

## Ex-FTC official says Trump era agencies will foster deal-making, respect for IP - Concurrences Brussels

08 September 2017 | 17:34 BST

- More willingness to resolve rather than litigate matters seen under Trump, official says
- Trump regime unlikely to 'pay less deference' to IP rights than Obama administration
- Merger control divergence worrisome as new regimes follow EU approach over US

The US Department of Justice (DoJ) and Federal Trade Commission (FTC) will likely foster a culture of deal-making and demonstrate a willingness to resolve matters rather than litigating them during US President Donald Trump's administration, a former Federal Trade Commission (FTC) official said on 7 September.

The Republican administration will also focus more on respect for intellectual property (IP) rights, according to Stephen Weissman, who served as deputy director of the FTC's Bureau of Competition between 2013 and 2015.

Weissman, who is now partner at Baker Botts in Washington DC, said the changes will be visible in both the DoJ and the FTC after the initial transition period of six months to one year is over.

"There will be in my view more willingness to resolve matters [rather than] litigate as [opposed to] during the Obama administration, when the agencies went to court at a historically high pace," he said.

Weissman made the comments at a conference organised by Concurrences, Baker Botts and Charles River Associates in Brussels. At the FTC, he was part of and supervised the review of several merger and non-merger investigations and enforcement actions, across sectors such as pharmaceuticals consumer products, energy, high-tech and general manufacturing.

"You'll see more deal-making and trying to preserve deals while cutting settlements as well," he said.

The new administration is also seen having a more fundamental respect for IP rights and "won't pay less deference" to these than the Obama administration did, Weissman said.

Last month, the US formally initiated an investigation into China's intellectual property practices, as reported.

The Trump administration will also usher in a more favourable environment for companies to do deals, Weissman said.

PROPRIETARY

**Sector:** Government  
**Topics:** Agencies, Merger Review, Policy Developments

**Grade:** Confirmed

#### Agencies

European Commission - Directorate General For Competition (EC - DG Comp)  
 US Department Of Justice (DoJ)  
 US Federal Trade Commission (FTC)  
 European Commission

There are no files associated with this Intelligence

There will be fewer innovative theories, he said, referring to the European Commission's (EC) much-discussed focus on the innovation theory of harm to competition when two close competitors merge.

US agency officials have not been impressed with the EC's innovation theory, which was most recently apparent in the contrasting approaches each of the two regimes took in their respective reviews of the Dow/DuPont merger.

Where the EC required the parties to divest research and development assets related to crop protection chemicals, the DoJ indicated in a press release announcing the deal's settlement that "the market conditions in the United States did not provide a basis for a similar conclusion at this time."

FTC acting chairwoman Maureen Ohlhausen told this news service in May that attempting to look too far into the future and making predictions in merger control can be risky and antitrust enforcers could get it wrong.

Overall, Weissman described the likely approach of the new regime as "a good thing for business". He added that he is worried about divergence in merger control among global authorities and said that it was not a "good thing" particularly when it comes to global deals that need to go through.

"I also worry about it from a US perspective that some of the newer regimes are more aggressive and have taken more to the EU approach than the US approach, [and] will also pursue a more aggressive agenda when it comes to innovation concerns," Weissman said.

Weissman argued that agencies have a burden of proof and that if they want to challenge a deal, regulators have to show in a "non-speculative, relevant market that the transaction will have effects".

He pointed to the "fundamental difference" between the US and the EU systems where – unlike in the US – the European regulator can block a deal without going to court.

by Khushita Vasant in Brussels

© 2017 Mergermarket Group. All rights reserved.

To be used for the internal business of the assigned users only. Sharing, distributing or forwarding the entirety or any part of this article in any form to anyone that does not have access under your agreement is strictly prohibited and doing so violates your contract and is considered a breach of copyright. Any unauthorised recipient or distributor of this article is liable to Mergermarket for unauthorised use and copyright breach.