
Washington Gets Ready for New Regulations

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Change is coming. And with Barack Obama in transition mode, WilmerHale lawyers held a web conference for clients in November detailing what the Democratic administration means for businesses and a new regulatory agenda.

"There's a fear in some circles that Obama will be pushed too far to the left," said [Jamie Gorelick](#), co-chair of the defense, national security and government contracts practice and chair of the firm's public policy and strategy practice. "But conservative districts that have elected very moderate Democrats should be a check on that power. These so called Blue Dogs will not take positions that are difficult for them at home."

Gorelick, former Deputy Attorney General and General Counsel of the Defense Department in the Clinton administration, provided an overview of Obama's priorities, stating that while the president-elect had received a mandate, he did not win a landslide that could be the impetus for a deluge of legislation. Washington partners [Thomas Mueller](#) and [Jim Lowe](#) also took part in the webinar, focusing on the changes expected in the antitrust world, especially at the Federal Trade Commission (FTC) and Justice Department (DOJ).

Gorelick said the economy would be the immediate focus of the Obama administration, including both short- and long-term stimulus packages, and that a move to beef up regulatory agencies promised greater corporate oversight.

"There will be a regulatory melee," she stated, "We all see a need to create better structures."

In addition, Gorelick indicated that The Committee on Foreign Investment in the US (CFIUS) is also expected to receive particular focus. At a time when investment dollars are at a premium, much of the available funds will be coming from sources located outside the country..

On the antitrust front, Lowe indicated there's an expectation that the DOJ and FTC will be more aggressive on monopoly cases and merger enforcement. "There's a real possibility of merger guidelines being updated," said Lowe. He also stated that the agencies and Congress may eliminate, or at least limit, some antitrust exemptions, including those for farmer cooperatives and the insurance, securities and banking industries.

Furthermore, he believes that while it is not clear at this point who will lead the two antitrust agencies, it is very likely that the frayed relations between the FTC and DOJ will improve and the doctrinal differences between the two agencies should narrow.

"We're going to see a greater emphasis on merger review," said Lowe. "This doesn't mean we're returning to a 'big is bad' theory, but there will be a discernable difference in how closely some mergers are reviewed."

Finally, Lowe noted that other agencies with antitrust authority—including the Federal Energy Regulatory Commission, Federal Communications Commission and Surface Transportation Board—are likely to step up their enforcement.

Mueller, co-chair of the firm's antitrust and competition practice, also said he foresees a narrowing in the interpretation and enforcement of antitrust reviews between the European Commission and the US. During the course of the 1990s and the early part of this decade, the US became the thought leader in the development of antitrust policy globally. "In many respects the US has lost dominance in this area," said Mueller. "I expect this administration to reassert itself." Invigorated engagement with foreign antitrust authorities would dovetail with the Obama administration's broader diplomatic agenda.

Mueller also said the criminal enforcement activity at the DOJ is likely to remain a high priority, with an emphasis on addressing long open criminal investigations and possibly an effort to resolve more cases with foreign individuals on a plea bargain basis. "There's going to be an effort to fast-track criminal cases."

Specifics of just how numerous and sweeping the reform will be will become more clear as Inauguration Day nears. But, suffice it to say, it is time for business leaders to take note: change is most definitely coming.