acquisitions of Instagram and WhatsApp in order to eliminate threats to its monopoly.

How could the antitrust agencies have failed so deeply at their most fundamental duty? Others have [pointed](#) to the ideological and legal precedent driving antitrust non-enforcement over the

last 40 years, most especially the consumer welfare standard.¹ We strongly concur with this assessment, but would supplement it with an additional factor: the professional incentives of the actual lawyers at the antitrust agencies push them strongly against independent-minded, rigorous enforcement, and toward a pro-corporate, pro-consolidation stance.

The bureaucrats who have continuously failed to enforce antitrust laws diligently and allowed corporations to accumulate and exercise unbridled power, as well as the corporate attorneys who argue in favor of mergers, and the judges who waive said mergers through, all come from the same cloistered networks and share similar professional incentives. This clique of regulators, lawyers and judges typically know each other and ascended with little outside scrutiny and few checks on their eventual power in government, the private sector, and the courts, respectively. They know that allowing the system of antitrust enforcement to fall into decay will often net them a financial boon – either immediately, in the case of private sector attorneys, or at a later date, in the form of high-powered private sector jobs or feted status at industry events, for the bureaucrats and judges. And as we demonstrate in this paper, the same antitrust officials who set these lax standards overwhelmingly leave government posts for partnerships at firms and corporations that benefit from those decisions.

The Cicilline Report does point to addressing the problem of the revolving door at the antitrust agencies as one of the many remedies needed to position the DOJ and FTC as agencies prepared to take on the power of Big Tech. The subcommittee staff [recommended](#) “codifying stricter prohibitions on the revolving door between the agencies and the companies that they investigate, especially with regards to senior officials” (p. 403). While this is encouraging, closing the revolving door at the FTC and DOJ is not merely incidental, but vital to robust enforcement action. We need a fundamental shift in who is allowed to shape our political economy and the incentives that drive their careers.

¹ The consumer welfare standard is the notion that mergers and acquisitions investigated under the Sherman and Clayton Acts should be judged by whether consumers are better or worse off due to the proposed transaction. Since the 1980’s, the FTC and the DOJ have used the consumer welfare standard to assess transactions. David Dayen in the American Prospect argued that the consumer welfare standard ignores “other by-products of market concentration—negative impacts on worker wages [...], squeezing of suppliers, fragility in the supply chain, reduction in innovation, and constraints on personal liberty and democracy”. Dayen connects the implementation of the consumer welfare standard with “increased consolidation in virtually every market sector, coinciding with declining quality of service, stagnant wages, low corporate investment, record corporate profits, soaring inequality and a growing sense that politics only works for the wealthy and powerful.”

Existing Research Shows Antitrust Agency Leadership Have Ties To Tech And Other Corporate Interests

Public Citizen's 2019 FTC Report

Public Citizen's 2019 report on FTC leadership's ties to tech and other industries found that over 75 percent (31 of 41) of FTC leaders over the past two decades [have](#) "either left the agency to serve corporate interests confronting FTC issues, joined the agency after serving corporate interests on these issues, or both." The report also found 26 of the 41 officials observed specifically had "revolving door conflicts of interest involving work on behalf of the technology sector." The officials counted in the report include former FTC commissioners as well as past directors of the Bureau of Consumer Protection and the Bureau of Competition.

Even within the federal antitrust enforcement regime, the Bureau of Competition stands out as uniquely captured – report author Rick Claypool notes that "remarkably" the nine officials who served as Director of that bureau since the late 1990s all had revolving door conflicts with Big Tech. Claypool argues the revolving door is a "pernicious influence-peddling" tool that undermines the mission of the antitrust enforcement agencies through three means:

- *"Business and special interest groups may 'capture' a federal regulatory agency by seeing their own past personnel appointed to key government posts," who then enforce regulatory laws in a manner which preferences the company's interest over the public interest.*
- *"Public officials may be influenced in official actions by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking to shape public policy, or, more subtly, by the prospect of future employment."*
- *"Public officials-turned-lobbyists will have access to lawmakers and regulatory officials not available to others due to their previous relationships, access that can be sold to the highest bidder among industries seeking to lobby."*

Claypool cites the Cambridge Analytica scandal and non-enforcement of consent orders (agreements that corporations make with the FTC stipulating remedial measures) against Google and Uber as evidence of the FTC's "failure to effectively police the technology sector," and argues those failures provide a backdrop to future attempts by Congress to regulate the sector.

ProPublica's 2016 Reporting on the Economic Consulting Industry

In 2016, Jesse Eisinger and Justin Elliot of ProPublica reported on economic consulting firms Charles River Associates and Compass Lexecon. These firms [hire](#) academics, former government officials, or both to testify as paid experts on behalf of corporate clients seeking merger approval from the antitrust agencies. These consulting jobs [offer](#) economists extremely lucrative paydays to “sway the government by documenting that a merger won’t be ‘anti-competitive’: in other words, that it won’t raise retail prices, stifle innovation, or restrict product offerings.” The economists work backwards from the conclusion that the proposed transaction will be beneficial for consumers (this being what their client is paying them for), and then cherry-pick data to satisfy the consumer welfare standard and gain merger approval from the FTC or DOJ for their corporate clients.

Eisinger and Elliot document how many major figures in economic policy and traditional antitrust legal thinking earn large sums of money through these consultancies. Compass Lexecon and Charles River consultants often build out their credentials with stints at the economic analysis groups at the enforcement agencies. Take Dennis Carlton, the former Deputy Assistant Attorney General in the ATR leading the Economic Analysis Group. Carlton is a senior managing director of Compass Lexecon as well as an economist at the University of Chicago’s Booth School of Business. ProPublica reported that Carlton charges at least \$1,350 an hour to his corporate clients at Compass Lexecon, for services like testifying for AT&T and Time Warner that the companies’ merger would benefit consumers. The authors estimate that Carlton made about \$100 million in his career as an economic consultant by 2016, a figure which includes equity stakes and non-compete payments. Importantly, this is in addition to Carlton’s comfortable salary at the University of Chicago; like most Charles River or Compass Lexecon consultants, Carlton has plentiful, alternative means of making a living which don’t involve unethical trading on his government connections. None of those paths, however, would make him a multimillionaire.

Corporations Undermine Antitrust Enforcement By Encouraging a Revolving Door From Government Service To Corporate Service

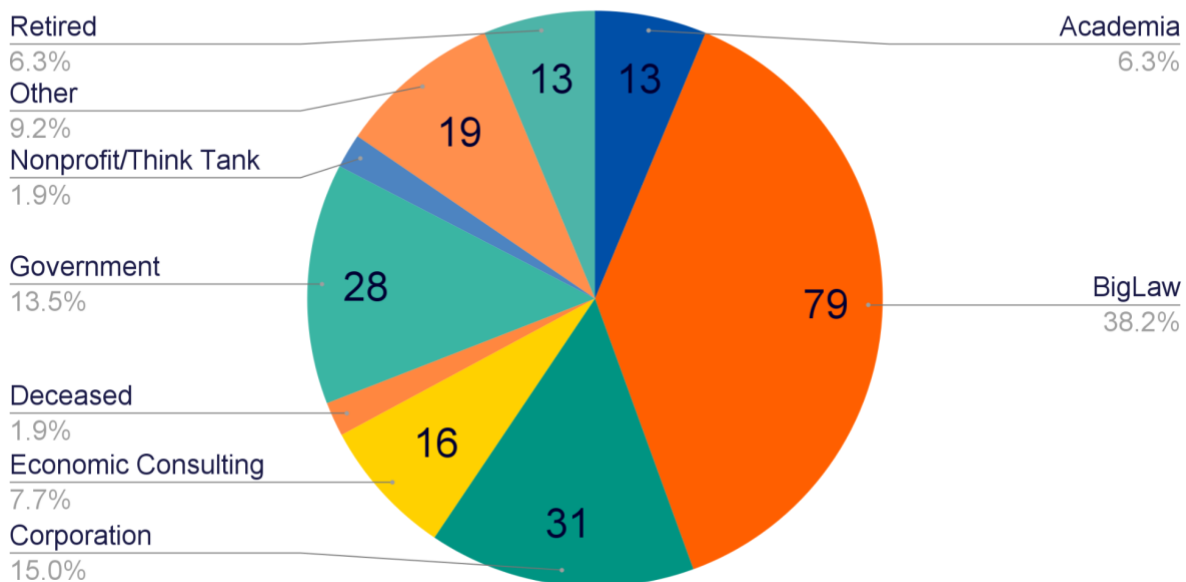
The Revolving Door Project Finds Over Half Of DOJ And FTC Competition Lawyers Leave Government For BigLaw Positions

Since 2020, the Revolving Door Project has requested documents through the Freedom of Information Act in order to investigate the frequency with which government officials leave the federal antitrust enforcement agencies for positions at private law firms, corporations, and economic consulting firms. We have found that the staff of the enforcement agencies are leaving public service for large and highly-profitable legal firms that principally represent corporations – often referred to as “BigLaw” firms – merger-driven corporations, and economic consulting firms at alarming rates.

In total, we found that 61 percent (126 of 207) employees of the Antitrust Division (lawyers and Economic Analysis Group) and FTC (Bureaus of Competition and Economics) joined either a BigLaw firm, merger-driven corporation, or economic consulting firm.

Sector after leaving ATR or FTC

Total tracked employees: 207



Looking exclusively at the DOJ’s civil merger enforcement attorneys and the FTC’s competition attorneys, we found that 57 percent (79 of 139) of the departed lawyers took jobs in BigLaw after leaving public service. 48 percent (24 of 50) of the departing economists we tracked at both agencies went on to jobs either at merger-driven corporations or economic consulting firms.

Taking a closer look at the civil merger enforcement attorneys who left the Antitrust Division from February 2014 to June 2020, we found that 51percent (31 of 61) next joined BigLaw firms, while 11 percent (7 of 61) next joined corporations, including three officials who are now at Amazon and one at Apple. The economists who work on merger enforcement at the Antitrust Division most often left for economic consulting firms (6 of 20, or 30 percent) and another 25 percent (5 of 20) next joined corporations including two to Amazon.

We also found that of the attorneys that departed the FTC’s Bureau of Competition from July 2014 to October 2021, almost 50 percent (47 of 99) next joined a BigLaw firm. Fifteen FTC attorneys next went to corporations including three to Amazon, four to Facebook, and two to Apple. At the FTC’s Bureau of Economics, 42 percent (10 of 24) of the employees left for positions at economic consulting firms, and three left for corporations including one to Amazon.

BigLaw Firms Seek To Influence The Executive Branch Through The Revolving Door On Behalf Of Their Corporate Clients

Joining a BigLaw firm is a common path for many lawyers, and we do not mean to suggest an individual’s decision to join such a firm after government service is a calculated or nefarious one. The [People’s Parity Project](#), a “nationwide network of law students and new attorneys organizing to unrig the legal system and build a justice system that values people over profits,” identifies the fear of student debt, joblessness, and professional ostracization as motivating factors that [push](#) law students into BigLaw who might [otherwise](#) use their law degrees to benefit the public interest. However, our evidence showing that FTC and DOJ Antitrust officials who left their positions are so often hired at BigLaw firms as opposed to any other type of institution reinforces the presence of a broader structural problem that influences the political economy.

BigLaw firms do not only seek to influence antitrust enforcement through hiring former officials; they similarly attempt to influence executive branch entities using well-placed alumni during both Democratic and Republican administrations to the benefit of their corporate clients.

People’s Parity Project and the Revolving Door Project [jointly publish](#) the BigLaw Revolving Door Reports series in which we research a particular BigLaw firm, their clients, and how they seek to

influence executive branch policies and actions and the larger field of regulatory law. The first report focuses on Kirkland & Ellis, a firm that during the Trump Administration [supplied](#) many of the DOJ lawyers who became known as Trump’s personal legal team. Our report [dives](#) into how Attorney General William Barr, a longtime partner of Kirkland & Ellis, stacked the DOJ with Kirkland recruits at the highest level, all tasked with the defense of the president as opposed to the DOJ’s mandate of equal justice under law. The legacy of these lawyers lives on in the Biden Administration: many of the legal positions taken by Trump’s politicized DOJ are [being defended](#) by Biden’s DOJ, with few actions by Attorney General Garland to reverse course. Notably, Kirkland alum Susan Davies was a [rumored contender](#) to lead the DOJ’s Antitrust Division. At some point after this effort failed and was publicly disavowed by Merrick Garland, Susan Davies became the Acting Head of the Office of Legal Policy – a fact only made public after [months of FOIA requests](#) and press inquiries by RDP.

Kirkland embodies the fact that while a firm may be known for Republican ties, they still have Democrat-aligned partners to deploy to the executive branch during Democratic administrations. BigLaw firms are not dedicated to political parties or an ideological vision, they are profit maximizing institutions which largely subsist off work thrown to them by the world’s largest corporations. In other words, the ascent of BigLaw in recent decades is [inextricably connected](#) to the rise of consolidated mega-corporations seeking firms of comparable scope. Reducing the concentration of the US economy is not in BigLaw’s interest.

