
U.S. Antitrust Institutions

Antitrust Law

Georgetown University Law Center

Dale Collins

December 14, 2021

Overview

- Four antitrust statutes
- Five types of enforcement agents
- Four types of sanctions/relief
- Four types of proceedings

Four Antitrust Statutes

- The major provisions that define offenses
 - Sherman Act
 - Section 1 prohibits “contracts, combinations . . . and conspiracies in restraint of trade”
 - Section 2 prohibits monopolization, attempted monopolization, and conspiracies to monopolize
 - Clayton Act
 - Section 7 prohibits the acquisition of stock or assets whose effect “may be substantially to lessen competition, or to tend to create a monopoly”
 - Robinson-Patman Act
 - Section 2 prohibits certain discriminations in price
 - Federal Trade Commission Act
 - Section 5 prohibits “unfair methods of competition”
 - NB: Unlike other provisions, not included in the definition of “antitrust law” in Clayton Act § 1
 - This will be important when it comes to private actions

Five Types of Enforcement Agents

- Department of Justice (DOJ) Antitrust Division
- Federal Trade Commission (FTC)
- State Attorneys General
 - Injunctive relief actions
 - Parens patriae actions
 - Class actions for damages sustained by citizens of the state brought by the state attorney general
- Individual private parties
- Private class actions

Four Types of Sanctions/Relief

- Criminal fines/imprisonment
- Damages (usually trebled)
- Injunctive relief
- Other equitable relief
 - Most notably disgorgement

Four Types of Proceedings

- Criminal prosecutions in federal district court
- Civil judicial adjudications in federal district court
- FTC administrative adjudications
- Agency administrative resolutions (consent decrees)

