



ESG Watch

The Current State of Antitrust and Implications for Companies

March 2, 2022



Hosted in Collaboration with Cleary Gottlieb

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Some of the critical topics we will be addressing today

- **Federal and State antitrust legislation:**
 - Prospects for pending bills
 - Concerns for the corporate community
 - Reforms companies should be seeking
 - Overlooked state legislation
- **The regulatory environment for M&A:**
 - Status of federal merger guidelines
 - What deals are being blocked
- **Antitrust enforcement**
 - The current state of enforcement under the new administration
 - Risks of civil and criminal actions for no-poach agreements



Today's Speakers



David McAtee
Senior Executive Vice
President and General
Counsel
AT&T



Bruce Hoffman
Partner
**Cleary Gottlieb Steen &
Hamilton LLP**



Paul Washington
Executive Director,
ESG Center
The Conference Board

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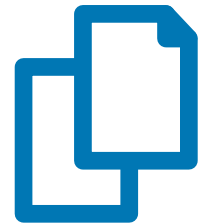
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Resources

[2022 Proxy Season Preview and Shareholder Voting Trends](#)

A report based on data from The Conference Board's ESG Advantage benchmarking tool on shareholder trends including 5 briefs that dive into E&S, HCM, corporate political activity, governance, and company sponsored proposals.

[Stockholder to Stakeholder Shift Report \(Publication\)](#)

The concept of stakeholder capitalism is not new. What is different today is the environment in which companies are operating, the range of issues they are addressing, the increased pressure from all stakeholders to take action, and the degree of transparency expected of companies. In a series of roundtables and interviews, we asked CEOs and C-suite executives for their perspectives and expectations for what lies ahead as the shift from stockholder to stakeholder capitalism spreads.

[ESG Metrics in Executive Compensation? Time for Boards to Pause and Reflect \(Publication\)](#)

Executive compensation programs have a lot in common with the Internal Revenue Code. The tax code has moved far beyond its essential purpose of raising revenue for the government, or even providing incentives to advance broad-based societal goals such as homeownership. Today it seeks to shape virtually every form of human behavior with a vastly complicated set of rules—and with questionable efficacy.

[C-Suite Outlook 2022: Reset and Reimagine \(Publication\)](#)

Inflation concerns are skyrocketing. Labor shortages are driving talent retention and recruitment to the top of the CEO agenda in 2022. How do CEOs plan to seize the opportunities? This year's C-Suite Outlook, our 23rd annual survey, details the external stress points business leaders face and the impact of these stressors on growth strategies. We also explore C-suite views on the benefits and risks of hybrid work models, and priorities related to environmental, social & governance (ESG) topics. The report reflects the views of 1,614 C-suite executives, including 917 CEOs globally.

[It Seemed Like a Good Idea at the Time: From Principle to Practice in Executive Compensation \(Webcast\)](#)

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[Merger Integration Conference \(October 13-14, New York City\)](#)

Driving strategy in an upended world relies on doing deals right. But, without effective merger integration, that can't happen. At the 2022 Merger Integration event, executives will share how they pivoted their integration processes, what worked, and what didn't. Join us to talk about what's next for the deal market and how to tweak your integration to support strategy and drive transformation.

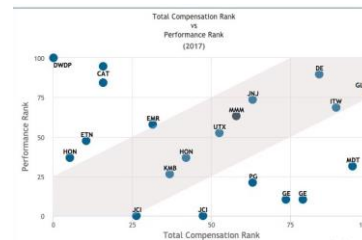
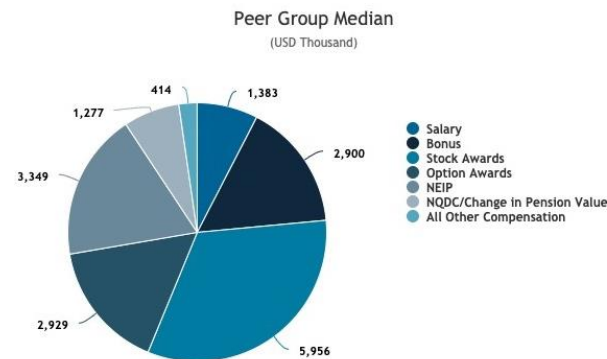


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The ESG Center serves as a resource, partner, and platform to help our Members address their priorities in corporate governance, sustainability, and citizenship through **trusted, timely, and actionable Insights**.

