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New House Democratic Majority Proposes Aggressive Antitrust Scrutiny

The new House Democratic majority sworn in last Thursday intends to ramp up antitrust oversight, pledging to “crack down on corporate monopolies and the abuse of economic and political power” as part of their “Better Deal” policy plan.

Led by Rep. David Cicilline (D-R.I.) who chairs the antitrust subcommittee within the House Judiciary Committee, and who launched an antitrust caucus in the House and sponsored several antitrust-related bills, the House Democrats plan includes three major initiatives:

1. Prevent big mergers that would harm consumers, workers, and competition. The new standards would also explicitly require regulators to consider acquisitions of consumer data as part of the merger review process.
2. Require regulators to review mergers after completion to ensure they continue to promote competition where economic conditions may later change.
3. Create a 21st century ‘Trust Buster’ to stop abusive corporate conduct and the exploitation of market power where it already exists.

The House Democrats plan to implement these initiatives, which will include holding hearings and launching investigations into a number of industries, including technology, healthcare and pharmaceuticals, food and several consumer products, such as beer and eyeglasses.

Potentially joined by a few Republican allies who have been critical of U.S. antitrust enforcement policy, the House Democrats also intend aggressive oversight of the Federal Trade Commission (FTC) and the Department of Justice, Antitrust Division (DOJ). Among other things, House Democrats propose creating a “consumer competition advocate” that will “proactively recommend competition investigations” to the DOJ and FTC. Under the House Democrats’ proposal, the DOJ and FTC would be required to publicly justify any decision not to pursue an investigation recommended



by the consumer competition advocate. The office would also be responsible for maintaining and publishing data regarding market concentration and conditions.

The House Democrats will also work with their Senate colleagues to attempt to rewrite key provisions of the antitrust laws, because they believe the current antitrust laws do not appropriately address the “the full range of potentially anticompetitive behavior.” One legislative proposal from Senator and potential 2020 presidential candidate Amy Klobuchar (D-MN), the “Consolidation Prevention and Competition Promotion Act, S. 1812,” would fundamentally change current U.S. antitrust law by implementing new legal standards for approval of large transactions, replacing the well-established legal standard against mergers that would “substantially lessen” competition with a lower “materially likely” standard, which would have a dramatic effect on how deals are investigated and challenged by the DOJ and FTC.

TAKEAWAYS

- Democrats, and some Republicans, have been critical of U.S. antitrust policy for several years, but outside of campaign rhetoric from political candidates, antitrust has not typically been a prominent feature of either party’s agenda or policy platforms. Coupled with frequent news reports and studies regarding consolidation and the Trump Administration’s recent report on competition in the healthcare industry (see [client alert](#)), antitrust policy appears to be at a “tipping point” where it could become a key part of the legislative agenda and 2020 election.
- Even if the Democrats fail to pass their proposed legislation, at a minimum, the next two years may involve significant congressional investigations of U.S. industries.
- Finally, while neither the House nor Senate can block a transaction, members can exert pressure on the DOJ and FTC to more aggressively scrutinize transactions and launch investigations.

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