

July 9, 2024

The Honorable Tom Cole
Chair
House Appropriations Committee
H-307, U.S. Capitol
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member
House Appropriations Committee
1036 Longworth House Building
Washington, DC 20515

The Honorable Hal Rogers
Chair
House Appropriations Commerce, Justice,
Science, and Related Agencies Subcommittee
H-307, U.S. Capitol
Washington, DC 20515

The Honorable Matt Cartwright
Ranking Member
House Appropriations Commerce, Justice,
Science, and Related Agencies Subcommittee
1036 Longworth House Building
Washington, DC 20515

Chairs Cole and Rogers, Ranking Members DeLauro and Cartwright:

The 38 groups and organizations below write to express our serious concerns with the drastic cuts and harmful policy riders that would dramatically impede the ability of the Department of Justice Antitrust Division (DOJ Antitrust Division) in the proposed Fiscal Year 25 Commerce, Justice, Science, and Related Agencies (FY25 CJS) Appropriations legislation passed by the House Commerce, Justice, and Science (CJS) Subcommittee on June 26th, 2024.

We urge you to undo these irresponsible funding cuts, reject the harmful riders currently in the legislation, and honor Senate CJS Subcommittee Chair Jeanne Shaheen’s commitment on the floor of the Senate on March 7, 2024 to remove the language included in the FY24 CJS Appropriations bill that circumvents the clear Congressional intent of the bipartisan Merger Filing Fee Modernization Act (MFFMA) by limiting DOJ Antitrust’s access to funds derived from filing fees.¹

In 2022, Congress took an important step towards adequately funding our antitrust enforcers by passing the MFFMA into law with sweeping, bipartisan majorities in both chambers.² This legislation was intended to correct decades of stagnant funding for the Federal Trade Commission (FTC) and DOJ Antitrust by generating additional funds through the filing of Hart-Scott-Rodino premerger notification filing fees (HSR fees) on only the largest, most costly mergers. These funds would help DOJ antitrust to maintain staffing levels necessary to manage its robust enforcement agenda. As noted by Jonathan Kanter, Assistant Attorney General (AAG)

¹ Congressional Record Vol. 170, No. 41, “[Antitrust Appropriations \(Executive Session\)](#),” (Mar. 7, 2024).

² Sen. Amy Klobuchar, [Klobuchar, Colleagues Call For Restoration of Antitrust Division Funding](#),” Press Release, (Mar. 5, 2024).

for DOJ Antitrust, the Division employed approximately 230 fewer staffers as of February 2023 than it had in 1979.³ Meanwhile, corporations across the economy have only become more concentrated and accumulating more capital to use in fighting off checks on their outsized market power.⁴

Under the leadership of AAG Kanter, DOJ Antitrust has successfully challenged multiple potentially illegal mergers and brought cases against corporations and executives for engaging in price fixing schemes and anticompetitive conduct. They have also supported work from other agencies like the United States Department of Agriculture and the Department of Transportation as they build more competitive markets.⁵ This approach has been successful, with DOJ Antitrust securing important victories month after month.⁶ This approach also has enormous popular support – Americans across demographics and the political spectrum strongly oppose abusive monopolies and support enforcement of our antitrust laws.⁷ And according to the Division, they plan to continue this aggressive enforcement in 2025, delivering lower prices for consumers, higher wages for workers, and a more competitive economy for businesses of all sizes.⁸

For example, DOJ Antitrust brought the first ever successful challenge to an airline merger when they blocked the attempted deal between Spirit and JetBlue, a combination that would have raised consumer prices and threatened jobs.⁹ The companies abandoned the transaction soon after the judgment.¹⁰ DOJ Antitrust has also brought challenges to deals across the economy, working to fight corporate concentration in agriculture, healthcare, and defense.¹¹

However, DOJ Antitrust has been just as active in policing anticompetitive conduct and addressing past mergers they believe were previously incorrectly approved. DOJ Antitrust is pursuing a critical case against Apple for alleged monopoly conduct.¹² They are suing to break up Live Nation/Ticketmaster, arguing the company is operating a monopoly.¹³ They are

³ Dan Papsun, "[Biden Seeks \\$100 Million Boost for Justice's Antitrust Muscle](#)," Bloomberg Law (Mar. 9, 2023).

⁴ Gustavo Grullon, et. al., "[Are US Industries Becoming More Concentrated?](#)," *Review of Finance*, Volume 23, Issue 4, (July 2019).

⁵ Brian German, "[Final Rule Makes Adjustments to Packers and Stockyards Act](#)," AgNet West, (Mar. 5, 2024); Josh Sisco, "[Biden administration moves to block JetBlue's \\$3.8B Spirit takeover](#)," Politico (Mar. 7, 2023).

⁶ American Economic Liberties Project, "[Antitrust Enforcers Win Big Ahead of the Holidays](#)," (Dec. 18, 2023).

⁷ Taylor Orth, "[Most Americans oppose monopolies and support Antitrust Laws](#)," YouGov (Nov. 6, 2023).

⁸ https://www.justice.gov/d9/2024-03/bs_section_ii_chapter_-_atr_-_02.29.24_omb_cleared_0.pdf.