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- ✓ Environmental (New)
- ✓ HCM + Social (New)



- **ESG Advantage** is the only platform that covers the **entire Russell 3000**
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Legislative Updates



Congress Supports Increasing Agency Resources, With Focus On Budget to Address Tech Giants

Merger Filing Fee Modernization Act of 2021 would increase agency budgets

- In addition to increased funding from higher filing fees, the bill would increase Congressional appropriations to the FTC and DOJ antitrust division for FY 2022
- The DOJ Antitrust Division's budget would be increased from \$184.5 million to \$252 million and the FTC's budget would be increased from \$330.2 million to \$418 million

Road to Passage

- Senate passed the bill in June 2021. House included identical language in its companion legislation on January 25, 2022. The bills are part of broader packages which require negotiation but appear likely to pass during the 117th Congress.

“Our competition enforcers don’t have enough resources to effectively take on multi-billion dollar, much less trillion-dollar, companies. The Federal Trade Commission and Department of Justice Antitrust Division shouldn’t have to fight some of the largest monopolies in history with duct tape and Band-Aids. . .”



— Senator Klobuchar (D-MN)



Merger Filing Fee Modernization Act of 2021: Senators Klobuchar and Grassley

Modify HSR filing fees for the first time since 2001, resulting in significant increases in many cases (though some decreases)

- ✓ Per Sen. Grassley’s webpage, the changes aim to “lower the burden on small and medium-sized businesses” and “ensure larger deals bring in more income and raise enough revenue so that taxpayer dollars aren’t required to fund necessary increases to agency enforcement budgets”

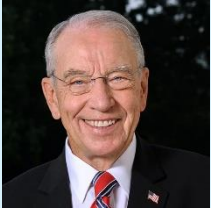
Changes in merger filing fee structure

Deal Size	Old Fee	New Fee
Less than \$161.5 million	\$45,000	\$30,000
\$161.5 million to \$500 million	\$125,000	\$100,000
\$500 million to \$1 billion	\$125,000 - 280,000	\$250,000
\$1 billion to \$2 billion*	\$280,000	\$400,000
\$2 billion to \$5 billion*	\$280,000	\$800,000
\$5 billion and higher*	\$280,000	\$2,250,000

Note: * Indicates new merger fee category under the Merger Filing Fee Modernization Act of 2021.
Source: “Federal Trade Commission: HSR threshold adjustments and reportability for 2021,” available at <https://www.ftc.gov/news-events/blogs/competition-matters/2021/02/hsr-threshold-adjustments-reportability-2021> [last accessed May 5, 2021]; Merger Filing Fee Modernization Act of 2021, S. 228, 117 Cong. 1 sess. (February 4, 2021), available at <https://www.congress.gov/bills/117th-congress/senate-bill/228>.

Source: Washington Center for Equitable Growth

“I’m proud to co-author this bipartisan bill, which will improve fairness in the fee schedules for proposed mergers and strengthen the ability of these agencies to challenge anticompetitive transactions.”



– Senator Grassley (R-IA)

“Now that my bill with Senator Grassley passed the Senate, the Federal Trade Commission and Department of Justice’s Antitrust Division are one step closer to having additional resources to conduct rigorous reviews of large mergers.”



– Senator Klobuchar (D-MN)



State Antitrust Venue Enforcement Act – Overview and Status in the Senate and House

The identical bills would prevent state antitrust cases from being transferred to another court and potentially consolidated alongside other private antitrust cases. The bill would also apply retroactively to cases currently under review.

