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BRIEFING ROOM

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

JULY 09, 2021 • STATEMENTS AND RELEASES

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

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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

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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.

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- 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.

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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.**

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- 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

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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

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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

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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.

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- 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

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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

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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 forces 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.

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- 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

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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:

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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:

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- 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 four 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.

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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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BRIEFING ROOM

Executive Order on Promoting Competition in the American Economy

JULY 09, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the interests of American workers, businesses, and consumers, it is hereby ordered as follows:

Section 1. Policy.

A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.

The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage. For small businesses and farmers, it creates more choices among suppliers and major buyers, leading to more take-home income, which they can reinvest in their enterprises. For entrepreneurs, it provides space to experiment, innovate, and pursue the new ideas that have for centuries powered the American economy and improved our quality of life. And for consumers, it means more choices, better service, and lower

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prices.

Robust competition is critical to preserving America's role as the world's leading economy.

Yet over the last several decades, as industries have consolidated, competition has weakened in too many markets, denying Americans the benefits of an open economy and widening racial, income, and wealth inequality. Federal Government inaction has contributed to these problems, with workers, farmers, small businesses, and consumers paying the price.

Consolidation has increased the power of corporate employers, making it harder for workers to bargain for higher wages and better work conditions.

Powerful companies require workers to sign non-compete agreements that restrict their ability to change jobs. And, while many occupational licenses are critical to increasing wages for workers and especially workers of color, some overly restrictive occupational licensing requirements can impede workers' ability to find jobs and to move between States.

Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries — seed, fertilizer, feed, and equipment suppliers — and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

The American information technology sector has long been an engine of innovation and growth, but today a small number of dominant Internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage. Too many small businesses across the economy depend on those platforms and a few online marketplaces for their survival. And too

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many local newspapers have shuttered or downsized, in part due to the Internet platforms' dominance in advertising markets.

Americans are paying too much for prescription drugs and healthcare services — far more than the prices paid in other countries. Hospital consolidation has left many areas, particularly rural communities, with inadequate or more expensive healthcare options. And too often, patent and other laws have been misused to inhibit or delay — for years and even decades — competition from generic drugs and biosimilars, denying Americans access to lower-cost drugs.

In the telecommunications sector, Americans likewise pay too much for broadband, cable television, and other communications services, in part because of a lack of adequate competition. In the financial-services sector, consumers pay steep and often hidden fees because of industry consolidation. Similarly, the global container shipping industry has consolidated into a small number of dominant foreign-owned lines and alliances, which can disadvantage American exporters.

The problem of economic consolidation now spans these sectors and many others, endangering our ability to rebuild and emerge from the coronavirus disease 2019 (COVID-19) pandemic with a vibrant, innovative, and growing economy. Meanwhile, the United States faces new challenges to its economic standing in the world, including unfair competitive pressures from foreign monopolies and firms that are state-owned or state-sponsored, or whose market power is directly supported by foreign governments.

We must act now to reverse these dangerous trends, which constrain the growth and dynamism of our economy, impair the creation of high-quality jobs, and threaten America's economic standing in the world.

This order affirms that it is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony —

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especially as these issues arise in labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.

It is also the policy of my Administration to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.

Whereas decades of industry consolidation have often led to excessive market concentration, this order reaffirms that the United States retains the authority to challenge transactions whose previous consummation was in violation of the Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. 1 *et seq.*) (Sherman Act), the Clayton Antitrust Act (Public Law 63-212, 38 Stat. 730, 15 U.S.C. 12 *et seq.*) (Clayton Act), or other laws. *See* 15 U.S.C. 18; *Standard Oil Co. v. United States*, 221 U.S. 1 (1911).

This order reasserts as United States policy that the answer to the rising power of foreign monopolies and cartels is not the tolerance of domestic monopolization, but rather the promotion of competition and innovation by firms small and large, at home and worldwide.

