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May 16, 2025

### **Conservative in name only? FTC Commissioner Mark Meador’s theory of antitrust enforcement bears little resemblance to traditional Republican policies**

**As newly-appointed Republican leaders explain the antitrust enforcement priorities of the Federal Trade Commission (FTC) and Department of Justice Antitrust Division (DOJ), one thing is clear: the Trump administration is crafting a definition of “conservative” antitrust policy that diverges significantly from the enforcement positions typically championed by conservatives. Paradoxically, this new understanding of “conservative” antitrust may have more in common with the antitrust enforcement agenda of progressive DOJ and FTC leadership during the Biden administration than with previous Republican administrations.**

In a recent paper and related speech, newly confirmed Republican FTC Commissioner Mark Meador took pains to cast many of the bedrock antitrust enforcement philosophies of the Biden-era as inherently conservative prerogatives, including the unequivocal statement that “big is bad.” Commissioner Meador’s redefinition of conservative antitrust policy implies that the Trump FTC will exhibit a strong pro-enforcement bent, as it equates the threats posed by big government and big business and describes greater risks from underenforcement than overenforcement in antitrust.

## **Populist themes continue to guide antitrust enforcement policy under Trump**

Commissioner Meador explained his antitrust enforcement philosophy in a May 1, 2025 paper entitled “Antitrust Policy for the Conservative”<sup>1</sup> and in a subsequent speech on “antitrust myth busting” at the Second Annual Antitrust Conference at George Washington University.<sup>2</sup> Commissioner Meador’s arguments mirror [many of the points laid out by DOJ Antitrust Division Assistant Attorney General Gail Slater](#) in a recent speech<sup>3</sup> describing “America First Antitrust.” Slater stated that America First Antitrust is “rooted in conservative values” and is focused on centering the interests of “America’s forgotten men and women.” Both Commissioner Meador and Slater advocate for a populist antitrust enforcement strategy focused on protecting the interests of average Americans across the economy in markets including groceries, health care, and energy. According to Commissioner Meador, this demonstrates that conservatives’ “renewed interest in antitrust enforcement” is motivated by more than “sour grapes over Big Tech censorship.”<sup>4</sup>

### **“Big is Bad” when it comes to government and business**

In a line that could as easily have come from Biden FTC Chair Lina Khan, Commissioner Meador stated unequivocally in his May 1, 2025 article, that “big is bad,” whether referring to the size of government or private businesses.<sup>5</sup> Commissioner Meador encouraged conservatives to reject the “libertarian approach to antitrust law,” which he said leads to enforcers “putting their heads in the sand when asked about how companies entrench, and maintain their economic power.”<sup>6</sup> Commissioner Meador cited President Trump’s call for “strong antitrust enforcement where there is ‘too much concentration of power in the hands of too few’”, and also quoted Vice President J.D. Vance’s statement that “we threw off the chains of monarchy in the early republic, and we didn’t mean to replace them with the chains of private monopoly.”<sup>7</sup>

### **Commissioner Meador’s proposed conservative antitrust policy: redefining consumer welfare and avoiding underdeterrence in antitrust enforcement**

Against that backdrop, Commissioner Meador advocated for a new conservative approach to antitrust enforcement, which adopts a redefined consumer welfare standard as the appropriate measure of competition and focuses on avoiding underdeterrence of the antitrust laws rather than avoiding overdeterrence.

With respect to the consumer welfare standard, while Commissioner Meador adopted the traditional conservative view that the antitrust laws should be interpreted and applied “in a way that preserves the priority of consumer welfare as the ultimate goal,” he argued for a new definition of consumer welfare than the one in use today, which is focused primarily on economic effects. Commissioner Meador argued that the traditional consumer welfare

approach “can excuse almost any merger or monopolization, so long as the benefits received by some market participants exceed the costs imposed on others.”<sup>8</sup> Instead, Commissioner Meador argued that consumer welfare should be defined to mean “consumer surplus, the net benefits to real consumers,” meaning, the “class of persons whose business is courted by the alleged monopolist, their trading partners.”<sup>9</sup>

Commissioner Meador also argued that a conservative approach to antitrust law should be more concerned with avoiding false negatives (i.e., allowing anticompetitive conduct or an anticompetitive merger) than with avoiding false positives (i.e., stopping procompetitive conduct or a procompetitive merger). In other words, Commissioner Meador argued that conservatives should advocate for antitrust policy that is more concerned about underdeterrence of the antitrust laws than about overdeterrence of the antitrust laws.

