

FTC's Changing Model Raises Questions About Its Mission

By **Nick Cheolas and Ian Barlow** (October 27, 2026)

In a Sept. 14 speech on the Federal Trade Commission's "model, mission and future," Commissioner Mark Meador argued that the FTC's traditional institutional model has "threatened to overshadow" its underlying mission.[1]

Meanwhile, Chairman Andrew Ferguson has signaled that the commission is moving away from its internal administrative adjudicatory process and toward federal court litigation, while embracing more direct presidential supervision of the agency.

In recent speeches and statements, FTC leaders have sketched out a vision of an agency that operates differently from its recent past but continues to play a distinct role as a competition and consumer protection enforcer.

However, both officials continue to defend a distinct role for the FTC as an antitrust enforcer alongside the U.S. Department of Justice Antitrust Division, and Ferguson has pushed back against recent proposals to consolidate federal antitrust enforcement within the DOJ.[2]

Their comments come as several distinctions between FTC and DOJ enforcement are narrowing.

Recent constitutional decisions have placed pressure on the FTC's traditional administrative structure, while the U.S. Supreme Court's June 29 decision in *Trump v. Slaughter* eliminated the statutory protection against at-will removal that had long been associated with the commission's independence and multiparty makeup.

Senior officials at both agencies have emphasized presidential accountability more openly: In an FTC statement on March 18, 2025, Ferguson described presidential removal authority as "necessary to ensure democratic accountability."

At the Sept. 17, 53rd Annual Fordham Conference on International Law and Policy, Associate Attorney General Stanley Woodward of the U.S. Department of Justice rejected the suggestion that political appointees should defer to unelected experts in setting enforcement policy.[3]

But as the FTC moves away from some of its traditional institutional features, the key question is how its distinctive enforcement mission will evolve as well.

The FTC's Model Is Changing

Several recent legal decisions accelerated the FTC's procedural evolution. In 2023, the Supreme Court, in *Axon Enterprise Inc. v. FTC*, **allowed** constitutional challenges to FTC administrative enforcement actions to proceed immediately in federal district court, rather than requiring defendants to wait for the conclusion of the administrative proceeding.[4]



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In 2024, the Supreme Court, in *SEC v. Jarkesy*, restricted administrative adjudication of claims resembling traditional actions at law.[5] Building on *Jarkesy*, the U.S. Court of Appeals for Fifth Circuit, on March 20 **held** in *Intuit Inc. v. FTC* that deceptive advertising claims implicate private rights that must be adjudicated in an Article III court.[6]

Then came June's decision in *Trump v. Slaughter*. There, the Supreme Court held that the FTC Act's for-cause removal provision violates the separation of powers, overruling the high court's 1935 decision in *Humphrey's Executor v. U.S.*, and making FTC commissioners removable at will by the president.[7]

The ruling removed the principal legal protection associated with the commission's institutional independence, though the FTC remains a multimember body with staggered terms and a statutory partisan-balance requirement.

Ferguson has embraced the court's view of presidential removal authority. After President Donald Trump removed Democratic Commissioners Rebecca Slaughter and Alvaro Bedoya on March 18, 2025, Ferguson made his statement that same day about presidential removal authority being necessary for ensuring democratic accountability.

Meador echoed the same point in his Sept. 14 speech, saying the American people "have a constitutional right to control the policy and direction of the Federal Trade Commission through their duly elected representative, the President of the United States."

In his Sept. 17 Fordham comments, Woodward called the idea that political appointees should defer to unelected experts "blatantly unconstitutional" and warned against officials who "ignore, delay, frustrate, or quietly sabotage" presidential priorities.

While presidential appointments have always influenced federal antitrust policy, recent agency leadership statements may suggest a difference in degree. Current leadership speaks openly of the president's authority to direct enforcement policy and of political appointees' obligation to carry it out.

That approach may improve coordination and democratic responsiveness. It may also make both agencies' priorities more sensitive to presidential transitions.

Federal Courts and Procedural Convergence

Ferguson is also reducing a major procedural difference between the agencies. At Georgetown University on Sept. 15, Ferguson described himself as "well and fully done" with administrative adjudication for conduct matters under Part 3 of the Rules of Practice for Adjudicative Proceedings and expects the FTC to move away from Part III merger proceedings as well.

The FTC chairman cited constitutional risk, the inefficiency of defending the forum while litigating the merits and a basic objection to the commission acting as prosecutor and final adjudicator: "No man ought to judge his own cause." [8]

Moving FTC cases to federal court narrows a structural agency distinction. The DOJ already litigates civil antitrust matters and often seeks permanent injunctions before Article III judges.