BigLaw Firms and Merger-Driven Corporations Actively Seek Former Antitrust Officials To Help Push Mergers Through The FTC And DOJ

BigLaw firms, as the litigators who actualize corporate mergers and acquisitions, highly value federal government-side antitrust experience when staffing their antitrust and competition practices. Antitrust practices serve clients in merger-driven industries like technology and pharmaceuticals, and they value the ability of their counsel to secure merger approval with little pushback from the antitrust enforcement agencies. Insider knowledge of each agency’s processes, as well as personal connections with current agency staff, are obviously major assets to clients pushing complex and potentially problematic mergers. An insider knows which desks and divisions within the agency are most scrutinizing or most lenient, and knows what arguments – for consumer welfare or other boons – will be most effective with which agency staff.

Many BigLaw antitrust practice web pages include allusions to their lawyers' familiarity with the antitrust agencies. One particularly obvious example is the BigLaw firm Dechert, which has advised corporations such as Kellogg, Whole Foods and US Airways in merger acquisition deals. Dechert [boasted](#) on their Antitrust/Competition practice website of their roster of former government officials who can secure a "green light" for their clients:

Institutional Expertise

Clients benefit from our hands-on, inside experience and close contact with regulatory agencies – qualifications that enable us to guide them confidently through every aspect of antitrust law relating to mergers.

Many of our U.S. lawyers have had extensive experience in the Antitrust Division of DOJ and the Bureau of Competition of the FTC, providing a balanced perspective that facilitates practical solutions. Our experience also enhances our credibility with those currently serving in government and contributes to our ability to advocate persuasively on behalf of our clients.

Leading corporations in merger-driven industries – such as Big Tech, agriculture, healthcare providers, and pharmaceuticals – also value federal antitrust enforcement experience for their in-house M&A and competition counsels. Public Citizen [found](#) that 26 of 41 FTC officials either became lobbyists or lawyers representing Big Tech companies after leaving the agency, or had Big Tech conflicts when joining the FTC.

In the lead up to the House Judiciary Subcommittee on Antitrust's [landmark hearing](#) on July 29, 2020 with the CEO's of Facebook, Apple, Alphabet and Amazon, the Revolving Door Project [wrote](#) on the many former antitrust officials staffing those corporations. At the time of the hearing, Apple was seeking a new in-house competition counsel, and [noted](#) in the job listing that "preference will be given to candidates with government antitrust experience." In addition to Apple's job listing, Facebook [also hired](#) a former FTC deputy director in 2020 to serve as the company's director and associate general counsel of competition. Amazon seems to be the most prolific hirer of former antitrust officials of late: our research found that the company has hired nine staff-level officials from the antitrust agencies since 2014. Per the Cicilline Report, these four firms have acquired over 500 companies since 1998; we would argue their preference for adding former antitrust officials to their ranks clearly bolsters their ability to acquire so many companies with little scrutiny.

Methodology

In order to track where federal antitrust enforcement employees next worked after leaving their positions, we submitted a FOIA request to the Department of Justice asking for lists of staff that had departed the Antitrust Division's civil staff members, as well as a series of FOIA requests to the FTC seeking lists of staff who had departed the Commission's Bureaus of Competition and Economics. We also requested position title, join date and departure date for each of the lists, although the DOJ request came back with names of staff only.

We next eliminated any support staff such as interns, trainees, paralegals, and lower-level analysts and statisticians from our count. We then searched for where the employee next went after leaving either the DOJ or FTC, primarily using LinkedIn and professional biographies as evidence. We noted other relevant professional moves beyond where the employee next worked after leaving the FTC or DOJ. If we could not find any information on that employee, we flagged them as unknown and did not include them in the final count.

After learning what employer the former FTC or DOJ employee next joined, we categorized each employer. For the BigLaw categorization, we cross-checked firms with The American Lawyer's 2020 [list](#) of the top 200 law firms globally. As we are also interested in law firms that have a significant impact in antitrust law enforcement cases in the US, we also included in the BigLaw category law firms such as Skadden, Arps, Slate, Meagher & Flom and Haug Partners, which are considered mid-sized firms but specialize in antitrust and IP issues and have a history of representing corporations in front of the FTC and DOJ. We counted plaintiff's firms, which are active in antitrust law but through representation of dominated businesses and impacted consumers and workers, as 'Other', along with personal injury firms and solo law practices.

We considered a corporation to be any for-profit company, with the condition that for-profit ventures that are not at all related to practicing law or antitrust policy were categorized as 'Other.' We distinguished corporations from economic consulting firms, which are for-profit companies, in order to more closely observe the revolving door between antitrust economic enforcers and the consulting firms. We considered government to be any position within the American federal or state governments. Academia refers to a full-time student or a teaching position at a university – many antitrust lawyers concurrently teach classes with their full time positions, but for the purpose of categorization we only counted full-time work as a next step. We considered 'Nonprofit/Think Tank' to be nonprofit research institutions.

The greatest limitation of our study was whether the employee had an internet footprint that indicated employment after leaving the FTC or DOJ. Some of the employees without an internet footprint, for example, worked for the DOJ or FTC for decades, suggesting they may have retired after leaving. But because we had no confirmation, we categorized them as ‘Unknown’ and thus did not count them for the retired category. We were also limited by how much information we received from the Department of Justice. It is possible that some of the employees in the ‘Unknown’ category from the DOJ were interns, trainees and other support staff that we would otherwise not include in our study, but because the DOJ did not return the FOIA with any information on position title or joining and leaving dates, they remain in the larger ‘Unknown’ count. Our summary data compares categorized employees to the tracked employee total, and does not count ‘Unknown’ employees in the total.

Half Of Antitrust Division Lawyers Left DOJ For BigLaw and Corporations Like Amazon

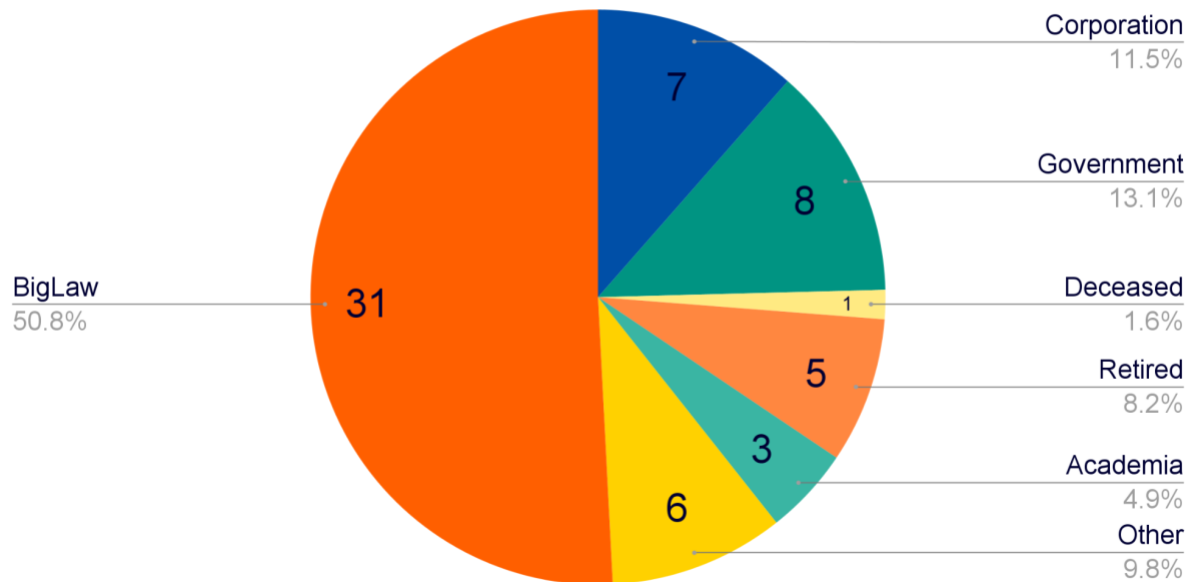
For this analysis, we requested a list of all Antitrust Division Civil staff members who departed the agency between February 1st 2014 and June 22nd 2020. We received a list of 194 names.

We included in our analysis staff at the attorney level through Section Chief level, and disqualified non-legal specialists, paralegals, and interns, on the logic that these individuals do not ultimately decide on division policy for a given case. We did not include in our count employees for whom we could not find post-DOJ employment information. We also separately analyzed the employees we found to have worked as economists for the Civil Section. Our analysis shows where officials next worked after leaving the Antitrust Division.

We found 61 non-economist employees in total. Over 50 percent of these employees (31) left the DOJ to join BigLaw firms, while 7 employees left for corporations.

Sector after leaving Antitrust Division

Total tracked employees: 61



Our findings show that positions at private law firms were by far the most popular next step for ATR attorneys leaving the division. The most frequent law firms former ATR attorneys joined were: Gibson Dunn (3), Axinn Veltrop & Harkrider (3), Freshfields (3) and Quinn Emmanuel (2).

As detailed in our [BigLaw Revolving Door Report](#), Gibson Dunn frequently represents tech monopolists, in particular Facebook. The firm represented Facebook in lawsuits stemming from the Cambridge Analytica scandal, including when the FTC [found](#) the company guilty of “deceiving users about their ability to control the privacy of their personal information.” That finding ultimately resulted in a \$5 billion settlement, which commissioner Rohit Chopra [stated](#) failed to require Facebook to respect user privacy and the penalty might have been “less than Facebook’s gains from violating the order.” One of the three trial attorneys who left the Antitrust Division for Gibson Dunn, [Joseph P. Vardner](#), now works at Facebook itself as an associate general counsel of compliance. Gibson Dunn also [guided](#) Amazon in its 2009 acquisition of Zappos for \$1.2 billion, a buy up that, [per the Cicilline Report](#), was one of two acquisitions integral to the corporation achieving its dominant position in the online retail market (pp. 15-16).

While [considered](#) a mid-size law firm, Axinn rivals other BigLaw firms’ antitrust practices by exclusively taking on antitrust and intellectual property law cases and litigation. The firm represents high-profile monopolistic corporations in mergers, [including](#) McKesson’s \$3.4 billion

tech joint venture with Change Healthcare and Google in its acquisitions of Motorola Mobility (\$12.5 billion) and ITA Software and (\$700 million). In addition to [guiding](#) Tyson Food in its \$2.16 billion acquisition of Keystone Foods, Axinn lawyers also [successfully defended](#) Tyson in the DOJ's 2011 lawsuit to block the corporation's sale of a Virginia chicken processing complex to George's Foods. The DOJ [alleged](#) that the sale would substantially "lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia." When former ATR trial attorney Craig Minerva [joined](#) Axinn, a founding partner [commented](#) that Minerva's "experience at the DOJ leading investigations into large and high-profile mergers strengthens our already deep bench of antitrust lawyers with government backgrounds."

The rest of the BigLaw firms employees joined were only represented once, but include such high profile hires as [William H. Stallings](#), the former Chief of the Transportation, Energy and Agriculture section, who joined Mayer Brown as a partner; [James J. Tierney](#), the former Chief of the Technology and Financial Services section (formerly the Networks and Technology Enforcement Section), who joined Orrick as a partner; and [Peter J. Mucchetti](#), the former Chief of the Healthcare and Consumer Products Section, who joined Clifford Chance as a partner.

The former ATR attorneys who joined corporations include some firms under high-profile investigation and criticism for monopolistic practices – for example, three officials joined Amazon. They are [Scott Fitzgerald](#), the former Assistant Chief of the Health Care and Consumer Products section; [Bryson L. Bachman](#), who was Senior Counsel to Donald Trump's Assistant Attorney General for Antitrust Makan Delrahim; and [Nathan P. Sutton](#), a former trial attorney. All three former officials were working for Amazon when CEO Jeff Bezos [faced harsh scrutiny](#) from members of the House Subcommittee on Antitrust in July 2020. At the time, the Revolving Door Project [argued](#) that a "key component" of Big Tech's defenses against antitrust scrutiny is "the antitrust enforcement officials who take a trip through the revolving door to the benefit of corporate clients."

As Associate General Counsel of Litigation & Regulatory matters at Amazon, Sutton in particular had a notable role in the House Judiciary's investigation into Big Tech. Sutton faced the House Judiciary Subcommittee on Antitrust (which oversees his former employer, the Antitrust Division) in July of 2019, where he [testified](#) that Amazon does not use "individual seller data directly to compete" with third-party businesses. However, in April 2020, the [Wall Street Journal](#) found that it was "[standard operating procedure](#)" for Amazon to look at proprietary information generated for third-party sellers on the platform when developing its house-brand offerings.

Members of the House Judiciary committee, including Antitrust Subcommittee Chairman Rep. Cicilline, [called on](#) Jeff Bezos to testify on Amazon’s (and Nate Sutton’s) potentially “criminally false or perjurious” testimony on the company’s [business practices](#). This followed [earlier calls](#) for Bezos’ testimony by the Athena coalition, a non-profit coalition working to rein in Amazon’s economic and political power (of which the Revolving Door Project is a member.) Bezos eventually agreed after a delayed response to the representatives, leading to the July 2020 Big Tech hearing where he [testified](#) that “we have a policy against using seller-specific data to aid our private-label business, but I can’t guarantee you that that policy has never been violated” (p. 278).

