



President Biden Issues Executive Order Taking Aim at Anti-Competitive Conduct, Including in Shipping and Logistics Sectors

JULY 9, 2021

On July 9, 2021, President Biden signed an [Executive Order](#) entitled “Executive Order on Promoting Competition in the American Economy” aimed at promoting competition across various aspects of the U.S. economy and perceived monopolies. The end goal of the Executive Order is “to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America’s consumers, workers, farmers, and small businesses.” In the transportation and logistics sector, President Biden ordered U.S. transportation agencies to crack down on anti-competitive conduct and unjust fees in the rail and sea shipping industries to try to lower costs to consumers.

In the shipping industry, President Biden cited the rapid consolidation of the global marketplace as a cause of current anti-competitive practices and encouraged “the Federal Maritime Commission to ensure vigorous enforcement against shippers charging American exporters exorbitant charges.” The rationale behind this statement appearing to be recent detention and demurrage fees, due to said consolidation, has “let powerful container shippers charge exporters exorbitant fees for time their freight was sitting waiting to be loaded or unloaded.” The Executive Order, by virtue of citation, also reinforced the need for the Federal Maritime Commission’s current investigation led by Rebecca Dye, which is focusing on practices of ocean common carriers and marine terminals in the first stage of its investigation into port demurrage, detention, and free time.

With regard to rail freight, President Biden encouraged the “Surface Transportation Board to require railroad track owners to provide rights of way to passenger rail and to strengthen their obligations to treat other freight companies fairly.” This language encourages the Surface and Transportation Board to take up a longstanding proposed rule on so-called reciprocal or competitive switching, which is a practice whereby shippers served by a single railroad can request bids from a nearby competing railroad if service is available.

This wide-sweeping Executive Order, which “includes 72 initiatives by more than a dozen federal agencies,” will push regulators to confront consolidation and perceived anticompetitive practices across a broad list of industries.

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