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Charting a Center-Left Course For Antitrust Enforcement

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EXECUTIVE SUMMARY

The last 50 years have been marked by major shifts in the nation's approach to enforcing U.S. antitrust laws. For example, *laissez-faire* or "Chicago School" conservatism captured antitrust for almost four decades beginning in the 1970s, persuading enforcers and judges that vigorous enforcement stifled efficiency and chilled innovation. In fact, enforcement protects the very competition that spurs incentives for firms to become more efficient and innovative. Diametrically opposed is the more recent theory of "Anti-Monopoly" progressivism, defined by far left attempts to use antitrust enforcement to rectify a variety of economic, political, and social injustices. U.S. antitrust laws, however, are not designed for such purposes. Instead, they are intended to serve the broad public interest by assuring a level playing field for competition and protecting consumers through fair prices, choice and innovation. There is a suite of other policy tools that can more efficiently and effectively tackle the problems that the Anti-Monopoly movement seeks to cure with antitrust enforcement.

This PPI analysis unpacks the downsides and high opportunity costs resulting from the ideological swings that divert antitrust enforcement from a more pragmatic, consistent, and effective course. As Americans face the worst cost-of-living crisis since the 1970s, the imperative of vigorous antitrust enforcement that works in the best interests of competition and consumers has never been higher. This includes focusing on consumer-facing sectors like food, healthcare, housing, and transportation, where the abuse of market power is highly visible and is felt keenly in pocketbooks and paychecks.

The adverse effect of Chicago School conservatism on antitrust is well established. But the downsides of major features of Anti-Monopoly enforcement under the Biden administration are not. The report takes a deep dive into this question and concludes that while Anti-Monopoly enforcers did work to temporarily slow down consolidation, they also incurred high costs in pursuing a specialized agenda.

PPI's report concludes with pragmatic proposals for a center-left antitrust platform to rein in harmful market power with discipline and consistency. These include codifying the principles advanced by "post-Chicago" enforcers, especially

under the Obama administration and fortifying them with principles that clarify, update, and strengthen antitrust enforcement.

Proposals in the first category include: adopting a broad interpretation of the consumer welfare standard to include price and non-price dimensions of competition; enforcing the "structural presumption" against illegal horizontal mergers; applying the antitrust laws to competitive problems in input, output, and innovation markets; and taking a skeptical view of efficiency justifications for anticompetitive consolidation and conduct.

The second category of proposals includes: reaffirming the central role of the consumer welfare standard in antitrust enforcement; adding a presumption against anticompetitive vertical mergers; reducing burdens on antitrust plaintiffs; raising the bar on efficiency claims; updating remedies policy based on evidence of past failures; and consolidating expertise in sectors like food, healthcare, and energy in either the Federal Trade Commission (FTC) or U.S. Department of Justice (DOJ).

I. ANTITRUST IS THE LEADING TOOL FOR PROMOTING COMPETITION AND PROTECTING CONSUMERS

A. Calling Balls and Strikes on Anticompetitive Consolidation and Conduct

Antitrust plays a vital role in ensuring that the playing field of competition, the trademark of a market economy, is level and fair. Without competition, dominant firms and tight oligopolies have strong incentives to wield market power. This distorts the competitive process and harms consumers by restricting output, raising prices, limiting quality and variety, and slowing down innovation. Workers also suffer the effects of market power through lower wages and benefits and less job mobility. Finally, the exercise of market power can foreclose smaller businesses from access to inputs and distribution, raising their costs and driving up prices.

When enforcers call "balls and strikes" consistently and pragmatically, antitrust is a powerful tool. It prevents the accumulation and abuse of market power through anticompetitive consolidation and business practices. In promoting competition, antitrust enforcement supports consumer and entrepreneurial freedom, reinforcing the democratic principles on which markets rest.

The centenarian U.S. antitrust laws provide a durable and flexible framework for promoting competition and protecting consumers. For example, Section 7 of the Clayton Act (1907) stops mergers that substantially lessen competition.[1] Section 1 of the Sherman Act (1890) prohibits harmful anticompetitive agreements.[2] Section 2 of the Sherman Act polices monopolistic, exclusionary conduct that blocks competitors' access to markets.[3]

The last 50 years of antitrust in the U.S., however, feature significant swings in antitrust enforcement. Even in the last six years, U.S. antitrust has shifted from far-left Anti-Monopoly progressivism under the Biden Administration to "politicization" by the Trump 2.0 administration for the purpose of advancing a political agenda, rewarding allies, and punishing enemies. Volatility in U.S. antitrust is now an uncomfortable reality, with vast implications for antitrust as a system of law enforcement and for the markets, competition, and consumers it is designed to protect.

