Reflections on President Biden's Executive Order on Competition

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Few would oppose the president's stated goals of lowering prices, raising wages, and increasing convenience for Americans. But his executive order is not the way to achieve them.

KEY TAKEAWAYS

- The president's order represents an agenda that is not intended to foster competition in order to spur growth and innovation. It is intended to redistribute a fixed pie.
- The order rests on the faulty premise that "corporate consolidation has been accelerating" when the best evidence shows that is not the case.
- The real challenge to workers and consumers in the U.S. economy is not too little competition, but too little productivity growth.
- Rather than a redistribution agenda grounded on false premises, the administration would better serve American workers and consumers by implementing a robust growth agenda designed to ensure that average workers thrive.

INTRODUCTION

President Biden signed an executive order on July 9 with a goal of "Promoting Competition in the American Economy."[1] The order includes 72 actions "to help restore competition so that we have lower prices, higher wages, more money, more options, and more convenience for the American people."[2]

Few would oppose lower prices, higher wages, or more convenience. But this is not the way to achieve those goals. With this order, the administration is implementing an agenda progressives call "predistribution"—the idea that "the best path forward is to deal with the underlying market forces that cause inequality in the first place."[3]

In other words, this is not an agenda to foster competition in order to spur growth and innovation; it is an agenda to drive redistribution of a fixed pie. The problem is that the order not only rests on the faulty assumptions that "corporate consolidation has been accelerating" and that corporate profits are the well that redistribution policies can mine, but also on the belief that growth is not needed. The real challenge to workers and consumers in the U.S. economy is not too little competition, but too little productivity growth. Rather than a redistribution agenda grounded on false premises, the administration would better serve American workers and consumers by implementing a robust growth agenda designed to ensure that average workers thrive.

It is troubling that the order is filled with misleading statements designed to build a case that there is a competition crisis in the U.S. economy. For example, it states that in over "75 percent of US industries, a smaller number of large companies now control more of the business than they did twenty years ago."[4] The president declared that there is "less competition and more concentration that holds our economy back. We see it in big agriculture, in big tech, in big pharma. The list goes on. Rather than competing for consumers, they are consuming their competitors."[5] The executive order itself reiterates the claim that increased concentration and decreased competition has denied "Americans the benefits of an open economy" and has widened "racial, income, and wealth inequality."[6] The White House endorses the claim that markups "have tripled" over the last few decades without qualifying this statement.[7] None of these statements are backed by real, objective evidence.

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For example, the White House refers to a study by Grullon, Larkin, and Michaely to assert that "over 75 percent of US industries" have become more concentrated over the last two decades.[8] This study defines industries based on NAICS three-digit classification between 1997 and 2014. But virtually all antitrust economists acknowledge that three-digit-level NAICS disaggregation is a misleading and unreliable measurement tool of market concentration.[9] Moreover, citing increases is irrelevant; what is relevant is whether increases in concentration have led to highly or even moderately increased levels of concentration. If an industry increases its C4 ratio (the share of sales captured by the top four firms in an industry) from 6 percent to 8 percent, then the industry is still highly competitive. But of course, citing such an inflammatory statement makes people think there is a crisis.

In fact, analyzing C4 concentration ratios using granular data from the U.S. Census Bureau's recently released quinquennial economic census reveals that just 4 percent of industries are highly concentrated. The average C4 ratio increased just 1 percentage point from 2002 to 2017—and the share of industries with low levels of concentration grew by around 25 percent.[10]

Moreover, the more concentrated industries were in 2002, the more likely they were to become less concentrated by 2017. Interestingly, less concentrated industries have gained a larger share of the economy between 2002 and 2017.[11] In short, the widely accepted narrative that monopolization is increasing to crisis levels is not supported by the facts. Overall, the U.S. economy remains vibrantly competitive.

The administration repeats the widely cited, but incorrect notion that industry markups are increasing as evidence that industry is leveraging its power to the detriment of consumers. In fact, there is no relationship between price increases and concentration ratios. The best evidence shows that the more concentrated an industry, the lower the price increases.[12] As ITIF has shown, the original study on which this claim is based was faulty and has been widely refuted.[13] One main reason is that the study did not control for the significant increase in intangible capital (something that raised fixed costs), leading to a vast overstatement of markups.

