

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 13, 2020

The Honorable Makan Delrahim  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Mr. Ian R. Conner  
Director of the Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Mr. Delrahim and Mr. Conner:

As the Trump Administration continues its extraordinary efforts to respond to the challenges of the coronavirus pandemic, we appreciate the Federal Trade Commission's (FTC) and Justice Department's continued focus on promoting the interests of American consumers, businesses, and the economy. Free and competitive markets will lead to more efficiency, lower prices, and higher-quality products—each of which will help the economy recover. Consistent with your respective responsibilities, we write to underscore the importance of ensuring that lawful mergers and acquisitions (M&A) continue without artificial intervention or delay, both during and after the coronavirus pandemic.

The Hart-Scott-Rodino Act established a federal premerger notification program under which the FTC and Justice Department review proposed mergers and acquisitions that meet certain criteria. During this review, the agencies identify potential antitrust violations before transactions are finalized, and take additional steps for deals that raise concerns.<sup>1</sup> Notwithstanding the ongoing pandemic, the premerger notification program continues to operate well<sup>2</sup> under an antitrust framework that has facilitated robust economic growth for decades.

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<sup>1</sup> *Premerger Notification Program*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/enforcement/premerger-notification-program> (last visited May 8, 2020).

<sup>2</sup> See, e.g., DealBook, *The Case Against Banning Mergers*, N.Y. TIMES (Apr. 27, 2020).

Now, however, citing the coronavirus pandemic, some lawmakers have proposed imposing a broad moratorium on M&A activity.<sup>3</sup> These lawmakers misguidedly assail anticipated mergers and acquisitions as “predatory” and “unnecessary,” and are using the crisis as a pretense to rail against firms being free to make decisions they perceive to be in their best interests.<sup>4</sup> One recent proposal to address such concerns is to empower regulators to bar certain M&A activity until it can be determined the transactions should resume.<sup>5</sup> Another proposal would simply establish a moratorium on M&A activity, excepting only bankrupt and “truly failing” companies.<sup>6</sup>

For the reasons outlined below, these proposals are dangerous and would needlessly burden our nation’s economic recovery. A broad moratorium on M&A activity—which would be unprecedented in our nation’s history<sup>7</sup>—is both unnecessary as a practical matter and ill-advised as a matter of policy. Even President Obama’s former chief economic advisor, Jason Furman, recently noted, “banning all mergers without regard to any analysis of their circumstances makes no sense in the best of times and is particularly misguided when some mergers can save jobs in the midst of an economic crisis.”<sup>8</sup> Unfortunately, these ideas are part and parcel of the latent socialism embraced by many modern Democrats, which represents an existential threat to America’s economic superiority.

**First, M&A activity has already “slowed to a trickle.”**<sup>9</sup> M&A activity has fallen to its lowest level in years,<sup>10</sup> and economic uncertainty means that this trend may continue for some time.<sup>11</sup> Importantly, the decline in M&A deals has reduced the workload associated with the

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<sup>3</sup> Press Release, Cicilline Leading Push for Moratorium on Unnecessary Corporate Mergers in Next Relief Package (May 5, 2020), <https://cicilline.house.gov/press-release/cicilline-leading-push-moratorium-unnecessary-corporate-mergers-next-relief-package>; Chris Rodrigo, *Democratic lawmakers push for merger freeze in next coronavirus relief package*, THE HILL (May 5, 2020); Reuters, *Warren, Ocasio-Cortez Want to Stop Many Company Mergers During Coronavirus Pandemic*, N.Y. TIMES (Apr. 28, 2020); Leah Nylen & Betsy Swan, *House antitrust chairman proposes merger ban during pandemic*, POLITICO (Apr. 23, 2020).

<sup>4</sup> Press Release, Cicilline Leading Push for Moratorium on Unnecessary Corporate Mergers in Next Relief Package (May 5, 2020), <https://cicilline.house.gov/press-release/cicilline-leading-push-moratorium-unnecessary-corporate-mergers-next-relief-package>.