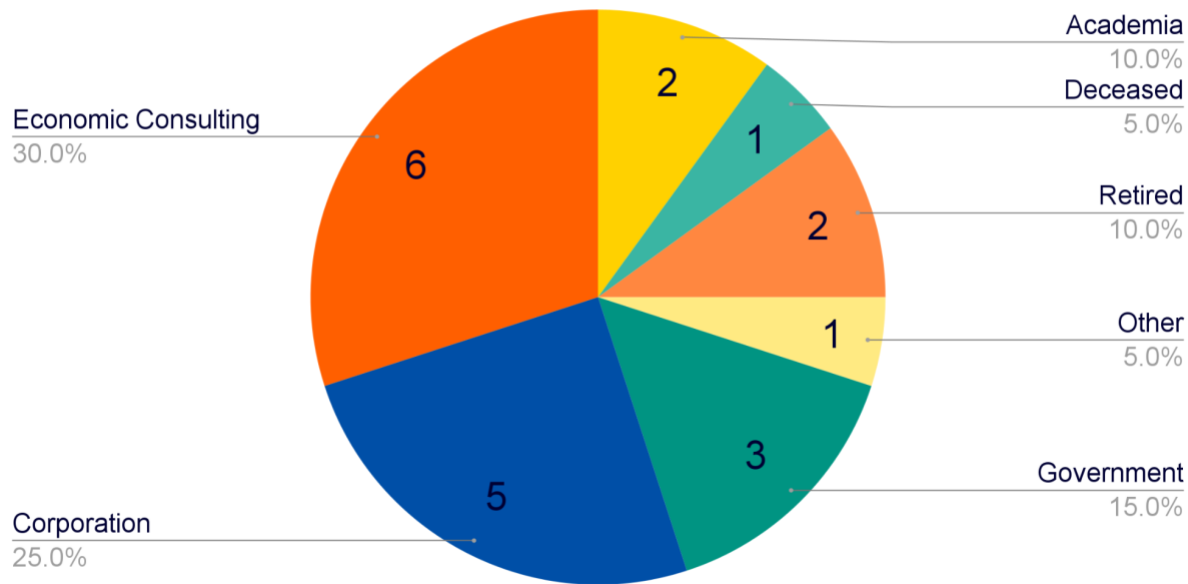
In other words, the event which incited the four Big Tech CEOs to finally testify before the House Antitrust Subcommittee was a former ATR trial attorney allegedly lying before Congress one year earlier, on behalf of his employer, Amazon.

Over Half of DOJ Antitrust Economists Leave for Economic Consulting Firms Or In-House Corporate Gigs

For this analysis, we requested from the DOJ a list of all Antitrust Division Economic Section staff members. We looked at management-level analysts and above, including head statisticians, analysts and economists, through the assistant chief-level staff. We disqualified specialists and interns from the analysis. We found information on 20 former officials.

Sector after leaving Antitrust Division Economic Analysis Group

Total tracked employees: 20



Over 50 percent of the officials left the ATR for a position at either an economic consulting firm with antitrust practices (6, 30%) or a corporation (5, 25%). Notable officials include [Nicholas D. Hill](#), the former Assistant Chief of the Economic Analysis Group, who left to become a partner at consultancy Bates White in 2017. Fellow economist [Randy C. Chugh](#) also joined Bates White as a manager. Economist [Gopal Das Varma](#) became a vice president at Charles River Associates, while two other economists, [Robert A. Arons](#) and [Jason L. Albert](#), joined Economists Incorporated, now known as Secretariat Economists.

[Charles River](#) is a self-described “worldwide leader in providing economic, financial, and management consulting services” that counts both corporations and the federal government among its clients. Their consultants regularly work for corporations seeking merger approval: In 2019 the firm [advised](#) two dialysis medical technology companies on their \$2 billion merger and helped the companies gain clearance from the FTC; A few months later, in April 2019, the firm’s consultants [helped](#) the FTC uphold a complaint challenging a merger between prosthetic knee medical technology companies. Economists Incorporated was [founded](#) by three former economists from the Antitrust Division, and their client list [includes](#) countless high-profile BigLaw firms.

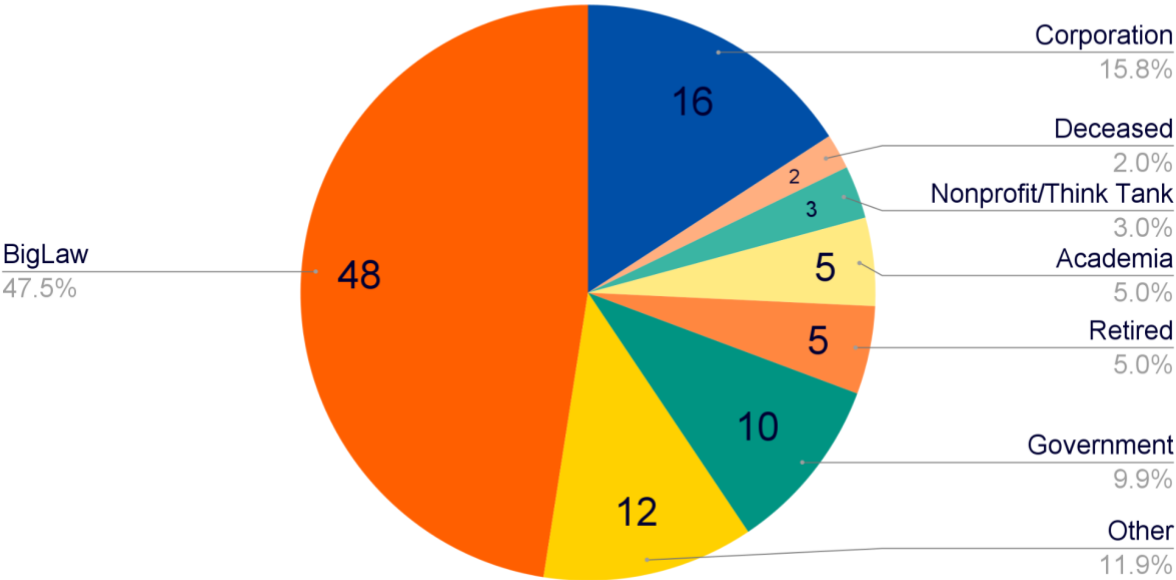
Two ATR officials joined Amazon after leaving the Division: [Monica G. Nehls](#), a former head research analyst, is now a business analyst at Amazon, while economist [Rui Huang](#) is an economist manager of industrial organization, machine learning and causal inference.

BigLaw is The Most Popular Next Step For FTC Competition Lawyers

For this paper, we have updated our analysis of FTC Bureau of Competition and Bureau of Economics departed staff first published by the Revolving Door Project in [April 2020](#), which was also updated in [May 2020](#).² Over multiple FOIA requests, we received from the FTC a list of Bureau of Competition (BC) staff who departed the agency from July 11th 2014 to October 14th 2021. We counted staff at the attorney level positions through Director level, disqualifying specialists, paralegals, and interns. We found information on 101 former BC staff.

Sector after leaving Bureau of Competition

Total employees tracked: 101



² These previous RDP analyses looked at where the former antitrust officials were at the time of our research; the new analysis counts only where the individuals' next positions were. Because of this, the previous analysis results are different from the results in this paper.

We found that close to half (48) of the attorneys worked at a BigLaw firm right after leaving the FTC. The most frequent law firms attorneys joined were Baker Botts and Kirkland & Ellis, with three attorneys each, while Axinn, Crowell Moring, Freshfields, Weil, Gotshal & Manges and Wilson Sonsini all hired two attorneys from the Bureau.

[D. Bruce Hoffman](#), the former director of the Bureau of Competition, left the agency in 2020 to join BigLaw firm Cleary Gottlieb as a partner. In announcing the firm's hire of Hoffman, Cleary Gottlieb [noted](#) that Hoffman's "impressive resume of success in both the public and private sectors" will allow the firm "to continue to provide the highest-quality advice to our clients."

We found that another 16 of the attorneys left for positions as in-house counsel to corporations including four attorneys to Facebook (now known as Meta) and three attorneys to Amazon. Two other attorneys joined Apple, while ExxonMobil, BHP Billiton (an Australian petroleum and mining corporation), IBM, Intel, McKesson and United First Partners (a broker dealer) each hired one former FTC employee.

[Barbara Blank](#), the former deputy assistant director of Anticompetitive Practices Division (ACP) and former Mergers II attorney [Alicia Burns-Wright](#) joined Facebook as associate general counsels in 2020. Two other FTC attorneys joined Blank and Burns-Wright at Facebook in 2021: [Rajesh S. James](#), who prior to working at the FTC was an associate at Davis Polk, and [James Rhilinger](#), who was the Deputy Assistant Director of the Mergers II division. Both James and Rhilinger joined Facebook as associate general counsels of competition.

Amazon's three former FTC attorneys include former Crowell & Moring associate [Amy Posner](#), who [joined](#) the FTC in 2007 and worked in the Mergers I division, which in part investigates technology markets. Posner joined Amazon in 2020 as a senior corporate counsel. [Elisa Kantor Perlman](#), who [worked](#) in the Mergers IV division which investigates retail and food distribution mergers, also joined Amazon in 2020 as a corporate counsel for litigation & regulatory matters. Jasmine Y. Rosner, who worked as an FTC attorney from 2012 to 2021, [reportedly](#) also joined Amazon.

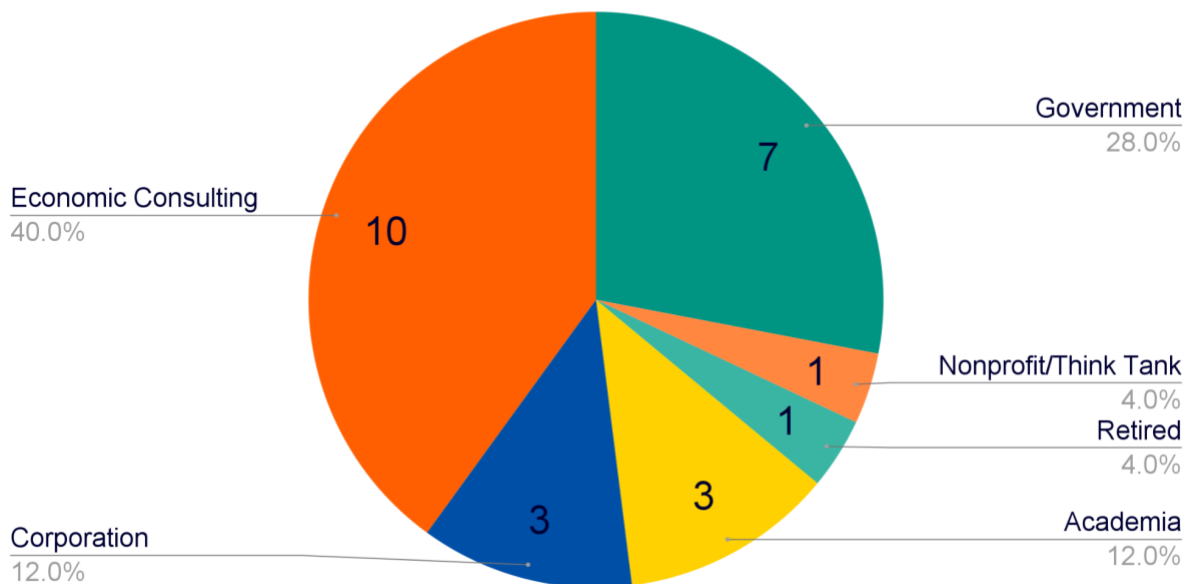
[Amy Elyse Dobrzynski](#) and [Emily Catherine Bowne](#) both joined Apple as competition law and policy counsel in 2020 and 2021, respectively. [Saralisa Brau](#), the deputy assistant director of the Health Care Division until 2017, became the chief antitrust counsel at McKesson, a healthcare giant that has made [13 acquisitions](#) from private equity firms in the past five years. [Leonor Davila](#) left the FTC to become a senior counsel for global antitrust compliance at Intel. [Jennifer M. Nagle](#) joined IBM as a counsel on data privacy after leaving the FTC, and now works at Mastercard as a senior counsel of privacy and data collection.

FTC Economists Left For Gigs At Economic Consulting Firms And Amazon

For this analysis, we [requested](#) from the FTC a list of Bureau of Economics (BE) staff who departed the agency from March 2nd 2014 to October 14th 2021.³ We tracked 25 staff at the senior research analyst and economist level positions through deputy director-level, disqualifying analysts, paralegals, and interns.

Sector after leaving Bureau of Economics

Total tracked employees: 25



Over half of the BE staff left for positions at either economic consulting firms (10) or corporations (3).

Four of the departed Bureau of Economics officials also worked for the DOJ's Antitrust Division at some point; one standout is [Nicholas D. Hill](#), who became the assistant section chief of the Economic Analysis Group at the ATR after leaving the FTC. In 2017, however, Hill [joined](#) economic consulting firm Bates White as a partner. At Bates White, Hill [consulted](#) for Evonik and

³ Our previous analysis of Bureau of Competition departed staff included analyst-level staff. The previous analysis also looked at where the former antitrust officials were at the time of our study, whereas this analysis tracks where the officials next worked after leaving the FTC.

Peroxychem, two hydrogen peroxide manufacturers seeking approval to merge from the FTC. Bates White [referred](#) to Hill’s analysis and testimony as “critical” in the companies’ successful ruling after the FTC, Hill’s former employer, attempted to block the merger. In the FTC’s complaint on the merger, the agency [argued](#) the merger would “substantially reduce competition in the Pacific Northwest and the Southern and Central United States for the production and sale of hydrogen peroxide, a commodity chemical used for oxidation, disinfection, and bleaching.” Hydrogen peroxide is most often used to de-ink recycled paper and sterilize food packaging and has [no effective substitutes](#).

