

Comparison of FTC Strategic Plans

Issue	FY 2014-2018 (Obama-era)	FY 2018-2022 (Trump-era)	Draft FY 2022-2026 (Khan)
Leaving the Business Community Out and Presuming Its Guilt	To carry out its broad mission, it must make effective use of limited resources by targeting its law enforcement and education efforts to achieve maximum impact and by working closely with federal, state, international, and private sector partners in joint initiatives. In addition, the agency engages in dialogue with a variety of stakeholders to understand emerging issues. (p.5)	Because the FTC has jurisdiction over a wide range of consumer protection issues in order to carry out its broad mission, it must make effective use of limited resources by targeting its law enforcement and education efforts to achieve maximum impact and by working closely with federal, state, international, and private sector partners in joint initiatives. In addition, the agency engages in dialogue with a variety of stakeholders to understand emerging issues. (p. 8)	Build a strategy to engage with and make connections with consumers who are often adversely impacted by powerful companies . Maintain strong relationships with community-based organizations and advocacy organizations nationwide, while continuously seeking new ways to build relationships with trusted community leaders (e.g. church leaders, teachers, community organizers, non-profit leaders, etc.). (p.6)
Burdening Legitimate Businesses	The FTC’s Mission is “[w]orking to protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity .”	The FTC ‘s Mission is “Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity .” (p.2)	The FTC’s Mission is “Protecting the public from deceptive and unfair business practices and policing unfair competition through law enforcement, advocacy, research, and education.” (p.4)
Burdening Legitimate Businesses in Competition Matters	The FTC strives to maintain strong litigation capabilities and works to ensure that the remedies imposed by its consent orders are effective in maintaining competition in the	The Commission will “[i]nvestigate potentially anticompetitive mergers and business conduct efficiently using rigorous, economically sound, and fact-based analyses that enhance	The Commission will “[i]nvestigate potentially anticompetitive mergers and business conduct efficiently using rigorous, economically sound, and fact-based analyses that enhance enforcement

	marketplace without undue burden on businesses. (p.11)	enforcement outcomes and <i>minimize burdens on business.</i> (p.13)	outcomes for <i>the benefit of consumers, workers, and honest businesses.</i> ” (p.16)
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Seismic Shifts in FTC Policy

<u>Issue</u>	<u>Long-standing Policy</u>	<u>Changes Made</u>
Removal of Support of the Free Market (16 CFR § 0.16)	“The Bureau’s [of Competition] work <i>aims to preserve the free market system and assure the unfettered operation of the forces of supply and demand. Its activities seek to ensure price competition, quality products and services and efficient operation of the national economy.</i> The Bureau carries out its responsibilities by investigating alleged law violations, and recommending to the Commission such further actions as may be appropriate.	The Bureau carries out its responsibilities by investigating alleged law violations, recommending to the Commission such further steps as may be appropriate, and prosecuting enforcement actions authorized by the Commission.
Centralizing Authority in Rulemakings (16 CFR § 0.8)	[The Chair] presides at meetings of and hearing before the Commission and participates with other Commissioners in all Commission decisions.	The Chair presides at meetings of and hearings before the Commission and participates with other Commissioners in all Commission decisions. <i>In rulemaking proceedings under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)), the Chair serves as or may designate another Commissioner to serve as the Chief Presiding Officer or may appoint another person to serve as Chief Presiding Officer who is not responsible to any other official or employee of the Commission.</i> ¹
Section 5 UMC Guidance	Obama Era Bi-Partisan Guidance reflects decades of the FTC’s approach to enforcing against “unfair methods of competition.” The guidance	Section 5 Guidance was removed with no plans to update or replace it. In his statement of opposition, Republican Commissioner Phillips said, “the Commission’s action today

¹ This change strips a neutral Administrative Law Judge of their role to preside over consumer protection rulemakings. The ALJ had the ability to determine which issues were up for debate in rulemaking hearings and which parties could present or cross-examine. This centralizes this Presiding Officer authority to the Chair which helps the Majority on the Commission get rulemakings through quicker, bypassing the original intent of the Magnuson-Moss Act to have slow and deliberate rulemakings.

	<p>serves to explain and limit otherwise vague and open-ended statutory authority by:</p> <ul style="list-style-type: none"> - Tethering UMC to the existing antitrust laws - Reinforcing the role consumer welfare plays in defining harm to competition - Underscores the need for a rule of reason approach, which is a similar to a cost benefit approach to weighing any harm against procompetitive benefits. 	<p>unleashes unchecked regulatory authority on businesses subject to Section 5 while keeping those businesses in the dark about which conduct is lawful and which is unlawful.”</p>
<p>Competition Investigations</p>	<p>Staff are required to seek a Commission vote is ordered to initiate a competition investigation.</p>	<p>Staff have now been broadly empowered to self-initiate competition investigations and only need the support of a single Commissioner to turn those investigations into compulsory exercises.</p>
<p>Blacklisting Companies</p>	<p>The law presumes mergers are legal. The burden is on the government to prove otherwise. Since enactment of HSR, all mergers above a certain size must be notified to the government prior to merger to give the government the opportunity to study the deal and decide if it has concerns.</p>	<p>FTC reverts back to dated policy that was largely relied upon before mergers were required to be notified. That policy states that current merger reviews that the agency finds to be problematic will also result on the merging parties being “blacklisted” requiring future transactions be “approved” by the agency. Via fiat the FTC believe future transactions are now presumed unlawful.</p>