



The Daily Dish

# The Biden Administration Marches In

DOUGLAS HOLTZ-EAKIN | DECEMBER 11, 2023

Fittingly enough, the Biden Administration chose December 7 to launch its latest assault on the private sector. Ostensibly, the topic was “[New Actions to Lower Health Care and Prescription Drug Costs by Promoting Competition](#).” (You gotta hand it to them, they have a singular lack of imagination when it comes to identifying culprits.)

The administration’s fact sheet begins with the sweeping assertion: “Currently the 25 largest pharmaceutical companies control around [70% of industry revenues](#). Other parts of the health care industry also face limited competition. Over [75% of Americans](#) live in highly concentrated hospital markets, and just three or fewer issuers of individual health insurance control [80% of the market](#) in 44 states. In addition, five insurers control [over 70%](#) of the Medicare Advantage market. This consolidation contributes to higher costs for taxpayers, lower wages for health care workers, and [worse quality of care](#) for patients.”

First of all, note that if 25 firms control 70 percent of the market, each averages 2.8 percent of the market. That’s not exactly overwhelming. Second, just as with the assertions regarding hospitals, health insurance, and Medicare Advantage, there is no evidence offered of the claim this raises prices or lowers quality. (In his broad [study](#), AAF’s Fred Ashton could find no such link.) Third, there is also the usual tedious recounting of past “achievements” in health care.

But the centerpiece of the announcement is the Biden initiative on march-in rights: “The Biden-Harris Administration believes taxpayer-funded drugs and other taxpayer-funded inventions should be available and affordable to the public. When an invention is made using taxpayer funds, under certain circumstances march-in authority under the Bayh-Dole Act enables the federal government to license the invention to another party.” In other words, forget the fact that one company has a patent and developed the product. The government will simply confiscate it and hand it to the next firm in line.

Now, this is framed in terms of drugs, with the announcement pointing fingers at its predecessor: “The prior Administration proposed a rule preventing the government from exercising this authority on the basis of high price alone. The Biden-Harris Administration decided not to finalize that proposal earlier this year.”

But the real bombshell is that undercutting intellectual property protections will be the goal across the government and in every sector of the economy: “Today, the Department of Commerce and HHS released a [proposed framework](#) for agencies on the exercise of march-in rights that specifies for the first time that price can be a factor in determining that a drug or other taxpayer-funded invention is not accessible to the public.”

Readers of Eakinomics can wade through the details, but here’s the key: This is the Biden Administration openly throwing markets overboard once and for all. Given the slightest connection to government funding, the government can preempt market activity on the grounds that the price is “too high,” or the product is “too slow” in coming to market, or the product is “too unsafe.” Now, I am sure the administration will swear up and down

that it has no intention of radically altering the boundaries of competition or innovation incentives. But it also has no track record of disciplined policymaking that provides any comfort.

The United States has been the most innovative developed economy for decades. The Biden Administration is seemingly intent on destroying intellectual property protections that have been a pillar of the environment producing that success.