The president's executive order cites the widely repeated claim that new startups are down because of market power. But no study making this argument has done more than assert correlation. ITIF has examined causation and has found that there has been no relationship between market power and new firm formation. Indeed, ITIF has concluded that, "When looking at the relationship between new establishments as a share of total establishments in a particular year at the four-digit NAICS code level and the change in industrial concentration in the industry, there is no relationship."[14]

The fact sheet claims that broadband prices are "as much as five times higher" for the over 200 million U.S. residents in "area[s] with only one or two reliable high-speed internet providers" compared to markets with more options.[15] This is both factually incorrect (even according to the order's own sources) and extremely misleading. The order cites two studies for this claim, however the claim for five times higher prices is specifically examining a small sample of monopoly markets, not "one or two" providers. A second major flaw with this premise is that the second study, supporting the claim that prices are "five times higher" examines quality-adjusted prices—Mbps per dollar, rather than raw prices. The study clearly shows the prices are the same in monopoly and duopoly markets; it's the speeds that are different. We should not be surprised that high-cost areas served only by the legacy telco line have much lower speeds. This is a problem, but it is not a competition problem. Slow speeds in high-cost areas would better be solved by infrastructure subsidies. Price regulation will not encourage upgrades in areas that are uneconomical to invest in.

The White House claims with no evidence that profits are up. Yet, according to the BEA, non-domestic, non-financial corporate profits are much lower now than they were in the 1950s and 60s when the U.S. government enforced a much more stringent antitrust regime.[16]

In other words, the executive order recycles inaccurate claims made by neo-Brandeisian opponents of big business to justify their "predistributionist" agenda. Again, the core economic problem is not related to too little competition, but to too little productivity. This agenda does nothing to address the U.S. productivity crisis; in fact, it will likely make matters worse by limiting the ability of large firms to continue to boost productivity and innovation.

The executive order claims that "too many local newspapers have shuttered or downsized, in part due to the Internet platforms' dominance in advertising markets." While it is true that journalism has changed in recent years, most of the trend has to do with how the Internet has rapidly changed business models for newspapers, not any alleged dominance in online advertising. Many newspapers lost revenue as readers began accessing free articles online and cancelling their subscriptions. Revenue from classified ads also dried up as websites such as Craigslist, Monster.com, and LinkedIn became popular alternatives to the traditional classified ads that brought in revenue for newspapers.[17]

HARMFUL INITIATIVES IN THE PRESIDENT'S ORDER

President Biden's order contains many measures that force competition at the expense of innovation and productivity:

- **To import prescription drugs from Canada:** While it may seem positive, unintended consequences inherently come with this proposal. First, contrary to common wisdom, drug prices increases in the United States have been reasonable.[18] In fact, according to the Peterson Center on Healthcare and Kaiser Family Foundation, the percentage of total U.S. health-care spending going toward retail prescription drugs was consistent from 2000 to 2017, at mostly under 10 percent.[19] Moreover, when examining increases in prescription medicine costs from 2000 to 2019 compared with other facets of the U.S. health care system, such as "hospital and related services" and "medical care," the increase in prescription medicine costs has been right in line with the increase in medical care, and just slightly above the increase in the urban consumer price index, considering all items. Second, importing Canadian drugs in effect also imports Canadian drug price controls, which have long stifled the environment for drug innovation in Canada, meaning we may also be unwittingly importing Canada's lower levels of biopharmaceutical innovation compared to the United States.[20]
- **To combat high prescription drug prices and price gouging:** This represents a blind fight against drug prices irrespective of the considerable innovation preceding their marketability or the efforts made for drugs that never reach the market. Such a fight runs the risks to lower drug prices to an idealized "perfect" competitive price whereby firms have no market power, meaning no capabilities to innovate, research, and fail as part of the inherent process of biopharmaceutical innovation.[21] America's life-sciences innovation industry is the world's most R&D-intensive, and it depends on the revenues derived from one generation of biomedical innovation to fund investment in the next. That's why the Organization for Economic Cooperation and Development (OECD) has found that "There exists a high degree of correlation between pharmaceutical sales revenues and R&D expenditures."[22] This dynamic explains why a number of studies have found that reducing profits—such as through drug price controls, whether implemented through foreign drug reference pricing schemes or other directly imposed limits—would

reduce R&D investment and therefore the number of new drugs innovated. For instance, when the Congressional Budget Office (CBO) examined the potential impact of the proposed House legislation H.R.3, which among other provisions would require drug companies to negotiate lower prices with the government, it concluded that reducing manufacturers' revenues by between $500 billion and $1 trillion over the next decade could result in 8 to 15 fewer new drugs coming to market.

