

Government Controversies and Public Policy Litigation

The Biden White House Ramps up Antitrust Enforcement and Reform

With Executive Order 14036 the Biden Administration Signals Focus on Competition Policy

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1. Introduction

On July 9, 2021, President Biden signed Executive Order 14036, “Promoting Competition in the American Economy”^[1] (the “EO”). The sweeping competition EO, coupled with six competition bills^[2] advanced by a bipartisan vote of the House Judiciary Committee in June, signals a sustained focus on competition policy from both the White House and Congress, and that focus is set to only intensify over the next year in the lead up to the midterms.

In announcing the EO, President Biden made clear that “bringing fair competition back to the economy” is a central tenant of his plan for the Nation’s long-term economic recovery.^[3] It represents a fundamental shift in federal competition policy, countering what reformers view as consolidation-friendly jurisprudence and under-enforcement of antitrust laws.

This EO serves primarily as an agenda-setting document to enliven the “whole-of-government” to use its full authority to improve economic competitiveness and innovation to the benefit of consumers, workers, and small businesses, and our country’s long-term economic growth. It provides directives to key executive branch agencies to review and strengthen prior policy guidance, and to encourage agencies to promulgate rules to increase competition, with the EO specifically targeting aspects of the health care, transportation, agriculture, internet service, technology, and banking and consumer finance industries. And it serves as a green light to enforcement agencies to fully and aggressively enforce the existing antitrust laws.

Of note, President Biden provided a key role for his White House to lead the “whole-of-government approach” by establishing a White House Competition Council, chaired by the White House Director of National Economic Council (“NEC”). In addition to the NEC Director, Brian Deese, the NEC has key personnel who are charged with implementing the White House “whole-of-government” approach, including Tim Wu, a Columbia Law Professor and author of the “The Curse of Bigness,”^[4] and Bharat Ramamurti, a long-time policy advisor to Senator Elizabeth Warren.

President Biden issued the EO before naming a head of the Department of Justice (“DOJ”) Antitrust Division, but just today the press is reporting that President Biden plans to nominate Jonathan Kanter to the position.^[5] Kanter has recently represented companies pushing for aggressive antitrust enforcement against some of the largest technology companies. Together with Lina Khan, who was sworn in as Chair of the Federal Trade Commission (“FTC”) on June 15, and is situated to be a leading voice in the Biden Administration on competition issues, these appointments signal an aggressive approach to antitrust enforcement and reform.

The alert analyzes the “whole-of-government” approach to competition outlined by the White House in

the EO and offers a high-level analysis of each policy area addressed in the EO.

2. Whole-of-Government Approach

In addition to setting out industry- and transaction-specific policies, the EO attempts to increase coordination of competition policy across agencies in what it calls a “whole-of-government” approach. The EO appears designed to avoid piecemeal enforcement, reduce agency capture, and make facilitation of competition a baseline component of the policy process, such that the federal government can, in the view of the EO’s proponents, respond effectively to well-coordinated industry lobbying and litigation. Moreover, the EO reflects the views of scholars-turned-Biden-appointees like Tim Wu, a technology and competition special assistant at the White House and one of the key architects of the EO, and Lina Khan, the FTC Chair, that consolidation is not only an industry-specific issue, nor does it cause only industry-specific harm. The EO sets forth a systemic approach to promoting competition, instead of focusing solely on consumer welfare. Notably, this approach is at odds with legislation introduced by Senators Mike Lee (R-UT) and Chuck Grassley (R-IA) and supported by many Republicans that would consolidate antitrust enforcement and expertise in the DOJ Antitrust Division.

The EO promotes a “whole-of-government” approach by:

