

# Senate Confirms Merrick Garland as Attorney General: Is an Antitrust Czar on the Horizon?

## WRITTEN BY

Nickolas M. Guttman | Brendan J. Thomas | Jacob A. Lutz, III

---

On March 10, the Senate confirmed Merrick Garland as the 86th U.S. attorney general, laying the groundwork for the Biden administration to begin implementing its priorities, including the possible appointment of an antitrust czar. Attorney General Garland departs the D.C. Circuit Court of Appeals, often referred to as the second highest court in the land, where he served as the chief judge for over eight years. In the mid-1980s, General Garland briefly taught antitrust law. He also authored an article in the *Yale Law Journal* titled, “Antitrust and State Action: Economic Efficiency and the Political Process,” where he discussed the immunities under the Sherman Act for state and local regulations.

This comes against the backdrop of a series of seemingly imminent appointments by the Biden administration, including the appointments of Lina Khan and Tim Wu,<sup>[1]</sup> who have been staunch critics of excessive consolidation and monopolistic behavior in the technology arena. For her part, Khan helped draft the Majority Staff Report and Recommendations for the Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary titled, “[Investigation of Competition in Digital Markets](#).” The report concluded, amongst other things, that certain technology companies’ dominance “has diminished consumer choice, eroded innovation and entrepreneurship in the U.S. economy, weakened the vibrancy of the free and diverse press, and undermined Americans’ privacy.” Although President Biden has not explicitly called for increased antitrust enforcement, the administration’s appointments and actions appear to point toward increased enforcement on existing market dominance, as well as increased scrutiny for proposed mergers and acquisitions that may decrease competition or otherwise encourage monopolistic behavior.

In January, media outlets reported that President Biden is considering the creation of an antitrust czar focused on policies regarding competition and antitrust enforcement.<sup>[2]</sup> Although the title of “czar” is more of a colloquialism, czars have previously been utilized by presidents to enable administrations to efficiently and effectively turn policy priorities into reality. Even if President Biden does not appoint an antitrust czar, the fact that such a move is under consideration may shed light on the importance that President Biden places on the issue.

Regardless of whether the Biden administration follows through and appoints an antitrust czar to coordinate competition policy across the government, it is clear that the new administration is taking competition seriously and that increased antitrust enforcement is likely. As such, it is as important as ever that companies exploring mergers and acquisitions, as well as institutions advising such companies, engage antitrust experts early in the deal process to shepherd them through what can be a very complicated arena.

[1] See <https://www.cnbc.com/2021/03/09/biden-loads-administration-with-big-techs-most-prominent-critics.html>.

[2] See

<https://www.reuters.com/article/us-usa-biden-antitrust-exclusive/exclusive-biden-administration-considers-creating-white-house-antitrust-czar-sources-idUSKBN29O2PT>.

## **RELATED INDUSTRIES + PRACTICES**

- [Corporate](#)
- [Financial Services](#)