It is also the policy of my Administration to support aggressive legislative reforms that would lower prescription drug prices, including by allowing Medicare to negotiate drug prices, by imposing inflation caps, and through other related reforms. It is further the policy of my Administration to support the enactment of a public health insurance option.

My Administration further reaffirms the policy stated in Executive Order 13725 of April 15, 2016 (Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American

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Economy), and the Federal Government's commitment to the principles that led to the passage of the Sherman Act, the Clayton Act, the Packers and Stockyards Act, 1921 (Public Law 67-51, 42 Stat. 159, 7 U.S.C. 181 *et seq.*) (Packers and Stockyards Act), the Celler-Kefauver Antimerger Act (Public Law 81-899, 64 Stat. 1125), the Bank Merger Act (Public Law 86-463, 74 Stat. 129, 12 U.S.C. 1828), and the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56), among others.

Sec. 2. The Statutory Basis of a Whole-of-Government Competition Policy.

(a) The antitrust laws, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act (Public Law 63-203, 38 Stat. 717, 15 U.S.C. 41 *et seq.*), are a first line of defense against the monopolization of the American economy.

(b) The antitrust laws reflect an underlying policy favoring competition that transcends those particular enactments. As the Supreme Court has stated, for instance, the Sherman Act “rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.” *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

(c) Consistent with these broader policies, and in addition to the traditional antitrust laws, the Congress has also enacted industry-specific fair competition and anti-monopolization laws that often provide additional protections. Such enactments include the Packers and Stockyards Act, the Federal Alcohol Administration Act (Public Law 74-401, 49 Stat. 977, 27 U.S.C. 201 *et seq.*), the Bank Merger Act, the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417, 98 Stat. 1585), the Shipping Act of 1984 (Public Law 98-237, 98 Stat. 67, 46 U.S.C. 40101 *et seq.*) (Shipping

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Act), the ICC Termination Act of 1995 (Public Law 104-88, 109 Stat. 803), the Telecommunications Act of 1996, the Fairness to Contact Lens Consumers Act (Public Law 108-164, 117 Stat. 2024, 15 U.S.C. 7601 *et seq.*), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376) (Dodd-Frank Act).

(d) These statutes independently charge a number of executive departments and agencies (agencies) to protect conditions of fair competition in one or more ways, including by:

- (i) policing unfair, deceptive, and abusive business practices;
- (ii) resisting consolidation and promoting competition within industries through the independent oversight of mergers, acquisitions, and joint ventures;
- (iii) promulgating rules that promote competition, including the market entry of new competitors; and
- (iv) promoting market transparency through compelled disclosure of information.

(e) The agencies that administer such or similar authorities include the Department of the Treasury, the Department of Agriculture, the Department of Health and Human Services, the Department of Transportation, the Federal Reserve System, the Federal Trade Commission (FTC), the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Federal Communications Commission, the Federal Maritime Commission, the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, the Consumer Financial Protection Bureau, and the Surface Transportation Board.

(f) Agencies can influence the conditions of competition through their exercise of regulatory authority or through the procurement process. *See* 41 U.S.C. 1705.

(g) This order recognizes that a whole-of-government approach is

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necessary to address overconcentration, monopolization, and unfair competition in the American economy. Such an approach is supported by existing statutory mandates. Agencies can and should further the policies set forth in section 1 of this order by, among other things, adopting pro-competitive regulations and approaches to procurement and spending, and by rescinding regulations that create unnecessary barriers to entry that stifle competition.

Sec. 3. Agency Cooperation in Oversight, Investigation, and Remedies.

(a) The Congress frequently has created overlapping agency jurisdiction in the policing of anticompetitive conduct and the oversight of mergers. It is the policy of my Administration that, when agencies have overlapping jurisdiction, they should endeavor to cooperate fully in the exercise of their oversight authority, to benefit from the respective expertise of the agencies and to improve Government efficiency.

