BRIEFING ROOM

FACT SHEET: Executive Order on Promoting Competition in the American Economy

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The economy is booming under President Biden's leadership. The economy has gained more than three million jobs since the President took office—the most jobs created in the first five months of any presidency in modern history. Today, the President is building on this economic momentum by signing an Executive Order to promote competition in the American economy, which will lower prices for families, increase wages for workers, and promote innovation and even faster economic growth.

For decades, corporate consolidation has been accelerating. In over 75% of U.S. industries, a smaller number of large companies now control more of the business than they did twenty years ago. This is true across healthcare, financial services, agriculture and more.

That lack of competition drives up prices for consumers. As fewer large players have controlled more of the market, mark-ups (charges over cost) have tripled. Families are paying higher prices for necessities—things like prescription drugs, hearing aids, and internet service.

Barriers to competition are also driving down wages for workers. When there are only a few employers in town, workers have less opportunity to bargain for a higher wage and to demand dignity and respect in the workplace. In fact, research shows that industry consolidation is decreasing advertised wages by as much as 17%. Tens of millions of Americans—including those working in construction and retail—are required to sign non-compete agreements as a condition of getting a job, which makes it harder for them to switch to better-paying options.

In total, higher prices and lower wages caused by lack of competition are now estimated to cost the median American household $5,000 per year.

Inadequate competition holds back economic growth and innovation. The rate of new business formation has fallen by almost 50% since the 1970s as large businesses make it harder for Americans with good ideas to break into markets. There are fewer opportunities for existing small and independent businesses to access markets and earn a fair return. Economists find that as competition declines, productivity growth slows, business investment and innovation decline, and income, wealth, and racial inequality widen.

When past presidents faced similar threats from growing corporate power, they took bold action. In the early 1900s, Teddy Roosevelt's Administration broke up the trusts controlling the economy—Standard Oil, J.P. Morgan's railroads, and others—giving the little guy a fighting chance. In the late 1930s, FDR's Administration supercharged antitrust enforcement, increasing more than eightfold the number of cases brought in just two years—enforcement actions that saved consumers billions in today's dollars and helped unleash decades of sustained, inclusive economic growth.

Today President Biden is taking decisive action to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America's consumers, workers, farmers, and small businesses. **Today's historic Executive Order established a whole-of-government effort to promote competition in the American economy.** The Order **includes 72 initiatives by more than a dozen federal agencies to promptly tackle some of the most pressing competition problems across our economy.** Once implemented, these initiatives will result in concrete improvements to people's lives.

Among other things, they will:

- Make it easier to change jobs and help raise wages by banning or limiting non-compete agreements and unnecessary, cumbersome occupational licensing requirements that impede economic mobility.
- 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 for people to get refunds from airlines and to comparison shop for flights by requiring clear upfront disclosure of add-on fees.
- Make it easier and cheaper to repair items you own by limiting manufacturers from barring self-repairs or third-party repairs of their products.

- 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.

The Order also encourages the leading antitrust agencies to focus enforcement efforts on problems in key markets and coordinates other agencies' ongoing response to corporate consolidation. The Order:

- 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.
- Announces a policy that enforcement should focus in particular on **labor markets, agricultural markets, healthcare markets (which includes prescription drugs, hospital consolidation, and insurance)**, **and the tech sector.**
- Establishes a **White House Competition Council, led by the Director of the National Economic Council,** to monitor progress on finalizing the initiatives in the Order and to coordinate the federal government's response to the rising power of large corporations in the economy.

A more detailed summary of the key actions in the Order is provided below:

Labor Markets

Competition in labor markets empowers workers to demand higher wages and greater dignity and respect in the workplace. One way companies stifle competition is with non-compete clauses. Roughly half of private-sector businesses require at least some employees to enter non-compete agreements, affecting some 36 to 60 million workers.

