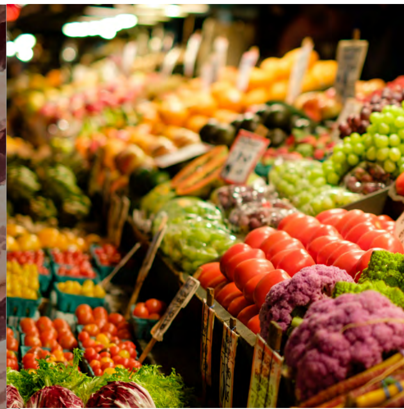
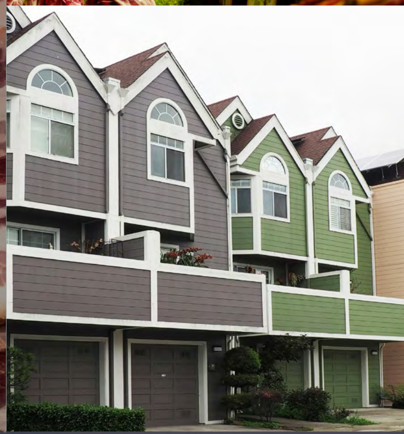
CAMPAIGN FOR WORKING AMERICA

Fixing Uncompetitive Markets:

Protecting Working Americans From the High Costs of Market Power





DIANA L. MOSS
PROGRESSIVE POLICY INSTITUTE

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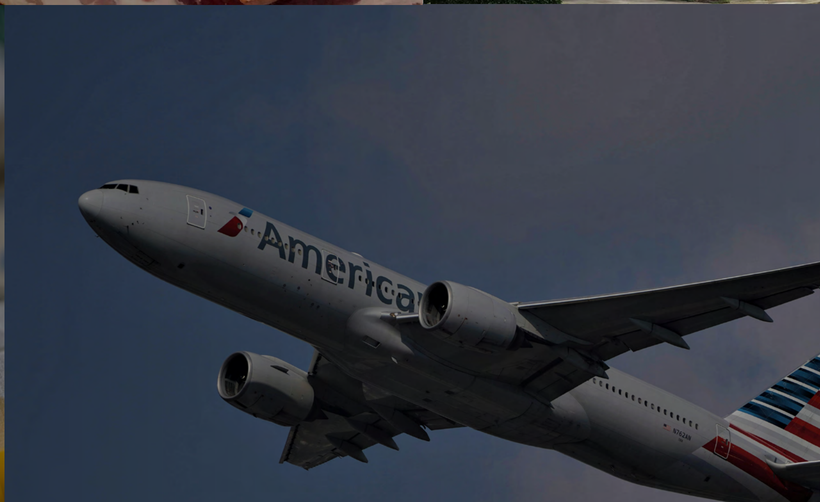

ABOUT PPI'S CAMPAIGN FOR WORKING AMERICA

The Progressive Policy Institute launched its Campaign for Working America in February 2024. Its mission is to develop and test new themes, ideas, and policy proposals that can help Democrats and other center-left leaders make a new economic offer to working Americans, find common ground on polarizing cultural issues like immigration, crime, and education, and rally public support for defending freedom and democracy in a dangerous world. Acting as Senior Adviser to the Campaign is former U.S. Representative Tim Ryan, who represented northeast Ohio in Congress from 2003 to 2023.

Since 2016, Democrats have suffered severe erosion among non-college white voters and lately have been losing support from Black, Hispanic, and Asian working-class voters as well. Since these voters account for about three-quarters of registered voters, basic electoral math dictates that the party will have to do better with them to restore its competitiveness outside metro centers and build lasting governing majorities. The party's history and legacy point in the same direction: Democrats do best when they champion the economic aspirations and moral outlook of ordinary working Americans.

To help them relocate this political north star and to inform our work on policy innovation, PPI has commissioned a series of YouGov polls on the beliefs and political attitudes of non-college voters, with a particular focus on the battleground states that have decided the outcome of recent national elections.

This report is the third in a series of Campaign Blueprints that can help Democrats reconnect with the working-class voters who have historically been the party's mainstay.