(b) Where there is overlapping jurisdiction over particular cases, conduct, transactions, or industries, agencies are encouraged to coordinate their efforts, as appropriate and consistent with applicable law, with respect to:

- (i) the investigation of conduct potentially harmful to competition;
- (ii) the oversight of proposed mergers, acquisitions, and joint ventures;

and

- (iii) the design, execution, and oversight of remedies.

(c) The means of cooperation in cases of overlapping jurisdiction should include, as appropriate and consistent with applicable law:

- (i) sharing relevant information and industry data;
- (ii) in the case of major transactions, soliciting and giving significant consideration to the views of the Attorney General or the Chair of the FTC, as applicable; and

- (iii) cooperating with any concurrent Department of Justice or FTC

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oversight activities under the Sherman Act or Clayton Act.

(d) Nothing in subsections (a) through (c) of this section shall be construed to suggest that the statutory standard applied by an agency, or its independent assessment under that standard, should be displaced or substituted by the judgment of the Attorney General or the Chair of the FTC. When their views are solicited, the Attorney General and the Chair of the FTC are encouraged to provide a response to the agency in time for the agency to consider it in advance of any statutory deadline for agency action.

Sec. 4. The White House Competition Council.

(a) There is established a White House Competition Council (Council) within the Executive Office of the President.

(b) The Council shall coordinate, promote, and advance Federal Government efforts to address overconcentration, monopolization, and unfair competition in or directly affecting the American economy, including efforts to:

- (i) implement the administrative actions identified in this order;
- (ii) develop procedures and best practices for agency cooperation and coordination on matters of overlapping jurisdiction, as described in section 3 of this order;
- (iii) identify and advance any additional administrative actions necessary to further the policies set forth in section 1 of this order; and
- (iv) identify any potential legislative changes necessary to further the policies set forth in section 1 of this order.

(c) The Council shall work across agencies to provide a coordinated response to overconcentration, monopolization, and unfair competition in or directly affecting the American economy. The Council shall also work with each agency to ensure that agency operations are conducted in a manner that promotes fair competition, as appropriate and consistent with applicable law.

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(d) The Council shall not discuss any current or anticipated enforcement actions.

(e) The Council shall be led by the Assistant to the President for Economic Policy and Director of the National Economic Council, who shall serve as Chair of the Council.

(f) In addition to the Chair, the Council shall consist of the following members:

- (i) the Secretary of the Treasury;
- (ii) the Secretary of Defense;
- (iii) the Attorney General;
- (iv) the Secretary of Agriculture;
- (v) the Secretary of Commerce;
- (vi) the Secretary of Labor;
- (vii) the Secretary of Health and Human Services;
- (viii) the Secretary of Transportation;
- (ix) the Administrator of the Office of Information and Regulatory

Affairs; and

(x) the heads of such other agencies and offices as the Chair may from time to time invite to participate.

(g) The Chair shall invite the participation of the Chair of the FTC, the Chair of the Federal Communications Commission, the Chair of the Federal Maritime Commission, the Director of the Consumer Financial Protection Bureau, and the Chair of the Surface Transportation Board, to the extent consistent with their respective statutory authorities and obligations.

(h) Members of the Council shall designate, not later than 30 days after the date of this order, a senior official within their respective agency or office who shall coordinate with the Council and who shall be responsible for overseeing the agency's or office's efforts to address overconcentration, monopolization, and unfair competition. The Chair may coordinate

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subgroups consisting exclusively of Council members or their designees, as appropriate.

(i) The Council shall meet on a semi-annual basis unless the Chair determines that a meeting is unnecessary.

(j) Each agency shall bear its own expenses for participating in the Council.

Sec. 5. Further Agency Responsibilities.

(a) The heads of all agencies shall consider using their authorities to further the policies set forth in section 1 of this order, with particular attention to:

(i) the influence of any of their respective regulations, particularly any licensing regulations, on concentration and competition in the industries under their jurisdiction; and

(ii) the potential for their procurement or other spending to improve the competitiveness of small businesses and businesses with fair labor practices.