- Stipulating that industry-specific statutes should be read together as part of “broader policies” to support competition, and industry-specific statutes should be understood to provide “additional protections” above the baselines set by the “first line of defense” of the Sherman Act, Clayton Act, and FTC Act. Sec 2(a), (c).
- Instructing agencies to “influence the conditions of competition” through rulemaking and procurement decisions, including by “rescinding regulations that create unnecessary barriers to entry.” Sec. 2(f), (g).
- Encouraging interagency enforcement cooperation in a manner that significantly increases the influence of the DOJ Antitrust Division and FTC, and the influence of the traditional “antitrust laws” over the interpretation and enforcement of industry-specific statutes, at other agencies.
- Establishing the White House Competition Council, tasked with implementation of the EO. Chaired by the Director of the National Economic Council (currently Brian Deese), the Council includes key domestic Cabinet Secretaries and requires the Chair to invite the relevant independent agencies to participate in the Council, including the FTC, Federal Communications Commission (“FCC”), and Consumer Financial Protection Bureau (“CFPB”). Sec. 4.
- Directing the Office of Information and Regulatory Affairs (“OIRA”) at the Office of Management and Budget (“OMB”) to incorporate pro-competition policies into its centralized review of major regulations, and encouraging OIRA to add consideration of effects on competition in regulatory impact analysis. Sec. 5(u).
- Invoking Supreme Court precedent discussing how promoting competition is “conducive to the preservation of our democratic political and social institutions” implicitly tying this effort to a broader theme of existential threats to democracy that currently motivates Democratic policies in other areas such as campaign finance and voting rights. Sec. 2(b) (quoting *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958)).

The DOJ, the FTC, and the FCC appear well coordinated on advancing the instant whole-of-government approach. Indeed, the same afternoon that President Biden signed the EO, the Acting Assistant Attorney General for the DOJ Antitrust Division, Richard Powers, issued a memorandum on the formation of a task force to determine, within 30 days, how the Division can assist other agencies in antitrust enforcement. Richard Powers^[6] and Lina Khan also issued a statement^[6] announcing a joint review of whether current merger guidelines are “overly permissive,” and both Khan and current Acting

FCC Chair Rosenworcel accompanied President Biden at the EO signing.

3. Key Policy Areas

The EO is broken into seven different policy areas. Each area is analyzed in turn below, initially focusing on the changes the technology sector should anticipate in the coming year. The EO's largest goal appears to be curtailing the power of large technology companies, but if there is a concerted and coordinated policy effort by the new White House Competition Council over the next two years the EO could have significant impacts on all its targeted industries. However, to do this would require expeditious rulemaking and guidance development, and adoption of the requested aggressive enforcement stance by independent agencies.

A. Technology

It is clear that the Biden Administration seeks to target the technology sector, in particular "Big Tech," in this instant EO. The EO underscores a fundamental shift in federal competition policy by the Biden Administration. Indeed, the Fact Sheet points to "dominant tech firms ... undermining competition and reducing innovation" as the targets of the EO.^[7] These actions include the following:

- **Mergers.** The operative text of the EO encourages "fair[] and vigorous[]" enforcement of the Clayton Act by the DOJ and FTC. Sec. 5(b). However, the EO may make mergers approval more difficult prospectively, as well as encourage the DOJ and FTC to consider revisiting past mergers. For example, the Fact Sheet argues that the EO "recognizes that the law allows [the DOJ and FTC] to challenge prior bad mergers that past Administrations did not previously challenge," indicating support for potentially unwinding of large-scale social media acquisitions in the mid-2000s.^[8]
 - The EO's introduction targets alleged tech-company "kill zones," flagging that it is "the policy of [the Biden 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." The EO's introduction also "reaffirms that the United States retains the authority to challenge transactions whose previous consummation was in violation of" the antitrust laws.
 - Moreover, the EO encourages the DOJ and FTC to review and consider revising the horizontal and vertical merger guidelines. Sec. 5(c). Notably, shortly after President Biden signed the EO, FTC Chair Lina Khan and the Acting Assistant AG of the Antitrust Division Richard Powers issued a statement^[9] announcing a joint review of whether the guidelines are "overly permissive."
- **User Surveillance and Data Accumulation.** The EO encourages the FTC to issue rules on "unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy." Sec. 5(h)(i). The EO's accompanying Fact Sheet characterizes this as targeted at "Big Tech platforms gathering too much personal information," most likely those that rely on data monetization, such as social media companies. The FTC has traditionally overseen privacy issues, such as data breaches and misrepresentations about privacy practices, via enforcement actions by its Bureau of Consumer Protection.
 - The EO's encouragement of the FTC to promulgate rules on privacy issues indicates a shift from an adjudication to a regulation model for privacy at the agency, which will be facilitated by the Commission's action earlier this month to amend its Rules of Practice to "streamline[]"^[10] its rulemaking process,^[11] and by the creation last March of a centralized group in the FTC's Office of General Counsel focused on drafting new regulations.^[12] This could create more regulatory

certainty across presidential Administrations, but it could also lock in a more heavy-handed approach even after Biden-appointed Commissioners have ended their terms.