- **To restore net neutrality rules:** The most significant Internet services recommendation the order makes is restoring the Obama-era net neutrality rules. These regulations are grounded in Title II of the Communications Act, which leverages utility-style tools originally designed to regulate the telephone market which was explicitly monopolistic at the time. This reinforces an apparent push for more utility-style provision of broadband, which will have many unintended consequences for investment and innovation in the long term.[23] We would be better off if Congress wrote new net neutrality rules that reflected the dynamism and competitiveness of the broadband market today.[24]
- **To scrutinize more mergers:** The idea that acquisitions are overwhelmingly "killer acquisitions" is largely not supported by data.[25]
- **To encourage the adoption of rules on data collection and surveillance:** This measure overlooks the fact that, should regulators change the rules for how the private sector must handle personal data, these rules should apply to all firms in an industry, irrespective of their size. After all, if regulators want to protect consumer privacy, every potential privacy violation matters regardless of the size of the company involved.[26]
- **To bar the tech companies that run online marketplaces from competing with their own products on these platforms:** Such a prohibition would not only harm American consumers with higher prices, lower quality, and less innovation, but also would create unfair competition because supermarkets, large retail chains, and medium-sized online marketplaces would still be able to offer their own products on their own platforms. The effect would be to selectively prohibit a common business practice for only a few large tech companies.[27]

BENEFICIAL ASPECTS TO THE ORDER

To be sure, there are some proposals that are positive and would likely have beneficial effects:

- **The proposals to "curtail the unfair use of non-compete clauses and other clauses or agreement that may unfairly limit worker mobility"** can prohibit unreasonable non-compete agreements and unfair non-poaching agreements among employers. However, a rule-of-reason approach is needed as some non-compete clauses may sometimes be justified, especially when trade secrets, know-how, and specific knowledge are involved. The measure is positive as it does not prohibit all non-compete clauses but merely those that are used unfairly—meaning when it does not make economic sense to enforce them.
- **Banning "unfair occupational licensing restrictions"** can enable more workers to enter these occupations.
- **The proposal to sell hearing aids over the counter** is likely to reduce costs.

- **More closely scrutinizing hospital mergers** can help address local market power that hospitals have in some areas. Likewise, price comparison and disclosure can empower patients and foster competition without unintended consequences. Moreover, standardization may indeed spur competition through increased price comparison and more straightforward benchmarking.
- **Allowing consumers to move their financial data:** Enabling consumers to take their financial data to new services will facilitate competition in the financial services industry by making it easier for consumers to discover new products and lowering switching costs. Increased financial data portability will also support the emerging fintech industry and allow for the development of new services.[28]
- **Creating rules on unfair trying practices or exclusionary practices in real estate listings:** Brokerage firms and multiple listing services (MLSs) have denied or limited access to property listing data, or used the threat of doing so, to prevent Internet-based competitors from offering consumers lower-cost alternatives that threaten to disrupt the traditional brokerage commissions.[29]

While these measures are likely to boost beneficial competition, it is striking that the administration left out several industries desperately in need of competition. Examples include auto dealers (where state laws prohibit manufacturer-to-consumer vehicle sales, optometry (where optometrists use their power to limit consumer rights to buy lenses from retailers and make it harder for consumers to buy glasses online), among others.

CONCLUSION

President Biden's executive order reflects the deep and abiding animus most progressives and many liberals now have toward large corporations. As such, they seek to reshape the U.S. economy away from a corporate structure. This appears to be the real motivation behind the president's order. Rather than focus on largely unneeded competition agenda, the nation needs a productivity and growth agenda.

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ENDNOTES

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