(b) The Attorney General, the Chair of the FTC, and the heads of other agencies with authority to enforce the Clayton Act are encouraged to enforce the antitrust laws fairly and vigorously.

(c) To address the consolidation of industry in many markets across the economy, as described in section 1 of this order, the Attorney General and the Chair of the FTC are encouraged to review the horizontal and vertical merger guidelines and consider whether to revise those guidelines.

(d) To avoid the potential for anticompetitive extension of market power beyond the scope of granted patents, and to protect standard-setting processes from abuse, the Attorney General and the Secretary of Commerce are encouraged to consider whether to revise their position on the intersection of the intellectual property and antitrust laws, including by

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considering whether to revise the Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments issued jointly by the Department of Justice, the United States Patent and Trademark Office, and the National Institute of Standards and Technology on December 19, 2019.

(e) To ensure Americans have choices among financial institutions and to guard against excessive market power, the Attorney General, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, is encouraged to review current practices and adopt a plan, not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 *et seq.*) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c).

(f) To better protect workers from wage collusion, the Attorney General and the Chair of the FTC are encouraged to consider whether to revise the Antitrust Guidance for Human Resource Professionals of October 2016.

(g) To address agreements that may unduly limit workers' ability to change jobs, the Chair of the FTC is encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.

(h) To address persistent and recurrent practices that inhibit competition, the Chair of the FTC, in the Chair's discretion, is also encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority, as appropriate and consistent with applicable law, in areas such as:

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- (i) unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy;
- (ii) unfair anticompetitive restrictions on third-party repair or self-repair of items, such as the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment;
- (iii) unfair anticompetitive conduct or agreements in the prescription drug industries, such as agreements to delay the market entry of generic drugs or biosimilars;
- (iv) unfair competition in major Internet marketplaces;
- (v) unfair occupational licensing restrictions;
- (vi) unfair tying practices or exclusionary practices in the brokerage or listing of real estate; and
- (vii) any other unfair industry-specific practices that substantially inhibit competition.

(i) The Secretary of Agriculture shall:

(i) to address the unfair treatment of farmers and improve conditions of competition in the markets for their products, consider initiating a rulemaking or rulemakings under the Packers and Stockyards Act to strengthen the Department of Agriculture's regulations concerning unfair, unjustly discriminatory, or deceptive practices and undue or unreasonable preferences, advantages, prejudices, or disadvantages, with the purpose of furthering the vigorous implementation of the law established by the Congress in 1921 and fortified by amendments. In such rulemaking or rulemakings, the Secretary of Agriculture shall consider, among other things:

(A) providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and therefore violate the Packers and Stockyards Act;

(B) reinforcing the long-standing Department of Agriculture

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interpretation that it is unnecessary under the Packers and Stockyards Act to demonstrate industry-wide harm to establish a violation of the Act and that the “unfair, unjustly discriminatory, or deceptive” treatment of one farmer, the giving to one farmer of an “undue or unreasonable preference or advantage,” or the subjection of one farmer to an “undue or unreasonable prejudice or disadvantage in any respect” violates the Act;

(C) prohibiting unfair practices related to grower ranking systems — systems in which the poultry companies, contractors, or dealers exercise extraordinary control over numerous inputs that determine the amount farmers are paid and require farmers to assume the risk of factors outside their control, leaving them more economically vulnerable;

(D) updating the appropriate definitions or set of criteria, or application thereof, for undue or unreasonable preferences, advantages, prejudices, or disadvantages under the Packers and Stockyards Act; and

(E) adopting, to the greatest extent possible and as appropriate and consistent with applicable law, appropriate anti-retaliation protections, so that farmers may assert their rights without fear of retribution;

(ii) to ensure consumers have accurate, transparent labels that enable them to choose products made in the United States, consider initiating a rulemaking to define the conditions under which the labeling of meat products can bear voluntary statements indicating that the product is of United States origin, such as “Product of USA”;