⁹ Nate Raymond, David Shepardson and Rajesh Kumar Singh, "[US judge blocks JetBlue from acquiring Spirit Airlines](#)," Reuters (Jan. 2024).

¹⁰ Michelle Chapman and David Koenig, "[JetBlue and Spirit are ending their \\$3.8 billion merger plan after a federal judge blocked the deal](#)," Associated Press, (Mar. 4, 2024).

¹¹ United States Department of Justice, "[U.S. v. Booz Allen Hamilton Holdings Corp. et al.](#)" (Dec. 2022); United States Department of Justice, "U.S. and Plaintiff States v. UnitedHealth Group, Inc. and Change Healthcare Inc.," (Sept. 21, 2022); United States Department of Justice, "[U.S. v. United States Sugar Corporation, et al.](#)," (Dec. 5, 2022).

¹² Victoria Song, "[US v. Apple: everything you need to know](#)," The Verge, (May 2, 2024).

¹³ United States Department of Justice, "[Justice Department Sues Live Nation-Ticketmaster for Monopolizing Markets Across the Live Concert Industry](#)," Press Release, (May 23, 2024).

prosecuting the company Agri Stats for operating a potentially illegal information-sharing platform and raising food prices for American consumers.¹⁴ They have partnered with other government agencies as leaders of the Biden Administration’s “whole-of-government-approach” to rein in corporate power, particularly with the United States Department of Agriculture in securing multiple settlement agreements with integrators in poultry markets.¹⁵ Importantly, none of this work generates additional funding for DOJ Antitrust through HSR fees.

Unfortunately, the current text of the FY25 CJS Appropriations legislation would not position DOJ Antitrust to continue their excellent work. Instead, it would jeopardize existing enforcement actions and put into question their ability to enforce the law by issuing new merger or conduct challenges. By reducing DOJ Antitrust’s funding by \$40.2 million dollars – almost 20% – and including new riders that would limit DOJ Antitrust’s ability to hire additional staff, collaborate with international enforcers, or implement the new 2023 Merger Guidelines, the CJS legislation will signal to corporations considering entering into anticompetitive deals or engaging in anticompetitive or criminal conduct that Congress will stand in the way of effective antitrust enforcement.¹⁶

As currently drafted, this legislation would hinder DOJ Antitrust’s ability to enforce the law. With reduced funding, Antitrust Division would have to turn a blind eye towards potentially illegal conduct or mergers, to underperform in their investigations or litigation because of a lack of funding, or to accept half-victories and settlements when they could potentially win in court and secure real victories for American workers, consumers, and small businesses.

Additionally, economists and observers have noted that merger and acquisition activity over the last few years has been uncharacteristically low. These same observers note that, should the Federal Reserve lower interest rates later this year or in 2025, this activity might increase, leading to a surge in merger filings that might require an investigation to determine whether they pose any competitive threat.¹⁷ It is imperative that should this filing rush occur, our enforcers have the resources to both investigate these deals and continue their important work addressing potentially anticompetitive conduct across our economy. Worse, a hard cap on DOJ Antitrust’s funding, regardless of how many deals might need to be investigated, could embolden executives to take advantage of a funding crunch and attempt potentially illegal deals.

¹⁴ United States Department of Justice, “[Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors](#),” Press Release, (Sept. 28, 2023).

¹⁵ Claire Kelloway, “[DOJ Settlement with Cargill and Sanderson has Big Implications for Chicken Farmers and Workers](#),” Food and Power, (Aug. 4, 2022).

¹⁶ House Committee on Appropriations, “[Departments of Commerce and Justice, Science, and Related Agencies Appropriations](#),” (June 24, 2024).

¹⁷ Victor Goldfield et. al, “[Mergers and Acquisitions—2024](#),” Harvard Law School Forum on Corporate Governance (January 19, 2024).

We request that you reject these unreasonable cuts to ATR's budget, remove the harmful riders that would inhibit DOJ from enforcing the antitrust laws and all other riders in this bill, and restore the bipartisan MFFMA by eliminating the language included in the FY24 CJS legislation preventing DOJ Antitrust from accessing necessary merger filing fees.

Sincerely,

20/20 Vision
Accountable Tech
American Economic Liberties Project
American Federation of Teachers
Americans for Financial Reform
Artist Rights Alliance
Blue Future
Campaign for Family Farms and the Environment
Center for Democracy & Technology
Center for Digital Democracy
Center for Popular Democracy
Committee to Support the Antitrust Laws
Consumer Action
Consumer Federation of America
Demand Progress
Economic Security Project Action
Farm Action Fund
Food & Water Watch
Friends of the Earth

Future of Music Coalition
HEAL (Health, Environment, Agriculture, Labor) Food Alliance
Institute for Local Self-Reliance
Main Street Alliance
National Farmers Union
National Sustainable Agriculture Coalition
Open Markets Institute
P Street
People Power United
People's Parity Project
Public Citizen
Public Justice Center
Public Knowledge
R-CALF USA
RAFI
Revolving Door Project
Service Employees International Union
Small Business Majority
The Tech Oversight Project