

May 2024

A Pro-Competition Economic Agenda

How Government
Can Build on Recent
Progress

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Acknowledgments

The author thanks Jeremy Bearer-Friend, Hannah Garden-Monheit, Suzanne Kahn, and Ganesh Sitaraman for their feedback and insights. Roosevelt's Matt Hughes and Aastha Uprety also contributed to this project.

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Introduction

The July 2021 Executive Order on Promoting Competition in the American Economy was a watershed moment in the American government’s approach to competition policy. For decades, the federal government had largely taken a hands-off approach to antitrust enforcement and to deploying regulatory authority to promote competition, based on the theory that consolidation could produce greater efficiencies that would flow through to lower prices for consumers. Reflecting a growing body of theoretical and empirical research that cast doubt on the benefits of that laissez-faire approach, the executive order—along with the nomination of aggressive antitrust enforcers to key positions at the Department of Justice (DOJ) and the Federal Trade Commission (FTC)—signaled a return to the more robust competition policy approach of the first half of the 20th century. The DOJ, FTC, and other federal agencies have since delivered major reforms that are starting to reverse the trends of the past 50 years.

This brief explores how the federal government can build on these recent successes. The July 2021 executive order included 72 specific steps federal agencies should take to promote competition in the areas they regulate, and some of those steps remain unfinished. But beyond completing that work, there are several areas—most notably, in strengthening enforcement tools and the federal judiciary, in institutionalizing a focus on competition across agencies, in reforming tax policy, and in tackling new challenges in the fields of information technology and artificial intelligence—where the government can push further in encouraging fair and competitive markets.

This brief starts by explaining why promoting competition matters: why competitive markets deliver better economic outcomes, and why the failure to prioritize competition in recent decades has harmed consumers, workers, and the American economy overall. It then describes some of the recent progress in swinging the pendulum back toward a more competitive economy. Finally, it describes a handful of areas in which further action could build on these recent advances.

Why Competitive Markets Matter

Over the past three decades, the largest firms in most industries gained more market power. According to an April 2019 study, from the late 1990s onward, more than 75 percent of US industries grew more consolidated ([Grullon, Larkin, and Michaely 2019](#)). The authors concluded that “US product markets have undergone a shift that has potentially weakened competition across the majority of industries.”

That shift in the last few decades has harmed consumers, workers, and US economic performance. Less competition tends to produce higher prices. If companies are less concerned about competitors swooping in to take their market share, they are less constrained in their ability to increase the prices consumers pay. As the authors of the



April 2019 study note, “lack of competition may allow remaining industry incumbents to gain wider profit margins by setting higher prices relative to production costs.” One large-scale study found that since 1980, average markups—that is, the difference between the cost of producing a product and its sale price—rose from 21 percent above marginal cost to 61 percent ([De Loecker, Eeckhout, and Unger 2019](#)).

The trend toward greater consolidation has hurt workers as well. If there are fewer potential employers competing for a person’s labor, then those employers generally can get away with offering lower wages and less generous benefits. This effect is significant. A 2020 academic analysis found that the typical American labor market is highly concentrated, and that the difference between a more concentrated labor market and a less concentrated one is as much as a 17 percent decrease in the average posted wage ([Azar, Marinescu, and Steinbaum 2020](#)). Similarly, a recent report from the US Department of Treasury—following a directive from the 2021 Executive Order on Competition—concluded that inadequate competition in labor markets can cause wage declines of as much as 20 percent ([US Department of the Treasury 2022](#)). The report also observed that workers can be harmed by a lack of competition in other ways beyond pay, such as with more unpredictable schedules, inferior working conditions, and fewer pathways for advancement.

The typical family suffers a significant financial hit from the combined effect of higher prices and lower wages. According to a 2019 estimate from New York University economist Thomas Philippon, the average American household loses \$5,000 a year in purchasing power because of the effect of concentration in product markets and labor markets ([Leonhardt 2019](#)).

The growing trend toward consolidation has also affected US economic performance. Greater concentration can have a negative impact on productivity growth, a key driver of economic growth ([Furman 2018](#)). And firms in more concentrated industries tend to invest less and be less innovative, suggesting they feel less competitive pressure to improve efficiency and product quality ([Gutiérrez and Philippon 2017](#)).