(iii) to ensure that farmers have greater opportunities to access markets and receive a fair return for their products, not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, with a plan to promote competition in the agricultural industries and to support value-added agriculture and alternative food distribution systems through such means as:

(A) the creation or expansion of useful information for farmers, such

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as model contracts, to lower transaction costs and help farmers negotiate fair deals;

(B) measures to encourage improvements in transparency and standards so that consumers may choose to purchase products that support fair treatment of farmers and agricultural workers and sustainable agricultural practices;

(C) measures to enhance price discovery, increase transparency, and improve the functioning of the cattle and other livestock markets;

(D) enhanced tools, including any new legislative authorities needed, to protect whistleblowers, monitor agricultural markets, and enforce relevant laws;

(E) any investments or other support that could bolster competition within highly concentrated agricultural markets; and

(F) any other means that the Secretary of Agriculture deems appropriate;

(iv) to improve farmers' and smaller food processors' access to retail markets, not later than 300 days after the date of this order, in consultation with the Chair of the FTC, submit a report to the Chair of the White House Competition Council, on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries, including any practices that may violate the Federal Trade Commission Act, the Robinson-Patman Act (Public Law 74-692, 49 Stat. 1526, 15 U.S.C. 13 *et seq.*), or other relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises; and

(v) to help ensure that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (*see* 35 U.S.C. 100 *et seq.* and 7 U.S.C. 2321 *et seq.*), in consultation with the Under Secretary of Commerce for Intellectual Property and

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Director of the United States Patent and Trademark Office, submit a report to the Chair of the White House Competition Council, enumerating and describing any relevant concerns of the Department of Agriculture and strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.

(j) To protect the vibrancy of the American markets for beer, wine, and spirits, and to improve market access for smaller, independent, and new operations, the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the FTC, not later than 120 days after the date of this order, shall submit a report to the Chair of the White House Competition Council, assessing the current market structure and conditions of competition, including an assessment of any threats to competition and barriers to new entrants, including:

(i) any unlawful trade practices in the beer, wine, and spirits markets, such as certain exclusionary, discriminatory, or anticompetitive distribution practices, that hinder smaller and independent businesses or new entrants from distributing their products;

(ii) patterns of consolidation in production, distribution, or retail beer, wine, and spirits markets; and

(iii) any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.

(k) To follow up on the foregoing assessment, the Secretary of the Treasury, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau, shall, not later than 240 days after the date of this order, consider:

(i) initiating a rulemaking to update the Alcohol and Tobacco Tax and Trade Bureau's trade practice regulations;

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(ii) rescinding or revising any regulations of the beer, wine, and spirits industries that may unnecessarily inhibit competition; and

(iii) reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.

(l) To promote competition, lower prices, and a vibrant and innovative telecommunications ecosystem, the Chair of the Federal Communications Commission is encouraged to work with the rest of the Commission, as appropriate and consistent with applicable law, to consider:

(i) adopting through appropriate rulemaking “Net Neutrality” rules similar to those previously adopted under title II of the Communications Act of 1934 (Public Law 73-416, 48 Stat. 1064, 47 U.S.C. 151 *et seq.*), as amended by the Telecommunications Act of 1996, in “Protecting and Promoting the Open Internet,” 80 Fed. Reg. 19738 (Apr. 13, 2015);

(ii) conducting future spectrum auctions under rules that are designed to help avoid excessive concentration of spectrum license holdings in the United States, so as to prevent spectrum stockpiling, warehousing of spectrum by licensees, or the creation of barriers to entry, and to improve the conditions of competition in industries that depend upon radio spectrum, including mobile communications and radio-based broadband services;

