

How the 2026 midterm elections could affect antitrust policy and enforcement

The 2026 midterm elections will determine control of Congress during the final two years of President Donald J. Trump's term. While Congress does not directly enforce antitrust laws, it significantly influences competition policy through oversight, appropriations, legislation and confirmations. As a result, changes in congressional control can affect the intensity and direction of antitrust enforcement even if the Executive Branch remains unchanged.

Historically, shifts in congressional control have had a greater impact on enforcement priorities than on substantive antitrust law. For example, congressional investigations into digital-platform markets helped shape public debate, agency priorities and subsequent antitrust litigation involving major technology companies.

Congressional oversight and investigations

A change in House control could immediately alter committee leadership and investigative priorities. Congressional committees have broad authority to hold hearings, issue subpoenas, compel testimony and request documents from private companies and federal agencies. These investigations often influence regulatory priorities and generate substantial public and media attention even when they do not result in new legislation.

For businesses, congressional investigations can create significant legal, operational and reputational risks. Companies may face extensive document requests, executive testimony, public scrutiny and increased regulatory attention. Industries likely to remain a focus of congressional interest include:

- Digital platforms and online marketplaces
- Artificial intelligence and data markets
- Healthcare and pharmaceuticals
- Consumer pricing practices
- Media and entertainment
- Energy and transportation.

Funding and resources for antitrust agencies

Congress also influences antitrust enforcement through funding decisions affecting the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division. Increased appropriations can enable agencies to hire additional attorneys, economists and technologists, as well as pursue more investigations and litigate more cases simultaneously.

From a business perspective, enforcement activity often depends as much on agency resources as on legal standards. Better-funded agencies can review more transactions, investigate more complaints and devote greater resources to complex cases.

Legislative and judicial developments

Congressional control may affect the advancement of antitrust legislation relating to digital platforms, merger enforcement, pharmaceutical pricing and other competition issues. Although sweeping reforms remain difficult because they require agreement among both chambers of Congress and the president, targeted legislative initiatives may continue to influence agency priorities and enforcement strategies even when they do not become law.

Senate control can also have long-term consequences through the confirmation of federal judges and senior agency officials. Judicial decisions ultimately shape how antitrust laws are interpreted and applied, while leadership changes at antitrust agencies can influence enforcement priorities and litigation strategies.

Implications for companies

Regardless of the election outcome, antitrust scrutiny is likely to remain significant. Competition policy has become an area of bipartisan interest, particularly in technology, healthcare, AI and data-driven markets.

Companies that secured merger approvals, consent decrees or negotiated settlements with the FTC or DOJ during the first two years of the Trump administration may also face renewed scrutiny if Democrats gain control of one or both chambers of Congress. Congressional committees could revisit high-profile transactions, examine the adequacy of remedies accepted by the agencies or investigate whether political considerations influenced enforcement decisions. While Congress cannot reopen completed agency actions on its own, oversight hearings, document requests and public investigations could subject previously approved transactions to additional scrutiny and increase pressure on regulators to closely monitor compliance with merger conditions and settlement commitments.

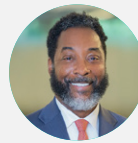
Companies should focus on practical risk management rather than electoral predictions by:

- Reviewing and updating antitrust compliance programs
- Ensuring document-retention and investigation-response procedures are current
- Assessing antitrust risks related to mergers, acquisitions, and strategic partnerships
- Evaluating AI, data and platform-related business practices
- Monitoring congressional investigations and enforcement trends in their industry
- Preparing for increased regulatory and public scrutiny in concentrated markets

Conclusion

The most significant antitrust effects of the 2026 midterm elections are likely to result from established congressional powers rather than major legislative changes. Shifts in oversight priorities, agency funding, legislative agendas and confirmations can all affect how antitrust policy is enforced and perceived. For businesses, the key takeaway is that competition-related scrutiny from regulators, lawmakers and courts is likely to remain an important feature of the legal and regulatory landscape regardless of which party controls Congress.

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