Fixing Uncompetitive Markets: Protecting Working Americans From the High Costs of Market Power

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COMPETITION MATTERS TO WORKING AMERICANS

Competition is the lifeblood of a market system. Access to markets, choice, and fair prices and wages preserves consumer, worker, and entrepreneurial freedom. The benefits of this are tangible. Competition keeps the engines of economic activity and growth at a fuller throttle, promotes a more equal distribution of income and wealth, and a better standard of living. Moreover, markets rest on fundamental democratic principles that are essential for preserving economic freedom and opportunity.

The prospect of anything but hard-nosed competition in the markets that make up the U.S. free-market economy should trouble working Americans. The 2024 Democratic Party Platform recognizes the importance and role of competition in our political economy.[1] It prioritizes promoting competition in markets that matter to working-class Americans, ranging from retail grocery, to agriculture, healthcare, drugs, fuel, transportation, finance, and construction.

An important reality is that market activity is largely fueled by consumers, workers, and entrepreneurs. For example, almost 70% of spending in the U.S. economy in the first quarter of 2024 was attributable to personal consumption expenditures.[2] Small businesses were responsible for almost 45% of U.S. gross domestic product (GDP) in the mid-2010s.[3] And labor contributed almost 70% to U.S. GDP in 2019.[4] These are big numbers. They make clear the high costs to the U.S. economy of a lack of competition if consumers do not spend due to high prices, small businesses do not get a foothold because of an unlevel playing field, and workers lose their bargaining power to powerful employers.

Antitrust enforcement referees the markets. Without it, prices, wages, choice, and the quality of goods and services are dictated by powerful firms, not the rough and tumble of the competitive process. Working Americans are the first to recognize the importance of robust market competition. But for the last several years, consumers have grown frustrated by high prices for food, housing, healthcare, energy, and transportation.[5] Small businesses are restrained by the high walls they must scale to get into some markets that are dominated by powerful firms. And workers can be limited by anticompetitive restraints on their mobility, wages, and benefits.

These limitations force some of the most important market participants to make tough choices about what to buy, where to work, and whether to start a business. With limited government resources to promote competition through antitrust enforcement and pro-competitive regulation, policymakers must also make hard choices. These choices should reflect what is important to working-class Americans to help them live better, not ideological trends or political interests of the day. This segment of PPI's Campaign for Working America takes on the question of how to best promote competition enforcement to reduce the cost of living and improve the lives of working Americans.

ANTITRUST ENFORCEMENT SHOULD FOCUS ON "POCKETBOOK AND PAYCHECK" ISSUES

A decline in competition is a major reason for the obstacles faced by working-class consumers, workers, and smaller businesses in many markets. Since the 1980s, and until even recently, enforcement of the U.S. antitrust laws has waned.[6] Harmful mergers that eliminate head-to-head competitors have been under-scrutinized by U.S. antitrust agencies and the courts.[7] Monopolies in major consumer- and worker-facing markets have gone largely unpoliced.[8] And illegal agreements to fix prices or divide up markets have become increasingly difficult for public and private antitrust enforcers to combat.[9]

The fallout from these developments has become more visible over the last few years. Firms that hold significant market power over workers and consumers, as a result of less competition, have much higher profit margins than those that do not. For example, economic research shows that aggregate markups of price over cost in the U.S. rose from about 20% in 1980 to about 60% in 2020, with higher markups among larger firms.[10] Moreover, prices and markups in many consumer- and worker-facing markets for essential commodities and services rose sharply during the pandemic and did not come down.[11] This drives up the cost of living for working Americans — not in a knockout punch, but with successive hits over time to "pocketbooks and paychecks."

These developments have activated working Americans. Consumers have united under the banners of public policy organizations and campaigns that promote the benefits of competition and oppose harmful business consolidation and practices. Unionized labor, once quiet, has become a stronger voice in opposing mergers that create powerful buyers. Small businesses, including independent pharmacies, grocers, repair shops, and others, have spoken up in opposition to business practices that stifle competition and push them out of the market. A key policy question, however, still needs to be answered. That is, namely, how to better align the goals and outcomes of antitrust enforcement with a focus on pocketbooks and paychecks.

