

Competition Policy Gets a Top Spot in the White House

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Following weeks of [speculation](#) about a potential role for Columbia Law Professor Tim Wu in the Biden Administration, the White House [announced](#) on March 5 that Wu has been named Special Assistant to the President for Technology and Competition Policy. As an official housed in the National Economic Council ("NEC"), Wu will not directly command staff within federal agencies or set the agencies' enforcement or regulatory agendas. Instead, Wu will most likely focus on coordinating federal agencies' efforts to identify and address competition issues. Given his history, Wu could seek to have particular influence on the Federal Communications Commission ("FCC") and Federal Trade Commission ("FTC") as they shape their Biden Administration agendas.

Wu's history as a law professor and advocate may offer some clues about how he will approach his duties. He rose to prominence as an advocate of "net neutrality," a phrase he [coined](#) in 2002. In general, his scholarship focuses on telecommunications, technology, and competition.

After the 2020 presidential election, Wu and several former federal antitrust officials authored a Washington Center for Equitable Growth (WCEG) [report](#) entitled "Restoring Competition in the United States: A Vision for Antitrust Enforcement for the Next Administration and Congress." The report that concludes the "U.S. economy is plagued by a problem of excessive market power" and "antitrust enforcement has failed to prevent this problem." Among the report's recommendations is a suggestion to create a White House Office of Competition Policy within the NEC, to bring a "'whole government' approach to competition policy."

Although the White House has not created such an office, Wu's title and administrative home in the NEC closely track WCEG's advice. In the view of Wu and his co-authors, the White House should "pressure agencies to open up closed markets while discouraging agencies from entrenching the industries that they regulate." Agencies that the WCEG report lists as possessing competition-related rulemaking authority range from the FDA to the Federal Housing Finance Agency.

Wu's record and the current political environment, however, suggest that the internet and communications industries are likely to be a core part of his focus. The Department of Justice, FTC, and FCC will be central to any ramp-up in competition regulation or enforcement in this arena. These agencies have over time played complementary, but sometimes competing, roles in internet and communications issues, particularly in large communications and media mergers. With the shifting jurisdictional classification of broadband internet services at the FCC, moreover, the dividing line between FCC and FTC jurisdiction over various players in the market has been unclear. Both the FCC and FTC, for example, jointly took an aggressive stance against VoIP gateways through which unlawful robocalls were being transmitted.

These agencies present challenges to an assertive White House coordinating role. The FCC and FTC

are independent; the selection of agency chairs and nominations to fill vacancies could indicate how willing the agencies will be to coordinate with the White House. At the same time, the Justice Department's independence was a [prominent issue](#) in Merrick Garland's confirmation hearings and could affect how the White House attempts to shape the Department's competition policy agenda.

Wu will also have competition of his own within the White House. For instance, OMB's Office of Information and Regulatory Affairs has a direct role in reviewing proposed federal regulations and may be more reluctant to issue aggressive regulations. Other White House components, from the Office of Science and Technology Policy to the Domestic Policy Council, are likely to make their voices heard, too.

We will closely monitor developments as Wu's role and the leadership picture in key agencies become clearer.