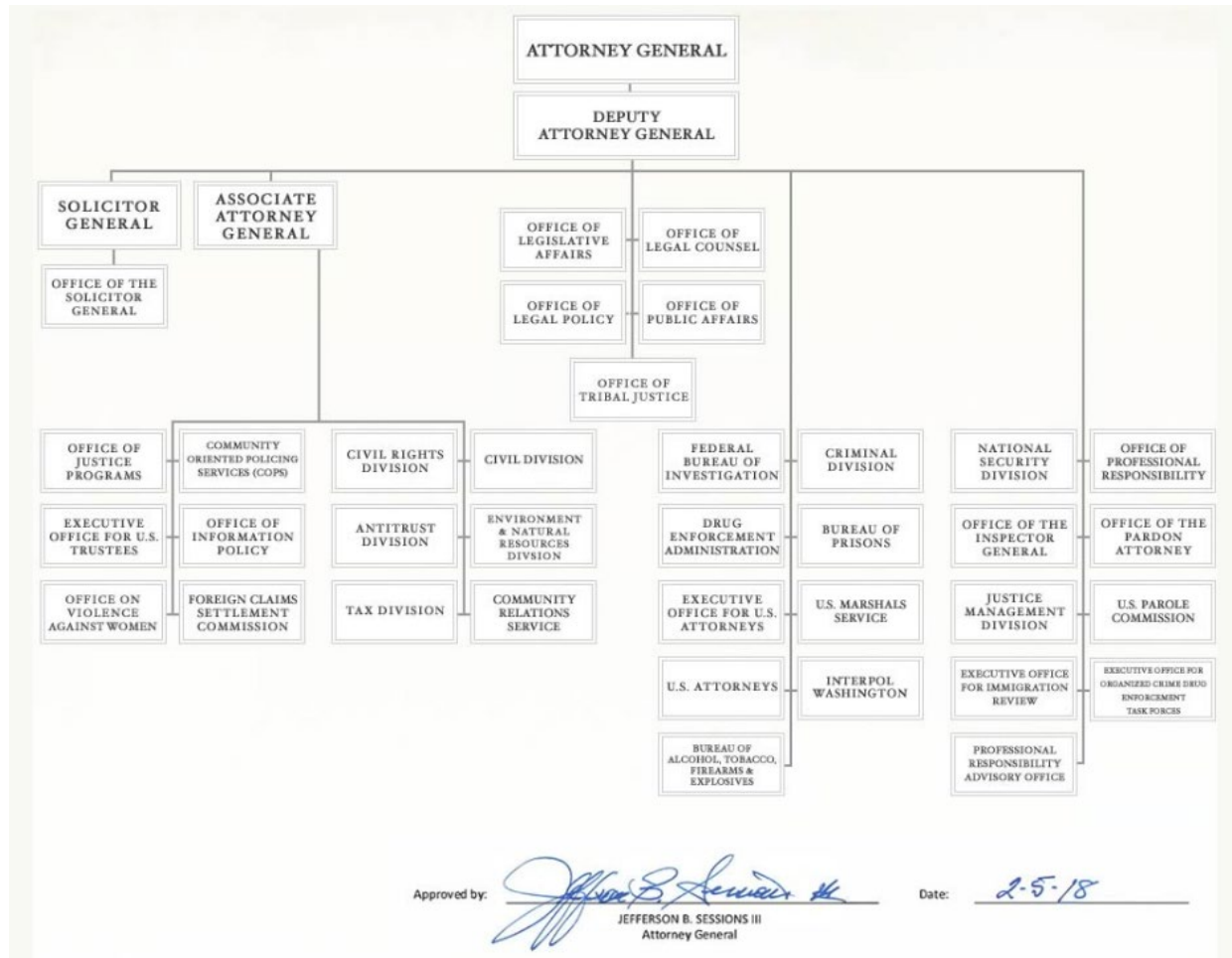
Summary

	Forum	Criminal	Injunctive Relief	Damages
DOJ	Federal court	X (under federal law)	X	
FTC	Administrative court		X	
State AGs*	Federal court for federal and state claims	X (under state law)	X	X (on behalf of citizens)
Private*	Federal court for federal and state claims		X	X

* Can bring state antitrust claims (but not federal antitrust claims) in state court

Government Organization

■ United States Department of Justice



Approved by:

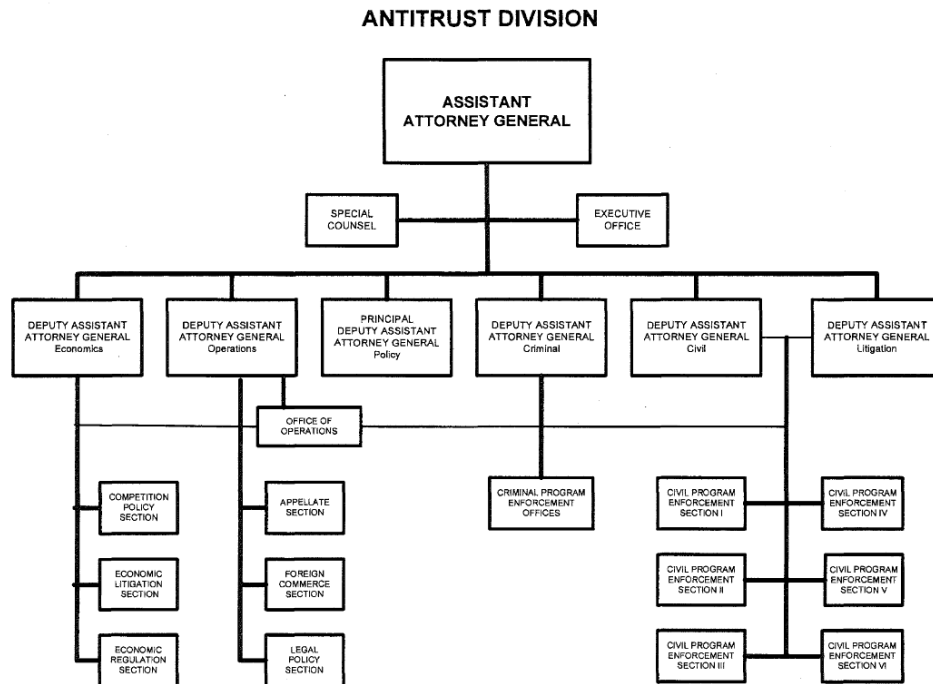

JEFFERSON B. SESSIONS III
Attorney General


Date:

2-5-18

Government Organization

■ Antitrust Division



Approved by  Date: 5/16/13
ERIC H. HOLDER, JR.
Attorney General

Notes:

1. The ATD has a hierarchical structure.
2. The Assistant Attorney General (AAG) has “complaint authority” to file a complaint without seeking the approval of anyone else. No one else in the Division has complaint authority. As a result, the AAG is the ultimate and sole decision-maker on legal challenges brought by the ATD.
3. The AAG is nominated by the President and subject to confirmation by the Senate. No one else in the ATD is subject to Senate confirmation.
4. The AAG serves at the pleasure of the President and the Attorney General and may be removed with cause.