- The EO's characterization of data collection and consumer privacy as competition issues also signals a shift in the enforcement framework, potentially making privacy and data accumulation, including through acquisitions, issues central to both of the FTC's traditional jurisdictional areas: competition and consumer protection. In combination with bipartisan support in Congress^[13] for increasing the FTC's budget and its fee collections, this could be the beginning of a more rigorous enforcement period by a better-resourced agency.
- This development of treating privacy as not only a consumer-protection issue but also an antitrust concern may indicate that U.S. privacy policy may be tracking what has already begun to occur in Europe, where competition agencies have begun exercising jurisdiction over privacy issues, including by treating data collection as both evidence of, and a contributor to, barriers to market entry.
- Finally, a resulting rulemaking pursuant to the EO may track—and serve as a substitute for—federal privacy legislation that the FTC and others have long supported^[14] but failed to pass, even in less polarized Congresses.
- **Platform Nondiscrimination.** The EO includes a broad provision encouraging the FTC to issue regulations regarding “unfair competition in major Internet marketplaces.” Sec. 5(h)(iv). Specifically, it directs the Commerce Department to conduct a study on “the mobile application ecosystem” in consultation with the DOJ and FTC, and with an “open and transparent stakeholder consultation process.” Sec. 5(r)(iii). The study is to be delivered to the White House Competition Council within a year of the EO, and to provide recommendations for “reducing barriers to entry” and “maximizing user benefit with respect to the ecosystem.” Sec. 5(r)(iii). Though the EO does not explain what “unfair competition” means, its accompanying Fact Sheet provides that “large platforms’ power gives them unfair opportunities to get a leg up on the small businesses that rely on them to reach customers.”^[15]
 - Unlike recent legislation reported from the House Judiciary Committee, the EO and the Fact Sheet do not discuss interoperability or alleged conflicts of interest from platform ownership. However, the EO has a “catchall” provision encouraging the FTC to consider legislating on “any other unfair industry-specific practices that substantially inhibit competition,” so rules regarding interoperability issues could potentially be within the EO's scope if the FTC is motivated to target them. Sec. 5(h)(vii).
- **“Right to Repair.”** The EO targets restrictions on device repair by customers or independent technicians in various industries, including agriculture and smartphones, by encouraging the FTC to consider legislation to combat “unfair anticompetitive restrictions on third-party repair or self-repair of items.” Sec. 5(h)(ii). Indeed, the Fact Sheet accompanying the EO specifically targets “cell phone manufacturers. . . making repairs more costly and time-consuming, such as by restricting the distribution of parts, diagnostics, and repair tools.”^[16] This perhaps signals the Biden Administration's support for the “right-to-repair movement,” a hot topic in both the United States and European Union related to smartphones.
- **Injunctive Remedies in F/RAND Licensing of SEPs.** The EO encourages the DOJ and Secretary of Commerce to reconsider the Trump Administration's Policy Statement^[17] on Remedies for Standard-Essential Patents Subject to Voluntary F/RAND Commitments, which withdrew an Obama-era policy^[18] of opposing the availability of injunctive relief for Standard-Essential Patent (SEP) infringement. Sec. 5(d). The EO's language perhaps signals that the Biden Administration views violations of F/RAND commitments as an antitrust issue rather than a purely

contractual matter, and as such, could dampen the availability of injunctive remedies for SEP holders.

B. Internet Service

The EO touches upon several issues related to access, pricing, and consumer choice for internet service in the United States. These issues include:

- **Net Neutrality.** The EO encourages the FCC to consider adopting neutrality rules promulgated in 2015 by the Obama Administration.^[19] Sec. 5(l)(i)–(ii). The Biden-appointed Acting FCC Chair, Jessica Rosenworcel, has been a strong proponent of net neutrality, as has White House advisor Tim Wu, who coined the term^[20] in the early 2000s. The FCC currently is evenly split between Democratic and Republican commissioners, though once the FCC is at full strength, it will likely move forward to restore these rules. To date, however, Biden has yet to nominate an FCC Commissioner or name a permanent FCC Chair.
- **5G Wireless Networks.** The EO encourages the FCC to conduct future spectrum auctions to “help avoid excessive concentration of spectrum license holdings,” as well as support “the continued development and adoption of 5G Open Radio Access Network (O-RAN) protocols and software.” Sec. 5(l)(ii)–(iii).
- **Broadband Prices.** The EO further encourages the FCC to, among other things, restore the Obama-era “Broadband Nutrition Label,” requiring providers to report prices and subscription rates to the FCC, and restrict “unreasonable” early termination fees for end-user communications contracts. Sec. 5(l)(v)–(vi).
- **Broadband Competition in Apartment Buildings.** The EO suggests there is limited competition for broadband access in apartment buildings, and thus encourages the FCC to prevent internet service providers from entering exclusivity agreements that require tenants to use that provider for internet services. Sec. 5(l)(vii).