After laying out this general framework for antitrust, Commissioner Meador opined on specific topics he argued “merit reconsideration as part of this proposed conservative approach.”<sup>10</sup> We discuss several of Commissioner Meador’s proposals below.

### **Minimizing the role of economic analysis**

Commissioner Meador called for a smaller role for economics analysis in the application of the antitrust laws, saying that “[t]he right has too often fetishized economic analysis.” While Commissioner Meador stated that economics “may inform the factual and legal analyses of an antitrust question, he does not consider it to be “a system of thought that can be relied upon to dictate outcomes or set policies.”<sup>11</sup>

### **Structural remedies as an appropriate remedy for exclusionary conduct**

Commissioner Meador argued that structural remedies—including breakups—are not too aggressive to be used to address exclusionary conduct, and he expressed a reluctance to accept behavioral remedies (e.g., licensing commitments or ongoing access requirements). Specifically, he said that “when exclusion has produced structural lock-in that is difficult to unwind, behavioral conditions may not be enough.”<sup>12</sup>

### **Less deference to efficiencies defenses**

Commissioner Meador advocated for enforcers to give less deference to claimed efficiencies and defenses in merger and conduct cases, arguing that efficiencies should only be recognized where they: (1) are realized in the same market as the harms they offset; (2) can only reasonably be achieved through the conduct or transaction at issue; (3) are nonspeculative (i.e., measurable in some way and likely to be realized); and (4) will directly and predominantly accrue to consumers.

Commissioner Meador's proposal, even if adopted, is likely to have limited practical impact in merger trials, where efficiencies defenses are rarely successful, but it may make FTC staff more reluctant to credit efficiencies in cases where the staff does not advocate for a merger challenge.

### **Skepticism of innovation defenses**

With respect to defenses focused on conduct or a transaction that will purportedly spur innovation, Commissioner Meador believes "innovation is too often treated not as one economic metric that can be used to apply law to facts, but . . . a sweeping defense that excuses exclusionary conduct and avoids scrutiny by reframing anything on the path to dominance and power as progress."<sup>13</sup> Commissioner Meador pushed back against claims by merging parties that "greater scale is necessary for innovation." Commissioner Meador contended that some of the most significant innovations have come "not from big businesses benefitting from scale, but from startups in the proverbial (or actual) garage." When analyzing a merger, Commissioner Meador encouraged enforcers to "balance the speculative gains of faster or greater innovation with the loss of competition."<sup>14</sup> While Commissioner Meador believes that antitrust enforcement should "protect the conditions that allow innovation to thrive," conduct that forecloses alternatives and depends on lock-in to successfully innovate should not be protected by an "innovation defense."

### **Merger retrospectives**

Commissioner Meador recommended undertaking comprehensive merger retrospectives, "particularly for mergers that the government attempted to block but failed, to see whether the court's analysis held up in the aftermath."<sup>15</sup> Commissioner Meador interpreted the requirement in Section 7 of the Clayton Act that a merger should be banned where "the effect of such acquisition may be substantially to lessen competition" to mean that a merger should be blocked "if there is reasonable likelihood that it will meaningfully reduce competition." Consistent with Commissioner Meador's position that underdeterrence should be avoided more than overdeterrence, he argued that enforcers should be required to demonstrate a greater level of certainty to excuse a merger that eliminates competition than to block that merger.