In short, the decades-long trend toward greater consolidation in most US industries benefited a small number of large incumbent firms at the expense of consumers, workers, and the American economy. In turn, this body of research suggests that a more robust federal government role in enforcing antitrust laws and in promoting competition across a variety of industries could help bring more innovation and dynamism to the American economy, along with lower prices for consumers and higher wages for workers.



Recent Steps to Promote a More Competitive Economy

Drawing on those findings, the Biden administration put promoting competition at the center of its economic agenda. The president’s July 2021 executive order began by reaffirming that the “American promise of a broad and sustained prosperity depends on an open and competitive economy.” It continued by noting that competition “creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage,” that for entrepreneurs it “provides space to experiment, innovate, and pursue the new ideas that have for centuries powered the American economy and our quality of life,” and that for consumers “it means more choices, better service, and lower prices.” The executive order then identified several industries—including agriculture, information technology, health care and prescription drugs, and telecommunications—where growing consolidation had harmed consumers.

The executive order launched a “whole-of-government” approach to combating the trend of growing consolidation and restoring greater competition to more industries. It urged the core antitrust enforcement agencies—the Justice Department and the FTC—to “enforce the antitrust laws fairly and vigorously.” But the order went beyond those core agencies to reaffirm the important role that all federal agencies can play in promoting competition in the fields they oversee. It identified 72 specific actions that nearly a dozen federal agencies—from the Surface Transportation Board to the Department of Health and Human Services—could take to encourage competition, and provided concrete directives and deadlines for those agencies to meet in completing their work.

Since then, the agencies have delivered reforms in keeping with the goals and deadlines in the executive order, and have gone beyond the executive order in certain cases to pursue novel procompetitive reforms. On the enforcement front, the DOJ and FTC challenged more mergers in 2022 than in any year since 1976 ([Nylen 2023](#)), and released updated merger guidelines that outlined a more modern and robust approach to antitrust enforcement ([US Department of Justice 2023](#)). On the regulatory front, the Biden administration completed dozens of the specific action items the president laid out in his executive order ([White House 2024](#)).

While the administration’s progress spans many industries, it has made notable gains in transportation, health care, and the labor market.



Transportation

The administration has brought more fair competition to the transportation sector—on air, land, and sea.

In air travel, the administration has made regulatory changes that promote more transparency and competition. The Department of Transportation is in the process of finalizing a rule that would require airlines and third-party websites to clearly disclose fees (like change fees or baggage fees) before a consumer makes a ticket selection ([US Department of Transportation 2022](#)). That will facilitate easier comparison shopping and push airlines to compete on the total cost of a ticket, rather than springing additional costs on consumers after an initial selection has been made.

The Justice Department complemented those efforts with two major enforcement actions. First, it stopped an agreement between American Airlines and JetBlue to form a “Northeast Alliance,” which would have led to less competition on routes in the Northeast ([Rennison and Chokshi 2023](#)). More recently, it sued to stop a proposed merger between JetBlue and Spirit Airlines, which it argued would result in fewer choices and higher prices for air travelers ([Chokshi 2023](#)). The companies eventually called off the merger ([Moreno 2024](#)).

On ground transportation, the administration made progress in two key areas. First, the Surface Transportation Board—which oversees the US railroad industry—issued a proposed rule on “reciprocal switching” that would promote more competition in areas that are currently only served by a single railway ([Surface Transportation Board 2023](#)). Second, the DOT took a significant step toward making the market for electric vehicle charging—and electric vehicles themselves—more competitive by requiring any company that accepts DOT grants for new charging infrastructure to make their chargers open-access ([US Department of Transportation 2023](#)). Tesla, which operates a large network of EV chargers, agreed to make its network open-access in the wake of that DOT action ([Dayen 2023](#)).

