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White House "Fact Sheet" on Competition in the U.S.: Long on Claims, Short on Facts

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KEY TAKEAWAYS

President Biden's new executive order directs agencies to expand regulations across the economy, including financial services, labor, agriculture, and technology.

The Biden Administration's new regulatory agenda on competition is based on a misreading of economic data and a distrust of free enterprise.

The White House Fact Sheet fails to make its case. It cites sources that do not support its claims, selectively reports data, and makes overly broad generalizations.

In July 2021, President Joe Biden issued an executive order (EO) that "established a whole-of-government effort to promote competition in the American economy."[1] According to the White House, the EO's 72 initiatives for at least 12 federal agencies are necessary to "reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America's consumers, workers, farmers, and small businesses."[2]

The White House cites various sources that, supposedly, support the Administration's main claim: Declining levels of competition, linked to increased corporate consolidation, have caused many different economic problems, including higher consumer prices and lower wages. While a less competitive environment certainly may lead to such economic problems, the White House fails to make the case that

U.S. market competition has declined, let alone that any decline in American competitiveness is due to corporate consolidation.

In many instances, the White House ignores key results of the very studies that it cites, and also makes overly broad generalizations that the evidence does not support. In other instances, the White House selectively reports certain statistics, often while providing no context whatsoever and misrepresenting the underlying data. In fact, the very first statistical claim in the *Fact Sheet* accompanying the EO—that the "economy has gained more than three million jobs since the President took office"—ignores the fact that the government had shuttered thousands of businesses during the 2020 COVID-19 pandemic, leading to a government-induced drop in employment of approximately 25 million between February 2020 and April 2020.[3]

The Administration's case is less than compelling because its sources do not support its conclusions. The President's claims represent his Administration's missed opportunity to bring attention to the many misguided government policies that *have* made markets less competitive and harmed American consumers. This *Backgrounder* examines the evidence—and lack thereof—for the Administration's assertions in each section of the *Fact Sheet* that summarizes the EO.

Opening Section

The introductory section of the *Fact Sheet* provides a link to one study in support of the idea that 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."[4] Yet, the *Fact Sheet* fails to mention that this trend has been driven by the very largest firms in various industries for decades, and that the overall concentration levels have changed very little since the 1980s.[5] Just as important, the Administration's basic statistic reveals little about the overall competitive behavior in any given industry, much less whether firms in these industries now harm consumers.[6]

To connect the purported higher industry concentration levels with higher consumer prices, the White House cites a study that estimates that companies have tripled their markups (the amount that firms charge above their cost) as concentration levels increased.[7] The Administration ignores at least three mitigating factors. First, the cited study provides just one macro-level estimate of markups, and the authors acknowledge, "Markups alone do not tell the full story about market power." Second, the study's authors estimate that the median markup has not changed since the 1950s.[8] Third, consumer prices have not been rising faster during the past two decades than during previous years—they have been rising more slowly.[9] Combined, these findings do not provide robust evidence that increased concentration levels have contributed to higher consumer prices throughout the economy.

Regarding the effects of industry concentration on wages, the *Fact Sheet* cites research that estimates that "industry consolidation is decreasing advertised wages by as much as 17%." While the 17 percent figure is quoted correctly, the study only estimates that increased concentration among *some* firms "is associated with" a decrease in *advertised* wages ranging from as little as 5 percent to as much as 17 percent.[10] Thus, the Administration chose to only report the high end of the estimate, and to relate that figure, too broadly, to "industry consolidation."

Although the *Fact Sheet* makes no mention of it, the cited study uses data only from 2010 through 2013. According to the study's authors, the data came from the website CareerBuilder.com, and "represents 35% of the total number of [job] vacancies in the US in January 2011."[11] Moreover, the authors claim that "[o]nly about 20%" of the posted vacancies in the data include salary information.[12] Given these problems with the sample,[13] it is clear that their evidence says nothing about the long-term wage trends in the U.S. economy.

Separately, the opening section of the *Fact Sheet* claims,

> 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.

As evidence, the White House links to a *St. John's Law Review* article titled "The Antitrust Legacy of Thurman Arnold."[14] While the article does provide estimates for how much a few of these enforcement actions saved consumers, the source for virtually all those estimates is Arnold himself or the Antitrust division of the Justice Department. Moreover, the article does not include (or reference) *any* sort of cost analysis of the Roosevelt Administration's overall enforcement efforts, nor *any* type of economic analysis of whether that effort "helped unleash decades of sustained, inclusive economic growth."[15]

Labor Markets

The second section of the *Fact Sheet* makes several claims about how changing concentration and competition have affected various labor issues.

For instance, the Administration views noncompete agreements as anti-competitive, and claims that "[t]ens 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." The White House does not, however, mention that most noncompete agreements are unenforceable unless they are very narrowly defined.[16]

Separately, the *Fact Sheet* states, "Roughly half of private-sector businesses require at least some employees to enter non-compete agreements, affecting some 30 to 60 million workers." As evidence, the White House cites an Economic Policy Institute paper from 2019.[17] This study, in turn, relies on a business-establishment-level survey where nearly half of the respondents indicated that "at least some employees in their establishment were required to enter into a noncompete agreement."[18] While the study does estimate a range of U.S. workers that might be subject to a noncompete agreement, its authors also state that the "survey data *do not allow us to determine the precise share* of workers nationwide that are subject to noncompete agreements."[19] (Emphasis added.)

Given these shortcomings in the study, the *Fact Sheet* is, at best, misleading. Furthermore, the Administration ignores that noncompete agreements can be an important source for helping workers. In some cases, these agreements protect firms' secrets and allow companies to survive by remaining competitive. Similarly, the agreements can mitigate high employee turnover, thus allowing employers to provide greater investments in their workers.[20]

Lastly, this section of the *Fact Sheet* states,

> 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.

This passage is misleading because not all such types of information exchanges are illegal, a fact that is clearly explained in the *Fact Sheet*'s supporting reference.[21] Perhaps more important, the Administration provides absolutely no evidence that the existing guidance has harmed workers, or that firms have collaborated to suppress wages and benefits.

Health Care

The White House correctly identifies high prices for pharmaceutical drugs as a public policy concern, but it grossly oversimplifies the issue and ignores many factors that lead to high drug prices. Besides disregarding competitive influences, the *Fact Sheet* fails to mention the high costs of creating pharmaceutical drugs, much of which is due to government requirements.[22] Similarly, although the *Fact Sheet* cites a RAND corporation study as evidence that "Americans pay more than 2.5 times as much for the same prescription drugs as peer countries," it fails to mention that many of these other countries[23] impose price controls on pharmaceuticals, thus artificially suppressing prices.[24]

The Administration asserts that high drug prices are "in part" due to a lack of competition among drug manufacturers and claims that the market power of the largest pharmaceutical companies allows them to reap higher profits than "the largest non-drug companies." Such comparisons can lead to misleading conclusions. Companies in different industries operate under a wide range of economic and regulatory circumstances, and therefore it would be prudent to use direct comparisons.