(iii) providing support for the continued development and adoption of 5G Open Radio Access Network (O-RAN) protocols and software, continuing to attend meetings of voluntary and consensus-based standards development organizations, so as to promote or encourage a fair and representative standard-setting process, and undertaking any other measures that might promote increased openness, innovation, and competition in the markets for 5G equipment;

(iv) prohibiting unjust or unreasonable early termination fees for end-user communications contracts, enabling consumers to more easily switch providers;

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(v) initiating a rulemaking that requires broadband service providers to display a broadband consumer label, such as that as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), so as to give consumers clear, concise, and accurate information regarding provider prices and fees, performance, and network practices;

(vi) initiating a rulemaking to require broadband service providers to regularly report broadband price and subscription rates to the Federal Communications Commission for the purpose of disseminating that information to the public in a useful manner, to improve price transparency and market functioning; and

(vii) initiating a rulemaking to prevent landlords and cable and Internet service providers from inhibiting tenants' choices among providers.

(m) The Secretary of Transportation shall:

(i) to better protect consumers and improve competition, and as appropriate and consistent with applicable law:

(A) not later than 30 days after the date of this order, appoint or reappoint members of the Advisory Committee for Aviation Consumer Protection to ensure fair representation of consumers, State and local interests, airlines, and airports with respect to the evaluation of aviation consumer protection programs and convene a meeting of the Committee as soon as practicable;

(B) promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of:

(1) enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines; and

(2) ensuring that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may

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constitute an unfair or deceptive practice or an unfair method of competition;

(C) not later than 45 days after the date of this order, submit a report to the Chair of the White House Competition Council, on the progress of the Department of Transportation's investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic;

(D) not later than 45 days after the date of this order, publish for notice and comment a proposed rule requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and other ancillary fees when passengers pay for a service that is not provided;

(E) not later than 60 days after the date of this order, start development of proposed amendments to the Department of Transportation's definitions of "unfair" and "deceptive" in 49 U.S.C. 41712; and

(F) not later than 90 days after the date of this order, consider initiating a rulemaking to ensure that consumers have ancillary fee information, including "baggage fees," "change fees," and "cancellation fees," at the time of ticket purchase;

(ii) to provide consumers with more flight options at better prices and with improved service, and to extend opportunities for competition and market entry as the industry evolves:

(A) not later than 30 days after the date of this order, convene a working group within the Department of Transportation to evaluate the effectiveness of existing commercial aviation programs, consumer protections, and rules of the Federal Aviation Administration;

(B) consult with the Attorney General regarding means of enhancing effective coordination between the Department of Justice and the Department of Transportation to ensure competition in air transportation

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and the ability of new entrants to gain access; and

(C) 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;

(iii) given the emergence of new aerospace-based transportation technologies, such as low-altitude unmanned aircraft system deliveries, advanced air mobility, and high-altitude long endurance operations, that have great potential for American travelers and consumers, yet also the danger of early monopolization or new air traffic control problems, ensure that the Department of Transportation takes action with respect to these technologies to:

(A) facilitate innovation that fosters United States market leadership and market entry to promote competition and economic opportunity and to resist monopolization, while also ensuring safety, providing security and privacy, protecting the environment, and promoting equity; and

(B) provide vigilant oversight over market participants.

(n) To further competition in the rail industry and to provide accessible remedies for shippers, the Chair of the Surface Transportation Board (Chair) is encouraged to work with the rest of the Board to:

(i) consider commencing or continuing a rulemaking to strengthen regulations pertaining to reciprocal switching agreements pursuant to 49 U.S.C. 11102(c), if the Chair determines such rulemaking to be in the public interest or necessary to provide competitive rail service;

(ii) consider rulemakings pertaining to any other relevant matter of competitive access, including bottleneck rates, interchange commitments, or other matters, consistent with the policies set forth in section 1 of this order;

(iii) to ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads’ failure to comply

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with the required preference for passenger rail, vigorously enforce new on-time performance requirements adopted pursuant to the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110-423, 122 Stat. 4907) that will take effect on July 1, 2021, and further the work of the passenger rail working group formed to ensure that the Surface Transportation Board will fully meet its obligations; and

(iv) in the process of determining whether a merger, acquisition, or other transaction involving rail carriers is consistent with the public interest under 49 U.S.C. 11323-25, consider a carrier's fulfillment of its responsibilities under 49 U.S.C. 24308 (relating to Amtrak's statutory rights).

