

President Biden's "Executive Order on Promoting Competition in the American Economy"

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On July 9th, President Biden announced his "Executive Order on Promoting Competition in the American Economy" to bolster competition in industries where certain companies dominate the market.¹

The executive order covers a wide range of industrial fields, including technology, health care, agriculture, manufacturing, and transportation, and gives the government agencies in charge of each field 72 specific instructions for promoting competition. This content may be considered the embodiment of the Biden administration's, and that of the future Democratic Party's, economic policy basis, and also describes specific competition promotional measures in the transportation sector, which will be introduced below.

1. Summary of the Executive Order

In various industrial fields in the United States, as a result of accelerated corporate consolidation over the last few decades leading to a small number of large companies dominating markets and stifling competition, prices have risen, worker wages have fallen, personnel mobility has been reduced, and corporate investments and innovations have declined, all of which are premised in the acknowledged growing income, wealth, and racial inequalities. Federal agencies are being asked to limit the monopsony and monopoly of large corporations, promote competition, and make considerations for and implement concrete measures that will benefit the U.S. consumers, workers, farmers, and small businesses.

By describing the specific individual regulations, systems, and business practices for every field, the President's plan can be said to be a "serious executive order" aiming for concrete results rather than a political performance (or something that seeks significance

simply from its issuance). The Washington Post reported that the Order has "kick(ed) off a major new battle between the administration and corporate titans that could reshape aspects of the U.S. economy."²

Here are some of the items listed in the Executive Order.

- Make it easier to change jobs and help raise wages by banning or limiting "non-compete agreements."
- Lower prescription drug prices by supporting state and tribal programs that will import safe and cheaper drugs from Canada.
- Save Americans with hearing loss thousands of dollars by allowing hearing aids to be sold over the counter at drug stores.
- Save Americans money on their internet bills by banning excessive early termination fees, requiring clear disclosure of plan costs to facilitate comparison shopping, and ending landlord exclusivity arrangements that stick tenants with only a single internet option.
- Make it easier and cheaper to switch banks by requiring banks to allow customers to take their financial transaction data with them to a competitor.
- Empower family farmers and increase their incomes by strengthening the Department of Agriculture's tools to stop the abusive practices of some meat processors.
- Increase opportunities for small businesses by directing all federal agencies to promote greater competition through their procurement and spending decisions.
- Calls on the leading antitrust agencies, the Department of Justice (DOJ) and Federal Trade Commission (FTC), to enforce the antitrust laws vigorously and recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.

¹Full text of the President's Executive Order <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

A Fact Sheet of the President's Executive Order <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

² Biden issues sweeping executive order on economic competitiveness - The Washington Post

As one can observe, specific issues are individually addressed. Further instructions (such as establishing a working group by a certain number of days, etc.) are specified in the Order. Moreover, a "White House Competition Council," led by the Director of the National Economic Council (NEC), has been established to monitor progress of the initiatives in the Order.

2. Overview of the Transportation Sector

Regarding the transportation sector, air travel, rail, and shipping are named as those whose "industries are now dominated by large corporations," which is illustrated in the following. * This mark indicates notes by the author.

Airlines

The top four commercial airlines control nearly two-thirds of the domestic market. Reduced competition contributes to increasing fees like baggage and cancellation fees. These fees are often raised in lockstep, demonstrating a lack of meaningful competitive pressure, and are often hidden from consumers at the point of purchase. The top ten airlines collected \$35.2 billion in ancillary fees in 2018, up from just \$1.2 billion in 2007. Inadequate competition also reduces incentives to provide good service. For example, the Department of Transportation (DOT) estimates that airlines were late delivering at least 2.3 million checked bags in 2019.

In the Order, the President directs the DOT to:

- Consider issuing clear rules requiring the refund of fees when baggage is delayed or when service isn't provided—like when the plane's WiFi or in-flight entertainment system is broken.
- Consider issuing rules that require baggage, change, and cancellation fees to be clearly disclosed to the customer.