<sup>5</sup> Erik Wasson, *Warren, Ocasio-Cortez Float Long-Shot Bid to Pause M&A in Crisis*, BLOOMBERG (Apr. 28, 2020).

<sup>6</sup> Press Release, Cicilline Leading Push for Moratorium on Unnecessary Corporate Mergers in Next Relief Package (May 5, 2020), <https://cicilline.house.gov/press-release/cicilline-leading-push-moratorium-unnecessary-corporate-mergers-next-relief-package>; see also Alexei Alexis, *House antitrust panel chairman urges halt to corporate mergers amid pandemic*, ROLL CALL (Apr. 23, 2020).

<sup>7</sup> See Chris Rodrigo, *Democratic lawmakers push for merger freeze in next coronavirus relief package*, THE HILL (May 5, 2020).

<sup>8</sup> Jason Furman (@jasonfurman), Twitter (Apr. 28, 2020, 10:02 PM), <https://twitter.com/jasonfurman/status/1255316457820479488>.

<sup>9</sup> Dan Primack, *House Judiciary antitrust chair calls for temporary merger ban*, AXIOS (Apr. 24, 2020); see also Ezequiel Minaya, *M&A Stopped Cold In March By Coronavirus Pandemic*, FORBES (Apr. 2, 2020).

<sup>10</sup> Lina Saigol, *Terminating Takeovers: Governments Should Think Twice Before Pulling up The Hatches*, BARRONS (May 5, 2020); see also Sergei Klebnikov, *M&A Activity Plunges, It Could Get Much Worse As Coronavirus Hits Markets And Prevents Face-To-Face Meetings*, FORBES (Apr. 3, 2020).

<sup>11</sup> See Alexei Alexis & Caitlin Reilly, *Mergers and acquisitions on hold as pandemic disrupts markets*, ROLL CALL (Apr. 6, 2020).

federal premerger notification program.<sup>12</sup> Although M&A activity will likely increase as the pandemic ends or stabilizes,<sup>13</sup> there is no reason to doubt that the Department and FTC will continue to operate effectively and evaluate proposed deals carefully.

**Second, antitrust agencies continue to conduct effective premerger reviews despite the pandemic.** The Department and FTC have adapted their operations and practices to continue assessing deals carefully during the coronavirus pandemic, implementing telework policies and an e-filing system for premerger notifications, for example.<sup>14</sup> There is every indication the Department and FTC will continue to give M&A activity sufficient scrutiny, and no practical reason to impose a moratorium on M&A activity in response to the pandemic. We fear that calls for such a moratorium are fueled not by sound policymaking, but a desire to create an opening for government intervention in an attempt to undermine well-functioning market forces that have served our economy for decades.

**Third, delaying or banning M&A activity will stunt economic development and recovery.** A broad moratorium on M&A activity in the United States would be unprecedented,<sup>15</sup> and would impede economic recovery. A moratorium would reduce the flexibility that American businesses have in deciding how to best access capital. Such flexibility is vital, especially during and in the wake of economic crises.<sup>16</sup> With companies struggling to survive, it makes no sense to deny them a primary way to access cash—especially when there may be limited alternatives available. A stop to M&A activity would also harm workers, because deals that help their employers survive will mean the difference between keeping and losing their jobs.<sup>17</sup> In addition, a broad ban on M&A activity would deny American entrepreneurs and companies the managerial expertise that comes with strategic partnerships,<sup>18</sup> expertise that will enhance recovery and help avoid business failures and an onslaught of bankruptcy filings. M&A plays an important role in economic adjustment and effective recovery.

Proposals to hinder M&A activity at this time disregard the experience and wisdom of American entrepreneurs and job creators, supplanting their business judgment with the central planning of Washington bureaucrats. As Congress considers proposals related to the pandemic—and given the importance of M&A transactions to our nation’s economic recovery—we respectfully request a briefing about your views on how Congress can lower burdens to

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<sup>12</sup> See, e.g., DealBook, *The Case Against Banning Mergers*, N.Y. TIMES (Apr. 27, 2020).