Overly burdensome occupational licensing requirements that impede worker mobility and suppress wages also restrict competition. Today, almost 30% of jobs in the United States require a license, up from less than 5% in the 1950s. Fewer than 5% of occupations that require licensing in at least one state are treated consistently across all 50 states. That locks some people out of jobs, and it makes it harder for people to move between states—particularly burdening military spouses, 34% of whom work in a field requiring a license and are subject to military-directed moves every few years.

Workers may also be harmed by existing guidance provided by the Department of Justice and Federal Trade Commission to Human Resource personnel that allows third parties to make wage data available to employers—and not to workers—in certain circumstances without triggering antitrust scrutiny. This may be used to collaborate to suppress wages and benefits.

In the Order, the President:

- Encourages the FTC to **ban or limit non-compete agreements**.

- Encourages the FTC to **ban unnecessary occupational licensing restrictions that impede economic mobility**.

- Encourages the FTC and DOJ to strengthen antitrust guidance to **prevent employers from collaborating to suppress wages or reduce benefits** by sharing wage and benefit information with one another.

These actions complement the President's call for Congress to pass the Protecting the Right to Organize (PRO) Act to ensure workers have a free and fair choice to join a union and to collectively bargain. Unions are critical to empowering workers to bargain with their employers for better jobs and to creating an economy that works for everyone.

Healthcare

The proposed Order tackles four areas where lack of competition in healthcare increases prices and reduces access to quality care.

***Prescription Drugs*:** Americans pay more than 2.5 times as much for the same prescription drugs as peer countries, and sometimes much more. Price increases continue to far surpass inflation. As a result, nearly one in four Americans report difficulties paying for medication, and nearly one in three Americans report not taking their medications as prescribed.

These high prices are in part the result of lack of competition among drug manufacturers. The largest pharmaceutical companies are able to wield their market power to reap average annual profits of 15-20%, as compared to average annual profits of 4-9% for the largest non-drug companies.

One strategy that drug manufacturers have used to avoid competing is "pay for delay" agreements, in which brand-name drug manufacturers pay generic manufacturers to stay out of the market. That has raised drug prices by $3.5 billion per year, and research also shows that "pay for delay" and similar deals between generic and brand name manufacturers reduce innovation—reducing new drug trials and R&D expenditures.

In the Order, the President:

- Directs the Food and Drug Administration to **work with states and tribes to safely import prescription drugs from Canada**, pursuant to the Medicare Modernization Act of 2003.
- Directs the Health and Human Services Administration (HHS) to increase **support for generic and biosimilar drugs**, which provide low-cost options for patients.
- Directs HHS to issue **a comprehensive plan within 45 days to combat high prescription drug prices and price gouging**.
- Encourages the FTC to **ban "pay for delay" and similar agreements by rule.**

Hearing Aids: Hearing aids are so expensive that only 14% of the approximately 48 million Americans with hearing loss use them.
On average, they cost more than $5,000 per pair, and those costs are often not covered by health insurance. A major driver of the expense is that consumers must get them from a doctor or a specialist, even though experts agree that medical evaluation is not necessary. Rather, this requirement serves only as red tape and a barrier to more companies selling hearing aids. The four largest hearing aid manufacturers now control 84% of the market.
In 2017, Congress passed a bipartisan proposal to allow hearing aids to be

sold over the counter. However, the Trump Administration Food and Drug Administration failed to issue the necessary rules that would actually allow hearing aids to be sold over the counter, leaving millions of Americans without low-cost options.

In the Order, the President:

- Directs HHS to consider issuing **proposed rules within 120 days for allowing hearing aids to be sold over the counter.**

***Hospitals*:** Hospital consolidation has left many areas, especially rural communities, without good options for convenient and affordable healthcare service. Thanks to unchecked mergers, the ten largest healthcare systems now control a quarter of the market. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year, in the middle of a healthcare crisis. Research shows that hospitals in consolidated markets charge far higher prices than hospitals in markets with several competitors.

In the Order, the President:

- **Underscores that hospital mergers can be harmful** to patients and encourages the Justice Department and FTC to review and revise their merger guidelines to ensure patients are not harmed by such mergers.
- Directs HHS to **support existing hospital price transparency rules and to finish implementing bipartisan federal legislation to address surprise hospital billing**.