▪ **HR 3460 Status in the House**

- Sponsored by Representatives Buck and Cicilline
- Introduced on May 21, 2021
- Approved by the House Judiciary Committee by a vote of 24-7
- Rep. Jim Jordan of Ohio, the panel's top GOP member, voted for the bill even though he is opposed to most of the remaining bills in the committee's antitrust package. Rep. Zoe Lofgren and two other California Democrats — Eric Swalwell and Lou Correa — voted against the bill, as did California Republicans Rep. Darrell Issa and Tom McClintock.

▪ **S 1787 Status in the Senate**

- Sponsored by Senators Lee, Klobuchar, Blumenthal, Hawley, Leahy and Cruz
- Introduced on May 24, 2021
- Approved by Senate Judiciary without amendment on September 23, 2021
- During the Judiciary hearing on September 23rd Senator Padilla expressed concern about the retroactivity, “Litigants and the courts are owed certainty about the rules they need to follow,” ... “We’re now debating whether or not to weigh into active litigation and undo a process that’s already been done.”
- Senator Durbin concurred, adding that jurisdictional changes are significant. Both Senators agreed to hold their amendments and work with members before bringing the matter to the floor.



CALERA: Sen. Klobuchar's Antitrust Reform Bill

Amend legal standard to make it easier to block mergers

- Amend § 7 of the Clayton Act to prohibit mergers that “create an appreciable risk of materially lessening competition” (current standard prohibits mergers that “substantially lessen competition”)
- Clarify that mergers that create a monopsony also violate the statute

Establishes five situations in which mergers would be presumed anticompetitive, and the merging parties would bear the burden to prove otherwise

- Shifts burden to merging parties for (1) an acquisition that significantly increases market concentration, (2) an acquisition in which the acquiring firm has over 50% market share (or significant market power), (3) an acquisition of an entity/asset that prevents, limits, or disrupts coordinated interaction among competition (*i.e.*, a maverick firm), (4) an acquisition that likely enables or materially increases the likelihood of unilateral or coordinated effects, and (5) “mega-mergers” valued at more than \$5B.

Redefines exclusionary conduct, focusing on *competitors*

- Create new provision under § 2 of the Clayton Act to prohibit “exclusionary conduct” (conduct that materially disadvantages rivals or limits rivals’ ability or incentive to compete) that “presents an appreciable risk of harming competition.”

Increase enforcement resources at DOJ and FTC

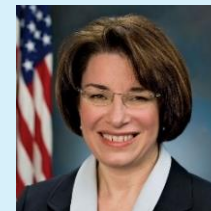
- Authorize increase of ~\$300 million to each of the agencies’ annual budgets
- Establish new FTC division to conduct market studies and merger retrospectives

“This bill will turbocharge antitrust enforcement.”



— Charlotte Slaiman,
Competition Policy Director
at Public Knowledge

“[O]ur economy today faces a massive competition problem. [CALERA] is the first step to overhauling and modernizing our laws so we can effectively promote competition and protect American consumers.”



— Senator Klobuchar (D-MN)



Open App Markets Act – Overview and Status in Senate & the House

This bill establishes rules related to the operation of an app store by a covered company (i.e., the owner or controller of an app store with more than 50 million U.S. users).

An app is a software application or electronic service that may be run or directed by a user on a computer or mobile device. An app store is a publicly available website, software application, or other electronic service that distributes apps from third-party developers to users.

The bill prohibits a covered company from (1) requiring developers to use an in-app payment system owned or controlled by the company as a condition of distribution or accessibility, (2) requiring that pricing or conditions of sale be equal to or more favorable on its app store than another app store, or (3) taking punitive action against a developer for using or offering different pricing terms or conditions of sale through another in-app payment system or on another app store while also providing privacy and security provisions to protect users from malware or misuse of personal data.

A covered company may not interfere with legitimate business communications between developers and users, use non-public business information from a third-party app to compete with the app, or unreasonably prefer or rank its own apps (or those of its business partners) over other apps.

The bill provides for enforcement of its provisions by the Federal Trade Commission and the Department of Justice, as well as through suits brought by developers that are injured by reason of anything forbidden under the bill.