United States Department of Justice

■ Antitrust Division



BRIEFING ROOM

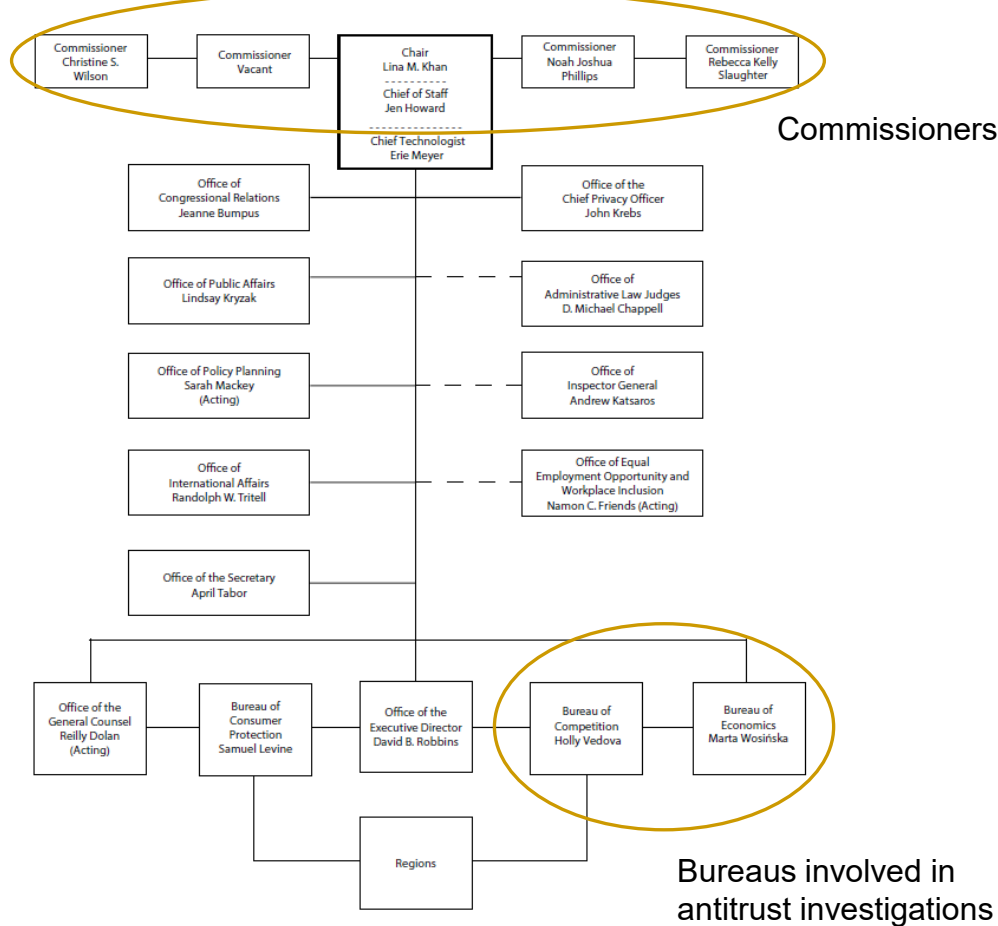
President Biden Announces Jonathan Kanter for Assistant Attorney General for Antitrust

JULY 20, 2021 • STATEMENTS AND RELEASES

- ❑ Confirmed November 16, 2021
- ❑ Nominated July 20, 2021
- ❑ Founding Partner, Kanter Law Group (2020 – present)
- ❑ Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP (2016-2020)
- ❑ Partner, Cadwalader, Wickersham & Taft LLP (2007 – 2016)
- ❑ Associate, Fried Frank (2000 – 2007)
- ❑ Attorney, Federal Trade Commission (1998 – 2000)
- ❑ J.D. 1998, Washington University in St. Louis School of Law

Government Organization

■ Federal Trade Commission



Notes:

1. The FTC has a “collegial” structure, that is, the Commission cannot take enforcement action unless a majority of the Commissioners vote to do so. No single person can make an enforcement decision for the FTC.
2. The FTC Act provides for five Commissioners. Each Commissioner serves for a term of seven years (or fills out the remaining term of her predecessor). By law, no more than three Commissioners can be a member of the same political party.
3. Each Commissioner is nominated by the President and subject to confirmation by the Senate. No one else in the FTC is subject to Senate confirmation.
4. The President appoints the chairman of the Commission, who is responsible for chairing Commission meetings and for administering the staff of the FTC.
5. The FTC is an “independent agency,” so that Commissioners do not serve at the pleasure of the President and can only be removed for cause.

