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

The American economy is finally recovering after more than a year of stagnation due to the COVID-19 pandemic. President Joe Biden’s administration wants to continue this momentum and further stimulate the economy. To help in that effort, President Biden recently signed an executive order aimed at increasing competition among businesses.

According to the White House, the order was designed 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.”

The Biden administration notes that corporate consolidation has been accelerating for many years, leaving the majority of industries in the hands of only a few entities. The administration points to this trend as the main reason for slow wage growth and rising consumer prices. This latest executive order intends to reverse these effects.

“[The administration] 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,” the White House said in a release.

All in all, the executive order includes 72 initiatives by more than a dozen federal agencies to help address competition inequality.

Read further to learn more about the executive order.

LABOR MARKET

Currently, nearly half of all private employers make employees sign noncompete agreements, limiting where employees can work during certain periods. Separately, many workplaces require certain licenses to perform specific jobs. The Biden administration believes these current trends are limiting growth.

In the executive order, the White House encouraged the Federal Trade Commission (FTC) to ban or limit noncompete agreements as well as occupational licensing restrictions. Additionally, the executive order urges the FTC and Department of Justice (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 bolster the president’s separate agenda (the Protecting the Right to Organize Act) that seeks to enhance collective bargaining protections for workers.

TechServe ALLIANCE

HEALTH CARE

The executive order addresses competition in health care in four main areas:

1. Prescription drugs
2. Hearing aids
3. Hospitals
4. Health insurance

Prescription Drugs

Right now, large drug manufacturers enjoy incredible profits year over year. The White House alleges that this is due to lack of competition and "pay for delay" tactics, where name-brand drug manufacturers pay generic manufacturers to stay out of the market. Such strategies result in Americans paying 2.5 times more for the same medications as peer countries.

The executive order directs the Food and Drug Administration to work with states and tribes to safely import prescription drugs from Canada, where drugs are less expensive. It also directs the Health and Human Services (HHS) Administration to increase support for generic and biosimilar drugs. Additionally, the order encourages the FTC to ban "pay for delay" and similar agreements.

Hearing Aids

Currently, the White House points out, only 14% of Americans with hearing loss use hearing aids. The administration says it's due to high prices, costing more than $5,000 per pair (typically not covered by insurance). Additionally, hearing aids can only be obtained after a medical analysis by a doctor or specialist—an unnecessary requirement, according to the Biden administration.

The executive order directs the HHS to consider issuing proposed rules within 120 days for allowing hearing aids to be sold over the counter.

Hospitals

Hospitals have been consolidating through mergers for years, resulting in higher prices and fewer rural locations. The White House notes that consolidated hospitals charge far higher prices than hospitals in markets with more competition.

The executive order directs the FTC to review and revise its merger guidelines to ensure hospital mergers do not harm patients. Additionally, the order directs the HHS to support existing hospital price transparency rules and finish implementing bipartisan federal legislation to address surprise hospital billing.

Health Insurance

Consolidation is also an issue in the health insurance sector, according to the Biden administration. Fewer insurance companies mean fewer options for consumers. Even when there are more options, comparing plans continues to be a struggle for many individuals.

The executive order directs the HHS to standardize plan options in the National Health Insurance Marketplace so people can comparison shop more easily.

TECHNOLOGY

The executive order addresses competition in the technology sector in four main areas:

1. Purchasing would-be competitors
2. Gathering personal information

3. Unfairly competing with small businesses
4. Repairing cellphones

Purchasing Would-be Competitors

Big tech platforms have acquired hundreds of companies in the past decade, sometimes aiming only to kill the potential competition. The Biden administration claims the federal government has been too lenient in these situations.

The executive order “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.”

Gathering Personal Information

The current business model of many large tech platforms is the accumulation of individuals’ personal information. The Biden administration is concerned about the breadth of this collected information—information is sometimes compromised through security breaches.

The executive order encourages the FTC to establish rules on surveillance and the accumulation of data.

Unfairly Competing With Small Businesses

Big tech platforms have incredible control over the online marketplace. Often, small businesses rely on these platforms to reach their customers. However, large platforms will sometimes examine the most popular products sold by these small businesses, then replicate them and promote them more prominently on their websites.

The executive order encourages the FTC to establish rules barring unfair methods of competition on internet marketplaces.

Repairing Cellphones

Big tech companies often impose restrictions on how repairs can be made on their products while still honoring warranties. Oftentimes, this restricts otherwise qualified, third-party businesses from making repairs, raising costs on consumers.

The executive order encourages the FTC to issue rules against anti-competitive restrictions on using independent repair shops or doing do-it-yourself repairs of personal devices and equipment.