The White House makes similarly misleading claims regarding medical devices. For instance, it sums the market share of the top four U.S. hearing aid manufacturers to imply that a lack of competition has led to high prices and, therefore, too few people with hearing aids. First, a small number of firms making up a large market share does not inherently signal insufficient competition. Also, there are multiple non-price-related reasons why Americans are not using hearing aids, including difficulty to use, discomfort, stigma, and high maintenance.[25] To be fair, the *Fact Sheet* does accurately state that "red tape" has created barriers to new entrants, thus limiting the number of firms selling hearing aids. That is, the Administration admits that current regulations are also an impediment to competition and lower prices.

The *Fact Sheet* also links high health care prices to consolidation, claiming, "Thanks to unchecked mergers, the ten largest healthcare systems now control a quarter of the market." Again, the White House oversimplifies the issues. For example, the Deloitte study cited in the *Fact Sheet* lists positive reasons for why hospital mergers and acquisitions are occurring, many of which are related to the better health of Americans. As that study points out, these improvements have resulted in more Americans being treated at outpatient facilities, reducing the need for as many hospitals, thus contributing directly to more hospital mergers and acquisitions.[26]

The Administration also claims that "[c]onsolidation in the health insurance industry has meant that many consumers have little choice when it comes to selecting insurers." Yet, the very same study that the White House uses to support this statement reports that "[f]or the third straight year, several insurers are entering the market or expanding their service area in 2021. [Also in 2021,] we find that 30 insurers are entering the individual market across 20 states...and an additional 61 insurers are expanding their service area within states [in which] they already operated."[27] The study discusses how consumers have more options and how the number of options has been steadily *growing*, thus contradicting the Administration.[28]

Transportation

The *Fact Sheet* claims that the transportation industry is dominated by "large corporations," and it discusses competitive issues in multiple transportation sectors. It states, for instance, that the "top four commercial airlines control nearly two-thirds of the domestic market," implying that a lack of competition has led to higher prices and fees. This statement is misleading, though, and oversimplifies the nature of the airline industry in several ways.

First, the airline industry was heavily regulated by the federal government prior to 1978. These regulations had led to many inefficiencies and caused pricing and entry limitations for airline carriers, culminating in a push to deregulate the industry.[29] Following deregulation, airline carriers experienced greater market competition predominantly through the entry of low-cost carriers.[30] Low-cost carriers are airlines that offer lower prices, point-to-point service, and have complimentary in-flight amenities.[31] These carriers may be more affordable for consumers, and serve as direct competition to the legacy airlines American, Delta, and United.

The *Fact Sheet* misconstrues evidence from Statista.com: It is true that American Airlines, Southwest Airlines, Delta Air Lines, and United Airlines are the four carriers with the largest market share,[32] but Southwest is a *low-cost carrier* that is now considered a "model for other carriers both in the United States and abroad."[33] Southwest is arguably one of the most successful airline carriers in terms of pricing, route service, and flight frequency—all thanks to deregulation that *increased* competition.[34]

The *Fact Sheet* gives the impression that other smaller airlines (such as Envoy Air, Frontier, JetBlue, SkyWest, and Spirit) hold limited market power and are therefore not competitive with the top four carriers.[35] The Administration's view is mistaken. Envoy, Frontier, JetBlue, SkyWest, and Spirit serve a different sector of the airline market than American, Delta, and United. Smaller airlines tend to offer lower prices and operate on shorter routes, which coincides with the nature of these airlines and accommodates a specific customer base. The fact that these airlines are not competitive with the top four carriers is not necessarily bad for competition. These airlines *are not intended* to compete directly with the top four carriers. Instead, these smaller airlines undercut legacy carriers' prices and serve customers who want cheaper fares and travel shorter distances.

Similarly, it is misleading to characterize other smaller carriers as having substantially less market share than the "top four commercial airlines" because these other carriers are *code-share partners* with the larger airlines. Under code-sharing agreements (airline alliances), one airline sells tickets and seats on another carrier's flight.[36] As such, these agreements can be beneficial to airline firms and consumers through complementary route networks.[37] That is, the smaller carriers benefit extensively from the top carriers' stance in the market. Code sharing explicitly allows airlines with less market share to advertise through the top four airlines, thus benefitting from the top airlines' position in the market.[38] If some airlines did not hold substantial market share, code sharing would be useless, which would in turn *hurt* smaller airline carriers. Legacy airline carriers with greater market share help smaller airlines to advertise and attract customers through their frequent flyer programs.

The *Fact Sheet* also claims that "[r]educed competition contributes to increasing fees like baggage and cancellation fees," but it provides no evidence of this claim. Instead, the Administration cites a 2018 *Business Insider* article that announced that American, Delta, and United were raising their checked-bag fees by $5.[39] In fact, the article mentions that many airlines raised their bag fees in succession, and the first firm to do so (during this period) was JetBlue, a low-cost carrier. The article also describes these fee increases as part of a practice called unbundling, a move that "began in the late 2000s when airlines recognized the necessity of gaining extra revenue to counteract the higher price of crude oil."[40]

Similarly, the White House blames industry consolidation for enabling "powerful container shippers" to charge "exorbitant fees for time their freight was sitting waiting to be loaded or unloaded," and notes that these fees can "add up to hundreds of thousands of dollars." The *Fact Sheet* provides no evidence that industry consolidation has caused such problems, it merely links to a 2019 opinion column and a 2018 announcement about a Federal Maritime Commission (FMC) probe into high fees.[41]

FMC Commissioner Rebecca Dye issued a final report in December 2018 regarding demurrage and detention. The final report encourages the FMC to establish a Shipper Advisory Board to "anticipate and avoid" any potential investigations for the maritime industry in the future.[42] The final report also suggests creating "Innovation Teams" to establish standardized approaches to solve maritime issues.[43] These approaches include notification of cargo availability, paying special attention to billing practices, properly establishing processes and procedures for demurrage and detention resolutions, and providing clear definitions of "demurrage" and "detention" to eliminate potential issues.[44]

Agriculture

The *Fact Sheet* makes sweeping statements, such as, "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." Yet, the studies on which the Administration relies to bolster this claim do not make a compelling case that input prices have risen due to market concentration. Furthermore, the studies focus on specific commodities, not overall input prices.[45]

The *Fact Sheet* also fails to provide evidence that, in general, input prices are increasing. In fact, according to the Economic Research Service at the U.S. Department of Agriculture (USDA), input prices have been on a long-term *downward* trend relative to the cost of labor.[46] Additionally, evidence shows that input prices tend to adjust with crop prices, meaning that if crop prices fall, input prices follow. Overall, it cannot not be concluded that all farm input prices have increased.[47]

