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Key Digital Asset Issues Require Antitrust Vigilance

By **Luke Taeschler, Sarah Gilbert and Jared Levine** (April 22, 2025, 6:01 PM EDT)

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Only three months into his second term, President Donald Trump has taken several steps to advance the growth of the digital assets industry.

After launching his own digital coin, $TRUMP, days before his inauguration, Trump issued a March 6 executive order establishing a Strategic Digital Asset Reserve. Also in March, Trump Media & Technology Group executives launched a $179 million SPAC targeting crypto and blockchain technologies.

The president's support for the crypto industry is already sparking new investment in the market. And in March, Kraken, a leading digital asset exchange, moved to acquire NinjaTrader for $1.5 billion to expand into the futures trading segment.

While the administration is publicly supportive of the digital assets industry, its approach to antitrust enforcement in this space specifically remains unclear.

However, the administration has signaled its intent to continue active antitrust enforcement generally, already filing two merger challenges this year — the U.S. Department of Justice's January move to block Hewlett Packard Enterprise's planned $14 billion purchase of Juniper Networks Inc. and the Federal Trade Commission's March move to block private equity firm GTCR BC Holdings LLC's planned $627 million acquisition of Surmodics Inc.

Trump's first administration also launched monopolization investigations and legal actions against several large technology companies. As digital asset companies continue to grow in scope and scale, they too will increasingly encounter potential antitrust concerns.

To help guide them and other legal practitioners, we address several issues relevant to the markets for non-fungible tokens and cryptocurrencies, digital wallets, and exchanges, including merger reviews, conspiratorial or monopolistic conduct, and interlocking directorates.

Merger Analysis: Yuga Labs-CryptoPunks as a Case Study

As the digital asset industry expands, consolidation is inevitable. While the DOJ and the FTC have not made any public antitrust filings involving these markets, the 2022 Yuga Labs-CryptoPunks acquisition provides a test case for how the agencies likely will analyze mergers in the NFT-cryptocurrency markets.

In 2022, Yuga Labs acquired complete control over the intellectual property underlying CryptoPunks NFTs. At the time, the parties were far-and-away the two most valuable and popular NFT collections, with their NFT portfolios providing a combined market capitalization of roughly $3.6 billion.[1] If reviewed, the deal would have raised several interesting antitrust questions.

Market Definition

First, agencies would need to determine whether to define the relevant antitrust market as (1) all NFTs sold on digital asset exchanges or, (2) only a subset of NFTs sharing similar qualities and competitive dynamics.

Industry participants refer to highly valuable and popular NFTs like the Yuga and CryptoPunks collections as blue chip NFTs, which are premium quality, command higher prices and, potentially, experience lesser fluctuation in value.[2]

Given their somewhat unique characteristics, the agencies may have considered these blue-chip NFTs to constitute an independent antitrust market.

The FTC has taken exactly this approach to market definition in two recent merger litigations, last year's FTC v. Tapestry and this year's FTC v. Tempur Sealy.

In Tapestry, the U.S. District Court for the Southern District of New York accepted the FTC's view that there was an "accessible luxury" handbag market within the broader handbag market. But in Tempur Sealy, the U.S. District Court for the Southern District of Texas rejected the FTC's argument that there was a distinct "premium mattress" market for mattresses exceeding $2,000.

In addition, one court addressing market definition for digital assets, United American Corp. v. Bitmain, as discussed further below, raised this exact question related to bitcoin cash, ultimately dismissing the claims without answering it.[3]

Market Shares and Market Structure

The agencies would next evaluate concentration levels in the relevant market, as they choose to define it, and the parties' market shares. If the relevant antitrust market in Yuga-CryptoPunks was the market for all NFTs, then that market is highly fragmented with millions of NFTs.