Finally, on sea transportation, the administration brought procompetitive reforms to the ocean shipping industry for the first time in decades. The ocean shipping industry is dominated by three global alliances that control roughly 80 percent of global shipping and nearly 100 percent of East-West shipping (i.e., between the US and Asia) ([White House 2022](#)). In the aftermath of the COVID pandemic, these alliances raised shipping costs by as much as tenfold on Asia-US routes, contributing significantly to higher prices for many US consumer goods in 2021 and 2022. The 2022 State of the Union address called for congressional action to reform the ocean shipping industry and empower its regulator—the Federal Maritime Commission—to crack down on anticompetitive conduct. Congress responded later that year by passing the Ocean



Shipping Reform Act, which authorized the FMC to issue new rules to lessen the market power of the shipping alliances ([Gallagher 2022](#)).

Health Care

From the provider market to the prescription drug market, the health-care sector is rife with competitive problems. The administration has made progress in addressing these issues in certain key areas.

One example is the hearing aid market. Nearly 40 million Americans suffer from mild-to-moderate hearing loss, but only one in seven of those 40 million people have hearing aids. That is in part because purchasing a pair of hearing aids is not typically covered by insurance, requires seeing a specialist to receive a prescription, and costs \$5,000 on average. In 2017, Congress passed a law directing the Department of Health and Human Services (HHS) to issue rules to allow certain hearing aids to be sold over the counter. The Biden administration's competition executive order set a firm deadline for HHS to complete the rules, and HHS issued them in the fall of 2022, allowing hearing aids to be sold for hundreds of dollars—instead of thousands—over the counter in a wide variety of stores. The opening of that market has prompted a number of firms to develop new and lower-cost hearing aids to compete for new customers ([Morris 2022](#)).

The FTC also took important steps to challenge potential misuses of patent systems to lock out competition and keep prices artificially high. In November 2023, the agency challenged the patents associated with more than 100 products listed in the Food and Drug Administration's "Orange Book" ([Federal Trade Commission 2023](#)). A product listed in the Orange Book is effectively insulated from competition from generic competitors for up to 30 months. The FTC's action—which covered commonly used medical products like asthma inhalers and EpiPens—is the first step toward promoting competition for those products, putting downward pressure on prices.

There were important enforcement victories in the health-care space as well. The DOJ successfully sued two pharmaceutical companies and imposed a quarter-billion dollars in fines for conspiring to fix the price of certain generic drugs ([Weixel 2023](#)). And the FTC has successfully challenged a number of mergers in the health-care space ([Federal Trade Commission 2024c](#)), including several hospital mergers that could have reduced access for patients ([Meyer 2022](#)).

Labor Market

As noted above, lack of competition in the labor market can drive down wages and benefits, and allow employers to take advantage of workers with no other meaningful



options. The Biden administration has prioritized promoting labor market competition, both through regulatory and enforcement actions.

Most notably, the FTC has finalized a rule that would ban the use of noncompete clauses ([Federal Trade Commission 2024b](#)). Approximately 30 million Americans are subject to noncompete clauses in their employment contracts. These clauses restrict their ability to work for another employer in their field for some period of time after leaving their current employer. By restricting employee options in this way, noncompete clauses allow employers to retain employees with lower wages and less generous benefits. The FTC estimated that noncompetes cost workers nearly \$300 billion in pay annually. Once the rule goes into effect later this year, it will be one of the most significant steps forward in promoting fair labor market competition in generations.

Antitrust enforcers have also paid more attention to labor market implications in their challenges. For example, the DOJ sued—ultimately successfully—to block a merger between book publishers Random House and Simon & Schuster not only because of potential harms to book consumers, but also because the merger would mean fewer options for authors trying to find publishing options for their work ([Alter and Harris 2022](#)). Similarly, in its recent suit to block the acquisition of grocery store chain Albertsons by its rival Kroger’s, the FTC noted that the acquisition would potentially harm thousands of grocery store workers ([Federal Trade Commission 2024a](#)). The closer scrutiny of labor market effects of proposed mergers and acquisitions bodes well for labor market competition.

Where the Government Can Go from Here

The Executive Order on Competition calls for further work in a number of fields, including agriculture, financial services, and broadband. It is critically important that federal agencies complete this work in a timely fashion. But there are also four key areas in which this and future administrations could go further to continue the strong progress of the past three years.

Enforcement and the Judiciary

While regulatory changes have been—and will continue to be—vital to the success of the pro-competition agenda, there is no substitute for effective enforcement of antitrust laws. Successful enforcement actions can not only stop anticompetitive mergers from going forward, but could also be used to unwind prior anticompetitive mergers that have contributed to the wave of consolidation we have seen in past decades.