***Health Insurance*:** Consolidation in the health insurance industry has meant that many consumers have little choice when it comes to selecting insurers. And even when there is some choice, comparison shopping is hard because plans offered on the exchanges are complicated—with different services covered or different deductibles.

In the Order, the President:

- Directs HHS to **standardize plan options in the National Health Insurance Marketplace so people can comparison shop** more easily.

Transportation

In the transportation sector, multiple industries are now dominated by large corporations—air travel, rail, and shipping.

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 actually provided** —like when the plane's WiFi or in-flight entertainment system is broken.

- Directs the DOT to consider issuing **rules that require baggage, change, and cancellation fees to be clearly disclosed** to the customer.

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

***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**.

Agriculture

Over the past few decades, key agricultural markets have become more concentrated and less competitive. The markets for seeds, equipment, feed, and fertilizer are now dominated by just a few large companies, meaning family farmers and ranchers now have to pay more for these inputs. For example, just four companies control most of the world's seeds, and corn seed prices have gone up as much as 30% annually.

Consolidation also limits farmers' and ranchers' options for selling their products. That means they get less when they sell their produce and meat—even as prices rise at the grocery store. For example, four large meat-packing companies dominate over 80% of the beef market and, over the last five years, farmers' share of the price of beef has dropped by more than a quarter—from 51.5% to 37.3%—while the price of beef has risen.

Overall, farmers' and ranchers' share of each dollar spent on food has been declining for decades. In short, family farmers and ranchers are getting less, consumers are paying more, and the big conglomerates in the middle are taking the difference.

Meanwhile, the law designed to combat these abuses—the Packers and Stockyards Act—was systematically weakened by the Trump Administration Department of Agriculture (USDA).

American farmers and ranchers are also getting squeezed by foreign corporations importing meat from overseas with labels that mislead customers about its origin. Under current labeling rules, meat can be labeled "Product of USA" if it is only processed here—including when meat is raised overseas and then merely processed into cuts of meat here. For example, most grass-fed beef labeled "Product of USA" is actually imported. That makes it hard or impossible for consumers to know where their food comes from and to choose to support American farmers and ranchers.

Corporate consolidation even affects farmers' ability to repair their own equipment or to use independent repair shops. Powerful equipment manufacturers—such as tractor manufacturers—use proprietary repair tools, software, and diagnostics to prevent third-parties from performing repairs. For example, when certain tractors detect a failure, they cease to operate until a dealer unlocks them. That forcers farmers to pay dealer rates for repairs that they could have made themselves, or that an independent repair shop could have done more cheaply.

In the Order, the President:

- Directs USDA to consider issuing **new rules under the Packers and Stockyards Act making it easier for farmers to bring and win claims, stopping chicken processors from exploiting and underpaying chicken farmers, and adopting anti-retaliation protections** for farmers who speak out about bad practices.
- Directs USDA to consider issuing **new rules defining when meat can bear "Product of USA" labels, so that consumers have accurate, transparent labels that enable them to choose products made here.**
- Directs USDA to develop a plan to **increase opportunities for farmers to access markets and receive a fair return, including supporting alternative food distribution systems like farmers markets and developing standards and labels** so that consumers can choose to buy products that treat farmers fairly.

- Encourages the FTC to **limit powerful equipment manufacturers from restricting people's ability to use independent repair shops or do DIY repairs—such as when tractor companies block farmers from repairing their own tractors**.

Internet Service

The Order tackles four issues that limit competition, raise prices, and reduce choices for internet service.

*Lack of competition among broadband providers***:** More than 200 million U.S. residents live in an area with only one or two reliable high-speed internet providers, leading to prices as much as *five times higher* in these markets than in markets with more options. A related problem is landlords and internet service providers entering exclusivity deals or collusive arrangements that leave tenants with only one option. This impacts low-income and marginalized neighborhoods, because landlord-ISP arrangements can effectively block out broadband infrastructure expansion by new providers.