C. Labor Markets

In keeping with the Biden Administration’s streamlined focus on workers and working families, the Fact Sheet outlining the EO commences with actions directed at workers. However, executive orders in general can only provide for limited concrete regulatory action in the broader labor market, so the EO can only “encourage[]” the FTC and other agencies to “consider” taking certain steps to further the administration’s priorities. Sec. 3(b), (d). These requested steps include:

- **Revisions to Antitrust Guidance.** The EO encourages the DOJ and the FTC to consider whether to revise the “Antitrust Guidance for Human Resource Professionals,” last published in October 2016. Sec. 5(f). The EO’s stated policy goal is to “better protect workers from wage collusion”, Sec. 5(f), amongst employers, which the Fact Sheet contends may be used to “suppress wages and benefits.”^[21]
- **Rulemaking to Curtail the Use of Non-Compete Clauses.** The EO argues that non-compete clauses “may unduly limit workers’ ability to change jobs” and encourages the FTC to “consider” using its statutory rulemaking authority under the Federal Trade Commission Act to curtail the use of non-compete clauses that “may unfairly limit worker mobility.” Sec. 5(g). This provision of the EO, and its potential impacts on employers, is discussed in more detail [here](#).
- **A Review of Occupational Licensing Restrictions.** The EO asks the FTC to examine its rulemaking authority to determine if it can issue regulations related to “unfair occupational licensing restrictions,” which the administration asserts will increase worker mobility. Sec. 5(h)(v). This builds on and broadens efforts undertaken by Michelle Obama and Dr. Jill Biden during the

Obama Administration, to make it easier for military spouses to transfer jobs between states.

- **A Report on the Effects of Lack of Competition in Labor Markets.** The EO directs the National Economic Council, in consultation with the Attorney General, the Secretary of Labor, and the FTC Chair to submit a report to the White House Competition Council in January 2022 “on the effects of lack of competition on labor markets.” Sec. 5(v)(i).

D. Healthcare

The EO targets four distinct areas of the healthcare industry: (1) prescription drugs, (2) hearing aids, (3) hospital mergers, and (4) health insurance. The requested agency action includes policies aimed at:

- **Prescription Drug Costs.** In an attempt to lower prescription drug costs, the EO directs the Food and Drug Administration (“FDA”), Department of Health and Human Services (“HHS”), and the FTC to continue work to lower drug prices by promoting biosimilar use and development, Sec. 5(p), facilitating the importation of prescription drugs from Canada,^[22] Sec 5(q), and encourages the FTC to use rulemaking to consider banning “pay for delay” schemes employed by brand-name drug manufacturers to protect their patents against biosimilar competition, Sec. 5 (h)(iii).
- **Hearing Aids.** In one of the more interesting and impactful actions taken, the EO directs the Department of Health and Human Services (“HHS”), within 120 days, to publish proposed rules that will allow hearing aids to be sold over the counter. In 2017, Congress passed bipartisan legislation allowing over-the-counter hearing aids,^[23] but the FDA has not issued regulations implementing this legislation, so hearing aids continue to require a prescription. This regulatory change is intended to expand the marketplace for hearing aids (currently there are four large hearing aid manufacturers) and lower costs for consumers, as the Fact Sheet asserts that because of their cost (hearing aids cost more than \$5,000 per pair) 86 percent of the 48 million Americans who need them go without.^[24] The new regulations may therefore open a large potential market for health and technology companies. This rule process will follow normal notice and comment procedures, which in theory means a final rule could be out as early as next summer. Sec. 5(p)(i).
- **Hospitals.** The EO directs DOJ and the FTC to scrutinize hospital mergers and finalize implementation of the No Surprises Act.^[25] Sec. 5(c)(directing the Attorney General and Chair of the FTC to “address the consolidation of industry in many markets...as described in section 1.”). Sec 5(p)(ii).
- **Insurance Plans.** The EO directs HHS to standardize public health insurance plans in the National Health Insurance Marketplace to allow comparison shopping (the mechanism for addressing this issue is not specified.). Sec. 5(p)(iii).