B. Antitrust's Susceptibility to Swings in Ideology

The first seven decades of antitrust enforcement in the U.S. were remarkably stable. The trustbusting era spurred by the passage of the Sherman Act in 1890 led to the break-up of monopolies, giving way to the "structuralist" period from the 1930s through the 1960s. Congress passed additional antitrust laws to protect smaller rivals, including the Packers and Stockyards Act (1921) and the Robinson Patman Act (1936).[4] The structuralist era was marked by judicial skepticism of large mergers in cases like *U.S. v. Philadelphia Nat'l Bank* (1963) and *Brown Shoe Co. v. United States* (1962).[5] Structuralism was guided by commonsense economics. The "structure-conduct-performance (SCP)" paradigm, for example, linked high market concentration to stronger incentives to exercise market power to raise price or exclude competitors and, ultimately, to poor market performance.[6]

This long period of stability ended in the"late 1970s and early 1980s. Since then, U.S. antitrust enforcement has been marked by major shifts. For example, far-right Chicago School *laissez faire* conservatism captured antitrust in the 1970s, rooted in the idea that vigorous antitrust enforcement stifles efficiency and chills innovation. By the late 1990s, mounting concerns over rising concentration and dominant firms generated backlash, coalescing in a center-left movement referred to as "post-Chicago." The revitalization of antitrust enforcement in this period, especially under the Obama administration, produced some of the most vigorous enforcement in decades.

It was not long, however, before antitrust veered again. In 2021, the Biden administration, guided by Senator Elizabeth Warren, installed far-left Anti-Monopoly progressives at the DOJ and FTC.[7] These enforcers had an expansive view of antitrust, namely, as a tool to address myriad political, economic, and social problems.

The Biden Anti-Monopoly enforcers worked to push the boundaries of antitrust norms and standards to make a bigger case for antitrust reform. They were successful in blocking highly concentrative, illegal mergers — deals that all but the most conservative enforcers would have also pursued.[8] But the Biden enforcers also mounted risky and ultimately unsuccessful cases, especially in the digital sector.

C. The Implications of Antitrust Instability

Volatility in antitrust enforcement hurts the very stakeholders the laws are designed to protect. Lax enforcement in the Chicago School era, for example, produced higher levels of market concentration, increasing price-cost markups, and widening wage and inequality gaps.[9] While conservatives favored the interests of business over consumers, the Anti-Monopoly movement promotes populist interests in targeting the political influence of big firms especially in a major sector of the economy, digital technology. Both approaches discourage compromise and consensus-building.

Ideological swings in antitrust hobble enforcement by creating legal hurdles that future enforcers must overcome. For example, it took years for post-Chicago advocates to beat back the caselaw that strongly disfavored antitrust plaintiffs. The impact of the Biden push to redefine antitrust is not fully known. But this era also produced caselaw, especially in high-profile litigation losses, that could well erect roadblocks for future enforcers. Overcoming these legal hurdles consumes valuable time and resources that could otherwise be deployed to combat market power more consistently and effectively.

II. WEAKENING THE CONSUMER WELFARE STANDARD

The contours of a pragmatic, effective antitrust platform are easier to define when we ask what enforcers and lawmakers should *avoid*. The answer to this question is part of a core debate in modern antitrust over the prevailing consumer welfare standard. The standard entered the picture in the 1960s as pressure was building to connect violations of antitrust law to consumer harm. This coincided with increasing complexity and diversity in the U.S. economy and a commensurately larger role for economics.

Adoption of the consumer welfare standard ushered in the era of more complex "effects-based" analysis. That is, namely, the framework used by enforcers and courts to consider how anticompetitive consolidation and business practices harm consumers. The consumer welfare standard captures a broad range of effects, from pricing to quality, variety, and innovation.[10] But effects-based analysis also opens the door to controversial efficiencies "defenses," or justifications for why, for example, cost reductions or faster innovation might reduce incentives to exercise market power.

A. Chicago School Conservatism and Lax Enforcement

By the late 1970s, antitrust was shifting to the right.[11] Conservative Chicago School doctrine walked back the SCP model and moved to *ad doc*, case-by-case analysis. Fueled by Robert Bork's now de-bunked treatise, *The Antitrust Paradox*, the Chicago School championed an inaccurate, narrow interpretation of the consumer welfare standard.[12] The focus was exclusively on short term price increases, the negative effects of which were far more easily overcome by claimed efficiencies.[13]

This skewed reading of the consumer welfare standard served a higher purpose for conservative antitrust — to support the idea that market power is short-lived because powerful incumbents will regularly be displaced by new, more efficient and innovative firms. Under this theory, government intervention in markets should be kept to a minimum.[14] Of course, defendants were held largely unaccountable for showing that efficiencies reduced incentives to exercise market power, and that the benefits of efficiencies would be passed through to consumers in the form of lower prices or higher quality products.