Requires the FTC to conduct a review of implementation three years after enactment.

Includes a private right of action meant to give start-ups within the industry the ability to defend against injury caused by monopolistic behavior.

▪ **HR 3825 Status in the House**

- Sponsors – Rep. Jayapal and Rep. Goodman
- June 23, 2021 – Hearing, markup and voted out of House Judiciary Committee. Currently waiting for full House consideration.

▪ **S. 2710 Status in the Senate**

- Sponsors – Senators Blackburn, Blumenthal and Klobuchar Booker, Graham, Kennedy, Hirono, Hawley, Durbin
- August 11, 2021 - Introduced
- February 3, 2022 – Substitute amendment agreed to and voted out of Judiciary Committee on a 21-1 vote.



American Innovation and Choice Online Act (AICOA)

No Self-Preferencing

- Prohibits covered platforms (i.e., GAFAM) from preferencing their own products and services in a manner that materially harms competition.

No Discrimination

- No discrimination in the application or enforcement of terms of service between similarly situated business users

Forced Interoperability

- Allow competitors to use the system platform, operating system, hardware, and software features Google’s products, services or lines of business use

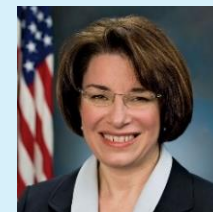
No Bundling of Products

- Prohibits requiring business users to use the covered platform owner’s own products and services as a condition of covered platform access

Data Use Restrictions

- No using data collected from business users or their users to improve products or services that compete with those business users on the covered platform

“As dominant digital platforms – some of the biggest companies our world has ever seen – increasingly give preference to their own products and services, we must put policies in place to ensure small businesses and entrepreneurs still have the opportunity to succeed in the digital marketplace.”



– Senator Klobuchar (D-MN)



American Innovation and Choice Online Act (AICOA)

Current Status and Next Steps

- Passage likely: Voted out of Senate Judiciary Committee by 16-6 vote
- Senators agreed to work together to amend the bills before full Senate for a vote
- Still resistance from both parties:
 - Democrat Senators from California concerned about impact on California businesses
 - Some Republicans believe it creates risk to protection of personal data and privacy
- No timeline on full Senate vote – more difficult if Dems lose House and Senate in midterms
- Bipartisan support, but Kevin McCarthy (R-CA) is opposed and unlikely to move the measures if he becomes Speaker



Platform Competition and Opportunity Act

The bill only applies to dominant technology platforms that:

- Have at least 50,000,000 U.S.-based monthly active users or 100,000 monthly active business users;
- Has a market capitalization of \$600 billion as calculated by a 180-day trading average;
- Is a critical trading partner to other businesses.

The legislation establishes a presumption against mergers and acquisitions of potential competitors by the Big Tech companies. A designated firm will have the burden of showing that any purchase of greater than \$50 million does not contribute to or sustain its dominant market share. The bill would prevent big tech from further suppressing competition through killer acquisitions.

Senate Version

- Amended to remove discretion from the FTC to ensure that this legislation will only apply to monopolistic big tech firms.
- Includes a provision limiting the application of this bill to firms that meet the above criteria within 30-days of the bill's passage. This will ensure that other growing firms—that do not have the same monopolistic practices of big tech—avoid these limitations
- Applies to companies with a market cap of \$600 billion or more as of the date of the bill's enactment.
- Introduced on November 4, 2021 but has not been scheduled for a hearing yet.

House Version

- Applies to any company that has its market cap reach \$600 billion
- The House bill was advanced by a 24-17 vote in the House Judiciary Committee on June 24, 2021. California democrats Salwell, Lofgren and Correa opposed the bill while three republicans, Buck, Gaetz and Bishop voted with the democrats.

