

Free Market Groups, Advocates Oppose Biden Administration's Eleventh Hour Antitrust Assault on American Businesses

December 3rd, 2024

Dear Member of Congress:

We write to express our strong concerns with the partisan political agendas being pursued by the Federal Trade Commission and the Department of Justice. In the final days of the Biden administration, the FTC and DOJ are going after their enemies by using antitrust enforcement actions as a political weapon.

This eleventh hour assault on American businesses and free market capitalism is unacceptable and should be condemned by all lawmakers.

The election of President Donald Trump and Republican sweeps of both the U.S. House and Senate reflects the American electorate's displeasure with the Biden-Harris administration's overregulation of the economy, including the FTC and DOJ's overzealous targeting of key industries and companies. Targeting cryptocurrencies, intervening in mergers and acquisitions, and ignoring the consumer welfare standard are just a few examples of the gross abuse of power exhibited under FTC Chair Lina Khan, U.S. Attorney General Merrick Garland, and Assistant Attorney General Jonathan Kanter.

Chair Khan and Assistant AG Kanter have pursued a progressive political agenda that puts the whims of unelected bureaucrats ahead of consumer choice. Both AAG Kanter and Chair Khan have jettisoned the consumer welfare standard in favor of the government picking economic winners and losers, upending decades of antitrust precedent. One of the reasons Chair Khan is suing to block the Kroger and Albertsons merger is to protect labor unions, which happen to be significant proponents of ESG policies. The FTC has also been accused of manipulating proposed rulemakings by using "flawed cost-benefit analysis and [eroding] economic standards at the agency." One FTC commissioner criticized the completion of the Negative Option Rule for being no more than "blatant electioneering to advance political ends."

Thanks to this hostile regulatory environment, mergers and acquisitions (M&A) have largely ground to a halt. M&A activity, especially among banks, promotes economies of scale, which enables combined entities to pass cost savings down to consumers. The flow of capital to small businesses can also improve as a result of certain M&A activity. The Biden administration has made it harder for regional banks and other mid-sized businesses to compete with larger companies, which has stymied competition and entrenched larger incumbent firms.

The DOJ's pending lawsuit against Visa over its debit card network is a prime example of the agency threatening to undermine electronic payments for U.S. consumers. The lawsuit mainly argues that Visa's incentive payments to firms like Apple harm the U.S. payments infrastructure. However, as one academic pointed out, "Visa's incentive payments could be seen as fostering complementary investments, rather than deterring competition." These monetary incentives can "can drive the adoption of new technologies, which in turn benefits consumers, merchants, and issuers alike." The DOJ's allegations of anticompetitive behavior appear to be tenuous at best.

It is no secret that the Biden administration has been waging war on cryptocurrencies by using so-called regulation by enforcement. The DOJ also established a National Cryptocurrency Enforcement Team to specifically target cryptocurrencies and digital asset issuers, mixers, and exchanges.

The FTC and DOJ have also filed eleventh hour enforcement actions and interventions. DOJ recently sued to block UnitedHealth's acquisition of Amedisys and is asking a judge to compel Google to sell its Chrome browser. The agency is also continuing its unfounded persecution of software company RealPage. Meanwhile the FTC is entering into baseless consent decrees with U.S. oil and gas companies. The Biden administration's intervention in the U.S. economy is far and wide.

Politically charged enforcement actions should cease as soon as possible. Antitrust enforcers attempting to ram through a partisan agenda on their way out the door is not in the best interests of the American public, but in the best interests of a select few that are only in power for less than two more months.

We applaud recent calls to terminate partisan enforcement actions stemming from the FTC and DOJ and encourage all members of Congress to reiterate these calls on behalf of American taxpayers.

Sincerely,



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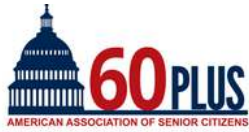
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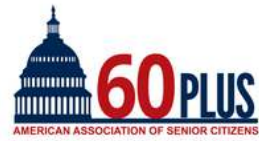
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