



Conservatives
for
Property Rights

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Statement on Biden Executive Order on Market Concentration

This statement, regarding President Biden's executive order calling for broad regulatory initiatives ostensibly aimed at market concentration, may be attributed to James Edwards, Executive Director, Conservatives for Property Rights:

"President Biden's 'trust busting' executive order is long on regulation and concentration of Big Government's power, and short on constructive measures that promote competition. Namely, the E.O. attempts to replace decisions that hundreds of thousands of businesses and investors who have skin in the game, and millions of consumers, make in markets with decisions made by centralized bureaucrats who have nothing at risk if they choose wrongly or regulate unwisely.

"That's a recipe for concentrated power and market lethargy, not dynamic competition and innovation. Consumers will end up with fewer choices and higher costs, not more options. In other words, this E.O. runs opposite to respecting private property rights.

"Especially harmful to property rights is how the E.O. turns back the clock on recalibration the New Madison Approach achieved. New Madison appropriately balances the intersection of antitrust and intellectual property. It recognizes that private intellectual property spurs dynamic competition. But the administration totally misses the boat on IP.

"Patent exclusivity enables innovators to shake up static markets and compete with established corporations. But throughout, the E.O. presumes IP harms competition. The opposite is true!

"Most people would prefer to take their chances with Big Business over Big Government. Large companies know they need small companies, and small firms don't get founded, don't innovate and don't thrive under a heavy regulatory regime and with weak IP rights."

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Examples of unadvised E.O. directives:

- ***Undoing Standard-Essential Patents' Access to IP Remedies:*** Threatens to reverse the 2019 Joint Policy Statement on Remedies for Standards-Essential Patents, which affirmed access to injunctions and all other available remedies for SEPs subject to FRAND commitments. Returning to the 2013 predecessor approach will turn FRAND into a compulsory licensing clause and weaken IP rights, thus harming competition and innovation.
- ***"Unjustifiably" Delayed Generic Drug and Biosimilar Market Entry:*** Disrupts the balance the Hatch-Waxman Act and the Biologics Price Competition and Innovation Act strike between biopharma

innovation and faster market entry by generic drugs and biologics. Twisting the patent system to diminish innovators' rights to market exclusivity will lead to fewer new medicines as well as generics.

- ***Industry-Specific M&A Rules and Reversals of Approved Deals:*** Orders industry-specific merger and acquisition rules for banks, health care, and other sectors. This unsound regulatory move will introduce adverse unintended consequences. Generally putting reversal of previously approved mergers, including vertical mergers, on the table injects costly uncertainty for investors and businesses across the board, actually reducing competition due to extreme caution. Such roadblocks to M&A disincentivize startup activity by foreclosing exit strategies while abetting oligarchy and monopoly.