(o) The Chair of the Federal Maritime Commission is encouraged to work with the rest of the Commission to:

(i) vigorously enforce the prohibition of unjust and unreasonable practices in the context of detention and demurrage pursuant to the Shipping Act, as clarified in "Interpretive Rule on Demurrage and Detention Under the Shipping Act," 85 Fed. Reg. 29638 (May 18, 2020);

(ii) request from the National Shipper Advisory Committee recommendations for improving detention and demurrage practices and enforcement of related Shipping Act prohibitions; and

(iii) consider further rulemaking to improve detention and demurrage practices and enforcement of related Shipping Act prohibitions.

(p) The Secretary of Health and Human Services shall:

(i) to promote the wide availability of low-cost hearing aids, not later than 120 days after the date of this order, publish for notice and comment a proposed rule on over-the-counter hearing-aids, as called for by section 709 of the FDA Reauthorization Act of 2017 (Public Law 115-52, 131 Stat. 1005);

(ii) support existing price transparency initiatives for hospitals, other providers, and insurers along with any new price transparency initiatives or changes made necessary by the No Surprises Act (Public Law 116-260, 134

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Stat. 2758) or any other statutes;

(iii) to ensure that Americans can choose health insurance plans that meet their needs and compare plan offerings, implement standardized options in the national Health Insurance Marketplace and any other appropriate mechanisms to improve competition and consumer choice;

(iv) not later than 45 days after the date of this order, submit a report to the Assistant to the President for Domestic Policy and Director of the Domestic Policy Council and to the Chair of the White House Competition Council, with a plan to continue the effort to combat excessive pricing of prescription drugs and enhance domestic pharmaceutical supply chains, to reduce the prices paid by the Federal Government for such drugs, and to address the recurrent problem of price gouging;

(v) to lower the prices of and improve access to prescription drugs and biologics, continue to promote generic drug and biosimilar competition, as contemplated by the Drug Competition Action Plan of 2017 and Biosimilar Action Plan of 2018 of the Food and Drug Administration (FDA), including by:

(A) continuing to clarify and improve the approval framework for generic drugs and biosimilars to make generic drug and biosimilar approval more transparent, efficient, and predictable, including improving and clarifying the standards for interchangeability of biological products;

(B) as authorized by the Advancing Education on Biosimilars Act of 2021 (Public Law 117-8, 135 Stat. 254, 42 U.S.C. 263-1), supporting biosimilar product adoption by providing effective educational materials and communications to improve understanding of biosimilar and interchangeable products among healthcare providers, patients, and caregivers;

(C) to facilitate the development and approval of biosimilar and interchangeable products, continuing to update the FDA's biologics

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regulations to clarify existing requirements and procedures related to the review and submission of Biologics License Applications by advancing the “Biologics Regulation Modernization” rulemaking (RIN 0910-AI14); and

(D) with the Chair of the FTC, identifying and addressing any efforts to impede generic drug and biosimilar competition, including but not limited to false, misleading, or otherwise deceptive statements about generic drug and biosimilar products and their safety or effectiveness;

(vi) to help ensure that the patent system, while incentivizing innovation, does not also unjustifiably delay generic drug and biosimilar competition beyond that reasonably contemplated by applicable law, not later than 45 days after the date of this order, through the Commissioner of Food and Drugs, write a letter to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office enumerating and describing any relevant concerns of the FDA;

(vii) to support the market entry of lower-cost generic drugs and biosimilars, continue the implementation of the law widely known as the CREATES Act of 2019 (Public Law 116-94, 133 Stat. 3130), by:

(A) promptly issuing Covered Product Authorizations (CPAs) to assist product developers with obtaining brand-drug samples; and

(B) issuing guidance to provide additional information for industry about CPAs; and

(viii) through the Administrator of the Centers for Medicare and Medicaid Services, prepare for Medicare and Medicaid coverage of interchangeable biological products, and for payment models to support increased utilization of generic drugs and biosimilars.