The Administration claims that "corn seed prices have gone up as much as 30% annually," which is a mischaracterization of the data because the increase was for one year only (2009).[48] Such use of the data is particularly misleading because seed prices, especially those listed in the *Fact Sheet* (for corn, soybeans, and cotton), are extremely volatile.[49] Incidentally, fertilizers, particularly over the past few years, have been subject to countervailing duties[50] (taxes), a policy that has most likely contributed to any increases in short-term input prices.[51] Regardless, while the Administration claims that some farmers and ranchers "have to pay more," the federal government has been paying other farmers billions because the prices they receive are *too low*, and the Congressional Budget Office is predicting that corn and soybean prices will remain low "for years to come."[52]

Regarding increased consolidation of the seed market, the *Fact Sheet* cites an opinion column by Kristina Hubbard, the director of advocacy and communications for the Organic Seed Alliance.[53] The Administration omits any reference to the possibility that government intervention and a disproportionate allocation of subsides to a few commodities, including corn, cotton, and soybeans, could have worsened concentration by insulating select farmers from competition.[54]

The White House tries to bolster the claim that "consolidation…limits farmers' and ranchers' options for selling their products" by citing the USDA data on meat-price spreads (the difference between the price that farmers receive and the price that consumers pay in the grocery store). However, the cited data range only from 2015 to 2020 for annual averages (and from June 2019 to June 2021 for monthly values). Given the high volatility of agriculture prices, this time frame is insufficient to establish a long-term trend.[55]

The *Fact Sheet* states that ranchers' share of the price for beef has decreased because of consolidation, and then cites a *New York Times* article describing the supply-and-demand shocks to the industry from the pandemic. The article provides no direct evidence that ranchers' share decreased because of more industry consolidation. These shocks are apparent in the monthly USDA data during the shutdowns. The disturbances resulted in higher wholesale prices due to lower processing capacities *even though* an excess supply of cattle would ordinarily have depressed prices.[56] Thus, the recently depressed share for cattle ranchers is, in large part, due to an extremely disruptive economic shock, not because of industry consolidation.

The White House further decries increased concentration by noting, "In short, family farmers and ranchers are getting less, consumers are paying more, and the big conglomerates in the middle are taking the difference." It cites a Center for American Progress report that claims:

> [S]mall and midsize farmers struggle to keep their operations running and make ends meet. Indeed, real net farm income for intermediate farms—defined as family farms operated by someone whose primary occupation is farming and with annual gross cash receipts of less than $350,000—has seen little improvement over the past two decades.[57]

One problem with this type of analysis is that *net farm income* does not represent farmers' total income. Rather, it is a measure of the net income earned only from farming, similar to profits earned in other businesses.[58]

However, when looking at farm household income,[59] median farm household income was 21 percent greater than median non-farm household income in 2019.[60]

The Administration also says that farmers' and ranchers' share of each dollar spent on food is declining. To support this claim, it uses the USDA's *food dollar* metric, a measure that "shows the farm and marketing cost split in a typical $1 food purchase."[61] It is true that the farm share is trending downward, but only very slightly. Between 1993 and 2019, the average farm share was 15.5 cents; the highest farm share was 16.9 cents (in 1998), and it was 14.9 cents in 2019.[62] Objectively, these figures do not represent large deviations from the long-term average.[63]

Finally, the *Fact Sheet* states that American farmers and ranchers are "squeezed by foreign corporations importing meat from overseas with labels that mislead customers about its origin." Aside from the fact that this statement contradicts the notion that the industry is now less competitive, the White House provides no evidence to support its position that foreign companies are "squeezing" domestic corporations. In fact, the Administration cites a Bloomberg article that focuses on the benefits of these imports to consumers, that praises one of the very meatpackers the *Fact Sheet* elsewhere criticizes for being anticompetitive and hurting farmers, and does not provide any evidence that farmers and ranchers are being harmed by such imports.[64]

Regardless, the *Fact Sheet* does not mention that, while the labeling of meat may indeed now be confusing, it is not due to foreign competition. Rather, it is due to inflexible U.S. labeling regulations that (in addition to confusing consumers) impose high costs on meat processors, farmers, and ranchers.[65]

Internet Service

The Administration asserts that many Americans lack access to broadband services as a result of limited competition. In fact, 95.6 percent of Americans in 2019 could access fixed terrestrial broadband at speeds of 25/3 megabits per second (Mbps)—the benchmark for advanced telecommunications capability.[66] In addition, 99.9 percent of the U.S. population has access to mobile service (at 5/1 Mbps), and 95.5 percent has access to both mobile and fixed services at those speeds.[67]

The *Fact Sheet* also claims that "[f]amilies are paying higher prices for necessities—things like…internet service." There is considerable debate about whether broadband prices have risen or fallen over time and, as is often the case in such debates, the answer lays in how the calculation is constructed. When comparing the same type of service over time, the cost of the most widely purchased tiers of cable broadband has *declined by 98 percent* during the past 15 years, from $28.13/Mbps to $0.64/Mbps.[68]

Focusing on the *average* cost of broadband or (other computations) can give the impression that prices have risen, but this method is overly simplistic because of myriad factors that determine rates. For example, transmission speeds may vary, as do service bundles and promotions. The cost of service also depends on geography, population density, and taxes. Generally speaking, broadband rates are progressive. That is, households with above-average incomes tend to purchase higher-priced enhanced services, while lower-income households pay less for more basic services. The simplistic nature of the figures cited in the *Fact Sheet*—some of which lack a verifiable source—misrepresent the role of competition in pricing.[69]

The Administration also claims that consumers pay more for broadband because competition is lacking. According to the *Fact Sheet*, "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." The combination of studies cited by the Administration does not, however, support this conclusion. For example, the number of service providers in an "area" (as cited by the White House) does not include satellite service, and the areas cited overstate the likely population affected. If satellite service is included, the proportion of U.S. residents living in an area with only one or two providers *declines* from 64.07 percent (211 million) to 4.02 percent (460,600), and the number of U.S. residents with three or more high-speed Internet providers *increases* from 32.17 percent to 95.94 percent.[70] The Administration also fails to provide evidence that a limited number of service providers in any area drives up broadband rates.[71]

The *Fact Sheet* asserts that broadband "exclusivity deals" have harmed low-income and marginalized neighborhoods by "effectively block[ing] out broadband infrastructure expansion by new providers." To support these assertions, the Administration relies on a study that did not examine such arrangements. Moreover, federal law prohibits exclusive-access agreements between property owners and broadband providers.

The *Fact Sheet* also asserts that a lack of price transparency makes comparison shopping hard, citing a supposed finding by the Federal Communications Commission (FCC) that actual prices can be 40 percent higher than advertised. This claim misrepresents the data attributed to the FCC. In fact, the 40 percent figure was mentioned in a 2016 news release by the agency in reference to unverified customer complaints. According to that release:

> The FCC receives more than 2,000 complaints annually about surprise fees associated with consumers' Internet service bills. The actual prices paid for broadband-related services can be as much as 40 percent greater than what is advertised after taxes and fees are added to a bill, according to consumer complaints to the Commission.[72]

If accurate, "surprise fees" must not be a big problem, because 2,000 complaints comprised just 0.58 percent of the 343,909 consumer complaints received that year.[73]

Technology

The Administration contends that mergers and acquisitions by dominant tech firms are "undermining competition and reducing innovation." According to the *Fact Sheet*, "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," and, "[t]oo often, federal agencies have not blocked, conditioned, or, in some cases, meaningfully examined these acquisitions."