Federal Trade Commission

■ Five commissioners



Lina Khan, Chair (Democratic appointment)
Academic attorney
Sworn in June 15, 2021
Term expires September 26, 2024



Noah Joshua Phillips, Commissioner (Republican appointment)
Hill staffer
Sworn in May 2, 2018
Term expires September 26, 2023



Rebecca Slaughter, Commissioner (Democratic appointment)
Hill staffer
Sworn in May 2, 2018
Term expires September 26, 2022



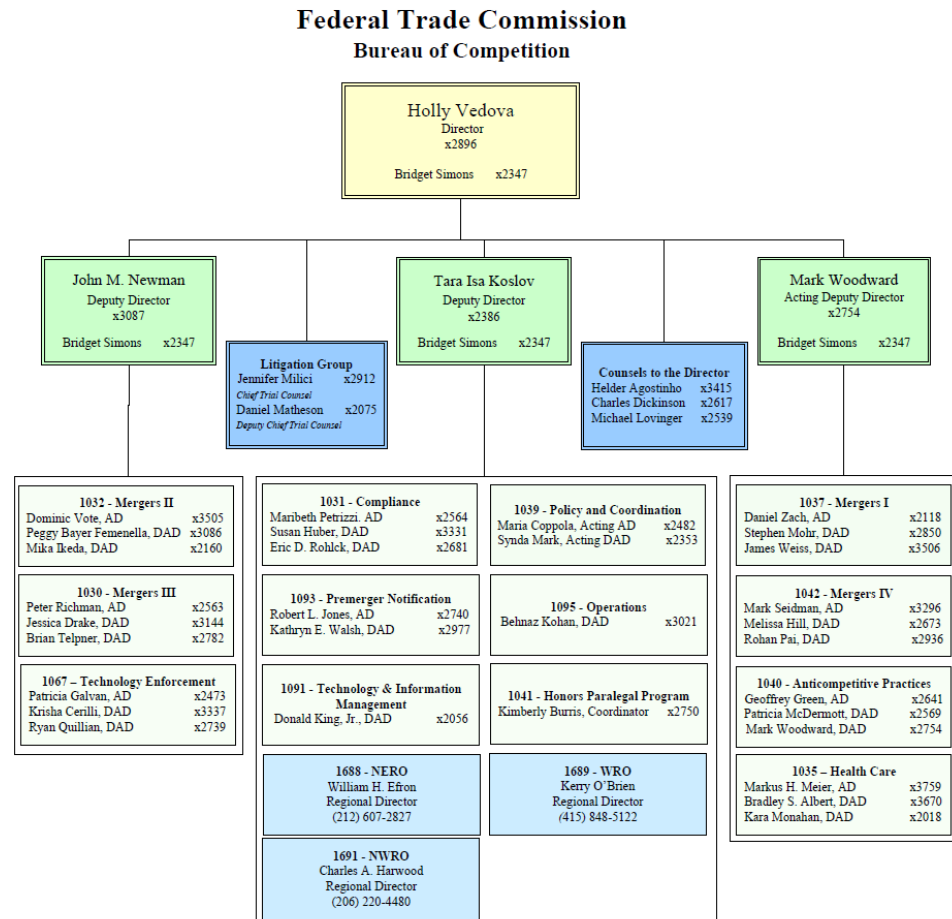
Christine Wilson, Commissioner (Republican appointment)
Antitrust attorney
Sworn in September 26, 2018
Term expires September 26, 2025



Alvaro M. Bedoya, Nominee (Democratic appointment)
Academic attorney (digital privacy issues)/former Hill staffer
Director, Center on Privacy and Technology, Georgetown University Law Center
Nominated September 20, 2021
Term would expire September 26, 2026

