

President Biden's Executive Order Promoting Competition and its Potential Impact on the SEC

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On July 9, 2021, President Biden signed an executive order that commits the federal government to aggressive enforcement of antitrust laws. The executive order was signed in an effort to promote open and fair competition in the economy. The executive order includes 72 specific actions to address issues in various industries, including agriculture, healthcare, transportation, and technology. Rather than a mandate, the President's executive order is a guide for federal and independent agencies, including the Securities and Exchange Commission (SEC), which encourages those agencies to adopt policies opposing exploitative business practices.

POTENTIAL IMPACTS OF THE EXECUTIVE ORDER ON THE SEC

1. The SEC may be required to work with the White House Competition Council to ensure that SEC operations are conducted in a manner that promotes fair competition, as appropriate and consistent with applicable law.
2. The SEC may be required to work with the White House Competition Council to create a coordinated response to overconcentration, monopolization, and unfair competition directly or indirectly affecting the American economy.
3. The SEC shall consider using its authority to further the policy of fair competition, with particular attention to the influence of the SEC's respective regulations on concentration and competition.

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4. The SEC shall consider using its authority to further the policy of fair competition, with particular attention to the potential for the SEC's procurement or other spending to improve the competitiveness of small businesses and businesses with fair labor practices.
5. Where not specified, the SEC is encouraged to comply with the requirements of the order.

The executive order also encourages the Federal Trade Commission (FTC) to consider exercising its statutory rulemaking authority to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” If the FTC, an independent agency not subject to Presidential directives, complies, such an action would have implications across many industries. The FTC was further encouraged to consider exercising its statutory rulemaking authority regarding, among other areas:

- Unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy;
- Unfair occupational licensing restrictions;
- Unfair competition in major internet marketplaces; and
- Unfair anticompetitive conduct or agreements in the prescription drug industries, such as agreements to delay the market entry of generic drugs or biosimilars.

President Biden believes this executive order and the actions of the agencies that stem from the executive order can help establish lower prices, higher wages, and more money, options, and convenience for Americans. Through this executive order, President Biden aims to prevent abusive actions by monopolies, as well as mergers that lead to “mass layoffs, higher prices, [and] fewer options for workers and consumers alike.”

Capital Markets & Securities Law Watch will continue to monitor developments regarding the SEC's actions stemming from this executive order and provide updates to our readers as information becomes available.

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