The Administration does not offer any evidence to support the "killer acquisitions" claim. It only references one study that focused exclusively on pharmaceutical companies, rendering it inapplicable to the tech industry.[74] Regarding government oversight of mergers and acquisitions, the Hart–Scott–Rodino Act (HSR) requires proposed mergers of consequence to be reviewed by both the Federal Trade Commission (FTC) and the U.S. Department of Justice Antitrust Division.[75]

In addition, the FTC has ordered Alphabet (including Google), Apple, Amazon, Facebook, and Microsoft to submit information about previously non-reported acquisitions that occurred between January 1, 2010, and December 31, 2019, including the terms, scope, structure, and purpose.[76] FTC officials say that they will evaluate whether the HSR filing thresholds are adequate.

The Administration also accuses large platforms of accumulating "extraordinary amounts of sensitive personal information and related data." This complaint ignores the fact that the collection of personal data by social media and other tech platforms begins with the voluntary cooperation of the individual consumer—and most sites allow users to customize their privacy settings. Most important, use of the platforms is *voluntary*, unlike the government's vast collection of personal information.

In addition, the Administration attacks "large platforms" for taking unfair competitive advantage of smaller companies, claiming that

> 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 copy-cat products more prominently than the small businesses' products.

The *Fact Sheet* then cites a political document that summarizes a series of hearings by the House Subcommittee on Antitrust, Commercial and Administrative Law.[77] A variety of critics have previously assailed this report as more propaganda than fact. For example, economist Alan Reynolds described it as "many pages full of newspaper references. Economics, however, is conspicuously missing throughout.... [T]he cited survey evidence only demonstrates the authors' technological ignorance and economic illiteracy."[78] The Information Technology and Innovation Foundation characterized the majority staff report as "filled with analytical errors."[79]

The Administration also claims that restrictions on self repairs and third-party repairs of technology devices raise costs by restricting the distribution of parts, diagnostics, and repair tools. As with many other assertions, the Administration provides no concrete evidence to validate these claims. Instead, it cites a 2017 article on Vice.com and a 2019 article on Vox.com.[80] Beyond the rhetoric, however, the issue of third-party repair involves serious issues, such as intellectual property, consumer safety, and cybersecurity—none of which is addressed in the *Fact Sheet*.[81]

Banking and Consumer Finance

The *Fact Sheet* "encourages" federal agencies to provide "more robust scrutiny of mergers" in the banking industry, and claims that "excessive consolidation raises costs for consumers, restricts credit for small businesses, and harms low-income communities." It then points out—correctly—that approximately 10,000 banks have closed during the past four decades. It states that "many of these closures are the product of mergers and acquisitions," but provides no context for this trend.

It is true that the total number of U.S. banks has been shrinking for decades, as the data cited in the *Fact Sheet* show.[82] However, the total number of banks in the U.S.— as with the total number of firms in any industry—does not, by itself, fully describe the level of competition in the financial sector, indicate the overall strength of the banking system, or reveal how well banks serve consumers. For instance, there were more than 25,000 banks in the U.S. prior to the Great Depression, but many of those banks were dangerously weak because they depended solely on the success of small local economies. Eventually, the harmful branching restrictions that spawned so many weak banks were relaxed and, in 1994, repealed.[83] Thus, while the "right" number of banks at any given time is difficult to know, more is not necessarily better (or indicative of a more competitive banking sector).

The Administration also presents misleading information on federal agencies' actions. While it may be true that "federal agencies have not *formally* denied a bank merger application in more than 15 years" (emphasis added), the *Fact Sheet* provides no details on why this may be the case or how many merger applications were voluntarily withdrawn. Yet, an article cited in the *Fact Sheet does* explain that between 5 percent and 18 percent of merger applications were voluntarily withdrawn between 2011 and 2018.[84] Within the banking industry, it is widely acknowledged that applications are rarely formally denied because agencies regularly encourage applicants to withdraw their submission before it can be denied.[85]

Evidence also reveals that federal agencies have increased regulatory roadblocks to creating new banks, and explicitly failed to approve numerous new bank charter applications. In 2009, regulators started requiring new applicants to submit seven-year business plans with evidence of capital sufficient to *exceed* the minimum required for all seven years, and mandated heightened supervisory monitoring for seven years (up from three years). After implementing these new rules, only 33 new applications were filed in 2009, and the Federal Deposit Insurance Corporation (FDIC) approved *none* of those requests to open a new bank.[86]

Moreover, in 2008, before the financial crisis hit, 72 percent (101) of the new deposit insurance applications—a necessity for opening a bank—filed with the FDIC were *not* approved.[87] More broadly, the White House ignores that the consolidation trend is *at least* partly driven by excessive federal regulations that increasingly burdened banks and would-be bankers—including the 900-page Dodd–Frank Wall Street Reform and Consumer Protection Act—with complex red tape and heavy compliances costs.[88]

The Administration also ignores other contributory factors to consolidation, such as the proliferation of Web-based technologies that lessen the need for physical offices. Compared to four decades ago, banks can now more easily pool deposits across geographic communities and reach customers without as many physical locations. This change represents an improvement in productivity and bank safety, thus increasing access to banking services for millions of Americans. Unsurprisingly, the FDIC reports that nearly 95 percent of American households now have an account at either a bank or credit union, the highest rate since 2009 (when the agency first conducted such a survey).[89]

The White House does cite one study supporting its claim that mergers and acquisitions have contributed to a reduction in small business lending, and another that suggests that consolidation has led to higher interest rates. However, the Administration ignores the broader evidence. For instance, one comprehensive review of the economics literature—covering over 150 studies dated *after* 2000—shows that although consolidation *can* adversely affect certain types of borrowers and depositors, other evidence reveals that it can have positive effects.[90] The review also provides evidence that much of the recent merger activity has been driven by the desire to obtain "too-big-to-fail" status (to secure the associated federal subsidies), not by insufficient private competition.[91]

Finally, the *Fact Sheet* claims that "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." As evidence, the Administration cites a report from the Center for American Progress (CAP) that amounts to little more than opinion and advocacy. The CAP argues that high transaction costs (and opportunity costs) prevent people from switching banks, but provides no direct evidence.[92] Not only does the CAP paper ignore the ease with which someone can open a bank account online,[93] it even notes that the United Kingdom implemented the type of portability "reforms" that the authors favor, and that those ostensible improvements induced very *little* switching among customers. This evidence contradicts the Administration's claim.