*The same day after the Presidential Order was issued, the DOT made public comments about new regulations for this item.³

- Consider measures to support airport development and increased capacity and improve airport congestion management, gate access, implementation of airport competition plans pursuant to 49 U.S.C. 47106(f), and "slot" administration.

Rail

In 1980, there were 33 "Class I" freight railroads, compared to just seven today, and four major rail companies now dominate their respective geographic regions. Freight railroads that own the tracks can

privilege their own freight traffic—making it harder for passenger trains to have on-time service—and can overcharge other companies' freight cars.

In the Order, the President encourages the Surface Transportation Board (STB) to:

- Require railroad track owners to provide rights of way to passenger rail and to strengthen their obligations to treat other freight companies fairly.

*In addition, a proposed merger between one of the largest North American freight rail companies, Canadian National Railway, and Kansas City Southern was submitted to STB, which governs what mergers are approved. The Order also calls on the Department of Justice and Federal Trade Commission (FTC) "to enforce the antitrust laws vigorously," and it can be surmised that the response to this large-scale merger was also being taken into consideration.

Shipping

In maritime shipping, the global marketplace has rapidly consolidated. In 2000, the largest 10 shipping companies controlled 12% of the market. Today, it is more than 80%, leaving domestic manufacturers who need to export goods at these large foreign companies' mercy. This has let powerful container shippers charge exporters exorbitant fees for time their freight was sitting waiting to be loaded or unloaded. These fees, called "detention and demurrage charges," can add up to hundreds of thousands of dollars.

In the Order, the President encourages the Federal Maritime Commission to:

- Ensure vigorous enforcement against shippers charging American exporters exorbitant charges.

3. Context and Assessment

As mentioned in the Presidential Order, various economic indicators clearly show that "economic stagnation" has transpired over the past 20 years or so. There is a viewpoint traditionally held within the Democratic Party that as a result of increased corporate consolidation and market concentration, "monopoly rents" have allowed for certain companies to expand their wealth, putting consumers, workers, small and medium-sized businesses, etc. at a disadvantage. Coinciding with efforts for full-scale economic recovery from the Coronavirus pandemic, the President's Executive Order can be viewed as a new economic policy for both the Biden administration and the Democratic Party.

Furthermore, President Biden has taken a stance against monopolies by huge high-tech companies since he was elected last year, and even after the formation of his administration, has continued to appoint economists in favor of stricter antitrust laws to important positions, such as Chairman of the Federal Trade Commission, members of the National Economic Council, etc., as well as clarifying his view of

³ U.S. Department of Transportation Announces Proposed Rule to Require Airlines to Refund Fees to Consumers for Significantly Delayed Bags and Services Not Provided by the Airline | US Department of Transportation

strengthening antitrust policy. Instructions regarding this are even included within this Executive Order, such as requiring the Federal Trade Commission and the Department of Justice to rigorously apply antitrust laws.

The issues addressed "to enforce the antitrust laws to combat the excessive concentration of industry" and to correct "unfair, deceptive, and abusive business practices" that unreasonably impair the interests of consumers, etc. in areas of airfare and internet charges, as was aforementioned, solidify the Executive Order's common theme of "promoting competition."

4. The Business Community's Reaction

At the time of writing this report, no noticeable reaction has been given by the business community. However, Neil Bradley, Chief Policy Officer of the American Chamber of Commerce contended that the Executive Order was "out of touch with reality" in its assessment that the "economy is over concentrated, stagnant, and fails to generate private investment needed to spur innovation," and "smacks of a 'government knows best' approach to managing the economy."⁴ In the future, it is expected that every field will have large organizations making similar oppositions, while small and medium-sized businesses, labor unions, consumer groups, etc. will support the promotion of competition.

⁴ Politico Pro Influence (Business groups knock Biden antitrust order — Toyota backtracks on donating to election objectors — Federal Association of Hospitals external affairs chief heads to childrens' hospitals group)