THREE ANTITRUST AGENDA PRIORITIES FOR WORKING AMERICANS

The Biden administration's focus on bringing down the cost of living for working Americans has not generated a universally positive reaction. This is especially true for working-class voters, who think the President has prioritized his "Bidenomics" agenda rather than focusing squarely on the high cost of living. The effectiveness of the Biden administration's policy is openly debated.[12] For example, separate and apart from inflationary pressure, or a general rise in price levels, market power can also drive up the cost of living for working Americans. The major policy tool for controlling the harmful acquisition and exercise of market power is the enforcement of the U.S. antitrust laws.

The Biden administration has not always picked good targets for enforcement of the antitrust laws, for a number of reasons. First, political administrations can pressure the U.S. antitrust agencies to use their prosecutorial discretion to focus on certain sectors, companies, or mergers.[13] This can lead to "uneven" antitrust enforcement across markets, where serious competition problems can go unaddressed and consumers and workers are left hanging.

For example, the Biden administration reignited enforcement of the U.S. anti-monopoly laws under the Sherman Act.[14] Most of those cases involve large players in the digital sector. And while many are not without merit, the pinch of market power is not felt as directly in pocketbooks and paychecks as antitrust cases in consumer- and worker-facing markets. The reality of limited agency budgets and resources means, therefore, that many market power problems in other consumer-facing sectors go unaddressed, such as in healthcare, food and agriculture, and others.

Second, the antitrust laws work slowly. Public or private challenges to illegal mergers or business practices can take years to work through the courts. And when remedies and compensation for victims of violations do finally emerge, they can be watered down. This happened in the early 2000s in settling the government's case against Microsoft for squeezing out competing web browser, Netscape.

Legislators who grow impatient with the slow pace of antitrust enforcement sometimes propose new laws that target specific sectors or business models. These proposals can work in opposition to competition by setting, for example, size-based thresholds for the types of digital companies to which new laws apply. Proposed laws can also interfere with competition from ticket resellers, thus handing more market power to Live Nation-Ticketmaster, the incumbent monopoly.[15]

Third, government resources are scarce. The 2024 round of Congressional appropriations resulted in stagnant or lower budgets for the U.S. antitrust agencies, relative to the previous two years.[16] Litigating antitrust cases in court is expensive, which means that enforcers must make trade-offs around what competition problems they attempt to solve and which go unresolved. Most important, much of the sticking power of antitrust enforcement lies in legal precedent, or the outcomes in the few cases that are resolved in the courts.

PPI research shows that the Biden administration has secured some important wins for consumers and workers in court, such as in airline and book publishing mergers. But the agencies' overall win rate is below the average for the last five administrations.[17] This is due, in part, to working to block mergers based on allegations that were not based on strong facts or theory. These include Meta's acquisition of virtual reality fitness app maker, Within, and Microsoft's acquisition of game developer, Activision. To be sure, stronger antitrust enforcement is not possible without taking risks. But unsuccessful legal outcomes can actually work against stronger enforcement and, therefore, the interests of consumers and workers.

The foregoing realities and facts make the case for a strong antitrust enforcement agenda built on putting working Americans first. This means choosing issues and spending resources on problems that are the most solvable and will deliver the most bang for the buck to relieve pressure on pocketbooks and paychecks. It also highlights the dangers of weaponizing the antitrust laws. We saw this during the Trump administration when the agencies launched investigations into the AT&T-Time Warner merger and automakers' agreement with California on auto emissions, both of which were largely motivated by political reasons. Those enforcement actions diverted important resources away from cases that would have better served consumers and workers.

PPI offers suggestions for what a competition agenda for working America should look like. It highlights three major areas where the antitrust laws can be re-focused to better protect consumers and workers:

1. enforcing the antitrust laws in markets with high levels of concentration, high prices and markups, and stagnant wages and low rates of entry by new firms;
2. blocking mergers that reduce consumer and worker choice and innovation; and
3. protecting consumers from drip pricing and junk fees.