(q) To reduce the cost of covered products to the American consumer without imposing additional risk to public health and safety, the Commissioner of Food and Drugs shall work with States and Indian Tribes

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that propose to develop section 804 Importation Programs in accordance with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173, 117 Stat. 2066), and the FDA's implementing regulations.

(r) The Secretary of Commerce shall:

(i) acting through the Director of the National Institute of Standards and Technology (NIST), consider initiating a rulemaking to require agencies to report to NIST, on an annual basis, their contractors' utilization activities, as reported to the agencies under 35 U.S.C. 202(c)(5);

(ii) acting through the Director of NIST, consistent with the policies set forth in section 1 of this order, consider not finalizing any provisions on march-in rights and product pricing in the proposed rule "Rights to Federally Funded Inventions and Licensing of Government Owned Inventions," 86 Fed. Reg. 35 (Jan. 4, 2021); and

(iii) not later than 1 year after the date of this order, in consultation with the Attorney General and the Chair of the Federal Trade Commission, conduct a study, including by conducting an open and transparent stakeholder consultation process, of the mobile application ecosystem, and submit a report to the Chair of the White House Competition Council, regarding findings and recommendations for improving competition, reducing barriers to entry, and maximizing user benefit with respect to the ecosystem.

(s) The Secretary of Defense shall:

(i) ensure that the Department of Defense's assessment of the economic forces and structures shaping the capacity of the national security innovation base pursuant to section 889(a) and (b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, 134 Stat. 3388) is consistent with the policy set forth in section 1 of this order;

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(ii) not later than 180 days after the date of this order, submit to the Chair of the White House Competition Council, a review of the state of competition within the defense industrial base, including areas where a lack of competition may be of concern and any recommendations for improving the solicitation process, consistent with the goal of the Competition in Contracting Act of 1984 (Public Law 98-369, 98 Stat. 1175); and

(iii) not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, on a plan for avoiding contract terms in procurement agreements that make it challenging or impossible for the Department of Defense or service members to repair their own equipment, particularly in the field.

(t) The Director of the Consumer Financial Protection Bureau, consistent with the pro-competition objectives stated in section 1021 of the Dodd-Frank Act, is encouraged to consider:

(i) commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products; and

(ii) enforcing the prohibition on unfair, deceptive, or abusive acts or practices in consumer financial products or services pursuant to section 1031 of the Dodd-Frank Act so as to ensure that actors engaged in unlawful activities do not distort the proper functioning of the competitive process or obtain an unfair advantage over competitors who follow the law.

(u) The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, shall incorporate into its recommendations for modernizing and improving regulatory review required by my Memorandum of January 20, 2021 (Modernizing Regulatory Review), the policies set forth in section 1 of this order, including consideration of whether the effects on competition and the

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potential for creation of barriers to entry should be included in regulatory impact analyses.

(v) The Secretary of the Treasury shall:

(i) direct the Office of Economic Policy, in consultation with the Attorney General, the Secretary of Labor, and the Chair of the FTC, to submit a report to the Chair of the White House Competition Council, not later than 180 days after the date of this order, on the effects of lack of competition on labor markets; and

(ii) submit a report to the Chair of the White House Competition Council, not later than 270 days after the date of this order, assessing the effects on competition of large technology firms' and other non-bank companies' entry into consumer finance markets.

Sec. 6. General Provisions.

(a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Where not already specified, independent agencies are encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

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THE WHITE HOUSE,

July 9, 2021.