The FTC has traditionally sought a preliminary injunction in district court while it pursued the merits administratively. A federal court model would subject both agencies to the same

procedural and evidentiary rules and eliminate the prospect of the commission reviewing its own complaint.

The agencies would still divide investigations through the traditional clearance process. While the clearance process has sometimes been criticized as opaque, industry or market expertise typically decides which agency handles a particular matter, with resources, emerging industries and new technologies also affecting assignments.

Conflicts are real, but infrequent: Contested clearances (where the agencies disagree) did not exceed 5.5% of reported transactions between 2000 and 2020. While clearance imposes costs and can produce uncertainty, the available evidence does not suggest interagency conflict is routine.

Meador's Model and "Mission"

Meador has also expressed support for a separate and distinct agency, emphasizing the unique aspects of the FTC's mission as opposed to its model.

In Sept. 14 remarks at George Washington University, Meador distinguished the commission's "progressive era" model — including independence and administrative adjudication — from its statutory mission.

In his account, Congress created the FTC because case-by-case Sherman Act litigation had produced uncertain standards, moved slowly and struggled to address harmful practices before competitive injury fully materialized.

The institutional model, Meador argued, "has neither withstood constitutional scrutiny nor lived up to its promise; the mission, however, remains the reason the agency exists."

Meador then turned to Section 5 of the FTC Act and its prohibition on unfair methods of competition, which the FTC may enforce but not the DOJ. Meador criticized past efforts to treat Section 5 as largely coextensive with the Sherman and Clayton Acts and urged a future in which Section 5 would regain its "independent function."

It remains unclear, though, how expanded unfair methods of competition enforcement might diverge from that advocated in the Section 5 enforcement policy statement the FTC adopted during the Biden administration,[9] which the sole Republican FTC commissioner at that time voted against adopting.[10]

Meador also envisioned a future where the FTC's Section 5 authority would be developed through enforcement instead of statements. While that view may sit in tension with what some have perceived as lighter touch competition enforcement in the current administration, Meador's view of the FTC, at least conceptually, involves broader enforcement against unfair methods of competition that may not amount to Sherman or Clayton Act violations.

The Continuing Case for a Separate FTC Competition Bureau

The proposed One Agency Act would transfer the FTC's antitrust personnel, matters, assets and funding to the DOJ and remove the FTC's unfair-methods authority, while leaving its consumer protection mission in place.

The bill, originally proposed by Sen. Mike Lee, R-Utah, in 2020, has been reintroduced in

both chambers of the current Congress by Lee and Rep. Ben Cline, R-Va.[11] The bill's findings assert that overlapping jurisdiction wastes resources, delays enforcement and creates uncertainty.

Even as other external forces push the agencies' models toward convergence, Ferguson and Meador have defended maintaining two federal enforcers.

First, Ferguson has leaned into the FTC's parallel consumer protection mission, emphasizing that consumer protection law can address abusive practices and may obtain relief more quickly than antitrust cases.[12] He has sought to supercharge that side of the agency while continuing antitrust enforcement.[13]

Second, the FTC also possesses unique tools beyond litigation: The FTC Act Section 6 market studies, compulsory information gathering, the Bureau of Economics, competition advocacy, workshops, reports to Congress and retrospective analysis. Meador argues that this expertise should assist courts, other enforcers and Congress, not merely support the commission's own cases.

Third, because the FTC's dual antitrust and consumer protection missions overlap, expertise in one informs the other. Former Acting Chair Maureen Ohlhausen explained this in a 2014 article noting, among other factors, a series of cases in which "the justifications for anticompetitive conduct [we]re couched in terms of protecting consumers." [14]

When the FTC considers consumer regulations and enforcement that restrict advertising and data use, it is useful that the agency has expertise evaluating how that may affect prices and innovation.

Some observers, including at the International Center for Law & Economics, an independent, nonprofit, nonpartisan global research and public policy think tank, have posited that "keeping the competition and consumer-protection enforcement functions together" fosters this balancing of interests, since the FTC commissioners are responsible for advancing both missions.[15]

Ferguson also highlighted the operational and logistical challenges of integration, including how the FTC's competition economists, market-study functions, pending matters and agency-specific expertise would fit within the Antitrust Division.

Ferguson also argued that Congress would need to revise the FTC-specific statutes to transfer enforcement authority to the DOJ. These concerns may be manageable, but would affect the speed, continuity and quality of enforcement during any transition.

This expansive view of the FTC's mandate, beyond enforcement, has deeper institutional roots: Former Chairman William Kovacic wrote more than 20 years ago that a successful competition agency does not engage "simply, or even primarily," in antitrust enforcement; research, hearings, empirical analysis and advocacy are also essential.[16]

In 2019, former Chairman Timothy Muris similarly tied durable agency success to a coherent mission that survives electoral cycles.[17] These accounts do not resolve whether two agencies are optimal, but they identify capabilities that a consolidation proposal would need to preserve.