In the Order, the President encourages the FCC to:

- **Prevent ISPs from making deals with landlords that limit tenants' choices.**

Lack of price transparency: Even where consumers have options, comparison shopping is hard. According to the Federal Communications Commission (FCC), actual prices paid for broadband services can be 40% higher than advertised. During the Obama-Biden Administration, the FCC began developing a "Broadband Nutrition Label"—a simple label that provides basic information about the internet service offered so people can compare options. The Trump Administration FCC abandoned those plans.

In the Order, the President encourages the FCC to:

- **Revive the "Broadband Nutrition Label"** and **require providers to report prices and subscription rates** to the FCC.

High termination fees: If a consumer does find a better internet service deal, they may be unable to actually switch because of high early termination fees —on average nearly $200 —charged by internet providers.

In the Order, the President encourages the FCC to:

- **Limit excessive early termination fees.**

Companies discriminatorily slowing down internet access: Big providers can use their power to discriminatorily block or slow down online services. The Obama-Biden Administration's FCC adopted "Net Neutrality" rules that required these companies to treat all internet services equally, but this was undone in 2017.

In the Order, the President encourages the FCC to:

- **Restore Net Neutrality rules** undone by the prior administration.

Technology

The Order tackles three areas in which dominant tech firms are undermining competition and reducing innovation:

*Big Tech platforms purchasing would-be competitors***:** Over the past ten years, the largest tech platforms have acquired hundreds of companies—including alleged "killer acquisitions" meant to shut down a potential competitive threat. Too often, federal agencies have not blocked, conditioned, or, in some cases, meaningfully examined these acquisitions.

In the Order, the President:

- Announces an Administration policy of **greater scrutiny of mergers**, especially by dominant internet platforms, with particular attention to the acquisition of nascent competitors, serial mergers, the accumulation of data, competition by "free" products, and the effect on user privacy.

*Big Tech platforms gathering too much personal information***:** Many of the large platforms' business models have depended on the accumulation of extraordinarily amounts of sensitive personal information and related data.
In the Order, the President:

- Encourages the FTC to establish **rules on surveillance and the accumulation of data.**

*Big Tech platforms unfairly competing with small businesses***:** The large platforms' power gives them unfair opportunities to get a leg up on the small businesses that rely on them to reach customers. For example, companies that run dominant online retail marketplaces can see how small businesses' products sell and then use the data to launch their own competing products. Because they run the platform, they can also display their own copycat products more prominently than the small businesses' products.
In the Order, the President:

- Encourages the FTC to establish **rules barring unfair methods of competition on internet marketplaces.**

*Cell phone manufacturers and others blocking out independent repair shops***:** Tech and other companies impose restrictions on self and third-party repairs, making repairs more costly and time-consuming, such as by restricting the distribution of parts, diagnostics, and repair tools.

In the Order, the President:

- Encourages the FTC to issue **rules against anticompetitive restrictions on using independent repair shops or doing DIY repairs** of your own devices and equipment.

Banking and Consumer Finance

Over the past two decades, the United States has lost 70% of the banks it once had, with around 10,000 bank closures. Communities of color are disproportionately affected, with 25% of all rural closures in majority-minority census tracts. Many of these closures are the product of mergers and acquisitions. Though subject to federal review, federal agencies have not formally denied a bank merger application in more than 15 years.

Excessive consolidation raises costs for consumers, restricts credit for small businesses, and harms low-income communities. Branch closures can reduce the amount of small business lending by about 10% and leads to higher interest rates. Even where a customer has multiple options, it is hard to switch banks partly because customers cannot easily take their financial transaction history data to a new bank. That increases the cost of the new bank extending you credit.

In the Order, the President:

- Encourages DOJ and the agencies responsible for banking (the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency) to **update guidelines on banking mergers to provide more robust scrutiny of mergers**.
- Encourages the Consumer Financial Protection Bureau (CFPB) to issue **rules allowing customers to download their banking data** and take it with them.

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