“This bipartisan legislation will put an end to those anticompetitive acquisitions by making it more difficult for dominant digital platforms to eliminate their competitors and enhance the platform's market power,”

– Senator Klobuchar (D-MN)



New York: “Twenty-First Century Anti-Trust Act”

During the previous legislative, the New York State Senate passed legislation aiming to make broad changes to the state’s antitrust law – with national ramifications. The session ended without action from the Assembly and the bill was reintroduced in January 2022 and is making its way through both houses now.

- Ostensibly aims at “Big Tech,” but applies to all businesses, even those with minimum contacts to NY
- Must be enacted by Assembly and signed by Governor to become law.
- On hold with recent developments but may be reintroduced. Key provisions are as follows:
 - **Merger Filings:**
 - Requires merger filings in NY 60 days prior to closing for a huge number of relatively small deals (~\$9.2M+) with little connection to NY
 - **Unilateral conduct:**
 - Makes illegal “abuse [of a] dominant position,” a concept pioneered in European competition law
 - Presumes that firms with more than 40% share are dominant, eliminates any defense that conduct had procompetitive effects, and applies special stricter provisions in labor markets
 - Creates a private treble-damage right of action for abuses of dominance
 - **Criminal enforcement:**
 - Extends to unilateral conduct (also subject to federal criminal enforcement, but has long not been enforced)
 - Increases penalties, including up to 4 years in prison for individuals



Deals, Deals and More Deals



FTC Enforcement Increasingly “Progressive”

ORGANIZATIONAL CHANGES



- Lina Khan (Columbia Law School; Big Tech critic) appointment to FTC Chair cheered by Senator Warren and other progressives
 - Tenure so far has included sweeping policy changes without public review or comment
 - Early Termination remains suspended
 - Changes to Second Request practice at FTC to increase burden of process
 - New prior approval policy requiring parties entering into consent orders, and possibly even parties abandoning transactions, to obtain prior FTC approval for new deals in same markets
 - Withdrawal of 2020 Vertical Merger Guidelines & plan for new Merger Guidelines
- Republican Commissioners: As a deterrence mechanism, FTC’s Democratic majority is intentionally imposing a tax (time, risk, cost, burden) on many mergers that courts would be unlikely to find unlawful
 - Merging parties should prepare for surprises, unwarranted delays
 - Merging parties need to be ready to push back – at the end of the day, FTC is constrained by judiciary, and will have to pick its battles
 - While we are seeing additional, unwarranted Second Requests, many deals that have some issues are still getting done
- Current Commission deadlocked as Alvaro Bedoya (Georgetown law professor; focus on privacy and civil rights) nomination to be a Democratic Commissioner has stalled
 - First nominated in September 2021; resubmitted in January 2022
 - With seat open, FTC currently has 2 Democratic Commissioners and 2 Republican Commissioners



ENFORCER STATEMENTS

- Chair Khan: *“The durability and public legitimacy of our antitrust regime depends on the ability of enforcers and courts to adapt, remaining faithful to [] legislative mandates even as markets and business practices shift and evolve.”*
- Commissioner Slaughter: *“We look forward to turning the page on the era of lax oversight and to beginning to investigate, analyze, and enforce the antitrust laws against vertical mergers with vigor.”*



New DOJ Leadership Also More Progressive



ORGANIZATIONAL CHANGES

- Jonathan Kanter was confirmed as Assistant Attorney General for Antitrust in November 2021
 - Former FTC staff attorney, law firm partner, and known critic of Big Tech, particularly Google
 - Well known for representing a number of Google competitors, including Microsoft, Yelp, and News Corp., spurring discussions around recusal for ongoing DOJ matters
 - Confirmation testimony suggested mainstream positions, but progressive themes as well:
 - Reduced emphasis on economics
 - Attention to labor/impact of mergers on employees
- Doha Mekki is principal Deputy Assistant Attorney General for Antitrust
 - Long-time DOJ staff lawyer
 - Focus on no-poach issues & currently leading the DOJ's first-ever criminal prosecution of alleged wage-fixing agreements



ENFORCER STATEMENTS

- Kanter speech on January 24, 2022:

“Antitrust law enforcement has not succeeded in keeping pace with these massive changes in our economy. In my view, the only way to reinvigorate antitrust enforcement is to adapt our approach to reflect the obvious economic and transformational technological changes that now define our economy.”