Three other Bureau of Competition economists joined economic consulting firms. Former senior economic policy adviser and deputy director [Dan O'Brien](#) joined Bates White after leaving the FTC; he later became a senior consultant at Bates White’s rival, Compass Lexecon. Economist [David Meyer](#) joined Compass Lexecon as an executive vice president directly from the FTC. Economist [Steven Tenn](#) became a vice president at Charles River Associates.

Two former economists work for Amazon: while [Joseph Breedlove](#) joined Cornerstone Research as a manager upon leaving the FTC, he later joined Amazon as a principal economist in 2017. [Antara Dutta](#), another economist, joined Amazon in 2020 as a principal economist after leaving the FTC.

Antitrust Division Economic Leadership Overwhelmingly Tied To Economic Consulting Firms

While our FOIA requests returned documents on staff-level personnel, we also sought to analyze leadership at the enforcement agencies. Using the Department of Justice’s [public records](#), we analyzed the past 20 Deputy Assistant Attorneys General (DAAG), the position which oversees the Economic Analysis Group in the Antitrust Division, for ties to economic consulting firms. We found that 17 officials in this position worked for economic consulting firms, the vast majority of whom after their DOJ tenure. The only exceptions we found were Ken Heyer, who served as DAAG in both 2004 and 2008, and Elizabeth Boliek, a Delrahim appointee who is now associated with the [American Enterprise Institute](#). Since 1983, all but two DAAG were tied to an economic consulting firm with an antitrust practice – in other words, 85 percent of people who have overseen the ATR’s economic research for merger enforcement have gone on to take jobs that serve to undermine the independent analysis of that division.

This also means that in the early stages of a government investigation, inhouse economists will be seated across the table from their former bosses – people to whom they may owe gratitude for promotions or advice, or depend upon for recommendations and networking in both economic consulting and academia.

Past Deputy Assistant Attorneys General for Economic Analysis by Economic Consulting Firm Affiliation			
Name	Tenure	Affiliation	Description
Elizabeth Boliek	2020-2021	N/A	
Luke Froeb	2017-2018	Berkeley Research Group	In 2020, Froeb joined Berkeley Research Group (BRG) as an academic affiliate.
Nancy Rose	2014–2016	Charles River	From 2004 to 2014, Rose was on the board of directors for CRA.
Aviv Nevo	2013–2014	Cornerstone Research	Nevo is an Expert at Cornerstone Research.
Fiona Scott Morton	2011–2012	Charles River	Scott Morton is a Senior Consultant for CRA.
Carl Shapiro	2009–2011, 1995-1996	Charles River	Shapiro is a Senior Consultant for CRA.
Ken Heyer	2008–2009, 2004–2006	N/A	
Dennis Carlton	2006–2008	Compass Lexecon	Carlton is a Senior Managing Director of Compass Lexecon.
David Sibley	2003–2004	Berkeley Research Group	In 2020, Sibley joined BRG as an academic affiliate.
Michael Katz	2001–2003	Compass Lexecon	Katz is a Senior Consultant with Compass Lexecon.
Joe Farrell	2000–2001	Bates White	Farrell is a partner at Bates White.
Tim Bresnahan	1999–2000	Cornerstone Research	Bresnahan is an expert at Cornerstone Research.
Marius Schwartz	1999–1999	Bates White	In 2013, Schwartz rejoined Bates White's Antitrust and Competition Practice as an academic affiliate.

Dan Rubinfeld	1997–1998	Compass Lexecon	Rubinfeld is a Senior Consultant at Compass Lexecon.
Andrew Joskow	1996–1997	NERA Economic Consulting	Joskow is an affiliated consultant at NERA.
Richard Gilbert	1993–1995	Compass Lexecon	Gilbert is a Senior Consultant at Compass Lexecon.
Barry Harris	1992–1993	Economists Incorporated	Harris is a Special Consultant and Board Chairman of Economists Incorporated.
Janusz Ordover	1991–1992	Compass Lexecon	Ordover is a Senior Consultant at Compass Lexecon.
Robert Willig	1989–1991	Compass Lexecon	Willig is a Senior Consultant at Compass Lexecon.
Frederick Warren-Boulton	1983–1989	Ankura	Warren-Boulton was a Senior Managing Director at Ankura.

The firms' lack of transparency regarding their clients means we are not able to determine how often the federal government contracts the firms to testify on antitrust cases as opposed to how often the firm represents a corporation. So, it is possible that the former DAAG's are still at times using their expertise for the public interest by representing the DOJ or FTC. A recent DAAG, Aviv Nevo, listed eight cases he has worked on for Cornerstone Research. In three cases, he testified for the FTC or DOJ.

Case	Client	Government Investigator
<u>FTC v. Qualcomm</u>	Qualcomm	FTC
<u>In the Matter of Ball Corporation and Rexam PLC</u>	FTC	FTC
<u>Cigna's Acquisition of Express Scripts</u>	Cigna	DOJ
<u>Walt Disney Company's Acquisition of 21st Century Fox Film and TV Studios and Certain Cable Networks</u>	21st Century Fox	DOJ
<u>Big Tex Trailers and American Trailer Works Merger</u>	Bain Capital	DOJ
<u>Commercial Metals Company's Acquisition of Certain Assets from Gerdau S.A.</u>	Commercial Metals Company	DOJ
<u>FTC v. Wilhelmsen et al.</u>	FTC	FTC
<u>Proposed Merger of Aetna and Humana Enjoined</u>	DOJ	DOJ

Beside the question of how often the former DAAGs are using their expertise to aid corporations seeking to gain merger approval from the officials' former work, the FTC and DOJ have had to contend with skyrocketing costs for hiring such consultants, leading the FTC OIG in 2019 to [suggest](#) bringing expert witnesses in-house (pp. 3-4). So long as economic consulting firms are integral to a party winning their case, and the government continues to hire outsiders rather than bolster in-house expertise, the need for deeper pockets clearly gives the advantage to corporations. And the seeming prevalence of economists wielding government prestige while offering up expertise as expert guns for hire is noteworthy.

Research Shows The Frequency With Which Antitrust Officials Join BigLaw, Economic Consulting Firms and Big Tech

Our analysis makes clear just how normalized it is for antitrust officials to leave public service for positions that serve the corporate interests they once helped regulate. BigLaw firms have been able to attract close to half of the competition lawyers who left the DOJ (31 of 61) and the FTC (48 of 101).

Of past economic leadership within the FTC and ATR, an overwhelming majority have ties to economic consulting firms, and most often join such firms after leaving government. This trend is reflected in the professional moves of staff-level economic experts at the FTC and ATR; 16 of 45 FTC and ATR economic experts joined economic consulting firms after leaving government service, or 35 percent of the known departed staff of the Bureau of Economics and Economic Analysis Group.

Notably, 16 ATR or FTC staff left government service for in-house advisor positions at Big Tech firms: Nine employees joined Amazon, four joined Facebook (now known as Meta), and three joined Apple. An additional two employees are now at Amazon and Facebook after first leaving for other firms, adding up to 18 FTC or ATR departed staff known to have joined Big Tech since 2014.

More Research Needed On Revolving Door Trends At Other Federal Enforcers

Though our report focused on the federal antitrust personnel working on competition issues, another division of the FTC plays an important role in regulating Big Tech and other large corporations. The Bureau of Consumer Protection (BCP) enforces the FTC's mandate to stop unfair and fraudulent business practices, and has brought important cases challenging the industry's misconduct including [fining Facebook](#) for violating consumers' privacy in 2020 in relation to the Cambridge Analytica scandal.

While we did not analyze where the departed staff of the BCP next joined, ProPublica's [2019 report](#) on FTC leadership ties to the tech industry found that six of seven officials who led the BCP since the late 1990's "have corporate revolving door conflicts, four of which include technology sector clients." However, more research is needed on the how prevalent revolving door moves are among BCP staff and more recent leadership.

While our research focused on the federal enforcement agencies, state attorneys general are also significant players in antitrust enforcement. They can bring federal antitrust suits on behalf of the residents in their states, or on behalf of the state itself. For example, The DOJ's recent antitrust suit against Google is one of three antitrust suits the company is facing; 38 state attorneys general are also [jointly alleging](#) anticompetitive conduct by the firm in the online search market and another [10 Republican attorneys general](#) have sued the company over its conduct in the online advertising industry.

Though they play a vital role in antitrust enforcement, little research exists on whether former staff of these offices have ties to corporations, law firms with corporate clients, or economic consulting firms. The ecosystem of DOJ and FTC enforcement, where BigLaw firms regularly represent corporate clients while in turn hiring economists to advise on merger cases, has clear opportunities for corporate capture; less information exists on whether a similar system is in place at the state level. State-level activity is outside of the scope of the focus of this paper and our current work at Revolving Door Project, but future investigation of possible connections therein is merited.

Obama Era Antitrust Enforcers And Their Corporate Ties

As our research has shown, the revolving door swings regardless of which political party is in power. Indeed, many of the Big Tech acquisitions listed in the Cicilline Report occurred under Obama enforcers' watch, and some even with their explicit approval.

The American Economic Liberties Project's retrospective on antitrust in the Obama era [investigated](#) the failures of the administration, "describing how enforcers carrying the consumer welfare banner subverted President Obama's public pledges to structure markets to be fairer and more stable." Their report, titled [Courage To Learn](#), encourages the Biden Administration to "reject the consumer welfare standard" and "seek a genuine shift in ideological approach, breaking not only from Donald Trump and Republicans but also enforcers under the Clinton and Obama administrations."

In a retrospective of DOJ antitrust enforcement in President Obama's first term, University of Michigan Law professor Daniel Crane [found](#) that the number of merger challenges under Obama's DOJ "do not evidence 'reinvigoration' of merger enforcement under Obama. Focusing on the last two fiscal years under Bush and the first two fiscal years under Obama, the numbers are comparable."

The toothless enforcement by Obama-era antitrust leadership has an enduring legacy, from the consolidation of the airline, ticket sales and other industries to one FTC-approved merger that threatened the country's ability to adequately respond to the pandemic. As the Revolving Door Project detailed in *The American Prospect*, government officials contracted with a firm called Newport Medical Instruments in 2008 to develop a mobile and easy-to-use ventilator after identifying a need to expand and improve the national stockpile of ventilators. But in 2012, just as the ventilator was ready for market approval and subsequent mass production, medical technology giant Covidien [acquired](#) Newport for \$100 million in a merger approved by the FTC.

According to the [New York Times](#), government officials speculated that Covidien had acquired Newport in order to prevent the better ventilators from undermining Covidien's own ventilator sales. As we will detail below, of the five commissioners who allowed the Covidien-Newport merger to consummate before the 30-day waiting period was finished, all five became partners at BigLaw firms after leaving the Commission.

Despite this distressing legacy, the Biden administration's transition to power included appointing many officials who [once staffed](#) the Obama administration, setting up the possibility that some of the same officials that failed to keep monopolists from accumulating power may return to leadership positions. And even the figures that don't secure a government post will continue to be influential upon their old colleagues from the private sector.

In order to understand the corporate influence over Obama-era antitrust enforcers, the Revolving Door Project tracked where Democratic officials — the leadership tasked with carrying out Obama's enforcement vision — ended up working after leaving the administration, and for which clients. Our findings reveal that leadership at both the DOJ and FTC overwhelmingly took jobs at corporate BigLaw firms after leaving their government posts, and a closer look at the revolvers in question implicates the impact their leadership had on how the antitrust agencies enforce cases today.

DOJ ATR Obama Administration Officials

Name	Position and Tenure	Post-Obama Employment	Notable Clients Post-Obama Administration*
Christine Varney	Assistant Attorney General, 2009-2012	Cravath, Swaine & Moore	AT&T , Delta Airlines , Unilever , Heinz
William Baer	Assistant Attorney General, 2012-2017	Arnold & Porter ; Brookings	None public
Molly Boast	DAAG for Civil Matters, 2009-2011	WilmerHale	Baker Hughes , SolarCity Corp
William Cavanaugh, Jr.	DAAG for Civil Matters, 2009-2010	Patterson Belknap	McGraw Hill , Abbvie in 2017 and 2019 , Ethicon
Sharis Pozen	Chief of Staff and Counsel 2009-2011, Acting Assistant Attorney General 2011-2012	General Electric ; Clifford Chance	GE Biopharma , Symrise AG
Ken Heyer	DAAG for Economics, 2008-2009		
Carl Shapiro	DAAG for Economics, 2009-2011	Charles River Associates	Google , General Electric
Fiona Scott-Morton	DAAG for Economics, 2011-2012	Yale ; Charles River Associates	Apple , Amazon
Aviv Nevo	DAAG for Economics, 2013-2014	University of Pennsylvania , Cornerstone Research	Qualcomm , Cigna , 21st Century Fox , Bain Capital
Nancy Rose	DAAG for Economics, 2014-2016	Massachusetts Institute of Technology	

Many of these officials, unsurprisingly, are influential figures in the world of antitrust – but as our research shows, they often worked for corporate clients while not employed by the federal government. Their corporate clients obviously stood to gain from the former officials' government experience. One example is Sharis Pozen, former Acting Assistant Attorney General of the ATR during the Obama Administration. Pozen left government service in 2012 to join BigLaw firm Skadden Arps, but eventually became the vice president of global competition law and policy at [General Electric](#) from 2014 to 2019, just as the corporation ramped up efforts to [sell off](#) multiple businesses. Once a giant conglomerate with varied business divisions, GE began to [sell off](#) parts after the great recession, and Pozen's guidance assured the company would be able to sell off businesses to more specialized corporations looking to further corner their respective industries.