Conclusion

The Biden Administration has issued an executive order to establish a "whole-of-government effort" aimed at promoting competition in the U.S. economy. The EO contains nearly 100 initiatives for at least 12 federal agencies. The Administration argues that alleged declining competition, which it links to increased corporate consolidation, has caused many different economic problems, including higher consumer prices and lower wages. According to the White House, the EO is needed to "reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America's consumers, workers, farmers, and small businesses."[94]

To support its conclusions, the White House released a *Fact Sheet* that cites various reports and academic papers. It completely fails to make the Administration's case. The *Fact Sheet* cites sources that do not support its claims, selectively reports certain statistics, misleadingly neglects contradictory statistics in those same sources, misrepresents results in some of those reports, and makes overly broad generalizations. The White House has not provided evidence that the U.S. economy is now less competitive than it was previously, much less that corporate consolidation reduced the overall level of competition in the U.S. and harmed America's consumers, workers, farmers, and small businesses.

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Endnotes

1. The 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/ (accessed July 28, 2021).
2. Ibid.
3. The 25 million figure refers to the employment level; as of December 2020, the employment level has remained at 8.9 million jobs below the February 2020 total. See FRED, "Employment Level [CE16OV]," Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CE16OV (accessed July 28, 2021). It is unclear exactly to which "jobs" category the EO is referring, but the gain of several million jobs in a six-month period is not unprecedented. For example, the Bureau of Labor Statistics reports, "From September 2019 to December 2019, job gains at opening and expanding private-sector establishments numbered 7.8 million." See U.S. Bureau of Labor Statistics, "Net Employment Gain of 792,000 Private-Sector Jobs During the Fourth Quarter of 2019," *TED: The Economics Daily*, August 4, 2020, https://www.bls.gov/opub/ted/2020/net-employment-gain-of-792000-private-sector-jobs-during-the-fourth-quarter-of-2019.htm (accessed July 28, 2021).
4. Gustavo Grullon, Yelena Larkin, and Roni Michaely, "Are U.S. Industries Becoming More Concentrated?" forthcoming in Swiss Finance Institute *Research Paper* No. 19-41, October 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047 (accessed July 20, 2021).
5. David Autor et al., "The Fall of the Labor Share and the Rise of Superstar Firms," NBER *Working Paper* No. 23396, May 2017, https://www.nber.org/papers/w23396 (accessed July 20, 2021).
6. Also see Ryan Bourne, "Does Rising Industry Concentration Signify Monopoly Power?" Cato Institute *Economic Policy Brief* No. 2, February 13, 2020, https://www.cato.org/economic-policy-brief/does-rising-industry-concentration-signify-monopoly-power (accessed July 20, 2021).
7. Jan De Loecker, Jan Eeckhout, and Gabriel Unger, "The Rise of Market Power and the Macroeconomic Implications," *The Quarterly Journal of Economics*, Vol. 135, No. 2 (May 2020), pp. 561–644, https://academic.oup.com/qje/article/135/2/561/5714769 (accessed July 20, 2021).
8. Ibid.
9. For instance, on an annual basis (December to December), the core consumer price index (all items less food and energy) increased, on average by 3.94 percent from 1980 to 2000. From 2000 to 2020, the index increased, on average, just 1.96 percent per year. Authors' calculations using "All items less food and energy in U.S. city average, all urban consumers, seasonally adjusted."
10. José Azar, Ioana Marinescu, and Marshall Steinbaum, "Labor Market Concentration," *Journal of Human Resources*, Vol. 56, No. 3 (Summer 2021), http://jhr.uwpress.org/content/early/2020/05/04/jhr.monopsony.1218-9914R1.full.pdf+html (accessed July 20, 2021). The study says: "Going from the 25th percentile to the 75th percentile in concentration is associated with a 5% (OLS) to 17% (IV) decline in posted wages, suggesting that concentration increases labor market power."
11. Azar, Marinescu, and Steinbaum, "Labor Market Concentration," p. 5.
12. Ibid., p. 6.
13. The sample is from a brief period; it is not representative of the U.S. labor market, and it does not include robust salary information.
14. Spencer Weber Waller, "The Antitrust Legacy of Thurman Arnold," *St. John's Law Review*, Vol. 78 (2004), pp. 569–614, https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1494&context=facpubs (accessed July 20, 2021).
15. The *Fact Sheet*'s introduction also makes several claims about declining wages. The claims are addressed in the next "Labor Markets" section of this *Backgrounder*.
16. In general, to be enforceable, the restrictive covenants in a noncompete agreement "(a) must be necessary to protect legitimate employer interests; (b) must be temporally and geographically reasonable in scope; (c) must not be contrary to the public interest; and (d) must be supported by consideration; i.e., the employee must receive something in exchange for signing the agreement." Furthermore, the burden of proof to show that the agreement meets these requirements falls on the employer, and "courts have generally recognized three main protectable employer interests: (1) trade secrets learned during his employment; (2) confidential business information; and (3) good will." See Katz, Marshall & Banks, LLP, "Non-Compete Agreements," 2021, https://www.kmblegal.com/resources/non-compete-agreements (accessed July 28, 2021).
17. Alexander J. S. Colvin and Heidi Shierholz, "Noncompete Agreements," Economic Policy Institute, December 10, 2019, https://www.epi.org/publication/noncompete-agreements/ (accessed July 20, 2021).
18. Ibid.
19. Ibid.
20. Consistent with labor laws, research shows that noncompete agreements can reduce employee turnover, protect company information, and prevent former employees from using their previous employer's secrets to later compete with them. Jane Muir, "The Advantages and Disadvantages of Non Compete Agreements," J. Muir & Associates, July 20, 2017, https://jmuirandassociates.com/non-compete-agreement-florida/ (accessed September 1, 2021).
21. Lawful exchanges of information can occur if the exchange of information is controlled by a third party, peoples' identity is protected, the information is old, and the data is sufficiently aggregated to protect individuals. U.S. Department of Justice Antitrust Division, "Antitrust Guidance for Human Resource Professionals," October 2016, p. 5, https://www.justice.gov/atr/file/903511/download (accessed July 29, 2021).