E. Transportation

The EO provides guidance on competition related to transportation, namely as related to the airline, rail, and shipping industries.

The bulk of these regulatory and policy changes are targeted at the airline and railroad industry.

- **Airlines.** The EO directs the Secretary of Transportation to issue a variety of new consumer protection regulations and guidance and to appoint or reappoint members of the Advisory Committee for Aviation Consumer Protection. These requested regulatory changes are largely just slight adjustments to existing regulations and are unlikely to dramatically impact the sector; many of these rules have been proposed or discussed previously.

Specifically, the EO asks the Department of Transportation (“DOT”) to (1) issue guidance to enhance consumer access to flight information and ensure advertising, marketing, pricing and charging of ancillary fees does not constitute an unfair or deceptive practice or unfair method of competition; (2) report to the White House Competition Council regarding progress with airlines providing refunds for flights cancelled because of the COVID-19 pandemic; and, (3) propose amendments to the definition of “unfair” and “deceptive” in transportation law, including 49 U.S.C. § 41712,^[26] governing airline consumer protection. Sec. 5(m)(i).

- Notably, the EO directs DOT to consider issuing clear rules requiring the refunding of fees when baggage is delayed or when an ancillary service, such as in-flight entertainment, is sold but not actually provided. The EO also directs DOT to consider issuing rules that require baggage, change, and cancellation fees to, according to the Fact Sheet, be “clearly disclosed to the customer.” Sec. 5(m)(i)(B), (F).
- Moreover, the EO impresses upon DOT a need to facilitate innovation and competition in nascent and innovative aviation technologies, including unmanned aircraft systems, while also bolstering safety, security, and privacy, protecting the environment, promoting equity, and providing oversight of market participants. Sec. 5(m)(iii).
- **Railroads.** Given the President’s well-publicized love of riding the rails, and given the shrinking number of freight railroads operating today, it is not surprising that the EO targets competition in the rail industry. Specifically, the EO directs the Chair of the Surface Transportation Board (“STB”) to require railroad track owners to provide rights of way to passenger rail and strengthens their obligations to treat others who need access to track fairly. For example, the EO encourages the STB to undertake rulemaking related to competitive access, including bottleneck rates and interchange commitments. Importantly for passenger rail, the EO also encourages the STB to ensure that freight railroads are providing passenger rail access without unwarranted delays or interruption consistent with existing federal law, including the Passenger Rail Improvement Act of 2008. Sec. 5(n)(i)–(iii).
 - Notably, the EO further directs the STB to consider whether a merger, acquisition, or other transaction involving rail carriers is consistent with sound public policy, and moreover, whether the subject carrier has fulfilled its responsibilities regarding Amtrak’s statutory right of access^[27] pursuant to 49 U.S.C. § 24308. Sec. 5(n)(iv). The STB has been weighing various competitive remedies, including reciprocal switching, for years; Board Chairman Martin Oberman said^[28] he agreed with the EO and shares the Biden Administration’s concerns about both freight and passenger service.

F. Agriculture

Broadly, the EO seeks to use the regulatory tools available to slow down the consolidation of farms and farm suppliers. The EO directs the United States Department of Agriculture (“USDA”) and the FTC to take a series of specific actions in this regard related to:

- **Farm Equipment.** The EO directly targets restrictions on the right to repair farm equipment, which increasingly has sophisticated and expensive technology incorporated, making it a significant expense for farmers. The EO directs the FTC to consider issuing regulations to address “unfair anticompetitive restrictions on third-party repair or self-repair of items.” Sec. 5(h)(ii). This is likely to have a broad impact across sectors, but the EO specifically cites as an example “the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment.” Sec. 5(h)(ii).
- **Rulemaking under the Packers and Stockyards Act.**^[29] The EO formally calls for three rules

that the USDA has already announced^[30] as in-progress regulations to (1) strengthen the general protections against anti-competitive behavior under the Act, (2) rescinding and reissuing an unimplemented rule protecting poultry farmers issued by President Obama in his final days in office, ^[31] and (3) clarifying enforcement standards under the act to make it easier for individual farmers to allege wrongdoing.