The legacy of the Chicago School is well known. Judicial opinions in *Continental T.V. v. GTE Sylvania* (1977),[15] *U.S. v. General Dynamics Corp.* (1974),[16] and *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.* (1993)[17] created stricter standards for plaintiffs to demonstrate the likelihood or evidence of anticompetitive harm. Raising the burden on antitrust plaintiffs affected a wide range of activity, from mergers to predatory pricing, and vertical agreements.

On the merger front, large deals moved forward. For example, the swath of airline mergers in the 2000s reduced the number of U.S. competitors to the "Big 4," shifting incentives from head-to-head competition to keeping capacity tight to support higher fares.[18] Likewise, the acquisition spree by agricultural behemoth Monsanto from the late 1990s through the 2000s created a dominant firm, with enormous power over licensing fees to farmers and seed prices.[19]

The mounting body of caselaw and deference to efficiency justifications acted to backburner antitrust as a major tool for promoting competition. As former FTC Chair Robert Pitofsky aptly put it: "In the 1960s, the United States had by far the vigorous antitrust system in the world" …. "But the 1980s, we had perhaps the least vigorous…Antitrust was almost asleep in the 1980s."[20] The damage to competition and consumers wrought by Chicago School conservatism is still felt by consumers today.

B. Anti-Monopoly Rejection of Modern Antitrust Standards

By the early 2010s, another antitrust shift was brewing — this time on the far left. Anti-Monopoly doctrine deemed modern antitrust an abject failure. As former FTC Chair, Lina Khan, explained: "Anti-monopoly is a governing philosophy that generally considers concentrations of power as a danger to freedom.[21] Barry Lynn, head of the Open Markets Institute, noted recently that: "… the purpose of anti-monopoly law, of competition policy, is not to promote efficiency foremost. It is to protect our democracy and it is to protect our individual liberties."[22]

The populist appeal of the Anti-Monopoly movement garnered support from the far-right MAGA wing of the Republican Party. Figures such as J.D. Vance and Steve Bannon praised FTC Chair Lina Khan, the latter noting that Khan was "…one of the most important political figures in the country."[23] Anti-Monopoly advocates borrowed from the ideas of Supreme Court Justice Louis Brandeis to support the vision of antitrust as a broad policy tool. However, they glossed over important details of Brandeis' position on key issues that qualified the role of antitrust. These included his concern over the size of business *and* government; the importance of other policies such as tax, privacy, and civil liberties; and the role of markets in promoting both consumer and entrepreneurial freedom.

Anti-Monopolists promoted the movement by leveraging Chicago School ideology.[24] They embraced its flawed, narrow reading of the consumer welfare standard and expansive view of efficiency justifications to reject the standard outright. The fatal flaw, of course, was accepting the Chicago School's already badly skewed interpretation of consumer welfare and emphasis on countervailing efficiencies. Indeed, the Anti-Monopoly movement's founders and proponents failed to consider the evidence that antitrust was not about "efficiency."[25]

For example, the post-Chicago Obama enforcers blocked large mergers in the 2000s and 2010s, including AT&T-T-Mobile (2011), Staples-Office Depot (2016), Sysco-U.S. Foods (2015), Halliburton-Baker Hughes (2016), Aetna-Humana (2016), and Anthem-Cigna (2017).[26] These highly concentrative deals eliminated head-to-head competition and invoked the "structural presumption" of illegality, where no efficiencies defense could possibly have saved the day.[27]

Recognizing the successes of pragmatic, vigorous, post-Chicago, center-left enforcement was never the Anti-Monopoly goal. Instead, it was to push for complete reform. This meant replacing the consumer welfare standard with bright line tests for "bigness," such as market share, and other size-based thresholds.[28] While bright-line tests may be appealing in their simplicity and aggressiveness, disconnecting anticompetitive effects from consumer harm introduces the risk of both under-enforcement and over-enforcement. For example, bright line tests risk allowing activity by market participants that falls under the threshold but could still harm consumers in ways only detectable under the consumer welfare standard. Likewise, bright line tests condemn all activity undertaken by market participants that exceed the threshold, potentially some of which could be remedied in ways that enhance consumer welfare.

