U.S. Department of Justice

Office of the Associate Attorney General

July 9, 2021

MEMORANDUM FOR THE ANTITRUST DIVISION

FROM: Vanita Gupta
Associate Attorney General

RE: Promoting Competition in the American Economy

President Joseph R. Biden just signed an *Executive Order on Promoting Competition in the American Economy*. The Attorney General has issued a statement welcoming the Order and reaffirming the Justice Department's commitment to enforcing the nation's antitrust laws and working across government to maximize competition. And the Department and the Federal Trade Commission have agreed to launch a joint review of our merger guidelines to consider revisions that will reflect current economic realities in the marketplace.

The Department's role in enforcing the antitrust laws is not an abstract exercise but has huge consequences for everyday Americans. Healthy competition in our economy translates into significant benefits, including lower prices for broadband, smart phones, food, and other essential services that mean the most to households of limited means.

The Executive Order calls for a "Whole-of-Government" competition policy. It underscores the importance of the interagency engagement the Division has been actively pursuing, and it will establish new opportunities to inject the Division's competition expertise into the work of other federal agencies.

For the Justice Department to be a driving force behind achieving the Executive Order's goals, the first step is for the Antitrust Division to develop an action plan for outreach and implementation. The Antitrust Division shall establish an internal Task Force and report back to me within 30 days on ways the Division can support other federal agencies in their pursuit of the policies in the Executive Order, including, but not limited to:

- Developing new interagency relationships and technical assistance programs that support regulators' consideration of competition;
- Promoting rulemaking efforts by other agencies to open critical sectors to competition;
- Encouraging agencies that apply a public interest standard to consider competition more effectively in their deliberations;

- Filing comments on mergers or similar transactions under the purview of other federal agencies;

- Strengthening the Division's work with the Department of Labor to help effectively implement whistleblower protections in the Criminal Antitrust Anti-Retaliation Act, including by offering antitrust training, guidance on the antitrust laws, and technical assistance to relevant Occupational Safety and Health Administration officials; and

- Continuing the Division's leadership of the Procurement Collusion Strike Force, working with procurement officials throughout the government to promote and protect the competitive process for public procurement, including by drafting internal policies; educating procurement officials on antitrust crimes; working with federal partners to create best practices for data collection and analytics that can help detect collusion; and working with law enforcement partners to prosecute actionable misconduct.

The action plan should reflect the Division's consultation with agency counterparts on how best to pursue these objectives.

The action plan should capitalize on the opportunities outlined by the Executive Order for collaboration with agencies in industry areas where attention to competition is particularly warranted. For example:

- Giving farmers and small distributors more bargaining power to negotiate with dominant agribusiness firms delivers competitive prices for suppliers and consumers. The Division's ongoing work with the Department of Agriculture to support the revision of Packers & Stockyards Act rules will benefit competition in food supply chains.

- As consumers return to air travel, competition will lower prices, reduce fees, and increases quality of service. The Division's work with the Department of Transportation to foster competitive airline markets, such as through slot allocation policies, will expand competition from low cost carriers.

- Broadband, and wireless services in particular, have become fundamental to the American way of life. The Division's work with the Federal Communications Commission to support competitive telecommunications markets will bring low prices and high quality to Americans and bridging the country's digital divide will support a more just economy.

- When Americans' health is on the line, they deserve the quality, choice and innovation that comes with competition. The Division's work with health regulatory agencies will discourage anticompetitive tactics and open markets to new entrants.

- Patented innovations are the foundation of standards that are used to power a wide range of products from smartphones to smarter homes, cars, and farm equipment. The Division's work with agencies that focus on intellectual property rights will promote balanced policies that foster competition and support the innovation that drives the digital marketplace.

- The global trade that helps fuel our economy depends on a supply chain that offers resilience, fast shipping and low prices. The Division's work with the Federal Maritime Commission will help ensure competition in the industries that cross the oceans with the goods we sell to other countries.

- Consumers deserve convenient, inexpensive and innovative options to manage their money. The Division's work with bank regulatory agencies will promote the competition necessary to ensure that financial institutions offer services that are accessible and affordable, including in underserved communities.

Collaboration within the Justice Department is also essential. The Civil Division, including the Consumer Protection Branch and the Commercial Litigation Branch, works on matters that involve potential harm to consumers or potential financial harm to the government, including matters that implicate federal consumer protection laws or federal civil fraud statutes. The action plan should define how the Division will work with the Civil Division and other components within the Department, including with respect to case intake, investigations, and resolution.

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Working together across the federal government, we can achieve the President's vision of a "fair, open, and competitive marketplace." These are principles that the Department lives and breathes, as evidenced by the tireless work of the lawyers, economists, and support staff of the Antitrust Division to pursue its critical mission no matter the challenge.

Thank you for the Division's continuing work to support competition for the benefit of all Americans. I look forward to receiving the action plan and am ready to provide any support you need as you move forward.