ENFORCING ANTITRUST LAWS IN HIGHLY CONCENTRATED MARKETS

A number of things can direct the attention of U.S. antitrust enforcement agencies to potentially harmful mergers, anti-competitive agreements to fix prices, or business practices that squeeze out competition. These include required filings, media reports, Congressional inquiries, and advocacy by competition and consumer organizations. Potential cases also evolve from complaints by competitors and customers. What is often lacking, however, is important context for decisions to take action. This includes a focus on sectors that have grown increasingly more concentrated, where prices and mark-ups have risen and wages have declined, and where entry by new firms has fallen over time.

Less competition weakens incentives for firms to compete hard on prices, wages, quality, and innovation. There are numerous U.S. markets with weak incentives for hard-nosed price competition that need more, or ongoing, antitrust attention. For example, four firms control more than 80% of markets for passenger airline service, warehouse clubs and supercenters, passenger car rental, kidney dialysis centers, phosphate fertilizer, and breakfast cereals, to name a few.[18] Only three pharmacy benefit managers and three purchasers of steers and heifers account for 80% of the national market.[19] Single firms, or dominant firms, control the markets for live events ticketing, genetic crop traits for soybeans, corn, and cotton, and construction software.[20]

All of these markets are part of supply chains in key consumer-facing industries such as food and agriculture, transportation, and healthcare. Many have been home to serial mergers that have eliminated competition over time. Other markets are home to harmful practices designed to keep out competition such locking out generic drug competition or disadvantaging smaller grocery retailers. Yet other markets are fertile ground for price fixing or market allocation schemes, including digital rental housing platforms, fertilizers, and others.

Many of these markets feature prices that are often much higher than average. For example, the producer price index (PPI) for passenger air transportation, agricultural machinery and equipment, and breakfast cereals has remained far above the average since about 2010, and especially since the COVID-19 pandemic.[21] Antitrust enforcers have a decent batting average in choosing cases to enforce in concentrated markets. For example, data show that mergers get more antitrust attention in markets where the top four firms control between 30-60% of output.[22] But current enforcement against monopolies is focused almost entirely on the digital sector, while problems in consumer-and worker-facing sectors continue to raise prices and reduce choice.[23]

Working Americans deserve a competition policy agenda that prioritizes consumers and workers who are exposed to the most visible, harmful effects of market power — higher prices and loss of choice. A campaign that delivers to working Americans should maximize antitrust bang for the buck to deliver tangible relief. This means focusing on strong enforcement against harmful mergers, monopolies, and anticompetitive agreements in concentrated sectors where prices and markups are high and wages and rates of entry by new firms are low.

BLOCKING MERGERS THAT REDUCE CHOICE AND INNOVATION

Many powerful firms have little incentive to innovate because they have no competitors to spur them to produce new and better products or to improve their business model.[24] Moreover, large firms may resist innovation because it is likely to cannibalize, or take revenues away from sales, from their existing products. While choice and fair prices are the most visible signs of competition to working Americans, paying ever higher prices for products and services that show no signs of quality improvement or innovation is a leading indicator of market power.

For example, farmers are hostage to the market power of the large agricultural biotechnology firms that produce genetically modified crop seeds and agrochemicals used on the vast majority of U.S. cropland. Three major firms dominate the sector as the result of mergers in the late 2010s that cut the number of competitors in half. Technology fees that farmers pay to use their patented genetic crop seed technologies rise regularly, but that do not materially increase crop yields.[25]

Workers also value choice in potential employers and in wages and benefits. Mergers that create powerful buyers shift bargaining power away from workers. This loss is apparent even when workers collectively bargain through labor unions. Unionized workers are now more vocal than ever as their bargaining power is threatened by mergers like Kroger and Albertsons, the proposed acquisition of U.S. Steel, and the now defunct joint venture between American-JetBlue.[26] Moreover, buyer market power disincentivizes employers to invest in increasing labor innovation and worker skills, such as employee training programs and improved systems that make labor more productive.

Antitrust enforcement should prioritize enforcement against mergers that create larger players and eliminate choice for consumers or workers. For example, enforcers were successful in convincing the courts to consider a loss of consumer choice as a harmful effect of the merger of JetBlue and Spirit.[27] Loss of choice is an especially serious result in some retail grocery, airline, and hospital mergers. In many cases, such mergers have disparate impacts on rural communities that are hit especially hard by the loss of competition in creating food, transportation, and healthcare "deserts."