“I am concerned that merger remedies short of blocking a transaction too often miss the mark [W]hen the division concludes that a merger is likely to lessen competition, in most situations we should seek a simple injunction to block the transaction.”



But, Enforcement Actions Consistent with Past Practice

DOJ sued to stop U.S. Sugar from acquiring a rival sugar refiner, Imperial Sugar Co.; litigation pending (11/23/21)



FTC Sues to Block \$40 Billion Semiconductor Chip Merger: the vertical deal would combine chip supplier Nvidia with chip design provider ARM; litigation pending (12/02/21)



FTC Sues to Block Lockheed Martin's acquisition of Aerojet Rocketdyne in a vertical deal, alleging it would further concentrate markets critical to national security and defense; litigate (01/25/22)



DOJ sues to stop UnitedHealth Group's Acquisition of Change Healthcare alleging it would eliminate United's only major rival for first-pass claims editing technology — a critical product used to efficiently process health insurance claims and save health insurers billions of dollars each year — and give United a monopoly share in the market (02/24/22)



Actual agency challenges have not been groundbreaking;
consistent with this, recent FTC votes to challenge deals have been 4-0



Recent Enforcement Data

While official statistics from the current year are not available yet, Commissioner Christine Wilson provides a summary at a [January 26th speech](#) at the Mercatus Antitrust Forum.

*“Let’s compare the 2020 numbers to the 2021 numbers. Under President Biden, only three suits were brought to challenge mergers, compared to nine in 2020. Consents to remedy anticompetitive transactions, down from 12 in 2020. And four transactions were abandoned in 2021 after the FTC opened investigations, compared to 10 in 2020. **Bottom line: the FTC had 12 merger actions in 2021, compared to 31 in 2020.**”*

FTC Merger Challenges	2020	2021
Suits	9	3
Consents	12	5
Abandoned	10	4
Total	31	12



Joint FTC/DOJ Plan to Modernize Merger Guidelines

REVIEW AND UPDATE OF MERGER GUIDELINES

- In January 2022, FTC and DOJ jointly announced process to review and update Merger Guidelines
 - Seeking public comments by March 21, 2022; after reviewing responses, agencies will release proposed guidelines for comment
 - Following the comment period, agencies intend to provide final revised Merger Guidelines
 - Targeting a release of final new guidelines in 2022
- Areas of particular interest:
 - Labor markets, agriculture, supply chain concerns, private equity roll-ups, and the role of technology
 - Looking beyond market definition and considering how market power may be reflected outside of market shares
 - Assessing harms holistically, including looking at impact on range of stakeholders, not just end consumers

ENFORCER STATEMENTS

- Chair Khan, January 18, 2022:

*“This inquiry . . . is designed to ensure that [the agencies’] merger guidelines accurately reflect modern market realities and **equip [the agencies] to forcefully enforce the law against unlawful deals.**”*

- AAG Kanter, January 18, 2022:

*“[W]e [must] ensure our approach to analyzing mergers is not one-dimensional or two-dimensional, but captures the rich complexity of the modern economy. **That will be how we prevent, in their incipiency, all of the harms of unlawful consolidation.**”*



Enforcement and Compliance



Big Cases to Watch

- ✓ **The big monopolization cases are all Trump administration cases being continued by the Biden administration**
 - *U.S. and Plaintiff States v. Google LLC*
 - *Federal Trade Commission v. Surescripts, LLC*
 - *Federal Trade Commission v. Meta Platforms*
- ✓ **No new big Biden conduct cases yet, except criminal no-poach, which follow prior trends**
 - *United States v. Surgical Care Affiliates LLC*
 - *USA v. DaVita Inc. et al*
 - *Doe v. Raytheon Technologies Corporation et al*
- ✓ **Cases outside the box**
 - *Axon Enterprise, Inc. v. Federal Trade Commission*
 - *West Virginia v. Environmental Protection Agency, No. 20-1530, argued before the Supreme Court on February 28, 2022*