However, if the agencies adopted a blue-chip NFT market, Yuga and CryptoPunks would possibly have a combined market share exceeded 30%, the threshold at which agencies assume a merger may cause anticompetitive effects.[4]

Competitive Effects and Consumer Harm

Finally, the agencies would need to determine whether the transaction will cause anticompetitive effects, including higher prices; reduced quality, output or choice; or increased barriers to entry or expansion. Applied here, agencies may have considered the following theories of harm.

Increased Floor Price for New Drops in the Primary Market

Because NFT companies typically offer new products for the first time through digital drops, antitrust agencies likely would consider the impact on the price of NFTs sold in the primary market through these drops.

Increased Royalties, Commissions on Secondary Market Sales

Because NFT companies also typically collect royalties on secondary sales — when a consumer resells an NFT to another customer on an exchange — agencies may consider the impact on the royalty rates collected in this secondary market.

Reduced Innovation or Utility

Because one of the key issues in the NFT space is the "utility" — the function or tangible benefit that comes with the NFT — agencies could consider whether the merger affected the merged firm's incentives to continue innovating and enhancing its NFTs' utility.

Conduct Issues: Claims and Theories Under the Sherman Act

Independent of merger concerns, companies operating in an increasingly consolidated market must be mindful of Sherman Act Section 1, covering conspiracies or other agreements among competitors, and Section 2, covering single-firm exclusionary conduct.

Potential Section 1 Issues

Under Section 1, digital asset companies face antitrust risk in three key areas: price-fixing and market manipulation, group boycotts, and information sharing.

Price-Fixing and Market Manipulation

Over the last decade, there have been several antitrust cases involving financial products like FX, Libor and GSE bonds. Unsurprisingly, this trend has now widened to include digital assets.

For example, United American Corp. v. Bitmain started when the plaintiffs lost a "hash war," a process for determining the future rules governing Bitcoin's blockchain, in 2021.

The plaintiffs then sued the opposing group in the hash war, alleging that the defendants conspired to manipulate Bitcoin's value by collectively agreeing to use all their digital mining power to win the hash war.[5] The U.S. District Court for the Southern District of Florida dismissed the case, holding that the plaintiff failed to plausibly allege an agreement among defendants or harm to competition.[6]

Similarly that year, in In re: Tether and Bitfinex Crypto Asset Litigation, the plaintiffs alleged that the defendants — several cryptocurrency issuers and Bitfinex, the digital asset exchange on which they were traded — conspired to purchase increased volumes of Tether to drive up its value and, in turn, drive up demand for their other cryptocurrencies.[7]

The defendants filed a motion to dismiss, but the U.S. District Court for the Southern District of New York allowed most of the Sherman Act claims to proceed, and the parties are now briefing the plaintiffs' motion for class certification.[8]

Group Boycotts

With respect to group boycotts, there is highly relevant 2015 precedent from the credit default swaps market. In the U.S. District Court for the Southern District of New York in In re: CDS Litigation, many of the largest banks were sued for allegedly conspiring to boycott a rising CDS public exchange trading platform that would have disrupted an industry in which CDS trading was limited to private sales brokered by banks.

One could easily imagine a scenario in which popular NFT companies collectively agree to delist their tokens from a digital asset exchange if their businesses were adversely affected by the exchange's pricing structure or policies — e.g., compliance procedures and fraud detection mechanisms.

Information Sharing

Digital asset companies should also be vigilant about information sharing among competitors, particularly when they use a third-party information service. In the In re: RealPage class action in the U.S. District Court for the Middle District of Tennessee, for example, the plaintiffs are challenging corporate landlords' alleged use of third-party software that algorithmically recommends rent prices based on information submitted by defendants.[9]

In th U.S. District Court for the U.S. District of Minnesota, the DOJ is also currently litigating a case against Agri Stats — a data analytics company — alleging that it facilitated an anticompetitive information sharing and price-fixing conspiracy among major meat processors.[10]

In the digital asset industry, Section 1 information sharing violations could easily be triggered by, for example: (1) exchanges that may communicate with token/crypto companies about using competing exchanges; (2) token-crypto companies who may communicate with one another about granting or denying competitors' access to specific permissions-based, i.e., private, blockchains or digital asset platform; and (3) competitors that may exchange information about the price of digital assets or the prices they are charging other vendors.

