

**JULY 9, 2021**

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White House Issues Executive Order on Promoting Competition in the American Economy

The White House announced today that President Joe Biden issued an expansive executive order designed to enhance competition across multiple sectors of the U.S. economy, including healthcare, technology, internet service, transportation, consumer products, banking and financial transactions, and the agricultural industry.

The order particularly focuses on merger enforcement and challenging corporate consolidation that President Biden said has led to higher prices for consumers and lost jobs and decreased pay for workers. The order calls on the antitrust agencies, the Department of Justice (DOJ) and Federal Trade Commission (FTC), to enforce the antitrust laws “vigorously” and challenge deals that are likely to raise prices for consumers. The order directs the antitrust agencies to focus enforcement efforts in particular on labor markets, agricultural markets, healthcare markets (which includes prescription drugs, hospital consolidation, and insurance), and the tech sector. The order also recognizes that the law allows the DOJ and FTC to challenge prior “bad” mergers that past Administrations did not previously challenge.

The order also focuses on labor markets and seeks to raise wages and make it easier for workers to change jobs and for small businesses to compete by (1) encouraging the FTC to ban or limit employment non-compete agreements and to ban unnecessary occupational licensing restrictions and (2) encouraging the FTC and DOJ to strengthen antitrust guidance to prevent employers from collaborating to suppress wages or reduce benefits by sharing information with one another.

In sum, the order involves 72 initiatives by more than a dozen federal agencies, specifically targeting “competition problems” that President Biden said have led to higher prices across various sectors, including:



- **Healthcare** – The order (1) emphasizes that hospital mergers can be harmful to patients and encourages the DOJ and FTC to review and revise their merger guidelines to ensure patients are not harmed by such mergers, (2) calls to allow the import of “safe and cheaper” drugs from Canada, (3) would permit hearing aids to be sold over the counter, and (4) directs HHS to standardize plan options in the National Health Insurance Marketplace so people can comparison shop more easily.
- **Technology** – The order announces an Administration policy of greater scrutiny of transactions by large internet platforms, with particular attention to the acquisition of nascent competitors, serial mergers, the accumulation of data, and competition by “free” products. The Order also encourages the FTC to establish rules on surveillance and the accumulation of data and the effect on user privacy.
- **Internet Service** – The order seeks to ban excessive early termination fees and require clear disclosure of plan costs, as well as ending landlord exclusivity arrangements that leave tenants with a single internet option.
- **Transportation** – The order aims to (1) make it easier for travelers to get refunds from airlines and to comparison shop for flights by requiring clear upfront disclosure of add-on fees, (2) focus on rapid consolidation in the global market for maritime shipping and calls for vigorous enforcement against shippers charging American exporters exorbitant charges, and (3) increase rail competition by strengthening obligations of railroad track owners to provide rights of way to passenger rail and to treat other freight companies fairly.
- **Banking and Financial Transactions** – The order encourages (1) DOJ and the agencies responsible for banking to update guidelines on banking mergers to provide more robust scrutiny of mergers and (2) the Consumer Financial Protection Bureau to issue rules allowing banks to allow customers to take their financial transaction data when they switch financial institutions.
- **Agriculture** – The order seeks to “empower family farmers and increase their incomes” by directing the Department of Agriculture to consider issuing new rules to make it easier for farmers to bring and win claims and stop the “abusive practices” of some meat processors.

This executive order is in line with recent efforts at the FTC and DOJ suggesting increased antitrust enforcement in certain industries such as technology, in labor markets, and government contracts and procurement. The order also builds off one that former President Barack Obama issued in 2016, which encouraged agencies to consider competition in their decisions and rulemakings. That order came near the end of Obama’s presidency, and few agencies followed through on its suggestions. President Biden’s order goes further by proposing specific steps that federal agencies should take.

It remains to be seen how today’s order will be implemented by the various federal agencies it mentions or what specific actions those agencies will take. While the White House can command executive branch agencies to take action, the order also encompasses many independent agencies like the FCC and FTC. The Order also describes many of its objectives as “suggestions” that may take certain agencies varying degrees of speed to develop and implement.

We will be issuing future client alerts that examine in more detail the actions being announced today. In the interim, we encourage you to contact our antitrust experts with any questions specific to your business.



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