There are three primary steps the executive branch and Congress could take to strengthen enforcers' hand in court.

First, both the DOJ antitrust division and the FTC need more funding to investigate and litigate the cases with the largest impact. Antitrust cases are expensive to prepare and to litigate to conclusion, as they typically require extensive discovery and expert analysis, while going up against some of the very largest corporations in the world with a lot on the line. To date, Congress has largely been penny-wise and pound-foolish in allocating funds to antitrust enforcers, given the large consumer and worker benefits that flow from successful enforcement. While Congress recently took an important step in the right direction with the passage of the Merger Fee Modernization Act—which cut filing fees for small mergers and raised them for larger mergers, bringing in millions in new funding for antitrust enforcement—it took two steps back by cutting funding for DOJ antitrust enforcement by 20 percent in its latest appropriations bill ([Dayen 2024](#)). A sizable and stable increase in funding for both DOJ antitrust and the FTC is vitally important for continued progress on the pro-competition agenda, and would represent good bang-for-the-buck for the American public.

Second, Congress can carefully modify existing antitrust statutes to give enforcers a better chance to stop anticompetitive mergers. Senator Amy Klobuchar's Competition and Law Enforcement Reform Act is a good starting point. Among many other provisions, the bill lowers the legal threshold for the government to prevail under the Clayton Act by requiring a showing that a merger creates “an appreciable risk of materially lessening competition”—an easier showing than the existing law's “substantially lessening competition” language ([Baer 2021](#)). The bill also flips the burden of proof from the government onto the merging companies in certain cases, such as in mega-mergers worth at least \$5 billion. In those cases, the companies would have to show that the proposed arrangement would not lessen competition.

Third, the Biden administration and future administrations should prioritize nominating judges with a history of support for robust antitrust enforcement. Decades of Chicago School antitrust thinking have made large portions of the judiciary less willing to consider new and novel antitrust challenges, even as the evidence has mounted that many mergers are bad for consumers and workers. The Biden administration has done a commendable job of bringing more diversity to the judiciary in many respects, but a diversity of views on antitrust and competition policy is important as well.

Institutionalization of Competition

Building on the Executive Order on Competition, agencies should prioritize hiring and empowering a senior official responsible for considering the competitive implications of agency decisions. Agencies are well-trained and well-equipped to consider the



budgetary impacts of their decisions. Through the use of cost-benefit analysis, they are also well-versed in assessing the potential costs of their actions on regulated industries. But many agencies are not as adept at considering the potential effects of their actions on producing more competitive markets.

The Executive Order on Competition attempted to institutionalize the focus on competition at agencies through the creation of the Competition Council—a group that includes the heads of more than a dozen federal agencies, and meets twice a year to discuss progress on promoting competition and to share ideas on how agencies can partner in their efforts. The Office of Information and Regulatory Affairs (OIRA) has also circulated guidance to agencies on how to consider the competitive effects of particular agency actions ([Office of Information and Regulatory Affairs 2023](#)). But without the right personnel in empowered positions at agencies to assist in these considerations, it is more likely that agencies will prioritize other considerations in their decisions. A chief competition officer at each agency would ensure that competitive concerns get a full airing.

Tax Policy

One historically underutilized tool for promoting competition is tax policy. By helping structure market incentives, taxes can play a significant role in encouraging—or discouraging—healthy competition.

Congress will have an opportunity to take a fresh look at America’s tax code in 2025. The 2017 Tax Cuts and Jobs Act (TCJA) made several permanent changes to the corporate tax code, such as lowering the corporate tax rate from 35 percent to 21 percent. But the TCJA also made a series of changes to individual tax provisions—such as lowering the top income tax rate and doubling the level at which the estate tax applies—that expire at the end of 2025. The expiration of those provisions is likely to prompt a congressional conversation about what America’s tax code should look like from 2026 onward.