In sum, the Chicago School and Anti-Monopoly legacies could not be more ideologically polarized. Yet they share the same theme, namely, deploying antitrust enforcement in ways that jeopardize its fundamental goal of promoting competition and protecting consumers. Since the end of the Biden administration, Anti-Monopoly advocates have shifted focus to advancing sector-specific antitrust bills in Congress. The American Innovation and Choice Online Act (S.2992),[29] Break Up Big Medicine Act (S.3822),[30] and the Family Grocery and Farmer Relief Act (S.4007)[31] are leading efforts. Currently, the bills have limited bipartisan or only Democratic support.

The Anti-Monopoly bills are pitched as strengthening antitrust and consumer-protection policy by reducing concentration, preventing dominant firms from engaging in conduct that limits competition, and unwinding vertical integration. However, they variously mandate government-imposed market restructuring, arbitrary thresholds for liability, and breakups as a one-size-fits-all remedy. They risk discouraging smaller players from expanding, the loss of consumer welfare, and destabilizing markets and supply chains through massive, hasty divestments of critical assets to potentially unsuitable buyers. Missing from the bills are crucial details about how enforcement action under myriad, sector-specific bills will align or conflict with generalist antitrust laws under the Sherman Act, Clayton Act, and other statutes. Among other questions are how claims brought under multiple statutes will be handled and how "statute-shopping" could impact remedies for restoring competition.

III. ASSESSING THE ANTI-MONOPOLY RECORD ON ANTITRUST

A. Testing the Limits of the Antitrust Laws

The Biden enforcers set an ambitious agenda to advance their goals through two major strategies: testing the limits of the U.S. antitrust laws and agency authority and slowing down consolidation. The Biden FTC's labor non-compete rulemaking is a leading example of the first. For example, despite economic evidence supporting a limited ban on low-wage and unskilled labor, the proposed rule sought to ban *all* non-compete clauses. Before this could be debated, the proposed rule was rejected by the courts on the grounds that the FTC exceeded its statutory rulemaking authority.[32]

Another example is the effort to revise the Merger Guidelines in 2023. A draft issued by the DOJ and FTC for public comment included a number of new, non-rebuttable presumptions for what the agencies would deem an illegal merger. This generated significant pushback.[33] The changes were subsequently dropped in the final version of the guidelines. The Biden enforcers also set their sights on large players in the digital sector, raising concerns that the agencies were diverting resources away from competition problems and high prices in consumer-facing sectors that were quickly becoming front-page news.

For example, in *FTC v. Meta/Within* (2022), the FTC attempted to enjoin the merger on the theory that it eliminated Meta as a potential competitor in virtual reality fitness apps. In *U.S. v. United Healthcare-Change Health* (2023), the DOJ challenged the deal on a major theory that UHC could disadvantage rivals operating on the Change health insurance claims processing platform. In *FTC v. Microsoft/Activision* (2022), the FTC sued to block on the theory that Microsoft would withhold Activision's video game products from rivals. In all three cases, courts found that the government failed to support its claims.[34]

On the non-merger front, the *FTC v. Amazon* monopolization case was inspired by FTC Chair Lina Khan's 2017 student article in the Yale Law Journal.[35] As the case moves forward to trial, the FTC continues to struggle to define a market to support its claim that the online retail and technology company "exploits its monopolies in ways that enrich Amazon but harm its customers."[36] Finally, in the transition from the Biden to Trump 2.0 administrations, the Biden enforcers inherited and litigated the *U.S. v. Google* search case, brought originally by the Trump 1.0 DOJ.

After prevailing on liability, the Biden DOJ asked the court for sweeping remedies, including breaking up the company and a complex set of conditions to quasi-regulate the search platform.[37] The court rejected much of what the DOJ asked for, finding that some remedies were not linked to competitive harm or that their severity could adversely affect consumers. This outcome is currently on appeal.[38] These cases reveal the Anti-Monopoly strategy to push the boundaries of antitrust norms and standards, an effort that yielded little forward movement.

B. Slowing Down Consolidation

To their credit, Anti-Monopoly enforcers in the Biden administration worked to slow down consolidation. One prong of this approach was to move to enjoin more mergers. For example, the DOJ and FTC successfully blocked the mergers of Spirit and JetBlue airlines and grocery giants Kroger and Albertsons, respectively.[39] As noted earlier, these highly concentrative and presumptively illegal deals would have been blocked by all but the most conservative enforcers.