Government Organization

■ FTC Bureau of Competition

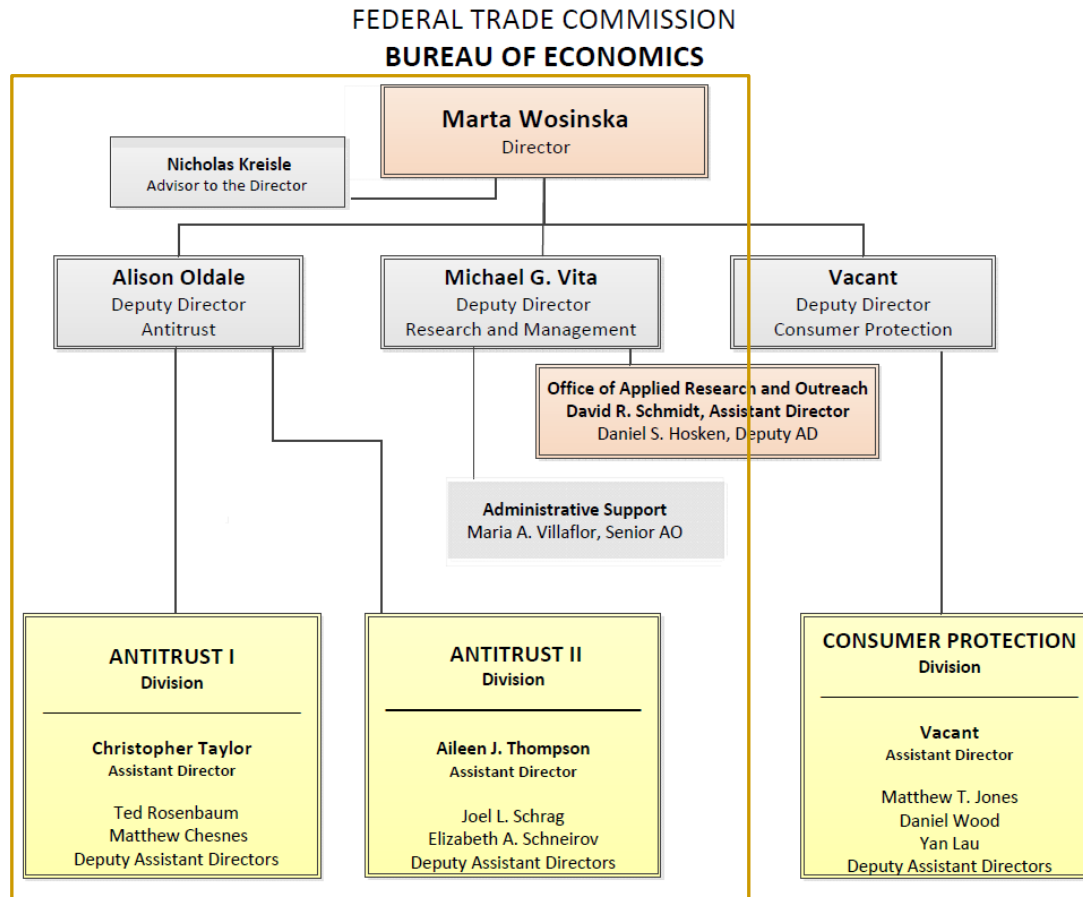


Notes:

1. The Bureau of Competition (BC) is the competition legal arm of the FTC and conducts antitrust investigations and legal challenges.
2. BC has a hierarchical structure.
3. The Director of the Bureau of Competition is appointed by the Commission and is the Commission's chief antitrust enforcement staff official.
4. The BC Director makes recommendations to the Commission on enforcement actions. As a matter of practice, the recommendations of other BC officials also go to the Commission.

Government Organization

■ FTC Bureau of Economics



Involved in antitrust investigations

As of 12/6/2021

Notes:

1. The Bureau of Economics (BE) the economics arm of the FTC and participates in investigations conducted by BC.
2. BE has a hierarchical structure.
3. The Director of the Bureau of Economics is appointed by the Commission and is the Commission's chief economics staff official.
4. The BE Director makes recommendations to the Commission on antitrust enforcement actions. As a matter of practice, the recommendations of other BE officials also go to the Commission.