Biden Executive Order on Antitrust



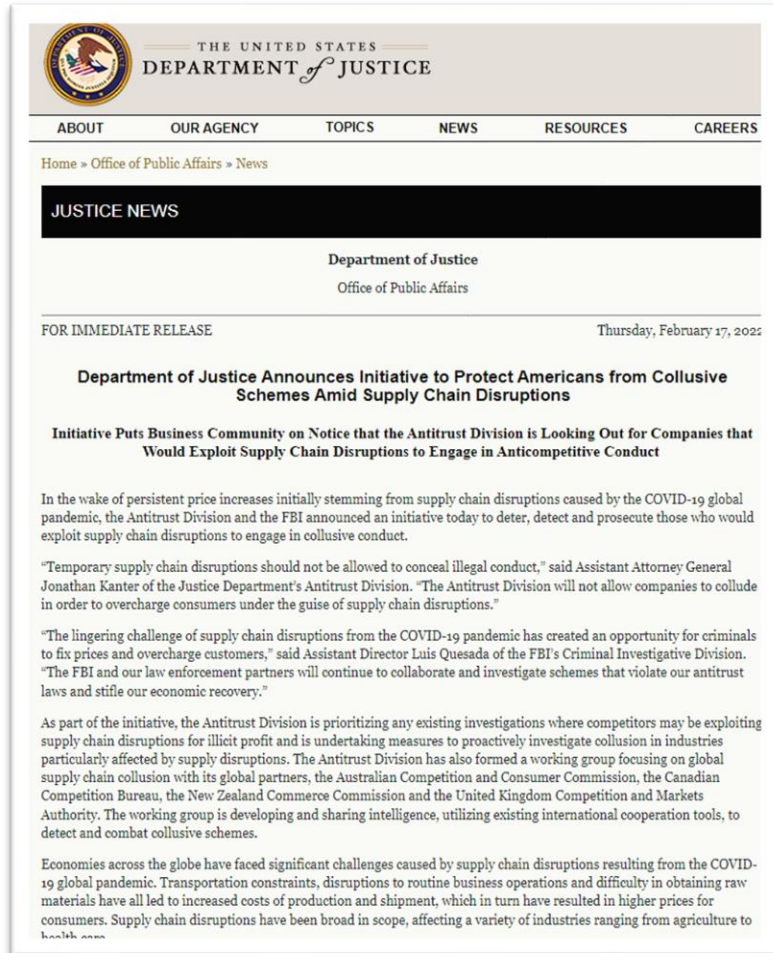
- ✓ **On July 9, 2021, President Biden signed the Executive Order on Promoting Competition in the American Economy**
 - Comprised of a collection of 72 discrete initiatives
 - Establishes interagency White House Competition Council
 - Does not make immediate policy change. Encourages review and consideration.
- ✓ **Prioritizes merger enforcement**
 - Encourages DOJ and FTC to revisit the horizontal and vertical merger guidelines. FTC has abandoned vertical guidelines. Both agencies committed to revisit horizontal guidelines
 - Reaffirms the right to challenge consummated transactions
- ✓ **Example: Repair Markets**
 - Encourages FTC to address through rulemaking authority “unfair anticompetitive restrictions on third-party repair or self-repair of items”
 - Note, on July 21, FTC voted unanimously on policy statement to prioritize enforcement against illegal repair restrictions, including evaluation of potential tying claims
- ✓ **Labor Markets**
 - Encourages FTC to (1) ban or limit non-competes; (2) ban occupational licensing restrictions that impede mobility; and (3) (together with DOJ) prevent collaboration leading to, e.g., wage suppression by revising Antitrust Guidance for HR Professionals

“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 — 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.**” —

Biden Executive Order (emphasis added)



