

Client Alert

Antitrust

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DOJ/FTC Initiatives Seek Public Comment on Anticompetitive Government Regulations

The DOJ Antitrust Division and FTC seek public comments from market participants in support of Administration efforts to eradicate laws and regulations that are viewed as hindering competition.

On March 27, 2025, the Department of Justice's Antitrust Division announced the creation of a new Anticompetitive Regulations Task Force. In accordance with a series of Executive Orders issued by President Trump, the Task Force will aim to identify and eliminate state and federal regulations that hamper free market competition. Through this initiative, DOJ hopes to "unleash competition by eliminating unnecessary, burdensome, and wasteful government regulations." Then on April 14, 2025, the FTC launched a public inquiry into anticompetitive regulations similarly seeking information from the public on how federal regulations can harm competition in the American economy.

IDENTIFICATION OF REGULATIONS

The DOJ/FTC are using several methods to identify regulations that run afoul of the Administration's policy goals. First, the DOJ's Task Force has invited "[a]ll market participants" to submit public comments by May 26, 2025, and the FTC's public inquiry allows the public forty days to submit comments until no later than May 27, 2025. The FTC stated that comments submitted to the DOJ task force need not be resubmitted in response to the FTC's inquiry. DOJ will review these comments to understand the anticompetitive effects that certain federal and state regulations have on consumers, small businesses, trade groups, and other market participants. Second, the DOJ's Task Force will enlist professional staff from throughout the Antitrust Division—including

attorneys and economists—to conduct their own search for anticompetitive regulations. Third, the White House has instructed agency heads to review regulations subject to their rulemaking authority and identify any regulations that facilitate the creation of monopolies, create unnecessary barriers to entry, limit competition, or burden agency procurement processes. Agency heads must submit a report on any such regulations to the Chairman of the FTC and the Attorney General by mid-June.

The DOJ's Task Force will focus its search on five sectors that it believes have the most significant impacts on American households: transportation, healthcare, housing, food and agriculture, and energy. However, the search will not be limited to these sectors, and DOJ will evaluate any laws or regulations that may create unnecessary barriers to competition. The FTC did not identify specific sectors.

POTENTIAL REMEDIAL ACTIONS

Because it lacks direct oversight of both state governments and other federal agencies, DOJ and FTC cannot unilaterally repeal laws and regulations that they deem to be harmful to competition. However, the DOJ/FTC still may be able to influence policy at both state and federal levels by placing a spotlight on rules and statutes that they believe harm competition. DOJ/FTC will be receiving recommendations from agency heads, which include the heads of all executive departments, military departments, and government-controlled corporations. In the case of federal agencies operating within the executive branch, DOJ/FTC will be able to advise the White House on the revision or elimination of specific federal regulations. The DOJ's Task Force also intends to file amicus briefs and statements of interest in private litigation, which may enhance efforts by private litigants seeking to challenge state and federal regulations on grounds that they are harmful to competition. Similarly, the Task Force will submit public comments to agencies and legislative bodies that are considering new regulations. And while it has not been explicitly identified by DOJ or FTC as an objective, it is reasonable to assume that the DOJ or FTC may be encouraged to bring their own lawsuits in an effort to challenge state or federal laws, or state regulations, that they believe are harmful to competition or run contrary to the Administration's policy goals.

TAKEAWAYS FOR BUSINESSES

The Trump Administration has exhibited a willingness to move quickly in its efforts to reduce government regulations, and the White House could move quickly in eliminating any federal regulations identified as anticompetitive. The executive branch, however, has more limited tools at its disposal to affect change at the state level.

Despite these limitations, these initiatives create a unique opportunity to weigh in on the nation's competition policy and potentially reduce anticompetitive regulations that harm business or inhibit competition. Companies, industry groups, trade associations, and other market participants can provide direct feedback to the DOJ/FTC by submitting public comments before the May 26 and 27 deadlines. While submission of a comment does not guarantee action by the White House, or inclusion on the DOJ/FTC's list of anticompetitive regulations in their submission to the White House due by June 18, commentors may be able to influence what is included on the list. Individuals and organizations may also submit comments anonymously if they so choose. Our team at King & Spalding—which includes former high-level DOJ and FTC officials—is well-positioned to assist clients with evaluating regulations of interest, preparing and submitting comments, and related agency advocacy.

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