A second prong of the strategy was more intense early-stage scrutiny of merger proposals. This was designed to force the abandonment of potentially harmful deals before the government filed a complaint. Many "second requests" for more information from the merging parties stretched on for a period of months, especially at the FTC.[40] The FTC forced the abandonment of several harmful hospital mergers under this strategy, including John Muir Health -- Tenet Healthcare, RWJ Barnabas Health -- Saint Peter's Healthcare System, and HCA Healthcare -- Steward Health.[41]

But there were also some questionable calls, including forcing the abandonment of Amazon's acquisition of autonomous vacuum cleaner manufacturer, iRobot. Both the FTC and European Commission overlooked the entry of new competitors in the market and iRobot's declining financial viability. This forced iRobot to exit the industry shortly after the parties abandoned the acquisition.[42]

The third prong of the Anti-Monopoly merger control strategy was moving to enjoin more mergers rather than settling them with remedies such as divestitures and behavioral conditions.

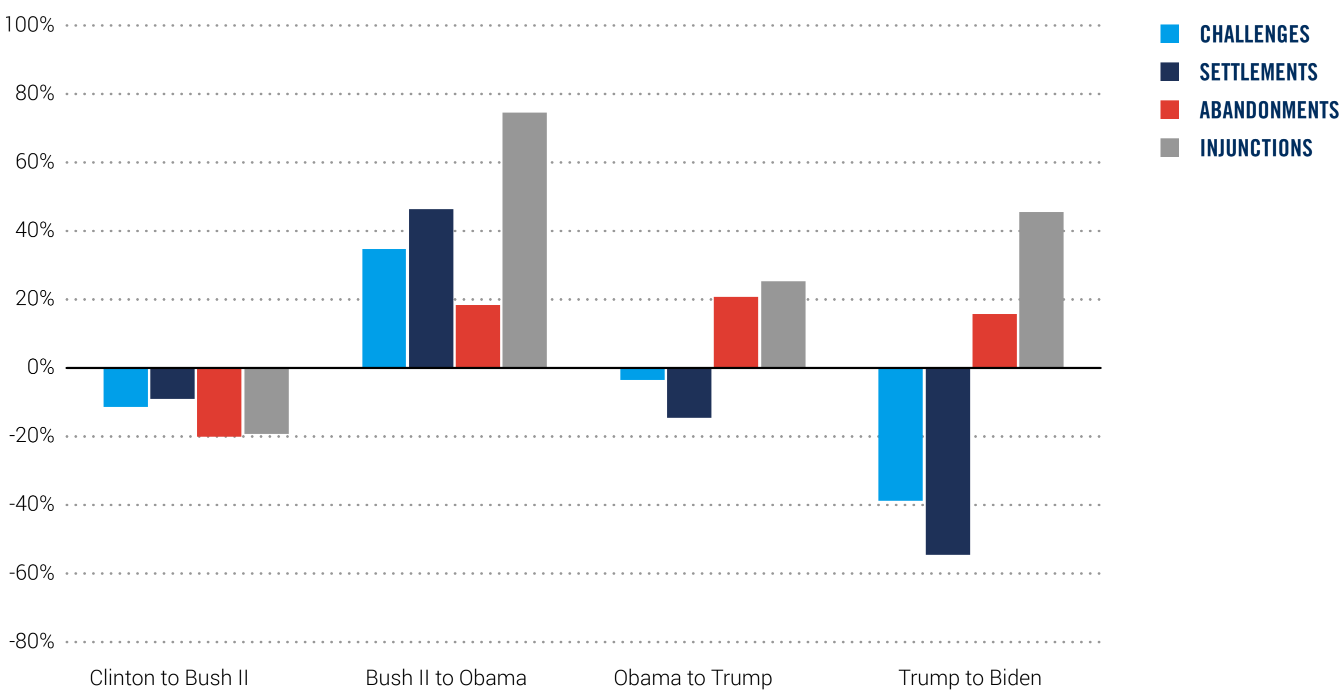
The DOJ broadly advertised its "no settlement" policy, which discouraged a number of deals.[43] However, there were several instances where companies called the government's bluff and took their deals to court where they introduced late-stage divestiture proposals. This supercharged the "litigating the fix" problem,[44] creating new legal precedent that muddied the waters around the question of whether the government should litigate the original (i.e., proposed) merger, or the restructured (i.e., post-divestiture) merger.[45]

C. The Empirical Record of Merger Enforcement

Evidence supports the idea that swings in antitrust ideology are clearly visible in merger control. PPI used data in the DOJ/FTC annual reports to Congress under the Hart Scott Rodino Act (1976) to compare the Biden Anti-Monopoly enforcers' record to other administrations based on rates of merger abandonments, challenges, settlements, and injunctions.[46] Figure 1 shows administration-over-administration changes in these rates of enforcement from 1993 to 2024.

