

United States Senate

WASHINGTON, DC 20510

May 1, 2020

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Assistant Attorney General Delrahim and Chairman Simons:

As the coronavirus (COVID-19) pandemic continues to threaten the lives and health of millions of Americans, it is also devastating businesses across the country and putting untold numbers out of work in extremely difficult and uncertain times. In light of the fact that the economic disruption caused by the pandemic will likely present numerous opportunities for anticompetitive conduct and consolidation, we write to urge the Department of Justice and the Federal Trade Commission (FTC) to be vigilant in enforcing the antitrust laws and protecting consumers during and after this chaotic period in our history.

The challenges involved in protecting competitive markets and enforcing the antitrust laws have undoubtedly increased during this public health and economic crisis, as employees are forced to work from home and limited agency resources are stretched even further. But if American companies and workers are to thrive in the global marketplace once COVID-19 is behind us, we need open and competitive U.S. markets. And that requires vigorous antitrust enforcement during and after the pandemic. While many traditional industries will suffer, some businesses – particularly in the digital economy – may thrive in the new environment. This discrepancy could drive a new wave of consolidation, as technology-based or otherwise well-performing companies seek to acquire distressed assets at low prices. Such transactions may raise difficult issues for agencies tasked with preventing anticompetitive mergers.

COVID-19 has not driven away threats to competition, far from it. The agencies must continue to confront potentially anticompetitive mergers, as pending acquisitions in the U.S. tax preparation market, textbook market, pharmaceutical industry, and other sectors still require scrutiny.

Beyond pending matters, COVID-19's effects on American businesses and workers will likely be profound and long-lasting. Many American companies will struggle and be forced into bankruptcy, and millions of workers will experience what could be extended periods of unemployment.

Investigations into potential anticompetitive conduct must also continue. The pandemic should not be an opportunity for dominant firms to abuse or further entrench their market power. Although some large companies are undertaking welcome efforts to help their customers and the public weather this crisis, these efforts do not give firms a free pass to engage in anticompetitive conduct. The agencies must continue to thoroughly investigate potential violations and take enforcement action if there is evidence of illegal conduct.

In addition, the pandemic has caused unprecedented volatility in American commodities markets, such as cattle, pork, and crude oil. The agencies must be vigilant in monitoring these markets and related markets for potential market manipulation or illegal collusion.

COVID-19 is first and foremost a human crisis, but it is also an economic one. The public will be poorly served if America emerges from the pandemic with an economy that is more consolidated and less competitive than it was before.

Accordingly, we respectfully request that you provide answers to the following questions:

- How is the COVID-19 pandemic affecting your agency's ability to investigate and take enforcement actions against anticompetitive transactions and anticompetitive conduct? Can your agency continue to fulfill its mission to protect consumers and competition at pre-pandemic levels without Congressional action?
- As merger review is inherently forward looking, how is your agency accounting for the increased uncertainty caused by the pandemic in its analyses of transactions and markets? In particular, how does your agency intend to analyze purchases of distressed assets that raise serious competition concerns?
- Is your agency currently facing difficulties in meeting the statutory pre-merger timelines under the Hart-Scott-Rodino Act due to the COVID-19 pandemic? If so, how has your agency handled these difficulties?
- In light of the market uncertainty caused by the COVID-19 pandemic, will your agency commit to conducting retrospective reviews of mergers that are allowed to proceed during the pandemic, if the decisions not to take action were based on market assumptions or predictions that turn out to have been incorrect?

Thank you for your prompt attention to these requests. We stand ready to support your agencies' efforts to protect competition and consumers.

Sincerely,



Amy Klobuchar
United States Senator



Dianne Feinstein
United States Senator



Patrick Leahy
United States Senator



Richard Blumenthal
United States Senator



Cory A. Booker
United States Senator



Richard J. Durbin
United States Senator



Mazie Hirono
United States Senator



Sherrod Brown
United States Senator



Edward J. Markey
United States Senator



Mark R. Warner
United States Senator



Bernard Sanders
United States Senator



Ron Wyden
United States Senator



Tammy Baldwin
United States Senator



Jeffrey A. Merkley
United States Senator



Tammy Duckworth
United States Senator