22. Many of these requirements prolong the research and development process, and even prevent the number of drugs that could come to market, further increasing drug prices. John O'Shea, "Don't Kill Off Life-Saving Drugs," Heritage Foundation *Commentary*, August 15, 2006, https://www.heritage.org/public-health/commentary/dont-kill-life-saving-drugs, and Pankaj Mondal, "The Importance of Pharmaceutical Competitor Analysis," undated, DrugPatentWatch, https://www.drugpatentwatch.com/blog/the-importance-of-pharmaceutical-competitor-analysis/ (accessed July 25, 2021).
23. Drug price controls exist in Australia, Canada, France, Germany, Greece, Japan, Mexico, Poland, South Korea, Switzerland, and the United Kingdom. Grant D. Aldonis, Under Secretary for International Trade, U.S. Department of Commerce, "Pharmaceutical Price Controls in OECD Countries, Implications for American Consumers, Pricing, Research and Development, and Innovation," testimony before the Committee on Health, Education, Labor, and Pensions, U.S. Senate, February 17, 2005, https://www.help.senate.gov/imo/media/doc/Aldonas-SenHELP-Rx-2-17-05.pdf (accessed July 25, 2021).
24. Implementing such controls in the U.S. would threaten innovation and limit Americans' access to cutting-edge pharmaceuticals, as is the case in Australia, Canada, France, Germany, Japan, and the United Kingdom. Doug Badger, "How Congress Can Make Real Progress on Drug Prices," Heritage Foundation *Issue Brief* No. 5016, December 9, 2019, https://www.heritage.org/health-care-reform/report/how-congress-can-make-real-progress-drug-prices.
25. Ameritas, "4 Reasons Why People Won't Wear Their Hearing Aids," October 13, 2020, https://www.ameritasinsight.com/wellness/hearing/wont-wear-hearing-aids (accessed July 25, 2021); Professional Hearing Associates Inc., "9 Reasons People Don't Use Hearing Aids," https://hearinginfo.net/blog/9-reasons-people-don-t-use-hearing-aids (accessed July 25, 2021); Ashley Festa, "Why People Avoid Hearing Aids—and How to Help," healthgrades, December 2, 2020, https://www.healthgrades.com/right-care/hearing-loss/why-people-avoid-hearing-aids-and-how-to-help (accessed July 25, 2021); Bev Betkowski, "Why Most People with Hearing Loss Don't Use Hearing Aids," Medical Xpress, August 22, 2018, https://medicalxpress.com/news/2018-08-people-loss-dont-aids.html (accessed July 25, 2021); and "5 Reasons People Don't Wear Their Hearing Aids," HearingLikeMe, July 21, 2016, https://www.hearinglikeme.com/5-reasons-people-dont-wear-their-hearing-aids/ (accessed July 25, 2021).
26. Traci Prevost et al., "The Potential for Rapid Consolidation of Health Systems: How Can Hospitals Use M&A to Innovate for the Future?" Deloitte, December 10, 2020, https://www2.deloitte.com/us/en/insights/industry/health-care/hospital-mergers-acquisition-trends.html (accessed July 25, 2021).
27. Daniel McDermott and Cynthia Cox, "Insurer Participation on the ACA Marketplaces, 2014–2021," Kaiser Family Foundation, November 23, 2020, https://www.kff.org/private-insurance/issue-brief/insurer-participation-on-the-aca-marketplaces-2014-2021/ (accessed July 25, 2021).
28. Although *rural* areas have experienced more hospital closures and tend to have fewer options for insurers, on average, consumers are experiencing a positive trend in choice of insurers. Ibid.
29. Severin Borenstein, "Why Can't US Airlines Make Money?" *The American Economic Review*, Vol. 101, No. 3 (2011), p. 233, https://www.jstor.org/stable/pdf/29783745.pdf (accessed August 30, 2021).
30. Dominic Detzen et al., "The Impact of Low Cost Airline Entry on Competition, Network Expansion, and Stock Valuations," *Journal of Air Transport Management*, Vol. 18, No. 1 (2012), p. 59, https://www.sciencedirect.com/science/article/abs/pii/S0969699711000949?via%3Dihub (accessed August 30, 2021).
31. Yu Kyoung Kim and Hyun Ryong Lee, "Customer Satisfaction Using Low Cost Carriers," *Tourism Management*, Vol. 32, No. 2 (2011), p. 236, http://tarjomefa.com/wp-content/uploads/2015/11/TarjomeFa-F27-English-1.pdf (accessed August 30, 2021).
32. Erick Burgueño Salas, "Leading Airlines in the U.S. by Domestic Market Share 2020," Statista, July 21, 2021, https://www.statista.com/statistics/250577/domestic-market-share-of-leading-us-airlines/ (accessed August 30, 2021).
33. Steven A. Morrison, "Actual, Adjacent, and Potential Competition Estimating the Full Effect of Southwest Airlines," *Journal of Transport Economics and Policy*, Vol. 35, No. 2 (May 2001), p. 240, https://www.jstor.org/stable/i20053863 (accessed August 30, 2021).
34. Ibid.
35. The White House, "Fact Sheet: Executive Order on Promoting Competition in the American Economy." Also see the citation linked in the Fact Sheet: Salas, "Leading Airlines in the U.S. by Domestic Market Share 2020."
36. Olivier Armantier and Oliver Richard, "Evidence on Pricing from the Continental Airlines and Northwest Airlines Code-Share Agreement," *Advances in Airline Economics*, Vol. 1 (March 2005), p. 2, http://recherche.enac.fr/~steve.lawford/reading_group_papers/armantier_richard05.pdf (accessed August 30, 2021).
37. Philip G. Gayle, "Airline Code-Share Alliances and Their Competitive Effects," *The Journal of Law and Economics*, Vol. 50, No. 4 (2007), p. 1, http://www-personal.k-state.edu/~gaylep/codesharesep5.pdf (accessed August 30, 2021).
38. For instance, even though Alaska Airlines could be viewed as having "only" a 5.3 percent market share, the company code shares with American Airlines, the airline with the largest (19.3 percent) market share. Customers who purchase a code-share ticket between American and Alaska can earn and redeem frequent flyer miles for either company (American or Alaska). Similarly, SkyWest code shares with Alaska, American, Delta, and United Airlines.
39. Brian Pascus, "The World's 3 Biggest Airlines Have All Raised Their Checked Baggage Fees," *Business Insider*, September 20, 2018, https://www.businessinsider.com/american-delta-united-all-raise-checked-baggage-fees-2018-9 (accessed July 29, 2021).