Figure 1 reveals a noticeable decline in all rates, as shown by negative numbers below the horizontal axis from Clinton to Bush II. This signals the Chicago School's influence on more conservative Republican administrations. In contrast, there is a sharp upswing across all metrics from Bush II to Obama, evidence of invigorated center-left enforcement in the post-Chicago period. The Trump 1.0 and Biden administrations show mixed records of administration-over-administration changes in enforcement.

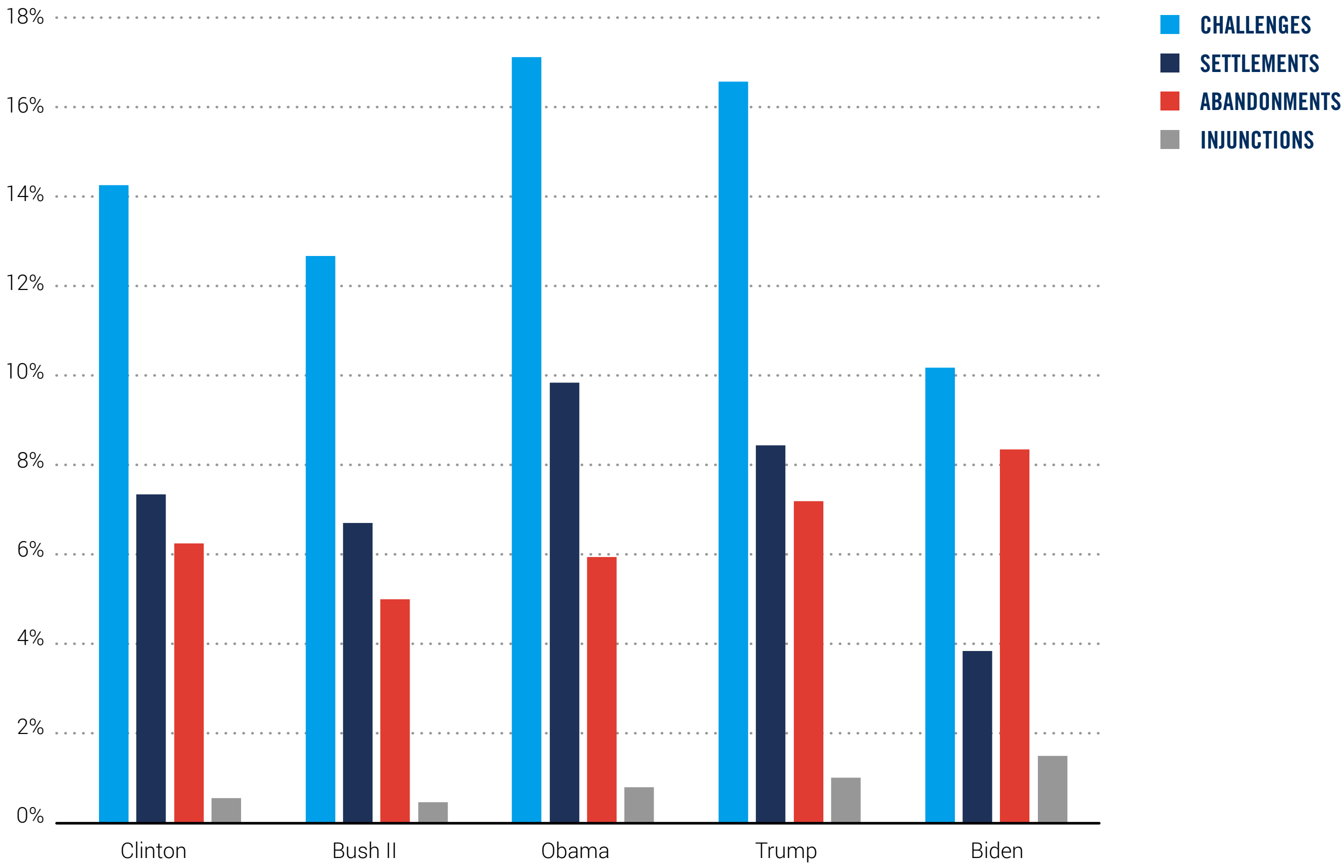
FIGURE 1: ADMINISTRATION-OVER-ADMINISTRATION CHANGES IN MERGER ENFORCEMENT



Source: DOJ/FTC annual reports to Congress under the Hart Scott Rodino Act

Figure 2 presents the same data on rates of enforcement for each of the five administrations. The lowest rate of merger challenges under the Biden administration is clear in the highest rate of abandoned transactions. In other words, with more forced abandonments, there is no need to file a complaint alleging that a transaction violates Section 7 of the Clayton Act. Likewise, the Biden enforcers' "no settlement" policy is reflected in the lowest rate of settlements across administrations.