The Stability Trade-Off

The emerging approach carries a less discussed trade-off: Ferguson, Meador and Woodward describe elections and presidential supervision as features of legitimate antitrust enforcement.

That view may empower each new administration to more aggressively align competition enforcement with their broader economic and industrial priorities. At the same time, it may create an environment for sharper transitions in case selection, enforcement priorities and settlement posture.

Maintaining two agencies may magnify both effects. During a single administration, common presidential direction could produce greater consistency across the DOJ. Across administrations, the agencies' different statutes and tools could give each new leadership team two vehicles to implement a new enforcement vision. Long-running investigations, negotiated orders and guidance documents may become less durable as a result.

Implications For The Future of FTC Antitrust Enforcement

For counsel and antitrust observers, three implications bear watching.

First, the FTC's status as a distinct competition enforcer now depends more heavily on case selection, particularly whether the commission develops stand-alone Section 5 cases that the DOJ could not bring and uses its competition and consumer protection authorities in complementary ways.

Second, increasing reliance on federal court litigation in line with the DOJ may make forum, strategy and settlement expectations more consistent within a given administration.

Finally, greater presidential control may make enforcement priorities more responsive to changes in administrations, requiring businesses to distinguish durable policies and priorities, and enforcement trends that may prove less lasting.

The FTC's continuing distinctiveness will ultimately depend on how it uses its broader statutory mandate and institutional expertise alongside the DOJ.

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[1] Mark R. Meador, The Model, Mission, and Future of the Federal Trade Commission (Sept. 14, 2026).

[2] Khushita Vasant & Chris May, U.S. FTC's Ferguson Says Advocates of One Agency Act Unrealistic About Costs, MLex (Sept. 18, 2026).

[3] Andrew N. Ferguson, Statement of Chairman Andrew N. Ferguson (Mar. 18, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/chairman-ferguson-statement.pdf; Stanley E. Woodward Jr., Antitrust Federalism, Remarks at the 53rd Annual Conference on International Antitrust Law and Policy, Fordham Law School (Sept. 17, 2026).

[4] Axon Enter. Inc. v. FTC, 598 U.S. 175 (2023).

[5] Sec. & Exch. Comm'n v. Jarkesy, 603 U.S. 109 (2024).

[6] Intuit Inc. v. FTC, 170 F.4th 411 (5th Cir. 2026).

[7] Trump v. Slaughter, No. 25-332, Slip Op. at 2 (2026).

[8] FTC Chairman Says Agency Is "Done" With In-House Administrative Litigation for Conduct Cases, King & Spalding (Sept. 17, 2026) (reporting Ferguson's Georgetown remarks).

Khushita Vasant & Chris May, U.S. FTC's Ferguson Says Advocates of One Agency Act Unrealistic About Costs, MLex (Sept. 18, 2026).

[9] Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

[10] Christine S. Wilson, Comm'r, Fed. Trade Comm'n, Dissenting Statement Regarding the "Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act" (Nov. 10, 2022).

[11] One Agency Act, S. 4918, 116th Cong. (2020); One Agency Act, S. 1059, 119th Cong. (2025); One Agency Act, H.R. 384, 119th Cong. (2025).

[12] David P. Wales & Karen M. Lent, The Evolving Antitrust Enforcement Landscape: Key Insights and Practical Takeaways From the 2026 Georgetown and Fordham Antitrust Conferences at 7 (Oct. 2026).

[13] Andrew N. Ferguson, A Conversation With FTC Chairman Andrew Ferguson: Enforcement Priorities and Practical Advice for Companies, interview by Ashley Taylor & Graham Bryant, Regulatory Oversight Podcast (Sept. 30, 2026).

[14] Ohlhausen, Maureen, One Agency, Two Missions, Many Benefits: The Case for Housing Competition and Consumer Protection in a Single Agency, https://www.ftc.gov/system/files/documents/public_statements/596131/141029-1agency2missions.pdf.

[15] International Center for Law and Economics, Comments to the House Committee on Energy & Commerce (Sept. 28, 2006), <https://laweconcenter.org/wp-content/uploads/2026/09/ICLE-FTC-Reform-RFI-Response-2026-0928.pdf>; <https://laweconcenter.org/resources/icle-comments-to-the-house-commerce-committee-on-ftc-reform/>.

[16] William E. Kovacic, *The Future of U.S. Competition Policy*, 20 *Antitrust* 5 (2004).

[17] Timothy J. Muris, *Will the FTC's Success Continue?*, 26 *Geo. Mason L. Rev.* 1411 (2019).