40. Ibid.
41. See Lars Jensen, "The New Oligopoly of Container Shipping," *Journal of Commerce* online, July 4, 2019, https://www.joc.com/maritime-news/container-lines/new-oligopoly-container-shipping_20190704.html (accessed July 29, 2021), and Hugh Morley, "US Detention-Demurrage Probe's Initial Focus Is Carriers, Terminals," *Journal of Commerce* online, April 2, 2018, https://www.joc.com/regulation-policy/us-detention-demurrage-probes-initial-focus-carriers-terminals_20180402.html (accessed July 29, 2021). The *Fact Sheet* also neglects to point out that "years of complaints" regarding these fees resulted in a 2020 FMC ruling that took six years to complete. See Baker Donelson, "Federal Maritime Commission Issues Final Interpretive Rule on Demurrage and Detention Under the Shipping Act," JDSupra, June 16, 2020, https://www.jdsupra.com/legalnews/federal-maritime-commission-issues-92007/ (accessed July 29, 2021).
42. Michael J. Cavanaugh, "FMC Commissioner Issues Final Report for Fact Finding 28," Holland & Knight, December 11, 2018, https://www.hklaw.com/en/insights/publications/2018/12/fmc-commissioner-issues-final-report-for-fact-find (accessed September 1, 2021).
43. Ibid.
44. Ibid.
45. Aleksandre Maisashvili et al., "Effects on Seed Prices of Proposed Mergers and Acquisitions Among Biotechnology Firms," Texas A&M University, September 20, 2016, https://www.agri-pulse.com/ext/resources/pdfs/m/e/r/p/t/Merger_Paper_Full_manuscript.pdf (accessed July 25, 2021).
46. Sun Ling Wang et al., "Agricultural Productivity Growth in the United States: Measurement, Trends, and Drivers," U.S. Department of Agriculture Economic Research Service, July 2015, https://www.ers.usda.gov/webdocs/publications/45387/53416_err189_summary.pdf?v=4461 (accessed August 2, 2021).
47. Carl Zulauf and Nick Rettig, "U.S. Farm Input Price Dynamics, 1981–2013," University of Illinois *FarmDocDaily*, November 14, 2014, https://farmdocdaily.illinois.edu/2014/11/us-farm-input-price-dynamics-1981-2013.html (accessed August 5, 2021), and Carl Zulauf and Nick Rettig, "Have U.S. Farm Input Prices Followed U.S. Crop Prices?" University of Illinois *FarmDocDaily*, September 17, 2015, https://farmdocdaily.illinois.edu/2015/09/have-us-farm-input-prices-followed-us-crop-prices.html (accessed August 5, 2021).
48. Kristina Hubbard, "Farmer to Farmer Campaign on Genetic Engineering," National Family Farm Coalition, December 2009, http://www.farmertofarmercampaign.com/Out%20of%20Hand.FullReport.pdf (accessed July 25, 2021), and Aleksandre Maisashvili et al., "Effects on Seed Prices of Proposed Mergers and Acquisitions Among Biotechnology Firms," Texas A&M University, September 20, 2016, https://www.agri-pulse.com/ext/resources/pdfs/m/e/r/p/t/Merger_Paper_Full_manuscript.pdf (accessed July 25, 2021).
49. Daren Bakst and Gabriella Beaumont-Smith, "The Truth About the Current Farm Economy," Heritage Foundation *Issue Brief* No. 5027, January 24, 2020, https://www.heritage.org/agriculture/report/the-truth-about-the-current-farm-economy. Farming is unpredictable, as it is beholden to unpredictable factors, such as weather. This unpredictability is translated through the volatile pricing of crops. See Harwood D. Schaffer and Daryll E. Ray, "U.S. Farmers Keep Planting, No Matter the Price—Commentary," *AgFax,* October 10, 2019, https://agfax.com/2019/10/10/u-s-farmers-keep-planting-no-matter-the-price-commentary/ (accessed July 25, 2021).
50. Countervailing duties are taxes or tariffs imposed on imports that have been found to be subsidized by the government of the country from which the product is exported. See also Daren Bakst and Gabriella Beaumont-Smith, "'Fertilizer Taxes' Will Hurt Farmers and Likely Drive Up Food Prices," The Daily Signal, April 1, 2021, https://www.heritage.org/agriculture/commentary/fertilizer-taxes-will-hurt-farmers-and-likely-drive-food-prices.
51. Bakst and Beaumont-Smith, "'Fertilizer Taxes' Will Hurt Farmers and Likely Drive Up Food Prices."
52. Tom Polansek, "USDA to Pay Farmers More Than $7 Billion Due to Low Crop Prices," Reuters, October 4, 2016, https://www.reuters.com/article/us-usa-farm-payments/usda-to-pay-farmers-more-than-7-billion-due-to-low-crop-prices-idUSKCN1242CS (accessed July 25, 2021), and Chuck Abbott, "'Big Crops, Low Prices,' for a Long Time Ahead, Says CBO," *Successful Farming*, January 29, 2019, https://www.agriculture.com/news/crops/big-crops-low-prices-for-a-long-time-ahead-says-cbo (accessed July 25, 2021).
53. Kristina Hubbard, "The Sobering Details Behind the Latest Seed Monopoly Chart," *Civil Eats*, January 11, 2019, https://civileats.com/2019/01/11/the-sobering-details-behind-the-latest-seed-monopoly-chart/ (accessed July 25, 2021).
54. Daren Bakst and Gabriella Beaumont-Smith, "Trump Budget Helps Show How to Reform Agricultural Subsidies," *The Washington Times*, February 12, 2020, https://www.washingtontimes.com/news/2020/feb/12/trump-budget-helps-show-how-reform-agricultural-su/ (accessed July 25, 2021).
55. U.S. Department of Agriculture, "Choice Beef Values and Spreads and the All-Fresh Retail Value," July 13, 2021, https://www.ers.usda.gov/data-products/meat-price-spreads/Choice beef values and spreads and the all-fresh retail value (accessed July 25, 2021).
56. Jayson Lusk, "Beef Marketing Margins," JaysonLusk.com, May 4, 2020, http://jaysonlusk.com/blog/2020/5/4/beef-marketing-margins (accessed July 25, 2021).
57. Zoe Willingham and Andy Green, "A Fair Deal for Farmers," Center for American Progress, May 7, 2019, https://www.americanprogress.org/issues/economy/reports/2019/05/07/469385/fair-deal-farmers/ (accessed July 25, 2021).
58. U.S. Department of Agriculture Economic Research Service, "Farm and Farm Income," https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/ (accessed July 25, 2021).
59. The USDA defines farm operator household income thusly: "Total income for the farm operator household consists of income from the farm business, income from other farming activities, and income from earned and unearned off-farm sources." U.S. Department of Agriculture Economic Research Service, "Glossary," https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary/#income (accessed August 6, 2021).