Potential Section 2 Issues

Dominant companies — particularly wallets and exchanges — must also be wary of Section 2, which applies to firms with monopoly power and prohibits monopolistic conduct.

Exclusivity and De Facto Exclusivity

Digital asset companies should avoid explicitly exclusive or nonexplicitly exclusive arrangements — e.g., market share discounts or loyalty rebates — which garner suspicion when they foreclose competitors from a "substantial share" of the market, traditionally 40% or higher.[11]

Most recently, the DOJ relied on this theory in United States v. Google LLC, in which the U.S. District Court for the District of Columbia found that Google's agreements with web browsers and smartphone manufacturers prevented competing search engines from gaining sufficient search traffic data to scale and improve their products.[12]

Exclusivity could take several forms here, including, for example, an exchange coercing a wallet provider to link exclusively to its exchange, or vice versa.

Blocked Interoperability

Companies should also avoid designing technology to be incompatible with other products, thereby constructing a "walled garden." In the U.S. District Court for the District of New Jersey, the DOJ's monopolization case against Apple raised this theory, alleging that Apple prohibited developers from launching or improving competing applications on iPhones.

The DOJ alleged that Apple degraded the quality of messages sent to non-iPhone devices and blocked iPhone users from accessing third-party digital wallets that offer better features than Apple's wallet. This issue could arise in the digital asset space if, for example, a popular NFT-cryptocurrency company designed its blockchain to integrate poorly, or be incompatible with, a particular digital wallet.

Refusals to Deal, Self-Preferencing and Tying

The U.S. Supreme's Court 2004 Verizon v. Trinko decision held that — subject to one narrow exception — companies have no duty to deal with their competitors. Nonetheless, plaintiffs have continued to pursue "duty to deal" claims, including in the digital assets industry.

In the Dec. 13 complaint in BiT Global Digital Limited v. Coinbase Global Inc., the plaintiff — a company that mints and sells the cryptocurrency Wrapped Bitcoin — alleged in the U.S. District Court for the Northern District of California that the defendant Coinbase delisted the plaintiff's currency in order to drive sales of its own competing Wrapped Bitcoin currency on the Coinbase exchange.[13]

Although these claims are disfavored, large companies should remain careful about how and when they terminate downstream/upstream partners.

Similarly, digital asset companies should be wary of "tying" claims — i.e., when a company conditions the purchase of one product on the purchase of another one of its products. Google was found liable under this theory last week for its conduct in digital advertising markets, with the court holding that Google unlawfully required customers of its ad exchange platform to use Google's publisher ad server.[14]

Serial and Killer Acquisitions

Companies must also be wary of strategies that could be characterized as using acquisitions to slowly amass a dominant position or kill off nascent but significant competitive threats. Most recently, the FTC brought serial acquisition claims against U.S. Anesthesia Partners Inc. alleging that the defendant "rolled up" several anesthesiologist practices in Texas and then raised prices.[15]

Similarly, a class of eyeglass wearers sued EssilorLuxottica in the Southern District of New York last year alleging for engaging in dozens of allegedly anticompetitive acquisitions competing eyewear brands, eyeglass retailers, and optical labs over the past decade.[16]

And the FTC is currently litigating a "killer acquisition" claim against Meta in the U.S. District Court for the District of Columbia arguing that Meta's 2012 acquisition of Instagram killed off Meta's chief rival threat and allowed it to monopolize the market. These claims are particularly relevant here, as the digital assets industry likely will see substantial consolidation in coming years, including acquisitions in which larger competitors purchase newer, innovative competitors.

