The Daily Dish

The Biden Competition Executive Order

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Eakinomics: The Biden Competition Executive Order

On Friday President Biden signed his highly publicized executive order (EO) "promoting competition in the American economy." The EO has the feel of an elementary school science fair with no theme and exhibits of widely varying quality. Its fact sheet brags of "72 initiatives by more than a dozen federal agencies to promptly tackle some of the most pressing competition problems across our economy," but they range from the insignificant (making it easier to get a refund when in-flight wifi does not work), to the laughable ("Directs HHS to issue a comprehensive plan within 45 days to combat high prescription drug prices and price gouging"), to the breathtaking (challenging "prior bad mergers that past Administrations did not previously challenge"). Nevertheless, the EO should be neither dismissed nor ignored.

First, as noted by AAF's Daniel Bosch, the EO itself further erodes the autonomy of the so-called independent agencies. In particular, it "is the broadest and most specific example in recent history of a president seeking certain policy outcomes from independent agencies." The administration is evidently unfamiliar with the quaint notion that independent agencies get to decide for themselves what policy should be.

Second, the notion that the antitrust agencies (Department of Justice and Federal Trade Commission) can revisit mergers that passed muster in the past is an economic earthquake because the administration is dead set on changing the standards for evaluating mergers, acquisitions, and competition policy. For decades, across the ideological spectrum and in the agencies and the courts, decisions have been guided by the consumer welfare standard. Decisions ranging from regulation to merger review were guided by whether careful analysis indicated that they would enhance consumer welfare or not.

The administration has decided that big is bad – no need for all that difficult analysis and troublesome facts – and? simply assumes that greater concentration prevails across the economy and that it automatically means economic bad news. This is a mistake. Massachusetts Institute of Technology industrial organization expert Nancy Rose finds that "rising national concentration is not mirrored at more local levels, where measures of concentration have been declining over time." Put differently, one really needs to do due diligence and find the facts.

Moreover, "highly aggregated measures of concentration across industries, which are used in many of the most provocative studies, *cannot* be used to draw conclusions about concentration dynamics due to a host of methodological challenges. Instead, industry-level studies are necessary to accurately assess causal relationships. These more appropriately modeled studies generally find no direct relationship between changes in concentration measures and changes in market competitiveness or performance." Put differently, one really needs to do the analysis.

Reading through the 72 proposed actions, one can find some ideas that appear to have merit, some that appear to be real stinkers, and the remainder scattered in between. But there appears to be no desire to actually do the work necessary to tell them apart.