Compliance Issues to Watch



The screenshot shows the top portion of a press release from the Department of Justice. At the top left is the Department of Justice seal. To its right, the text reads "THE UNITED STATES DEPARTMENT OF JUSTICE". Below this is a navigation menu with links for "ABOUT", "OUR AGENCY", "TOPICS", "NEWS", "RESOURCES", and "CAREERS". A breadcrumb trail indicates the path: "Home » Office of Public Affairs » News". A black box with the text "JUSTICE NEWS" is present. Below that, the text "Department of Justice" and "Office of Public Affairs" is displayed. The release is dated "Thursday, February 17, 2022" and is marked "FOR IMMEDIATE RELEASE". The main heading is "Department of Justice Announces Initiative to Protect Americans from Collusive Schemes Amid Supply Chain Disruptions". A sub-heading reads "Initiative Puts Business Community on Notice that the Antitrust Division is Looking Out for Companies that Would Exploit Supply Chain Disruptions to Engage in Anticompetitive Conduct". The body text begins with "In the wake of persistent price increases initially stemming from supply chain disruptions caused by the COVID-19 global pandemic, the Antitrust Division and the FBI announced an initiative today to deter, detect and prosecute those who would exploit supply chain disruptions to engage in collusive conduct." It continues with quotes from Assistant Attorney General Jonathan Kanter and Assistant Director Luis Quesada of the FBI's Criminal Investigative Division. The text concludes with "As part of the initiative, the Antitrust Division is prioritizing any existing investigations where competitors may be exploiting supply chain disruptions for illicit profit and is undertaking measures to proactively investigate collusion in industries particularly affected by supply disruptions. The Antitrust Division has also formed a working group focusing on global supply chain collusion with its global partners, the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission and the United Kingdom Competition and Markets Authority. The working group is developing and sharing intelligence, utilizing existing international cooperation tools, to detect and combat collusive schemes. Economies across the globe have faced significant challenges caused by supply chain disruptions resulting from the COVID-19 global pandemic. Transportation constraints, disruptions to routine business operations and difficulty in obtaining raw materials have all led to increased costs of production and shipment, which in turn have resulted in higher prices for consumers. Supply chain disruptions have been broad in scope, affecting a variety of industries ranging from agriculture to health care."

[Department of Justice Announces Initiative to Protect Americans from Collusive Schemes Amid Supply Chain Disruptions | OPA | Department of Justice](#)

FTC Launches Inquiry into Supply Chain Disruptions

November 29, 2021

Orders Walmart, Amazon, Kroger and other large wholesalers and suppliers to turn over information to help study causes of empty shelves and sky-high prices

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The Federal Trade Commission is ordering nine large retailers, wholesalers, and consumer good suppliers to provide detailed information that will help the FTC shed light on the causes behind ongoing supply chain disruptions and how these disruptions are causing serious and ongoing hardships for consumers and harming competition in the U.S. economy.

The FTC is issuing the orders under Section 6(b) of the FTC Act, which authorizes the Commission to conduct wide-ranging studies that do not have a specific law enforcement purpose. The orders are being sent to Walmart Inc., Amazon.com, Inc., Kroger Co., C&S Wholesale Grocers, Inc., Associated Wholesale Grocers, Inc., McLane Co, Inc. Procter & Gamble Co., Tyson Foods, Inc., and Kraft Heinz Co. The companies will have 45 days from the date they received the order to respond.

"Supply chain disruptions are upending the provision and delivery of a wide array of goods, ranging from computer chips and medicines to meat and lumber. I am hopeful the FTC's new 6(b) study will shed light on market conditions and business practices that may have worsened these disruptions or led to asymmetric effects," said Chair Lina M. Khan. "The FTC has a long history of pursuing market studies to deepen our understanding of economic conditions and business conduct, and we should continue to make nimble and timely use of these information-gathering tools and authorities."

In addition to better understanding the reasons behind the disruptions, the study will examine whether supply chain disruptions are leading to specific bottlenecks, shortages, anticompetitive practices, or contributing to rising consumer prices.

[FTC Launches Inquiry into Supply Chain Disruptions | Federal Trade Commission](#)





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