According to her professional biography, at GE Pozen [was](#) "responsible for merger clearance on numerous significant, transformational deals, steering global antitrust investigations to positive conclusions, antitrust compliance and other related issues," all duties made much easier with insider knowledge of the Antitrust Division. Now, Pozen is back in BigLaw, co-chairing Clifford Chance's antitrust practice, and [recently guided](#) GE through yet another divestment: the \$21.4 billion sale of GE Biopharma to pharmaceutical giant Danaher.

FTC Obama Administration Officials			
Name	Position and Tenure	Post-Obama Employment	Notable Clients Post-Obama Administration*
Jon Liebowitz	Chairman, 2009-2013 and Commissioner, 2004-2009	Davis Polk	Comcast , Syngenta , Herbalife
Julie Brill	Commissioner, 2010-2016	Hogan Lovells ; Microsoft	
Edith Ramirez	Chairwoman, 2010-2017	Hogan Lovells	Youtube , Novartis , IBM
Terrell McSweeney	Commissioner, 2014-2018	Covington & Burling	
Richard Feinstein	Director of BC, 2009-2013	Boies Schiller Flexner	
Deborah Feinstein	Director of BC, 2013-2017	Arnold & Porter	Google , Abbvie , AT&T
Joseph Farrell	Director of BE, 2009-2012	Bates White	
Howard A. Shelanski	Director of BE, 2012-2013	The White House ; Davis Polk	Facebook , McKesson , Aetna , Tyson , Charles Schwab
Martin S. Gaynor	Director of BE, 2013-2014	Carnegie Mellon ; Bates White	
Francine Lafontaine	Director of BE, 2014-2015	University of Michigan	

Existing research by [Public Citizen](#) clearly showed how Big Tech in particular has managed to capture FTC leadership over the past decade; but our research shows that Big Tech is not the only industry former FTC officials are advocating for. Literally every Democratic commissioner from the Obama administration joined a BigLaw firm upon leaving the FTC: Jon Liebowitz to David Polk, Julie Brill and Edith Ramirez to Hogan Lovells, and Terrell McSweeney to Covington & Burling.

Their firm clients include telecommunications giants like Comcast and T-Mobile, pharmaceutical companies like Novartis and Merck, and agricultural corporations like Syngenta. The sub-commissioners officials often represent monopolistic corporations personally, like former Bureau of Competition director Deborah Feinstein whose clients include Abbvie and AT&T. Yet, this about-face from public to private interest does not apparently preclude these figures from future leadership positions in Democratic administrations; in fact, many of these same names were floated during the Biden Administration transition to once again lead the DOJ Antitrust and FTC.

Howard Shelanski

Under the Obama Administration, Howard Shelanski [led](#) the FTC's Bureau of Economics and later became the administrator of the Office of Information and Regulatory Affairs (OIRA). At OIRA, Shelanski [bolstered](#) the role of cost-benefit analysis in reviewing regulatory policy, an outlook critics say routinely underestimates the benefits of regulation. Similarly, as Director of the Bureau of Economics, Shelanski investigated antitrust cases in the context of whether business conduct and mergers harmed consumers, known as the consumer welfare standard.

Both of these analytical frameworks over-emphasize quantifiable factors, while under-emphasizing qualitative factors. This is to the advantage of business interests, whose reported revenues and liabilities are readily accessible and easy-to-analyze quantitative data. Under cost-benefit analysis, for example, one might weigh an environmental regulation's readily quantifiable impact on an oil company's profits against the less- or unquantifiable benefits of reduced smog pollution, reduced potential health hazards from inhaling polluted air, and reduced carbon emissions. The consumer welfare standard, as commonly interpreted, similarly privileges price shifts over almost any other consequence of a merger, such as harm to worker organization and wages; reduced product quality or choice; increased political influence, and more.

Shelanski is now a partner at BigLaw firm Davis Polk, where he advises clients in antitrust matters, including one of the most notorious monopolists of our time — Facebook. He is specifically [advising](#) the firm on its ongoing response to the FTC suit aiming to undo the social media giant's acquisitions of Instagram and WhatsApp. Shelanski was [simultaneously](#) advising Facebook and helping guide the then-Biden campaign's antitrust policy. This is the nature of the cloistered world of antitrust: Shelanski, as a representative for a monopoly currently embroiled in a blockbuster antitrust suit, is still considered qualified to espouse opinions on how the exact policy being used against the monopolist should be carried out.

Deborah Feinstein

Few names have come up more frequently in Revolving Door Project’s research on antitrust enforcement than that of Arnold & Porter’s Deborah Feinstein. Feinstein was the director of the FTC’s Bureau of Competition from 2013 to 2017, and was named counsel in four 2020 merger cases in front of both the FTC and ATR: pharmaceutical mega-merger Abbvie and Allergan, Google’s acquisition of FitBit, AT&T’s sale of its operations in Puerto Rico and the U.S. Virgin Islands, and Altria’s stock acquisition of e-cigarette manufacturer Juul.

Feinstein’s career is defined by trips through the revolving door; she previously left the FTC in 1991 to eventually lead Arnold & Porter’s antitrust practice – that is, until she returned to the agency she used to argue against as its new director. Arnold & Porter **boasts** many antitrust lawyers who have held “significant senior government positions” at the FTC and DOJ, including fellow Obama-era enforcer William Baer. Feinstein’s work at Arnold & Porter includes representing clients in sectors like retail, healthcare, and medical technology, primarily before the DOJ and the FTC.

In 2015, in the midst of Feinstein’s tenure as Bureau of Competition director, journalist David Dayen wrote in The Intercept how **under her leadership**, the “FTC has largely abandoned its attempts to block mergers, instead favoring consent agreements that have a history of failing to achieve their goals.” Feinstein **argued** that consent orders, under which the agency allows companies to merge while extracting concessions like certain business divestitures in order to purportedly remedy the anti-competitive effects of the merger, “are every bit as important in preserving competition and protecting consumers as are [the FTC’s] successful litigation efforts.” Dayen notes that Feinstein’s preference for consent agreements “over admittedly riskier legal challenges comes directly from a career in private practice, where settlements are the end goal.” When Feinstein was presented with research by Northeastern University law professor John Kwoka **showing** conduct remedies are “ineffective in preventing harm to consumers,” she was **“unmoved”** and continued to “vigorously [defend] even the most questionable remedies—including Hertz/Dollar Thrifty and Albertson/Safeway –as smart enforcement decisions.”

Today, the FTC continues to overwhelmingly prefer using consent agreements to settle merger cases. In 2020, an American Antitrust Institute paper on high concentration in the pharmaceutical industry **found** that at the root of increasing consolidation was the FTC’s “policy of settling virtually all challenged horizontal pharmaceutical mergers with consent orders requiring divestitures.” Instead of seeking injunctions to stop harmful mergers outright, the FTC

habitually settled with consent agreements. This consistent response from the FTC spurred a [shopping spree](#) among pharmaceutical companies -- between 1994 and 2020, “many drug makers engaged in serial mergers and/or repeatedly went to the till to purchase divestiture assets in other challenged mergers.” Feinstein’s leadership cemented the use of such consent agreements, a move that benefits the corporations she now represents at Arnold & Porter.

Jon Leibowitz

Jon Leibowitz ascended to the top post of the FTC during the Obama administration, following a career (mostly) within the federal government. He was a longtime advisor in the Senate, eventually becoming chief counsel of the antitrust committee. Between that and his FTC appointment, Leibowitz lobbied for the Motion Picture Association of America as the organizations' vice president of congressional affairs.

When he left the FTC in 2013, Leibowitz again returned to lobbying, this time for Comcast on behalf of his BigLaw employer, Davis Polk. When Comcast unsuccessfully attempted to buy Time Warner in 2014, Leibowitz [commented](#) that he believed the deal would be approved by the FCC and DOJ, as it had “a lot of pro-consumer benefits that will outweigh any anticompetitive claims.” Comcast, as one of six providers of broadband in the entire United States, deployed Leibowitz to head up the [21st Century Privacy Coalition](#), a corporate trade group aimed at lowering privacy standards. The group’s work included pushing lawmakers to exempt companies like Comcast and Verizon from stringent FCC regulations related to protecting personal information, instead permitting them to comply only with less stringent rules set out by Leibowitz’s former agency, the FTC.

Aside from his top client Comcast, Leibowitz’s work at Davis Polk entails advising many other monopolistic companies on the antitrust rules he once helped enforce at the FTC. His professional biography notes he [advised](#) agricultural chemical giant Syngenta in the company’s \$43 billion takeover by ChemChina in 2015. The FTC [ultimately approved](#) the Syngenta-ChemChina merger in 2017, and now Syngenta is one of [only four](#) companies that control the global seed market. He also [advised](#) Bio-Reference Laboratories on its \$1.5 billion acquisition by OPKO Health, a merger which the FTC [approved](#) in 2015.

Whereas other high-profile revolvers have curated reputations of being experts in particular industries or areas of competition law, Leibowitz’s resume ultimately reveals him as an ex-

regulator for hire for large corporations, regardless of what particular issues they are facing. As Matt Stoller [described](#), “it’s hard to find a powerful monopoly Leibowitz doesn’t work for.”

Terrell McSweeney

A former FTC commissioner from 2014 to 2018, Terrell McSweeney was considered a strong contender for another antitrust leadership post during the Biden transition. Once Joe Biden’s [deputy chief of staff](#) while he served in the Senate, McSweeney [advised](#) Biden’s 2020 campaign on antitrust issues while working at Covington & Burling, the firm she joined as a partner after stepping down as FTC commissioner. American Economic Liberties Project Research Director Matt Stoller [described](#) the Biden campaign’s approach to antitrust and busting Big Tech as “reluctant [...] because one of his main advisors on antitrust, Terrell McSweeney, was on the Obama Federal Trade Commission, and she bears some responsibility for the lax antitrust record of the Democrats in that era.”

During her tenure as commissioner, McSweeney approved many large mega-mergers: in the pharmaceutical industry, she approved mergers including Teva Pharma’s \$40.5 billion [acquisition](#) of Allergan’s generic business in 2016, Pfizer’s \$16 billion [acquisition](#) of Hospira in 2015, Medtronic’s \$42.9 billion [acquisition](#) of Covidien in 2015, and Actavis’s [acquisition](#) of Forest Laboratories in 2014.

McSweeney also [controversially signed](#) an FTC amicus brief opposing collective bargaining for Uber drivers in 2017. As David Dayen described in [The American Prospect](#), McSweeney’s support “was an example of Obama-era enforcers weaponizing antitrust against working people, going after workers and professionals when they sought to organize but doing nothing when businesses merge to squeeze labor.” McSweeney also [voted for](#) a \$20 million pittance of a fee when the FTC found Uber had lied about drivers’ annual median income when trying to recruit new drivers. In comparison, Uber brought in [\\$37 billion](#) in gross revenue that same year. Notably, McSweeney’s current employer Covington & Burling [represented Uber](#) in a 2019 international acquisition of Middle East rival Careem Networks.

The ties to Big Tech do not end there – McSweeney’s fellow Covington partner Robert Kelner [counseled](#) Amazon CEO Jeff Bezos ahead of his first Congressional hearing before the House Judiciary Committee. Covington partner Thomas Barnett is also [representing Facebook](#) in its FTC lawsuit. Other notable firm clients [include](#) Deutsche Telekom, which Covington represented in the T-Mobile/Sprint merger and Disney in its \$71 billion acquisition of 21st Century Fox.

A [2013 FTCWatch](#) piece on McSweeney's nomination to the FTC painted her, above all else, as a political operative: "Another source observed that the White House could have gone two ways – either nominate a smart, experienced litigator or someone with Washington savvy who is knowledgeable about antitrust. McSweeney fit the bill as someone steeped in the workings of Washington both on the Hill and in the White House, as well as in private practice, where she was an associate at O'Melveny & Myers in 2005."

Conclusion: Part One

The Biden Administration, in its push to rein in Big Tech, has relied heavily on the important research by groups such as the American Economic Liberties Project, Open Markets, and Public Citizen. Legislation to reform antitrust enforcement is popular across bipartisan lines, including calls for more funding for enforcement. But the Revolving Door Project's research makes clear that these calls for change must include more action to close the revolving door between government enforcers and corporate entities that seek to avoid bold oversight. The DOJ Antitrust and FTC are captured by corporate interests, both at the leadership and staff level.

Through FOIA requests, we discovered that staff lawyers and economists at the DOJ Antitrust Division and FTC Bureaus of Competition and Economics regularly leave their government positions for BigLaw firms with antitrust practices that represent monopolistic corporate clients. A notable contingent of lawyers and economists went on to become in-house counsel for corporations that are regulated by the agencies.

The Big Tech firms Amazon, Facebook, and Apple are not only prominent clients of many BigLaw firms with antitrust practices, they also hired a notable number of former DOJ and FTC lawyers and economists as in-house counsel. Building upon research by Public Citizen, American Economic Liberties Project, and others, we found further evidence that this precedent is set by DOJ and FTC leadership. Both top appointees and deputy-level officials have also left for the same BigLaw and economic consulting firms that career officials join after leaving the antitrust enforcement agencies.

Now that we have identified the crisis of incentives at play for the antitrust enforcers, the next section will explore how the Biden administration and motivated DOJ and FTC leadership could close the revolving door and cast out corporate interests from the agencies charged with defending Americans from monopoly power.