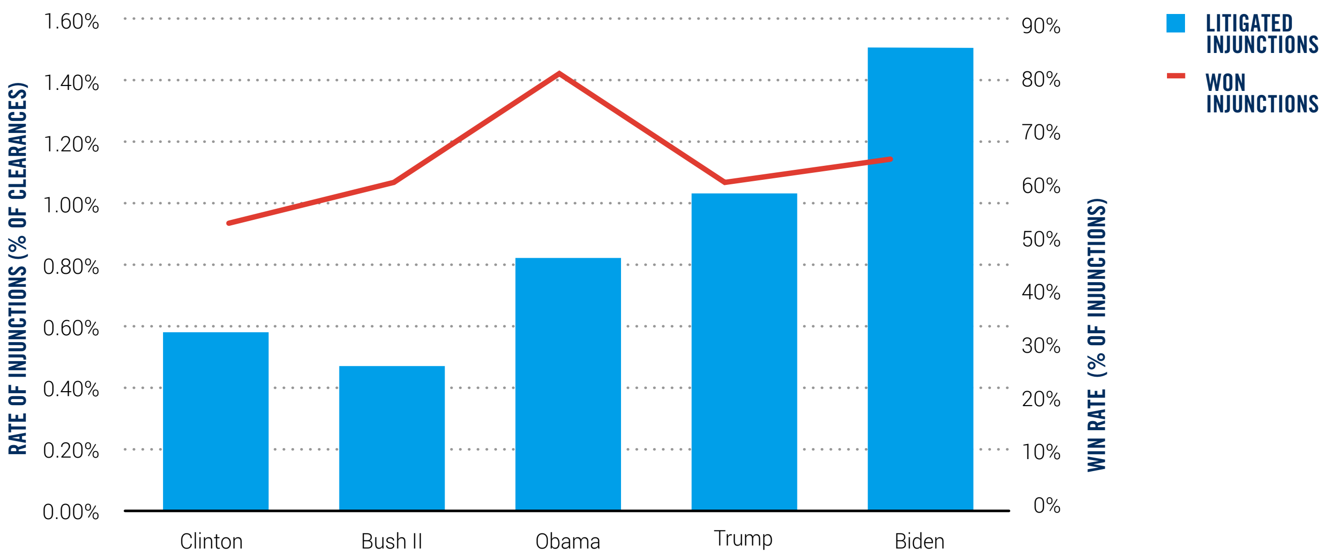
FIGURE 2: RATES OF MERGER ENFORCEMENT BY ADMINISTRATION (PERCENT OF CLEARANCES)



Source: DOJ/FTC annual reports to Congress under the Hart Scott Rodino Act

Historical merger enforcement data support the idea that merger control under Biden temporarily discouraged anticompetitive mergers. However, the long-term effect is different. Figure 3 shows the rate of merger injunctions, along with the government's "win rate," or percentage of cases where it successfully blocked a merger in federal court. The rate of injunctions increases steadily beginning with the Obama administration. But the win rate increases from the Clinton to Obama administration, falls through Trump 1.0, then recovers only slightly through the Biden administration.

FIGURE 3: RATES OF MERGER INJUNCTIONS VS. WIN RATE



Source: DOJ/FTC annual reports to Congress under the Hart Scott Rodino Act

The biggest takeaway from Figure 3 is that the Obama enforcers have the highest win rate, at 80%. In contrast, the Biden win rate is just under 65%, or about average across all administrations and on par with the Bush II and Trump 1.0 administrations. The practical implication of this analysis is important. The Biden enforcers achieved a record rate of injunctions over the last 30 years, but won just just over 60%. The Obama enforcers had a lower rate of injunctions but won a significant majority of them. In other words, the Obama enforcers had, by far, the highest ratio of wins-to-injunctions of all five administrations. The Biden enforcers had the lowest ratio.

The Biden enforcers' relatively low win rate on merger injunctions, which is now codified in antitrust caselaw, has an important implication. Companies could be emboldened to pursue deals similar to those that the Biden enforcers attempted unsuccessfully to block. But future enforcers may think twice about challenging them, even if they have stronger facts and evidence. This would weaken enforcement.

Anti-Monopoly enforcers also incurred high opportunity costs by focusing enforcement heavily on the digital sector, against the backdrop of steadily mounting concern over high concentration and rising prices in food, healthcare, and transportation. The number of mergers that were reportable under HSR in these sectors increased about 30% year-over-year from 2009 to 2024.[47] This is a dramatic increase in consolidation in consumer-facing sectors.