TRANSPORTATION

The transportation sector is dominated by a handful of corporations. The executive order addresses competition as it relates to:

1. Airlines
2. Rail
3. Shipping

Airlines

There are four commercial airlines that control two-thirds of the industry. This contributes to high prices for consumers, such as with baggage and cancellation fees. The Biden administration points out that these increases often come in lockstep, meaning the top airlines tend to raise them at the same time. These simultaneous increases demonstrate “a lack of meaningful competitive pressure,” according to the White House. Notably, despite this industry consolidation, airlines were late delivering 2.3 million checked bags in 2019, according to the Department of Transportation (DOT).

The executive order directs the DOT to consider issuing clear rules requiring the refund of fees when baggage is delayed or when service isn't actually provided, such as when the plane's Wi-Fi or in-flight entertainment system is broken. Additionally, the order directs the DOT to consider issuing rules that require baggage, change and cancellation fees to be clearly disclosed to the customer.

Rail

The rail industry, like airliners, is heavily consolidated, going from 33 "Class I" freight railroads in 1980 to only seven today. Moreover, four rail companies dominate their respective geographic regions of the United States. These companies can prioritize their own freight traffic, sometimes to the detriment of passenger trains and other companies' freight cars.

The executive order encourages the Surface Transportation Board to require railroad track owners to provide rights of way to passenger rails and strengthen their obligations to treat other freight companies fairly.

Shipping

The industry's 10 largest shipping companies control more than 80% of the global market, leaving manufacturers who need to ship goods "at these large foreign companies' mercy," according to the Biden administration. These companies are allowed to charge exorbitant fees for when their shipments are sitting, waiting to be loaded or unloaded.

The executive order encourages the Federal Maritime Commission to ensure vigorous enforcement against shippers charging American exporters exorbitant charges.

AGRICULTURE

Agriculture consolidation is another concern for the Biden administration. Four companies now control most of the work's seeds, and seed prices have increased as much as 30% annually. This consolidation also limits to whom small farmers can sell their goods, meaning lower price sharing for these farmers. Summarily, farmers are getting less for their goods and consumers are paying more for them, all while large corporations are reaping profits.

Additionally, current labeling rules allow for shady business practices that can harm consumers. For instance, foreign beef manufacturers may use the label "Product of USA" merely if the product was processed here. In fact, that beef may not be from the United States—the White House notes that most grass-fed beef labeled "Product of USA" is actually imported.

The executive order aims to combat these practices through the following directives:

- Directs USDA to consider issuing new rules under the Packers and Stockyards Act that would make 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-it-yourself repairs, such as when tractor companies block farmers from repairing their own tractors.

INTERNET SERVICE

The executive order addresses issues in the internet service sector in four primary areas:

1. Lack of competition
2. Lack of price transparency
3. High termination fees
4. Indiscriminate service slowdowns

Lack of Competition

According to the White House, 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. This situation is sometimes exacerbated when landlords enter exclusivity deals with internet service providers (ISPs), effectively blocking broadband internet expansion for an area.

The executive order encourages the Federal Communication Commission (FCC) to prevent ISPs from making deals with landlords that limit tenants' choices.

Lack of Price Transparency

Even in areas with ISP competition, price shopping can be difficult. In fact, internet prices can be 40% higher than advertised, according to the FCC.

The executive order encourages the FCC to revive the Obama-era "Broadband Nutrition Label" (a simple label that provides basic information about the internet service offered so people can compare options) and require providers to report prices and subscription rates to the FCC.

High Termination Fees

Currently, some consumers are charged fees—nearly $200 in some cases—when terminating a contract with an ISP prematurely.

The executive order encourages the FCC to limit excessive early termination fees.

Indiscriminate Service Slowdowns

Large ISPs can indiscriminately block or slow down online services. This means they could slow service to one website instead or another, effectively redirecting which sites receive traffic. This practice was banned under the "Net Neutrality" rules, but those rules were undone by the previous administration.

The executive order encourages the FCC to restore Net Neutrality.

BANKING AND CONSUMER FINANCE

In the last four decades, 70% of U.S. banks have been lost to closures, mergers or acquisitions. This practice affects consumer pricing and banking access, especially in rural areas. Excessive consolidations can also reduce the amount of small business lending and raise interest rates. Even when there are multiple banking options, it isn't easy to migrate financial transaction history data.

The executive order encourages the 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. Additionally, the order encourages the Consumer Financial Protection Bureau (CFPB) to issue rules allowing customers to download their banking data and take it with them.

SUMMARY

The executive order broadly addresses competition inequalities across market sectors. These proposed initiatives have the potential to help individuals and small businesses alike. However, it remains to be seen how all of these initiatives will play out, as executive orders are essentially a directive to federal agencies to revise their regulations. In other words, some of the proposals may never come to fruition, and those that do may take months to implement. At the very least, this executive order and its initiatives indicate the position of the Biden administration—signaling that it may pursue these agenda items through alternative means, if necessary.

Employers should continue to monitor exactly how the executive order plays out. In the meantime, employers can read the full overview of the order here.