More attention to these types of mergers is important to protect working-class Americans. As part of an antitrust policy focused on paychecks and pocketbooks, it is important to preserve antitrust's consumer welfare standard. The standard has been under fire by advocates who want to replace it with one that limits the size of firms based on "bigness."[28] Unlike the consumer welfare standard, such tests would not focus on determining if mergers or business practices actually harm consumers or workers with higher prices, lower wages, and less innovation and choice. This could result in unintended consequences that can limit innovation and growth. Standing up for consumer welfare, therefore, is important for ensuring that antitrust enforcement promotes competitive markets.

PROTECTING CONSUMERS FROM DRIP PRICING AND JUNK FEES

Last, but not least, is protecting consumers from some practices designed to deceive or take advantage of them. These include "drip pricing" schemes that consumers frequently encounter in buying airline fares or tickets to live events. Drip pricing takes advantage of consumers who spend time searching online but do not know the final price — after all fees have been added in — of the product or service until the very end. Exhausted from searching, a consumer will just buy the product, even if she is unhappy with additional fees, often known as junk fees, and the final price.

Drip pricing has an important connection to competition. First, it stifles comparison shopping and competition. Second, firms with market power are more likely to impose junk fees on consumers because there is less competition.[29] Drip pricing, therefore, extracts a market power "toll" that preys on consumers' valuable time and attention. Drip pricing and junk fees tee up the important intersection between consumer protection, an area that should be a high priority for antitrust enforcers. The Biden administration has taken significant steps to rein in junk fees. For example, a proposed rulemaking by the Federal Trade Commission would mandate "all-in" pricing upfront in the purchase process so that consumers can more easily comparison-shop.[30]

As PPI has explained, however, rules around junk fees must distinguish between anti-consumer junk fees and fees that are a legitimate feature of a pro-competitive business model. For example, ultra-low-cost airlines promote consumer choice for budget travelers by unbundling their fares from other services. This is pro-competitive and serves an important segment of consumer demand. Regulators and antitrust enforcers should continue to be on the lookout for harmful drip pricing schemes. This is especially important as technology advances. There is a good chance that drip pricing will increase in frequency, but also complexity, as prices are increasingly determined through digital algorithms.

TAKEAWAYS

Competition is vital to a market economy and antitrust enforcers are rightly positioned on the playing field to ensure that the game of competition is fair. This benefits working-class Americans in myriad ways. PPI's analysis shows that antitrust enforcement should focus on three major themes to deliver the benefits of competition to consumers, workers, and smaller businesses. Our recommendations focus on "pocketbook and paycheck" priorities, where these important market participants are hit hard by anticompetitive mergers and conduct.

ABOUT THE AUTHOR

Diana Moss is Vice President and Director of Competition Policy at the Progressive Policy Institute. From 2015-2023, Dr. Moss was President of the American Antitrust Institute. An economist, her work spans the economic, policy, and legal analysis of antitrust enforcement and sector regulation, with industry expertise in digital technology, energy, agriculture, airlines, telecommunications, media, and health care.

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The Progressive Policy Institute is a catalyst for policy innovation and political reform based in Washington, D.C. Its mission is to create radically pragmatic ideas for moving America beyond ideological and partisan deadlock.

Founded in 1989, PPI started as the intellectual home of the New Democrats and earned a reputation as President Bill Clinton's "idea mill." Many of its mold-breaking ideas have been translated into public policy and law and have influenced international efforts to modernize progressive politics.

Today, PPI is developing fresh proposals for stimulating U.S. economic innovation and growth; equipping all Americans with the skills and assets that social mobility in the knowledge economy requires; modernizing an overly bureaucratic and centralized public sector; and defending liberal democracy in a dangerous world.

PROGRESSIVE POLICY INSTITUTE
1919 M Street NW,
Suite 300,
Washington, DC 20036

Tel 202.525.3926
Fax 202.525.3941

info@ppionline.org
progressivepolicy.org