Given the effect of the Biden enforcers' strategy of forcing the abandonment of mergers, we looked at the difference between the rate of abandonments in consumer-facing sectors and the average across *all* sectors in the Biden era.[48] Results show that the differences are negative for most sectors, or that the rate of abandonments in consumer-facing sectors was lower than across all sectors.

For example, the rate of merger abandonments from 2021 to 2024 is -8% in food processing, retail grocery, and gas stations, -6% in insurance, and -2.5% in ambulatory care. The difference is positive (2%) in the hospital sector. However, is it less positive than the more aggressive rate of abandonments under the Obama administration. That the Biden enforcers were *less* aggressive in shutting down mergers early on in consumer-facing sectors supports the concern that enforcement resources were diverted to other sectors, such as digital technology.

IV. CHARTING A COURSE FORWARD FOR CENTER-LEFT ANTITRUST

A. The Case For Center-Left Antitrust Enforcement

PPI's analysis of far right and far left swings in antitrust ideology focuses the lens on why a center-left approach better serves the interests of competition and consumers. So, what does a center-left approach to antitrust look like? To be sure, the post-Chicago movement defined its basic contours. This includes working to invigorate enforcement within the maximum contours of existing antitrust law. Center-left antitrust also rests on pragmatic decisions about what cases to pursue, with a focus on markets with significant market power concerns and evidence of consumer harm. Finally, it means advancing consistent enforcement to promote competition over the long term, to boost output, keep prices down, and incentivize competition on quality, variety, and innovation.

The Obama administration adhered to these framing principles in a number of ways. For example, it issued the first-ever Executive Order on Competition requiring federal executive agencies to review and expunge regulations that limited competition.[49] Post-Chicago enforcers successfully blocked large mergers, pursued aggressive cartel enforcement,[50] and withdrew conservative past policy guidance on monopolistic conduct.[51]

Post-Chicago advocates had a strong evidence-based case for repositioning antitrust enforcement toward the center-left. This came with a strong dose of "common sense" signaling to the business community. For example, the Assistant Attorney General for Antitrust at DOJ under the Obama administration, William Baer, noted before a Senate Judiciary antitrust subcommittee hearing in 2016 in the wake of DOJ's move to block an anticompetitive merger of cinema advertisers: "I said at the time, and I believe to this day, that this is representative of an anticompetitive transaction that never should have made it out of the boardroom."[52]

B. Defining Principles of a Center-Left Antitrust Platform

Post-Chicago enforcers controlled the fallout from the Chicago School approach to antitrust with the following principles that should continue to define the core of a center-left antitrust platform:

- *Adopting a broad interpretation of the consumer welfare standard to include the price dimensions and non-price dimensions of competition, such as quality, variety, choice, and innovation.*

- *Recognizing the connection between high market concentration and anticompetitive effects in enforcing the "structural presumption" against horizontal mergers.*

- *Applying the antitrust laws to competitive problems in all markets: consumer products and services, labor, raw materials and other inputs, and innovation.*

- *Taking a skeptical view of efficiency justifications for anticompetitive consolidation and conduct.*

But there is more work to be done to fortify a center-left antitrust platform based on more recent developments. For example, strengthening enforcement should focus on legislative and process reforms that focus on:

- *Codifying the full scope of the consumer welfare standard, including adverse effects on prices, choice, quality, variety, and innovation.*

- *Adding a presumption of illegality for vertical mergers to the existing structural presumption for horizontal mergers.*

- *Reducing burdens on antitrust plaintiffs, including clarifying the importance of direct, circumstantial, and retrospective evidence of competitive harm.*

- *Significantly raising the bar for efficiency defenses and requiring post-merger reporting and proof that benefits are passed through to consumers.*

- *Revising agency guidance on merger remedies that explicitly recognizes past failures.*

- *Consolidating expertise in sectors such as food and agriculture, healthcare, and energy in a single agency to focus resources and leverage knowledge.*

With this approach to formalizing a platform for pragmatic, vigorous center-left antitrust, the U.S. will avoid the costly mistakes that have resulted from swings in antitrust ideology over the last 50 years.This will reinforce antitrust's vital role in promoting competition and protecting consumers, while supporting innovation and growth.

ABOUT THE AUTHOR

Diana L. Moss is Vice President and Director of Competition Policy at the Progressive Policy Institute. An economist, Dr. Moss's work spans the economic, policy, and legal analysis of antitrust enforcement and sector regulation, across a wide range of industries. She has spoken widely; testified before Congress, state legislatures, regulatory commissions, and in federal court; and has made numerous radio and television appearances.

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