Part Two: Closing the Revolving Door

Introduction

The Revolving Door Project’s research, in conjunction with existing research by other organizations, clearly illustrates a corrosive corporate influence upon antitrust enforcement. But what can be done to close the revolving door and cast out this influence? We have identified a variety of solutions, from executive actions the Biden Administration and antitrust leadership can implement to legislative action and oversight Congress can enact.

Executive Actions to Close the Revolving Door

Corporate Capture Creates Trust Between Regulators And Regulatees, Undermining The Effectiveness Of Enforcement

The value of corporate capture for monopolistic companies and their counsel goes beyond these naked instances of conflicts of interest. The revolving door does not only exist because ambitious and competent antitrust lawyers seek prestige and pay days – by employing former enforcers who have recent ties to current enforcers, corporations are able to take advantage of the trust between current and former officials. Instead of enforcers holding corporations and their counsel at an objective arms-length away as they investigate corporate behavior, instead enforcers find themselves seeking pertinent information from former colleagues.

BigLaw firms boast about their high-profile antitrust hires in order to signal to corporations that they will be able to secure approval from the antitrust agencies with little pushback. Take, for instance, Arnold & Porter’s announcement when the firm hired Obama-era assistant attorney general for the Antitrust Division, [Bill Baer](#), in May 2017: “We look forward to having his experience, legal acumen, and judgment in service to our clients.” Two months later, Arnold & Porter secured yet another antitrust official, this time FTC Bureau of Competition director [Debbie Feinstein](#). Bill Baer gave the congratulatory quote, saying “no one works harder, has better judgment, or is as highly respected by enforcers than Debbie Feinstein.” Arnold & Porter utilize this team of [“former senior government officials”](#) and their “deep understanding of the

competition authorities and frequent dealings with them” to accomplish one singular goal: getting deals cleared.

And they do. The firm’s antitrust website highlights [10 mega mergers](#) Arnold & Porter successfully advised on in front of antitrust regulators in recent years, including AT&T-Time Warner, Monsanto in its acquisition by Bayer, General Electric in its acquisition of Alstrom, and Abbvie in its acquisition of Allergan.

In each of those cases and more, Arnold & Porter’s team of revolvers capitalized on their knowledge of how the FTC and DOJ function: which staff are lenient or thorough, what arguments will appeal to them. And when a former government official walks into the room, chances are one of the current officials on the other side of the table used to work for them. That is the type of relationship that BigLaw firms, and by extension their corporate clients, use to get complicated, lucrative deals approved without a congruent investigation by the government. That system creates crises of incentives at the antitrust enforcement agencies every day, yet it’s legal under our current ethics laws and regulations.

Antitrust Enforcement Leadership Shouldn’t Just Be BigLaw

The Biden Administration transition process made public the debate over whether BigLaw lawyers with corporate clients should be able to assume posts as top enforcers. One name floated as a possible head of the Antitrust Division was Susan Davies, a Kirkland & Ellis lawyer who, as reporters Ryan Grim and David Dayen [described](#), “spent much of the last decade working on behalf of major mergers and fending off antitrust enforcement.” She counts [Facebook](#), crypto currency firm Coinbase, pharma giants Abbott Laboratories, Teva Pharmaceuticals, and Sanofi, as well as United Airlines and JUUL Labs [among her clients](#). The public backlash against Davies’ prospective nomination became even more high-profile when Attorney General Merrick Garland addressed the rumors in a confirmation hearing. Garland claimed Davies was not up for the Assistant Attorney General position, but also defended antitrust lawyers who defend Big Tech, [stating](#): “Unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement in one way or another in some part of high tech and we can’t exclude every single good lawyer from being able to be in that division.”

The antitrust agencies have failed in their duties of preventing unlawful monopolization in the past 40 years. Corporations have benefited from this lapse and reinforced it by establishing a lucrative revolving door into the BigLaw firms that represent corporate interests. Closing this

revolving door would require excluding lawyers with deep ties to corporations accused of anti-competitive conduct from future service within the federal antitrust enforcement regime. It could become a strength of the DOJ Antitrust and FTC that top leadership and staff instead come from backgrounds of public advocacy (such as plaintiff attorneys who argue complicated and lengthy civil antitrust cases on behalf of everyday people) or non-federal government service (e.g., the State Attorneys General employees who protect their constituents from corporate misconduct⁴). And despite Attorney General Garland’s statement, there are enough talented lawyers to staff the agencies who have not worked for corporate interests.

Similarly, leadership seeking to strengthen antitrust enforcement could improve morale within the agencies by promoting their own to higher posts. Instead of political hires, top deputy positions such as assistant bureau directors in the FTC and section chiefs in the DOJ, could be promoted from within the existing workforce. Such a promotion pathway would encourage, ambitious lawyers to stay in government rather than leaving for not only better pay, but greater prestige in the private sector. And ultimately, perhaps career employees who star in senior roles could themselves transition to become political appointees: Who knows best how to run an agency performing well than someone who is a key cause of that success?

FTC and DOJ Antitrust Leadership Under Biden

Biden’s appointment of Lina Khan to FTC Chair is resounding proof that one need not work for the antitrust defense bar to be effective. Khan [gained expertise](#) on monopoly power through her work as an advisor to former FTC Commissioner Rohit Chopra and later counsel to Rep. Cicilline for the House Judiciary Committee’s competition in digital markets investigation. Her work outside of government aligns with FTC’s mission of protecting consumers and combatting monopoly power: as a researcher at Open Markets before her law degree, her academic work at Yale, and her faculty position at Columbia, Khan [studied consolidation](#) across multiple sectors and the evolution of antitrust law.

⁴ The Biden Administration chose to appoint such a State Attorney General after a fumbled nomination of a corporate lawyer: Former BigLaw partner Alex Oh was set to become the SEC’s enforcement director in 2021, but the Revolving Door Project and other groups opposed Oh due to her strong ties to corporate clients including ExxonMobil. A U.S. District Judge admonished Oh and her team for acting “disrespectful” in Paul Weiss’s defense of ExxonMobil from a “lawsuit seeking to hold the company liable for murder and torture by the Indonesian military during civil unrest between 1999 and 2001.” Oh resigned from the SEC following the outcry and the Biden Administration went on to choose Gurbir Grewal, the former State Attorney General of New Jersey for the enforcement position instead. Crucially, Grewal lacked corporate ties and his expertise included leading the New Jersey AG office to take action on cases “related to cryptocurrency offerings, subprime auto lending and predatory student loans.”

Biden's other chosen trustbuster, Jonathan Kanter, was a longtime plaintiff's attorney, who worked at Paul Weiss and later his own boutique firm. Per the [American Prospect](#), Kanter played a key role in designing the state- and federal-level antitrust cases against Facebook and Google, and most crucially, "his career has been spent in opposition to the beliefs of the antitrust establishment, which discounts the competition problem and believes in the consumer welfare standard as the best way to measure whether abuses of market power exist."

Biden's uncaptured antitrust appointments, however, are just the start. To reinvigorate antitrust enforcement over the long-term, this administration should take additional steps to break monopolies' hold on the anti-monopoly workforce.

Federal Post-Employment Restrictions

Ethics law as written today do restrict the professional moves of federal employees after they leave civil service, albeit insufficiently. Federal reformers should build from this base.

Currently, all federal government employees are subject to the post-employment restrictions laid out in the [18 U.S.C. Section 207](#). Per a Congressional Research Service report, the laws [include](#):

(1) a lifetime ban on "switching sides" (e.g., representing a private party on the same "particular matter" involving identified parties on which the former executive branch employee had worked while in government); (2) a two-year ban on "switching sides" on a broader range of issues; (3) a one-year restriction on assisting others on certain trade and treaty negotiations; (4) a one-year "cooling off" period for certain senior officials on lobbying; (5) two-year "cooling off" periods for very senior officials from lobbying; and (6) a one-year ban on certain former officials from representing a foreign government or foreign political party.

The statute is enforced by the Department of Justice, and violators of the statute can face [both](#) criminal and civil penalties.

According to the Congressional Research Service, these conflict of interest laws were designed to [protect government interests](#) against former officials who might take "proprietary information" to private parties, as well as "limit the possible influence and allure of potential private arrangements by federal officials when they interact with prospective private clients or would-be future employers while still employed by the government." Former Office of Government Ethics (OGE) director Walter Shaub [noted](#) that section 207 does not restrict former employees from joining a particular employer; instead it "prohibits a former employee from

providing certain services to, or on behalf of, non-Federal employers or other persons, whether or not done for compensation.”

In their paper “[Illusory Conflicts](#): Post-Employment Clearance Procedures And The FTC’s Technological Expertise”, authors Lindsey Barrett, Laura Moy, Paul Ohm & Ashkan Soltani describe the origins of the revolving door laws. According to their research, the idea that “a public servant owes undivided loyalty to the Government” is an integral belief behind section 207. The authors also argue that post-employment restrictions were developed to be somewhat flexible, as “overly rigid conflict rules might make it impossible to draw top talent to agencies where employees with needed expertise could easily find employment with other agencies or the private sector.”

While section 207 was enacted by Congress and would require legislation to amend, there are several alternative paths to strengthening the ethics standard. The Federal Trade Commission, for example, can update its internal ethics regulations to further restrict revolving door activity. The President, meanwhile, has the means to strengthen ethics standards by issuing [executive orders](#) with provisions for federal employees like ethics pledges and conflict of interest requirements for officials both entering and leaving government and by directing the Office of Government Ethics (OGE) to revisit regulations for [implementing](#) the statute for the executive branch.

Biden Executive Order On Ethics

On the first day of the Biden administration, the White House released an [executive order](#) strengthening the requirements set by section 207. Revolving Door Project [called the order](#) a “strong step forward for ethics in government,” if properly implemented and enforced. As explained by the [Project on Government Oversight](#), the order requires “incoming appointees to wait two years before working on issues related to their former clients or employers.” Another encouraging provision “places restrictions on how soon former Biden administration officials can communicate with their former agency colleagues as well as with senior White House staff, requiring them to wait two years.” It also “imposes a one-year prohibition on ‘senior and very senior’ government appointees participating” in shadow lobbying, when former officials do the work of lobbying without falling into the exact legal definition of lobbying. While the executive order was an encouraging first step, the president can still do more to bring an end to the influence of the revolving door within the executive branch.

FTC Post-Employment Restrictions

Already, the FTC's internal ethics regulations go beyond the general standard that applies to all federal employees, although judging from the data presented earlier in this paper, not far enough. In addition to section 207 and OGE regulation, the FTC further [requires](#) former employees to [seek clearance](#) from the Commission "before participating in many FTC matters that were pending or directly resulted from matters that were pending during their FTC tenure" under Commission Rule 4.1. If the Commission [prohibits](#) a former employee from participating in a case [because](#) they "participated personally and substantially" in that case as an FTC official, the former employees' law firm and partners are [also banned](#) from participating "unless they take certain measures to screen the former employee from participating and they file a screening affidavit with the Commission attesting to such measures[.]"

According to the agency's website, former employees submit formal requests for clearance via email. The FTC's Office of the General Counsel then has 10 days to address the request, either by granting, denying or extending the consideration period by another 10 days. If an employee is not sure whether they must submit a request for clearance in the first place, they can also ask the OGC for advice.

Although these standards appear stronger on their face, the agency's administration and enforcement of them has done little to slow the revolving door between the FTC and monopolistic corporations and their law firms. Indeed, paradoxically, they have been wielded more often to undermine those who are most vocally committed to stronger enforcement. [Illusory Conflicts](#) details how interpretation of section 207 and FTC supplemental regulation is carried out within the agency, drawing from personal experience by two of the authors who worked as a senior policy advisor and a staff technologist as well as other former FTC technologists who were interviewed for the paper. Despite the formal process for requesting clearance, the authors also found that OGC staff "frequently dismiss clearance requests informally over email, without either directing former employees to file formal requests pursuant to the FTC's rules or referring the matter to the Commission for approval." The authors also hone in on the "unintended consequence" of the post-employment restrictions, which they argue "impede well-meaning, former federal employees from providing their knowledge and general expertise to other enforcement agencies with similar missions, such as those at the state level." In general, the authors found the FTC's restrictions were "overly broad, [and] their application opaque[.]"

Specifically, FTC technologists, whose role is to provide [expertise](#) on “technology-related consumer protection and competition issues,” are unable to contribute to enforcement efforts by state attorneys general offices and plaintiff attorneys that align with the FTC’s mission. The authors argue that state attorneys general seeking to investigate violations of the law are on the same side as the FTC. As such, a technologist contributing to those efforts does not violate section 207 which aims to prevent former federal employees from “switching sides” on a particular matter. In action, the FTC denied clearance for technologists looking to contribute to such enforcement efforts, owing to the agency’s interpretation that a state AG’s investigation into a particular company is “the same ‘proceeding or investigation’ as one conducted by the FTC of the same company for related practices—even if the FTC’s investigation culminated in a complaint that has already been settled with the company in question.” Any given company is often tied by the FTC to any “proceeding or investigation” involving other companies it merged with, creating a web of possible conflicts made more complicated by rampant consolidation in the technology sector.

In addition, the Office of General Counsel denies requests for clearance over informal email rather than a formal clearance request form, limiting “the transparency of the decision, avenues for appeal, and rigor of the analysis.”