60. U.S. Department of Agriculture Economic Research Service, "Income and Wealth in Context Farm Operators' Household Income Compared with U.S. Household Income," https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/income-and-wealth-in-context/#uscompare (accessed July 25, 2021).
61. U.S. Department of Agriculture Economic Research Service, "Food Dollar Application," 2019, https://data.ers.usda.gov/reports.aspx?ID=17885&reportPath=/FoodDollar/Real (accessed July 25, 2021).
62. Ibid.
63. The *Fact Sheet* also ignores the fact that, even though farmers and ranchers are only one piece of the supply chain (the USDA categorizes 12 industry groups), they are among the highest-paid segments of the supply chain. U.S. Department of Agriculture, "Food Dollar Application."
64. Deena Shanker, "Most Grass-Fed Beef Labeled 'Product of U.S.A.' Is Imported," Bloomberg, May 23, 2019, https://www.bloomberg.com/news/articles/2019-05-23/most-grass-fed-beef-labeled-product-of-u-s-a-is-imported (accessed July 30, 2021).
65. Jeremy Dalrymple, "Mandatory COOL: Costly and Unnecessary," Heritage Foundation *Issue Brief* No. 5019, December 18, 2019, https://www.heritage.org/trade/report/mandatory-cool-costly-and-unnecessary.
66. Federal Communications Commission, "Fourteenth Broadband Deployment Report," January 19, 2021, https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (accessed July 30, 2021).
67. Ibid.
68. NCTA, "Setting the Record Straight About Broadband Pricing," May 11, 2021, https://www.ncta.com/whats-new/setting-the-record-straight-about-broadband-pricing (accessed July 30, 2021).
69. The *Fact Sheet* also fails to account for the discounts available to lower-income households offered by broadband providers, as well as taxpayer subsidy programs, such as Lifeline. In addition, the American Rescue Plan Act of 2021 authorized $7.2 billion to ensure connectivity during the pandemic for public and private schools, and for public libraries. The E-Rate Program established under the Telecommunications Act of 1996 provides eligible schools and libraries with discounts ranging from 20 percent to 90 percent for telecommunications and Internet access. See Federal Communications Commission, "E-Rate: Universal Service Program for Schools and Libraries," June 21, 2021, https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate (accessed August 30, 2021).
70. Federal Communications Commission, "Fixed Broadband Deployment," https://broadbandmap.fcc.gov/#/area-summary?version=jun2020&type=nation&geoid=0&tech=acfosw&speed=25_3 (accessed July 30, 2021).
71. Since the Industrial Revolution, and especially in the Information Age, it is not unusual for efficient, competitive markets to comprise only a few big, innovative firms. This is especially true when there are high fixed costs or when a company debuts market-altering technology. Often, innovative companies that appear dominant soon fade, such as Alta Vista, America Online, Myspace, Napster, Netscape, and Palm. At the current churn rate, about half of the S&P 500 companies will be replaced over the next 10 years, according to the 2018 Corporate Longevity Forecast. Scott D. Anthony et al., "Corporate Longevity Forecast: Creative Destruction Is Accelerating," Innosight *Executive Briefing*, February 2018, https://www.innosight.com/wp-content/uploads/2017/11/Innosight-Corporate-Longevity-2018.pdf (accessed July 30, 2021).
72. News release, "FCC Unveils Consumer Broadband Labels to Provide Greater Transparency to Consumers," Federal Communications Commission, April 4, 2016, https://www.fcc.gov/document/fcc-unveils-consumer-broadband-labels (accessed July 30, 2021).
73. Figures compiled from FCC-complaints data. See FCC Open Data, "CGB–Consumer Complaints Data," updated August 31, 2021, https://opendata.fcc.gov/Consumer/CGB-Consumer-Complaints-Data/3xyp-aqkj (accessed August 31, 2021).
74. Colleen Cunningham, Florian Ederer, and Song Ma, "Killer Acquisitions," *Journal of Political Economy*, Vol. 129, No. 3 (March 2021), pp. 649–702, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3241707 (accessed July 30, 2021).
75. The premerger review determines the likelihood that the transaction would substantially lessen competition in violation of Section 7 of the Clayton Act.
76. News release, "FTC to Examine Past Acquisitions by Large Technology Companies," Federal Trade Commission, February 11, 2020, https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies (accessed August 30, 2021).
77. U.S. House of Representatives Committee of the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law, Majority Staff Report and Recommendations, "Investigation of Competition in Digital Markets," 2020, https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519 (accessed September 1, 2021).
78. Alan Reynolds, "Big Tech's Monopoly of What?" *National Review*, July 28, 2021, https://www.nationalreview.com/2021/07/big-techs-monopoly-of-what/ (accessed July 30, 2021).
79. Robert D. Atkinson, "Seventeen Flaws in the Cicilline Antitrust Report on Competition in Digital Markets," Information Technology and Innovation Foundation, October 23, 2020, https://itif.org/publications/2020/10/23/seventeen-flaws-cicilline-antitrust-report-competition-digital-markets (accessed July 30, 2021).
80. Jason Koebler, "Do You Know Anything About Apple's 'Authorized Service Provider' Program?" Vice, March 16, 2017, https://www.vice.com/en/article/ypkqxw/do-you-know-anything-about-apples-authorized-service-provider-program (accessed July 30, 2021), and Tik Root, "Apple Effectively Has a Monopoly on Fixing Your iphone; There's Now a Fight to Change That," Vox, July 3, 2019, https://www.vox.com/the-goods/2019/7/3/18761691/right-to-repair-computers-phones-car-mechanics-apple (accessed July 30, 2021).

81. Generally speaking, manufacturers prefer to control product repairs to ensure the integrity of their products. Improper repairs could subject them to reputational harm and legal liability for product malfunctions. Moreover, forcing manufacturers to share proprietary information about product design would facilitate counterfeiting. Software security may also be weakened by improper repairs.
82. Federal Financial Institutions Examination Council and Federal Reserve Bank of St. Louis, "Commercial Banks in the U.S. (DISCONTINUED) [USNUM]," https://fred.stlouisfed.org/series/USNUM (accessed August 3, 2021).
83. Federal Deposit Insurance Corporation, "Historical Timeline: The 1920's," January 2, 2014, https://www.fdic.gov/about/history/timeline/1920s.html (accessed August 3, 2021).
84. Jeremy C. Kress, "Modernizing Bank Merger Review," *Yale Journal on Regulation*, Vol. 37 (2020), p. 456, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1557&context=yjreg (accessed August 3, 2021). Though the article shows that the approval rate is increasing over some of this period, the number of applications is also decreasing near the end of the period.
85. See Cliff Stanford et al., "Biden Competition Order May Influence Bank Merger Approvals," Alston & Bird, July 16, 2021, https://www.alston.com/-/media/files/insights/publications/2021/07/biden-competition-order-may-influence-bank-merger.pdf (accessed August 6, 2021).
86. Written testimony of Patrick J. Kennedy, Jr., Managing Partner of Kennedy Sutherland LLP, president of the Subchapter S Bank Association, before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, hearing titled "Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions," March 21, 2017, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400294 (accessed July 19, 2021). In 2016, the FDIC reverted to its previous three-year oversight period, but the FDIC still retains the ability to exercise a high level of ongoing oversight. See Jeff Smith, "De Novo Charters: Reduced FDIC 'Special Probation' Period," The Banker's Statement, Spring 2016, https://www.vorys.com/publications-1734.html (accessed July 19, 2021).
87. Written testimony of Patrick J. Kennedy, Jr.
88. See, for example, written testimony of Kenneth L. Burgess, before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, U.S. House of Representatives, hearing titled "Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions," March 21, 2017, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400294 (accessed July 19, 2021).
89. See Federal Deposit Insurance Corporation, "How America Banks: Household Use of Banking and Financial Services," October 19, 2020, https://www.fdic.gov/analysis/household-survey/index.html (accessed July 20, 2021).
90. Robert DeYoung, Douglas D. Evanoff, and Philip Molyneux, "Mergers and Acquisitions of Financial Institutions: A Review of the Post-2000 Literature," *Journal of Financial Services Research*, Vol. 36 (2009), pp. 87–110, https://link.springer.com/article/10.1007%2Fs10693-009-0066-7 (accessed July 20, 2021).
91. Ibid.
92. Divya Vijay and Andy Green, "Switching to Responsible Banking," Center for American Progress, February 26, 2021, https://www.americanprogress.org/issues/economy/reports/2021/02/26/496444/switching-responsible-banking/ (accessed July 20, 2021).
93. For instance, anyone can open an account with several U.S. banks online by entering name, Social Security number, and street address.
94. The White House, "Fact Sheet: Executive Order on Promoting Competition in the American Economy."