

One Agency Act

What does the One Agency Act do?

The One Agency Act consolidates antitrust enforcement authority at the Department of Justice by: (1) removing the Federal Trade Commission's "unfair methods of competition" authority; and (2) transferring all FTC antitrust matters, personnel, and resources to the DOJ. The One Agency Act **does not** change the FTC's ability to police "unfair and deceptive acts or practices" (*i.e.*, consumer protection) under Section 5 of the FTC Act.

Why is the One Agency Act necessary?

The two-headed approach to antitrust enforcement of the last century has led to growing inefficiency, waste, delays, and confusion. FTC and DOJ spend significant time and resources on the clearance process, arguing over which agency will get which cases. In one case, the matter had to be decided by a coin toss; in some instances they appear to have even duplicated enforcement efforts. This wastes taxpayer money, imposes costs on defendants, and delays redress for consumers. The two agencies have also taken different sides on matters of antitrust policy, even going so far as to argue against each other in court on the same appeal.

How will this affect antitrust enforcement?

The One Agency Act will improve and strengthen antitrust enforcement by eliminating inefficiencies, waste, and delays, and by ensuring a single, consistent voice on antitrust policy that is accountable to the public. Putting all antitrust enforcers under one roof will also make it easier to share expertise across industries and case teams. Antitrust enforcement will no longer hinge on which agency reviews a deal or investigates a target,

Will the One Agency Act lead to the politicization of antitrust enforcement?

No. Unlike the Federal Trade Commission, the Department of Justice is accountable to the American people. The Attorney General and the Assistant Attorney General for the Antitrust Division serve at the pleasure of the president, and, unlike FTC Commissioners, can be removed by the president. The FTC has also at times been crippled when missing one or more commissioners. For example, it had to refer the Microsoft investigation to DOJ after the Commission was deadlocked 2-2 and couldn't move forward under its own rules. Moreover, the FTC does not appear to be above political influence. In 2013, it closed its investigation into Google with what many viewed as a slap on the wrist; this came after Google representatives met with officials at the Obama White House. More recently, the FTC sued Qualcomm in the final days of the Obama administration, with just two commissioners voting for the complaint. Later, on appeal, DOJ sided with Qualcomm, and the two federal agencies argued against each other in federal court.

Will the One Agency Act disrupt ongoing enforcement efforts?

The One Agency Act is carefully crafted to minimize disruption to any ongoing investigations or litigation. It gives the head of the Antitrust Division maximum flexibility in transferring open matters to the Justice Department, and allows him to extend the deadline for doing so by up to a year if necessary. The Assistant Attorney General is also authorized to deputize FTC employees to continue their work on behalf of the Justice Department to ensure continuity and prevent any interruption to their work.

Does the One Agency Act weaken the antitrust laws?

No. The One Agency Act does not change the substance of the Sherman or Clayton Acts. While Section 5 of the FTC Act was at one time envisioned to be broader than the Sherman Act, it was rarely applied that way. In contemporary practice, the FTC has almost exclusively based their Section 5 complaints on Sherman Act case law.