Another issue is the FTC’s “risk-averse culture” which leads the agency to side with technology companies when identifying potential conflicts. In one case described by a former technologist interviewed by the authors, a technologist publicly criticized a tech company before joining the FTC. The company filed a complaint, leading the FTC to remove the technologist from an investigation of the company and preclude him from investigating the company in the future. In another case, a tech company filed a complaint after a member of a technologist’s Ph.D dissertation committee requested the FTC investigate the company, citing publicly-available information. The company argued the technologist was conflicted and the FTC sided with the company, banning the technologist from working on investigations into the company. A subsequent investigation of the company operated without a technologist for several months.

The FTC should update its internal ethics rules on post-employment restrictions to account for these problems. In particular, new standards should be clearer and easier to enforce and should better distinguish between those who switch sides and those who continue to work in line with the agency’s goals in different settings.

FTC Post-Employment Restrictions

Instituting a three year prohibition on former officials meeting with current FTC staff.

1

Revolving door hires allow corporations to take advantage of former employees' personal relationships with current FTC staff to grease the wheels of merger and enforcement processes. This influence is outsized when the former officials were previously in a supervisory role to the staff they are meeting with. Instituting a prohibition on former officials meeting with staff would reduce the advantage of hiring a revolver, and would act as a deterrent to corporations that seek to hire revolvers because of their potential influence on current staff.

Systematically disclosing the date, recipients, and subject of all communications between current and former FTC staff.

2

By leaning on old contacts, former FTC employees may be able to get valuable information about the agency's thinking and direction. Forcing these exchanges into the light of day will discourage this type of communication and reduce the value of hiring from the revolving door.

Expand bans on lobbying to cover all departed staff for two years and prohibit "behind-the-scenes" activities.

3

Current federal ethics regulations require a two year cooling off period from lobbying for very senior officials who left government. The FTC should expand this requirement to include all leadership and staff level employees. They should also expand the definition of lobbying to cover "behind the scenes" activities, which the Project on Government Oversight identified as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." The ban on "behind-the-scenes" activities for departed staff should also include participation in all merger review and civil investigative processes the FTC embarks on, as in the course of these investigations and reviews, there are constant discussions between government and the target company's lawyers about the scope and substance of investigation.

Relaxing post-employment restrictions on former FTC staff who continue to work on the side of the FTC while with a different employer.

4

Current rules and the way they have been administered to hamstring those working on behalf of antitrust action in their post-FTC employment are inconsistent with section 207's intent to ensure "public servant[s] owe undivided loyalty to the Government." Former FTC employees' work for state governments bringing antitrust actions does not in any way threaten or call into question this loyalty, because the employees' goals remain substantially the same across employment relationships. Further, it is in the FTC's interest to cultivate and facilitate the growth of an informed, competent antitrust workforce across levels of government to ensure robust and enduring antitrust enforcement over time.

Increasing transparency into the process of reviewing, and the criteria for granting, FTC clearance requests, and ethics waivers.

5

The proposed prohibitions would likely significantly reduce the volume of paperwork associated with FTC employees' post-employment but it would not bring it to zero. The FTC should commit to publicizing the criteria that it uses to assess clearance requests and ethics waivers and should publish all such documentation for former FTC employees in an easily accessible manner.

FTC Post-Employment Restrictions for Leadership

Given their influence, senior FTC officials should face even stricter standards. These standards could come through an administration-wide executive order. During the Biden Administration's transition period, the Revolving Door Project [published](#) a proposed executive order on ethics that would establish more stringent rules on appointees entering and leaving the executive branch. One provision would ban every nominee in an executive agency, for a period of five years after leaving office, from making any "communication to or appearance before an officer or employee of the executive agency" of which they were employed on behalf of a corporation or a nonprofit that principally lobbies for for-profit interests. In her Anti-Corruption and Public Integrity Act, Senator Elizabeth Warren has proposed requiring income disclosures from former senior officials for a period of 4 years after they leave government service and prohibiting companies from immediately hiring senior government officials from agencies that they recently lobbied. Although the White House already released a executive order on ethics, President Biden should consider how his administration can implement stronger standards through executive order.

While Chair Khan has yet to announce intent to update supplemental ethics regulations, we urge the Federal Trade Commission to consider additional steps to close the revolving door among its leadership. Specifically, we would suggest **instituting prohibitions for a period of four years on high level FTC staff accepting employment at or compensation from (such as through a law firm) any corporation that is currently or was within the previous four years, under FTC investigation**. We also suggest expanding this ban to limit former leadership's behind-the-scenes activities with such corporations, including shadow lobbying and any interactions with the FTC in regards to merger reviews or investigations. Current rules barring former FTC employees (and in some cases, the firms to which they revolve) from working on specific matters impose a heavy administrative burden on the agency to monitor the specifics of former employees' behavior. Moreover, since the FTC's insight into a former employee's actions within a firm or company are inevitably incomplete, these standards do not offer a credible safeguard against revolving door concerns. Bright line rules like this prohibition could, therefore, both reduce the FTC's administrative burden and improve public trust in the agency.

DOJ Post-Employment Restrictions

Unlike the FTC, the DOJ does not currently impose [post-employment](#) restrictions on its employees beyond what is required in generally applicable ethics law. Yet, as our data demonstrates, the revolving door is a pervasive issue within the DOJ Antitrust Division as well. To combat this problem, the Department of Justice broadly, and the Antitrust Division in particular, should adopt rules parallel to the FTC's [Appearances](#) rule and update the DOJ's supplemental ethics regulations in line with the suggestions laid out above for the Federal Trade Commission.

Coordinating Anti-Monopoly Efforts Across The Executive Branch

Anti-monopoly policy does not solely happen at the FTC and DOJ Antitrust. On the policy front, the Biden administration has thus far shown a full understanding of that fact, starting with his appointment of Columbia law professor [Tim Wu](#) to the National Economic Council as a “special assistant to the president for technology and competition policy” in March 2021. As an advisor within the White House, Wu is able to work with the antitrust enforcement agencies and Congress to follow through on President Biden’s ambition to take on the monopoly power of Big Tech, as well as other concentrated industries like agriculture and pharmaceuticals. Wu has [taught](#) at Columbia Law School since 2006, and has [worked](#) in public service at multiple levels – as an enforcement counsel in the New York Attorney General’s Office, as an advisor in the Obama White House, and at the FTC. Encouragingly, his resume lacks the kinds of corporate ties typical of recent antitrust leadership lawyers.

Biden’s second all-of-government antitrust effort is his [executive order](#) “Promoting Competition in the American Economy.” The order is 72 initiatives spanning over a dozen federal agencies and the federal laws they enforce, focusing on consolidated industries that most affect Americans’ lives such as agriculture, pharmaceuticals and healthcare, and telecommunications. His initiative “to ensure Americans have choices among financial institutions and to guard against excessive market power” calls on the DOJ, Federal Reserve, Federal Deposit Insurance Corporation and the Comptroller of the Currency to revitalize bank merger enforcement under the Bank Merger Act. Biden’s decision to use an all-of-government executive order to address monopoly power shows both the administration’s understanding of how corporate concentration has reshaped the American economy and his administration’s ability to address that reshaping using executive levers of power. The executive order also provides an opportunity

for non-government advocates to check progress each agency is making to address monopoly power by making public the president's goals for those agencies.

The Biden administration must recognize, however, that ethics deficiencies could threaten anti-monopoly action across the whole-of-government as well. To ensure his anti-monopoly agenda is successful everywhere, therefore, the President should issue an executive order that restricts political appointees' ability to revolve out to work for corporate monopolies. Specifically, the executive order should prohibit officials who worked on implementing any part of the competition executive order, including senior career staff, from working on behalf of a for-profit company to influence anti-monopoly policy directly or indirectly for a period of four years.

Enforcing Ethics Violations

Whatever reforms an administration makes to rein in the revolving door by strengthening post-employment restrictions, those rules still must be enforced in order to disincentivize conflicts of interest. Unfortunately, in the most recent high-profile example of a post-employment restriction violation, the perpetrator received next to no punishment. Former FTC commissioner Joshua Wright lobbied FTC officials on behalf of his client Qualcomm in the midst of the agency's enforcement action against the corporation. Wright had overseen the Qualcomm case during his tenure as commissioner, and was found guilty by the Office of the Inspector General of violating post-employment rules. However, the Trump-era Justice Department declined to prosecute, allowing the matter to close with no consequences. An administration looking to stop former public officials from profiting off of connections to government should choose to prosecute violators of ethics laws to the fullest extent. This is especially true of violations at the highest possible level: Wright was a Commissioner, not just an attorney or economist.

Creative Agency Actions

One particular agency leader has taken on the issue of the revolving door head-on: Consumer Financial Protection Bureau director Rohit Chopra. Formerly a commissioner for the FTC, Director Chopra has made it his mission to cast out corporate influence from the CFPB. Under his direction, the CFPB issued [ethics guidance](#) to staff "reminding them to report suspicious communications and activity by former employees to agency officials" in order to deter former employees from violating ethics and confidential information disclosure laws and regulations.

The press release also makes clear the CFPB will make referrals to criminal and civil authorities and bar associations about violations of ethics regulations.

The CFPB also enacted a new process for [public engagement](#) on CFPB rulemaking: members of the public can submit petitions for rulemaking directly to the CFPB for public review and comment. The CFPB will also force lobbyists and former government officials to use this public process rather than attempting to influence CFPB officials behind closed doors. The CFPB implemented the process “to ensure high standards of transparency and ethics, particularly when it comes to addressing the corrosive effects of the ‘revolving door.’”

The ethics guidelines and new public engagement process are examples of how creative and motivated agency leadership can not only take tangible steps to loosen corporate capture, but how such actions can build up agency culture that rejects corporate influence more generally.

Legislative Action to Close the Revolving Door

In the last several years, antitrust policy has seen renewed interest from lawmakers across the aisle. Closing the revolving door must be viewed as an integral part of any effort to reinvigorate enforcement. Members of Congress can move the antitrust agencies closer to that goal in a variety of ways.

The Antitrust Agencies Are Not Equipped To Enforce Their Mandate Or Match The Deep Pockets Of Big Tech

Under both Republican and Democratic administrations, the state of the civil service has been slowly decaying due to [lack of funding](#) and at times outright rejection of governance. The antitrust agencies are no exception to this; in recent years, the agencies' funding has [failed](#) to keep pace with inflation, GDP, or with corporate monopolies ever-deepening pockets. More funding is vital to not only restoring the agencies to working order, but equipping them with the means to properly balance the scales after 40 years of under-regulation.

The fiscal year 2022 omnibus failed to meet that goal. While Congress did increase the agency's budgets, it just barely returned them to where they were a decade ago (accounting for inflation) when the agencies had a much less ambitious agenda and far less interest in combating consolidation. In his FY 2023 budget request, President Biden [asked](#) Congress for an additional \$88 million and \$139 million for the DOJ ATR and FTC respectively. Those figures would bring the agencies' budgets closer to the levels necessary for them to fulfill their statutory obligations (totaling an estimated \$280 million for the ATR and \$515 million for the FTC), but still don't account for the agencies' increasingly complex and growing workload. The Biden administration also has yet to return the staffing levels at the agencies to their Obama Administration peaks.

During that same period, the FTC and ATR's responsibilities grew astronomically: amidst a steady uptick in HSR merger filings that began during the Obama administration, the number of filings [doubled](#) between 2020 and 2021. The mergers the antitrust agencies investigate have also grown in complexity, as measured by deal valuation, since the greater a deal's value, the more financial relationships and accounts likely to be involved. RDP found that both the total value of all HSR filings and the average value of a filing have increased since the beginning of the Obama administration. The HSR fee structure, a key source of revenue for the agencies, has not changed in [20 years](#) — merging corporations continue to pay a static \$45,000 to \$280,000

to the antitrust agencies per transaction even as the average valuations of those transactions have soared.

As corporations consolidated entire industries, their ability to defend their anti-competitive behavior in front of regulators has become almost limitless. This is perhaps best measured by companies' pricey reliance on BigLaw firms to defend them in front of federal regulators. [The New York Times](#) estimated Google's team of antitrust lawyers defending the company from the DOJ and States Attorneys General antitrust lawsuits included at least 16 lawyers from six different law firms. Tallying up the typical \$1,000 to \$2,000 an hour BigLaw partners charge, in addition to the countless associates that aid them, amounts to an incredible amount of money. The DOJ Antitrust Division, on the other hand, must split its budget among the many cases it reviews, litigates, and investigates every year.

Besides their duty to protect competition, the FTC is also charged with protecting consumers from fraud and deception including false advertising and violations of privacy. The FTC's regulatory efforts in that area have also suffered from a lack of capacity, all the while technology has steadily advanced and become more deeply entwined with peoples' lives.

Congressional Efforts To Increase Funding For Antitrust Enforcers Is Key

The single most effective means by which Congress could close the revolving door in antitrust enforcement would be to drastically increase funding to the FTC and DOJ Antitrust. While Biden's proposed 2023 budget brings the DOJ and FTC closer to the funding levels they need to carry out their duties, even better is funding proposed in the [Competition and Antitrust Law Enforcement Reform](#) Act, introduced by Senate Antitrust Committee head Amy Klobuchar. The Act includes a total of \$1.135 billion in funding for the FTC and DOJ Antitrust Division for fiscal year 2022 in order to "[give federal enforcers](#) the resources they need to do their jobs".