Interlocking Directorates

Finally, interlocking directorate issues arise when the same individual serves as an officer or sits on the board of competing companies. Last April, in response to a DOJ investigation, two directors on the Warner Brothers Discovery board resigned from the board of Charter Communications, a competing video distribution company.[17]

Similarly, in 2023, the FTC settled a similar case against Quantum Energy Partners and EQT Corporation.[18] Most recently, Elon Musk raised a Section 8 claim in his lawsuit against Open AI in the Northern District of California.[19]

Section 8 is a potentially easy pitfall for digital asset companies, which are often owned in full or part by private equity or venture capital funds that commonly invest across several firms (and potentially competitors) in the same industry and appoint directors to those firms' boards.

Conclusion

As the digital assets industry continues to mature and consolidate during Trump 2.0, it likely will inevitably bump up against the antitrust laws in new ways.

Because these issues are broad, and thus could affect all different types of market participants, companies and legal practitioners working in this space should remain vigilant against lurking antitrust issues as their industry continues to grow.

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[1] Bored Apes Maker Yuga Labs Acquires CryptoPunks NFT Collection, available at https://techcrunch.com/2022/03/11/bored-apes-maker-yuga-labs-acquires-cryptopunks-nft-collection/?guccounter=1 (Mar. 11, 2022).

[2] What are Blue-Chip NFT Collections?, available at https://dappradar.com/blog/what-are-blue-chip-nft-collections (Dec. 28, 2023).

[3] United American Corp. v. Bitmain, Inc., 530 F.Supp.3d 1241, 1267-68 (S.D. Fla. 2021).

[4] 2023 Merger Guidelines, Section 2.1 at 5-6.

[5] United American Corp., 530 F.Supp.3d at 1241.

[6] Id. at 1274-1275.

[7] In re Tether and Bitfinex Crypto Asset Litigaiton, 576 F.Supp.3d 55, 77-78 (S.D.N.Y. 2021).

[8] Id. at 93-94.

[9] In re RealPage, Inc., Rental Software Antitrust Litig. (No. II),709 F. Supp. 3d 478 (M.D. Tenn. 2023); Duffy v. Yardi Sys., No. 2:23-cv-01391-RSL (W.D. Wash. Dec. 04, 2024).

[10] United States v. Agri Stats, Inc., No. 23-2009 (JRT/JFD), 2024 WL 2728450 (D. Minn. May 28, 2024).,

[11] Tampa Elec. Co. v. Nashville Coal Co., 365 U.S. 320 (1961).

[12] United States v. Google, 747 F.Supp.3d 1 (D.D.C. 2024).

[13] Bit Global Digital Limited v. Coinbase Global Inc., Complaint at ¶¶ 21-22, (N.D. Cal. 2024).

[14] United States v. Google LLC, No. 23-cv-00108, 2025 WL 1132012 (E.D. Va. Jan. Apr. 17, 2024).

[15] FTC v. U.S. Anesthesia Partners, Inc., No. 4:23-cv-03560, 2024 WL 2137649, at *7-8 (S.D. Tex. May 13, 2024).

[16] In re Eyewear Antitrust Litigation, No. 1:24-cv-04826-MKV, Direct Purchasers' Consolidated Amended Complaint, complaint at ¶¶ 68-99 (S.D.N.Y. 2024).

[17] Two Warner Bros. Discovery Directors Resign after Justice Department Expresses Antitrust Concerns, available at https://www.justice.gov/archives/opa/pr/two-warner-bros-discovery-directors-resign-after-justice-department-expresses-antitrust.

[18] In the Matter of QEP Partners, LP, et al., Docket No. C-4799, Decision and Order, available at https://www.ftc.gov/system/files/ftc_gov/pdf/2210121c4799eqtquantumfinalorder.pdf.

[19] Musk v. Open AI, et al., Case No. 4:24-cv-04722-YGR, Complaint at ¶¶ 368-382, (N.D. Cal. 2024), available at https://business.cch.com/ald/MuskvAltmanFirstAmendedComplaint.pdf.