Congress should consider tax changes that simultaneously raise additional revenue and promote fair competition. International tax reforms that close loopholes available to large multinational firms are a good example. Currently, domestic small businesses may have to compete against both US multinationals and foreign multinationals with US operations. Because of the structure of our current tax code, these large multinationals can often find creative ways of reducing their tax liability in ways that small businesses with only domestic operations cannot. Small businesses do not usually have a subsidiary in the Cayman Islands or Ireland that allows them to incur lower tax liability on intangible income. Leveling the tax playing field by closing loopholes available to multinationals would give smaller competitors in both product and service markets a better shot at success.



In addition, Congress should consider a graduated corporate tax, such that large and highly profitable corporations pay a higher marginal tax rate than smaller and less profitable corporations. Prior to the TCJA, the US had a mildly graduated corporate tax code, in which corporate income under \$10 million was taxed at a slightly lower rate than income above \$10 million. The TCJA replaced that approach with a single (and lower) flat rate. As economist Kimberly A. Clausing describes, a more graduated corporate income tax could both more effectively tax likely above-normal returns and “discourage size itself, and the accumulation of economic power” ([Clausing 2023](#)). Legal scholar Reuven Avi-Yonah has proposed a similar approach, but with a much higher corporate income tax rate on income above \$10 billion, which would put significant financial pressure on firms generating such high profits to split up into smaller businesses ([Avi-Yonah 2022](#)). In combination with international tax reform, such an approach could generate more corporate tax revenue while encouraging more competition.

Tax reform should also address existing tax code provisions that encourage certain forms of mergers and acquisitions. Law professor Jeremy Bearer-Friend has proposed several procompetitive tax policy changes ([Bearer-Friend 2018](#)), including:

- **Taxing stock-based mergers and acquisitions.** Currently, the tax code imposes a tax on acquisitions that use cash or assets. But under Internal Revenue Code Section 368, stock-based deals are not subject to taxation. Equalizing this treatment removes distortionary incentives for certain types of acquisitions and raises revenue.
- **Capping interest deductions for debt used for acquisitions.** Companies often lever up to purchase competitors, and can write off the subsequent interest on that debt. A cap on these types of deductions would allow smaller deals to receive preferential tax treatment, while larger leveraged transactions would be disincentivized.
- **Limiting the ability of spin-offs to be easily reacquired.** One persistent problem is that merging companies spin off a portion of the entity as a condition of allowing the merger to go through, only for those spin-offs to be reacquired later without tax liability. By modifying section 355 of the Internal Revenue Code, these types of transactions would not be subject to preferential tax treatment.

Tech Platforms and Artificial Intelligence

One of the most significant areas in need of procompetitive reform—and where the work is clearly unfinished—is the information technology sector. There are currently pending antitrust lawsuits against Facebook, Google, and Amazon that could produce transformative changes if successful. But in addition to those enforcement efforts,



Congress can and should play a role in injecting more competition in this industry. In particular, the bipartisan American Innovation and Choice Online Act—which would stop large tech platforms from preferencing their own products over third-party products—would help level the playing field for small business users. The bill built a large well of support but ultimately did not get to the president’s desk. It should be a priority going forward.

As artificial intelligence models grow more prevalent and widely used, it is critically important that federal legislators and regulators ensure that this new technology promotes competition rather than stifling it. The president’s 2023 Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence directs agencies to use their authorities “to promote competition in AI and related technologies, as well as in other markets.” To satisfy this directive, agencies should consider how they can use their authorities to promote competition within the field of AI model development—for example, by promoting more open access to AI tools, including for small businesses and startups. In addition, agencies should focus on ensuring that adoption of AI in other fields does not have anticompetitive impact. In particular, agencies should consider how AI can be used by purported competitors in a field to coordinate on pricing or otherwise engage in collusive behavior.

Conclusion

While there has been notable recent progress to reverse the decades-long trend toward great consolidation in many American industries, it will take additional effort to fully achieve the benefits of more competitive markets. Consumers, workers, and entrepreneurs can all benefit from a system where large incumbent firms are subject to more sustained competition and consistent pressure to either improve their products or lose ground to competitors. By strengthening enforcement authorities and funding, institutionalizing an emphasis on competition across federal agencies, enacting tax policy that promotes greater competition, and addressing competitive issues in the fields of information technology and artificial intelligence, future administrations can build on recent progress and deliver real gains to American consumers and workers.



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