

Competition EO: Biden Signs Sweeping Executive Order Aimed at Promoting Competition

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On July 9, 2021, President Biden signed a comprehensive Executive Order aimed at promoting economic competition across the U.S. economy including through enhanced enforcement of antitrust laws. According to a White House fact sheet, the “Executive Order on Promoting Competition in the American Economy” (the Order) is intended to address corporate consolidation, rising consumer prices, and low wage growth resulting in growing income, wealth, and racial inequalities. The Order calls for a “whole-of-government approach” to tackling these issues.

“The heart of American capitalism is a simple idea: open and fair competition,” President Biden said in remarks before signing the Order. “But what we’ve seen over the past few decades is less competition and more concentration that holds our economy back.” Biden admonished corporations that buy competitors rather than compete, particularly so-called “killer acquisitions” in the tech industry meant to shut down potential threats. He singled out the pharmaceutical and agricultural industries as of particular concern, while also calling on action to curtail the use of privacy-infringing surveillance and data collection practices in the tech industry.

While the Order contains several provisions aimed at reducing consumer prices, it also focuses on increasing competition in labor markets. The Order encourages the Federal Trade Commission (FTC) to consider promulgating rules that curtail the use of non-compete clauses and occupational licensing requirements. The Order also targets the Antitrust Guidance for Human Resource Professionals of October 2016 as ripe for revision in light of ongoing investigations into wage fixing.

The Order also calls on various agencies to revise their rules in several different areas impacting competition and antitrust law, including by:

- Encouraging the Department of Justice (DOJ) and FTC to aggressively enforce existing antitrust laws, and specifically to pursue action to unwind anticompetitive mergers that were unchallenged by prior administrations, particularly in the tech and internet sectors;
- Advising the FTC and DOJ to review and revise horizontal and vertical merger guidelines;
- Urging the FTC to issue rules on surveillance and data accumulation practices, unfair methods of competition on internet marketplaces, and do-it-yourself repairs of devices and equipment;

- Directing the Secretary of Commerce to consider changing the Commerce Department’s position on antitrust enforcement as it relates to intellectual property;
- Establishing a new White House Competition Council, led by the Director of the National Economic Council, to monitor the progress of the actions and recommendations outlined in the Order and to coordinate the federal government’s response to increasing corporate consolidation.

FTC Chair Lina Khan and the Acting Assistant Attorney General for the DOJ Antitrust Division, Richard Powers, issued a [joint statement](#) promising to review their merger guidelines “with the goal of updating them to reflect a rigorous analytical approach consistent with applicable law.”

Senator Amy Klobuchar (D-MN) commended the President for “reimagining what the federal government can do to promote competition under our current laws” but also [called](#) for new legislation to update antitrust laws. Sen. Klobuchar has been outspoken as a proponent of increased enforcement of federal antitrust law, [introducing a comprehensive antitrust reform bill](#) earlier this year. The President’s Executive Order follows on the heels of other bipartisan legislative efforts to strengthen antitrust law, including [proposals to strengthen competition in prescription drug markets](#) as well as to [enhance state enforcement of federal antitrust law](#).

Beyond its focus on the technology sector and internet marketplaces, the Order addresses several other industries. In particular, it calls for changes to the agricultural industry’s treatment of farmers, packers, and stockyard workers, as well as labeling and pricing of meat products. The Order also proposes transparency-focused changes to labeling in the beer, wine, and spirits and tobacco industries. In addition, anticompetitive practices in the telecommunications and transportation industry are highlighted, with the Order calling on agencies to find ways to increase consumer choice regarding broadband service and air travel.

Watch this space for industry-specific analysis of the goals, enforceability, and potential effects of this comprehensive order.

This article is part of our “Unpacking the Executive Order on Promoting Competition” series. Click [here](#) for other related articles. Please contact a member of the Winston & Strawn Antitrust/Competition Practice Group or your Winston relationship attorney for further information.

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