The FTC and DOJ also receive non-discretionary funding from fees paid by merging corporations under the Hart-Scott-Rodino Act. The current fee structure [has not been updated](#) since 2000, when Congress established that the three tiers of fees (\$45,000 to \$280,000) would remain the same while the thresholds for the tiers would adjust according to gross national product. As the [Washington Center for Equitable Growth](#) observed, this means "all mergers are paying far less in real terms." The outdated system allows for larger mergers, which are more often investigated and challenged, to only account for a small percent of overall HSR fees: WCEG found that

“between 2010 and 2016[...] the largest deals—those valued at more than \$5 billion—accounted for only 7 percent of total merger fees but accounted for almost one-fifth of the merger investigations requiring second requests. By contrast, smaller deals subject to the \$125,000 fee accounted for almost half of the fees collected but only one-third of second requests.”

The House and Senate are both considering versions of the [Merger Filing Fee Modernization Act](#), which would change the Hart-Scott-Rodino fee schedules so that larger firms pay significantly steeper fees: up to \$2.25 million for transactions larger than \$5 billion, which would adjust yearly based on the consumer price index. The increase in funding with inflation accounted for is paramount for the FTC and DOJ to be able to keep up with the steady uptick in merger filings.

Securing these increases to the agencies’ appropriated and fee-based funding is critical. If the antitrust reform bills are not passed promptly, Congress should include these increases in the FY 2023 omnibus government funding agreement.

How The FTC And DOJ Could Use Increased Funding to Close The Revolving Door

While increasing the budgets of the antitrust enforcement agencies and closing the revolving door are important aspects of reform, the details of these measures’ implementation will be critical. To successfully reinvigorate our antitrust infrastructure, leadership will need to be attentive to the enduring legacy of corporate capture and to the work of hiring and retaining a committed workforce. In particular, it will be important to recognize that many serving officials remain captured and existing reform proposals are unlikely to eradicate corporate influence from soft power institutions.

Consider the much-reported pipeline between the FTC and George Mason’s Antonin Scalia Law School. The law school and the think tank it houses, the Global Antitrust Institute, [receive funding](#) from such Big Tech monopolists as Google, Amazon and Qualcomm to promote a “hands-off approach to antitrust law” to government officials. According to the Tech Transparency Project, “[dozens](#)” of George Mason graduates and academics became “commissioners, bureau heads, attorney-advisers, legal interns—during the Obama and Trump administrations.” Former Commissioner Joshua Wright, who violated federal law by lobbying on Qualcomm’s behalf before his former agency, is the executive director of the Global Antitrust Institute. Antitrust

leaders should not ignore this legacy as they assume control of the agencies and work to increase their capacity.

Rapid and expansive new hiring will be critical in both addressing a longstanding gap between agencies' capacity and that of monopolists and ensuring a majority of agency staff is mission-aligned. Closing the chasm will require adding reinforcements for existing capacities and adding staff with new competencies, like technologists. Similar to bringing all economic work in-house, technologists could help improve agency knowledge on emerging technologies and reduce dependence on the corporations themselves. Agency leaders should make use of all available tools to staff up quickly, while maintaining merit system principles. They must also improve upon existing recruitment practices to ensure that they are not entrenching corporate influence and that they are actively bringing in new perspectives and greater diversity to the agency. Improved recruitment and professional development programs at the FTC aimed at improving diversity at the agency could be one way of assuring career FTC staff center racial justice in antitrust enforcement.

In addition to supporting new hiring, an expanded budget should also be directed towards better compensating agency staff. While government salaries will never be able to compete with the lavish incomes on offer at the BigLaw firms and lobbying shops to which officials have traditionally revolved, increases could help encourage committed public servants to stick with the agency over the long-term. Paired with one of our earlier recommendations to promote from within, improved salaries could help build and maintain a corps of dedicated public servants who are recognized for their expertise.

Bringing Consultancy Work In-House

Our observation that all but one of the past 20 DOJ deputy assistant attorneys general for economic analysis has close ties to an economic consulting firm with an antitrust practice illustrates just how much of a business antitrust expertise has become. An economic consultant who is able to “prove” a merger upholds consumer welfare to a judge is invaluable to merging corporations. And the government must play the same game: the FTC and DOJ Antitrust both retain outside economic consultants for cases. As the Revolving Door Project has previously described, the industry of economic consulting is highly concentrated. The past 20 DAAG's had ties to only eight consulting firms. Compass Lexecon, a firm with ties to six former DAAGs, once [dispatched economists](#) to argue for opposite sides in an antitrust case:

[A] group of government lawyers hired Compass Lexecon’s Jonathan Baker as a consultant for a case against Apple. In the courtroom, however, Baker found himself arguing against his own boss at Compass Lexecon, Jonathan Orszag, who’d helped to set up Baker’s contract with the Feds. Baker conducted an economic analysis finding Apple artificially inflated e-book prices by 19 percent. Orszag ran a similar analysis and found Apple only had negligibly higher prices of 1.9 percent. Two economists from the same firm, two different answers to the same question. The only difference was who was paying whom.

Rather than relying on economists with questionable allegiance to public service, the agencies should rely on their own by bringing economic consulting in-house. Public servants analyzing the economic impact of prospective mergers for the government may also more easily adapt to using alternative approaches to analyzing harm to consumers and the economy and end the over-reliance on the consumer welfare standard to measure every merger case. Economic consultants who work for both the government and corporations must consider the implications of their analysis conducted on behalf of the government for how it effects their ability to attract paying corporate clients. And when the government is finally distinct from the lucrative economic consulting industry, it will be in a better position to discredit mercenary “expertise,” rather than fear the collateral consequence for when they hire the same economist, or the same firm, in the next case.

Moving economic analysis in-house would also likely save the agencies money. In the Office of Inspector General’s 2019 report on “Top Management Challenges Facing The Federal Trade Commission,” the authors [identified](#) the “escalating cost of expert witnesses” as a top concern. According to the OIG, the Bureaus of Competition and Consumer Protection are pursuing more complicated cases, leading to “higher costs to obtain the kinds of outside experts needed to support these cases.” The OIG recommended an updated approach to expert witness services – bringing expert talent in-house. Their recommendation builds on the Bureau of Economics’ previous efforts to bring more contracting in-house and noted “various challenges in acquiring and retaining talent.” Even with additional funding to make the in-house positions more enticing for economists, hiring in-house experts would likely be cheaper and more sustainable than relying on increasingly expensive consulting firms. As the Compass Lexecon debacle shows, the government is competing with rich corporations to hire economic consultants – a fact consulting firms can use to raise prices. In addition, bringing economic consulting work in-house would completely negate the conflicts of interest the enforcement agencies currently deal with when hiring outside economists.

How Congress Should Hold Big Tech To Account: The House's Investigation Into Digital Markets

As part of the House Antitrust Subcommittee's "Investigation Into Digital Markets", the subcommittee convened a series of hearings with the CEOs of Big Tech corporations including Amazon, Apple, Google and Facebook. The hearings exemplify how Congress members seeking to hold monopolistic corporations to account can publicly bring anticompetitive abuses to light. Congress should use the "Digital Markets" investigation, hearings, report and legislation as examples for confronting monopoly power in other industries.

Over the course of the hearings, the subcommittee compelled Big Tech CEOs to testify on their companies' anticompetitive behavior, often in contrast to the stories of small businesses who had become victims to Big Tech's unconstrained economic power. The hearings were a huge success: as the Revolving Door Project [wrote](#), "through incisive questioning, lawmakers were able to coax out consequential admissions of wrongdoing and bring to public attention the myriad harms these companies have perpetrated and then worked hard to obscure." The success of the hearings can be replicated for other similarly concentrated industries.

One notable story from the hearings was then-Amazon CEO Jeff Bezos's resistance to Congress's call to testify on a particularly concerning [Wall Street Journal report](#) that Amazon was using proprietary information generated for third-party sellers on the platform to develop its house-brand products. The report [contradicted](#) Amazon lawyer (and former DOJ Antitrust official) Nate Sutton's testimony to the subcommittee on antitrust that Amazon does not use "individual seller data directly to compete" with third-party businesses. Notably, Bezos [stepped down](#) as CEO in July 2020, in the midst of the subcommittee's investigation and other probes of possible abuses, although he remains the company's largest shareholder. Further investigations into Amazon's contradictory statements on third-party seller business practices eventually led members of the antitrust subcommittee to send the corporation a letter [stating](#) that Amazon representatives "may have lied to Congress in possible violation of federal criminal law." The members asked for Amazon to submit more evidence and noted they were considering a referral to the Department of Justice to begin a criminal investigation. After "Amazon refused to turn over any business documents or communications that would corroborate its claims or correct the record," the House members [made good](#) on their threat and referred the company to Attorney General Garland in March 2022 for engaging "in a 'pattern and practice' of misleading conduct that appeared designed to 'influence, obstruct, or impede'" the committee's investigation. Though the committee did not ultimately issue a subpoena for Bezos' testimony,

the story sets a standard for future hearings for concentrated industries aside from Big Tech: Congress should use whatever power necessary to compel testimony and remind monopolists they are still subject to government oversight.

Accordingly, Congress should also enforce the consequences for attempting to avoid that oversight. During the investigation, the subcommittee expressed skepticism of Amazon's responses, owing to the company making "[possibly criminally false or perjurious](#)" statements during the investigation (p.253-254). Without facing consequences for lying, however, Amazon and other companies will see little reason to stop.

In their [final report](#), the Subcommittee on Antitrust acknowledged the problems posed by the revolving door and recommended Congress codify "stricter prohibitions on the revolving door between the agencies and the companies that they investigate, especially with regards to senior officials" (p. 402).

The Anti-Corruption and Public Integrity Act

While recent legislative antitrust reform efforts have not been focused specifically on the issue of corporate capture of the agencies, wider anti-corruption bills could address the issue. Senator Elizabeth Warren's Anti-Corruption and Public Integrity Act [aims](#) to "lock the revolving door" across the entire federal government. Specifically, Senator Warren proposes prohibiting "the world's largest companies, banks, and monopolies (measured by annual revenue or market capitalization) from hiring or paying any former senior government official for 4 years after they leave government service," an action that would stop the revolving door between monopolistic corporations and the antitrust enforcement agencies directly.

The personal financial disclosures released by nominees joining the Biden Administration [include](#) not only work for law firms, but specific clients who compensated the nominee in the past two years through the law firm. Presumably, lawyers who work for monopolistic clients would still have to disclose that work and be subject to the same ethics rules as those who work directly for corporations. While the Anti-Corruption and Public Integrity Act is focused on senior-level leadership, the law could work in conjunction with Revolving Door Project's recommendations for post-employment restrictions and logging communications, therefore creating higher ethical standards for both leadership and staff.

To Stop The Revolving Door, Biden Must Revitalize The Civil Service And Cast Out Corporate Influence

The past few decades in antitrust enforcement have been defined by inaction. In Democratic and Republican administrations alike, the antitrust enforcers have stood by while corporations engaged in merger sprees, buying up rivals of increasing size, taking mega-mergers from rare deals to common. The American Antitrust Institute's review of the state of enforcement found that this inaction has allowed for unmitigated concentration across vital industries and undermined the effectiveness of the country's antitrust laws. The result has wreaked havoc on small businesses, which are dominated by monopolistic corporations. They have used their power to hurt workers through layoffs and undermining labor laws. And despite antitrust experts' supposed worship of the consumer welfare standard, consumers are facing higher costs at home for essentials like meat, groceries.... Corporations relentlessly bought up rivals, whittling down supply chains until the catalyst of the pandemic brought many industries into full-blown crisis.

The revolving door has been a central part of this story. In Democratic and Republican administrations alike, antitrust enforcement leaders have been plucked from the world of BigLaw firms and the corporations they defend. With the knowledge that they will soon return to the side of monopolies, these leaders have been none too eager to robustly enforce the law and alienate their future clients. Back on the outside, they have happily traded knowledge of the agencies' inner workings for higher salaries, greasing the wheels of consolidation. Below leadership level, the lawyers and economists tasked with day-to-day antitrust enforcement follow the same pattern, most often joining BigLaw and economic consulting firms upon leaving their posts.

To combat the corporate capture of the antitrust enforcement agencies, Biden and his would-be trustbusters, Lina Khan and Jonathan Kanter, have to do the work of revitalizing the civil service. Their energy and enthusiasm are an important piece of the puzzle. With more funding to match, the DOJ and FTC can quickly become places that public interest advocates are excited to join and grow within. New funding could also support higher salaries that make long-term employment viable and attractive for all. By promoting from within, the agencies can make clear to ambitious lawyers and economists that staying in the government can offer a route to personal advancement and exciting new opportunities. This shouldn't be limited to attorneys:

similar practices should extend to technologists and other experts so that the agencies have a workforce that can effectively investigate monopolistic corporations and argue against them in court. New hiring priorities could encourage the hiring of people from regions and groups that are disproportionately affected by corporate consolidation, re-centering the reality that laws exist to protect such marginalized people against monopoly power.

In return for fairer compensation and greater opportunities, the agencies could implement ethics rules that would prevent would-be revolvers from working for corporations they once oversaw, both directly and through BigLaw and consulting firms. In particular, Biden must put a stop to the endless revolving of top leadership. His appointment of Kanter and Khan is an incredibly encouraging changing of the guard; but real systemic change requires a sustained effort to identify corporate actors and limit their influence in future administrations.