- **Increased Transparency in Meat Labeling.** In June, the FTC finalized a rulemaking^[32] imposing penalties for marketers who make “false, unqualified claims” that their products are “Made in the USA.” Concurrently, Secretary Vilsack announced that the USDA would undertake a “top-to-bottom review” of the “Product of USA” label on meat.^[33] The EO formally requests rulemaking to “define the conditions” where meat can be identified as a “Product of the USA.” Sec. 5(i)(ii). Under current regulations, meat grown and slaughtered elsewhere can be labeled a “Product of the USA” so long as it is processed in the United States.
- **Increased Access to Markets.** The EO calls for development of a plan to increase farmers’ access to markets and issue a report on the effect of retail concentration on competition in the food industry. In conjunction with the EO announcement, the USDA announced^[34] it would invest \$500 million to support new meat and poultry processing facilities, which aims to help small farmers and new entrants by breaking up the monopoly of big processing plants.

G. Banking and Consumer Finance

Finally, the EO outlines the Biden Administration’s enforcement priorities to address growing bank consolidation in the economy. These policies are designed to reflect the general heightened scrutiny of mergers at the heart of the administration’s competition agenda and include:

- **Updated Merger Guidelines:** The EO requests, within 180 days, that the AG, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency review their respective practices for merger oversight of banks. Sec. 5(e).
- **New Rulemaking from the Consumer Financial Protection Bureau (“CFPB”).** The EO also seeks to message that the CFPB should take a more aggressive and expanded oversight role, a stark contrast to the approach taken during the Trump Administration.
 - First, the EO encourages the agency to commence a rulemaking that would allow consumers to more easily control their transaction data, thereby increasing portability between banks. These regulatory changes would be similar to the actions the Administration is calling for in the tech industry.
 - Second, the EO broadly calls on the CFPB to have a renewed focus on “enforcing the prohibition on unfair, deceptive, or abusive acts” within the consumer finance industry. Sec. 5(t)(ii). The CFPB’s mandate is not specific or targeted, but seems to solely reinforce that the CFPB should be more aggressive in its enforcement and oversight.

4. Conclusion – What to Watch for Next

This Executive Order should be seen as a roadmap of what to expect from the Biden Administration—strengthened guidance, new rulemaking and more aggressive anti-trust enforcement from the DOJ and independent agencies. This aggressive approach and timeline by the Administration, will be occurring concurrently with Congressional hearings and markups of their package of competitiveness reforms, and as an expected increase in attention and enforcement from state attorney generals. While the rulemaking and enforcement actions take time, there will be a concerted effort by those tasked with implementing this EO to have real victories that the Administration can communicate about, to demonstrate that they are effectively fighting for those with less economic power—workers, small business owners, consumers—ahead of the midterm elections in November 2022.

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[21] Press Release, White House, *FACT SHEET: Executive Order on Promoting Competition in the American Economy* (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.

[22] HHS has the discretionary power to approve the importation of prescription drugs pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat 2066.

[23] FDA Reauthorization Act of 2017, Pub. L. No. 115-52, 131 Stat. 1005.

[24] Press Release, White House, *FACT SHEET: Executive Order on Promoting Competition in the American Economy* (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.

[25] No Surprises Act, Pub. L. No. 116-260, Div. BB, 134 Stat. 2758 (2020).

[26] 49 U.S.C. § 41712, <https://www.govinfo.gov/content/pkg/USCODE-2010-title49/pdf/USCODE-2010-title49-subtitleVII-partA-subpartii-chap417-subchapl-sec41713.pdf>.

[27] 49 U.S.C. § 24308, <https://www.govinfo.gov/content/pkg/USCODE-1995-title49/pdf/USCODE-1995-title49-subtitleV-partC-chap243-sec24308.pdf>.

[28] Press Release, Surface Transp. Bd., *Statement from STB Chairman Martin J. Oberman on Executive Order on Competition* (July 9, 2021), <https://prod.stb.gov/news-communications/latest-news/pr-21-29/>.

[29] Pub. L. No. 67-51, ch. 64, 42 Stat. 159.

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[31] 9 C.F.R. Part 201; Poultry Grower Ranking Systems, 81 Fed. Reg. 92,723 (Dec. 20, 2016)

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[33] Press Release, USDA, *USDA Announces Efforts to Promote Transparency in Product of the USA Labeling* (July 1, 2021), <https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling>.

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