### **Legislative proposals**

In addition to advocating for Congress to earmark "drastically more resources for antitrust enforcement," Commissioner Meador suggested additional legislative proposals related to antitrust reform for Congress to consider. Some of his proposals involve codifying the policy prescriptions he outlined earlier in the article, such as "cabining the use of

economic evidence” in antitrust enforcement matters and defining consumer welfare as consumer or trading partner surplus.”<sup>16</sup>

## Conclusion

While it remains to be seen to what extent Commissioner Meador’s redefinition of conservative antitrust policy will be reflected in FTC (and DOJ) enforcement, his position indicates that, in many respect, the agencies’ enforcement posture may more closely resemble the enforcement regime under President Biden than any previous Republican administration. However, Commissioner Meador’s support for maintaining a high level of enforcement activity may run into practical roadblocks. On May 15, 2025, FTC Chair Andrew Ferguson testified before the House Appropriations Committee, where he touted the agency’s recent reduction of nearly 100 FTC personnel, and said he anticipates reducing the full-time-employee headcount at the FTC to the lowest level in 10 years.<sup>17</sup> Whether Commissioner Meador’s potentially aggressive enforcement agenda can be reconciled with Chair Ferguson’s pledge to “reduc[e] the size of the agency in line with [President Trump’s] vision” is an open question. What’s certain, however, is that Commissioner Meador is committed to redefining what “conservative” antitrust policy looks like, and we will be watching closely to see how his views translate into enforcement decisions.

## References

1 Federal Trade Commission, Office of Commissioner Mark R. Meador, “Antitrust Policy for the Conservative” (May 1, 2025) available [here](#) (hereafter “Antitrust Policy for the Conservative”).

2 Federal Trade Commission, Office of Commissioner Mark R. Meador, “Antitrust Myth Busting”, Remarks at the Second Annual Antitrust Conference at the George Washington University presented by the GW Competition & Innovation Lab (May 5, 2025) available [here](#) (hereafter “Antitrust Myth Busting”).

3 Department of Justice speech, “Assistant Attorney General Gail Slater Delivers First Antitrust Address at University of Notre Dame Law School” (April 28, 2025) available [here](#).

4 Antitrust Myth Busting at 5. FTC Chair Andrew Ferguson and AAG Slater [have been vocal](#) about what they perceive to be a “censorship epidemic” being facilitated by large tech companies who purportedly wield their market power to “achieve political outcomes” and suppress conservative speech. In February 2025, the FTC launched a public inquiry and issued a Request for Information (RFI) “to better understand how technology platforms deny or degrade users’ access to services based on the content of their speech or affiliations, and how this conduct may have violated the law.” See Federal Trade

Commission press release, “Federal Trade Commission Launches Inquiry on Tech Censorship” (Feb. 20, 2025) available [here](#).

5 Antitrust Policy for the Conservative at 3 (“Our founders also understood that the concerns about political power apply no less to unchecked economic power.”).

6 Notably, while Commissioner Meador described libertarianism’s focus on the “mere absence of government” as a “narrow conception of human freedom” in his article, in his GW speech he made a point to argue that the “enforcement of the antitrust laws [is] not regulation,” but rather “law enforcement, period. Full stop.” By making this distinction and attempting to carve out antitrust enforcement from the purview of government regulation, Commissioner Meador demonstrated an unwillingness to fully reject the more libertarian elements of the broader conservative coalition.

7 Antitrust Policy for the Conservative at 7.

8 Antitrust Policy for the Conservative at 22.

9 Antitrust Policy for the Conservative at 22.

10 Antitrust Policy for the Conservative at 26.

11 *Id.*

12 Antitrust Myth Busting at 4.

13 Antitrust Myth Busting at 2.

14 Antitrust Policy for the Conservative at 28.

15 Antitrust Policy for the Conservative at 31.

16 Antitrust Policy for the Conservative at 32.

17 U.S. House of Representatives, Testimony of the Federal Trade Commission before the Committee on Appropriations, Subcommittee on Financial Services and General Government (May 15, 2025) available [here](#).

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