<sup>13</sup> See Ezequiel Minaya, *M&A Stopped Cold In March By Coronavirus Pandemic*, FORBES (Apr. 2, 2020).

<sup>14</sup> Ian Conner, *Changes in Bureau procedure during COVID-19 coronavirus pandemic*, FEDERAL TRADE COMMISSION (Mar. 16, 2020), <https://www.ftc.gov/news-events/blogs/competition-matters/2020/03/changes-bureau-procedure-during-covid-19-coronavirus>; Press Release, Justice Department Announces Antitrust Civil Process Changes for Pendancy of COVID-19 Event (Mar. 17, 2020), <https://www.justice.gov/opa/pr/justice-department-announces-antitrust-civil-process-changes-pendency-covid-19-event>.

<sup>15</sup> See Leah Nylén & Betsy Swan, *House antitrust chairman proposes merger ban during pandemic*, POLITICO (Apr. 23, 2020).

<sup>16</sup> See Lina Saigol, *Terminating Takeovers: Governments Should Think Twice Before Pulling up The Hatches*, BARRONS (May 5, 2020).

<sup>17</sup> See, e.g., DealBook, *The Case Against Banning Mergers*, N.Y. TIMES (Apr. 27, 2020).

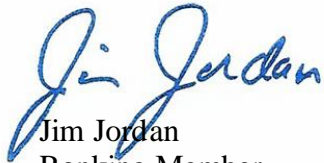
<sup>18</sup> *Id.*

The Honorable Makan Delrahim  
Mr. Ian R. Conner  
May 13, 2020  
Page 4

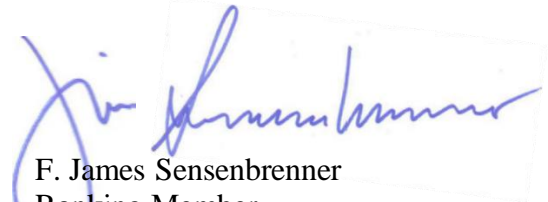
economic recovery and encourage economic activity through dealmaking as the nation works to emerge quickly from the coronavirus crisis.

Thank you for your attention to this matter.

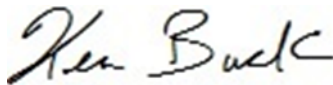
Sincerely,



Jim Jordan  
Ranking Member  
Committee on the Judiciary



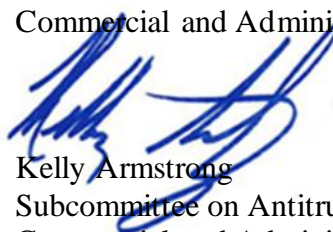
F. James Sensenbrenner  
Ranking Member  
Subcommittee on Antitrust,  
Commercial and Administrative Law



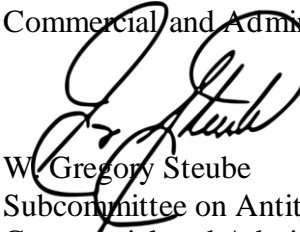
Ken Buck  
Subcommittee on Antitrust,  
Commercial and Administrative Law



Matt Gaetz  
Subcommittee on Antitrust,  
Commercial and Administrative Law



Kelly Armstrong  
Subcommittee on Antitrust,  
Commercial and Administrative Law



W. Gregory Steube  
Subcommittee on Antitrust,  
Commercial and Administrative Law

cc: The Honorable Jerrold L. Nadler, Chairman, Committee on the Judiciary  
  
The Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust, Commercial and Administrative Law  
  
The Honorable William P. Barr, Attorney General, United States Department of Justice  
  
The Honorable Joseph J. Simons, Chairman, Federal Trade Commission  
  
The Honorable Noah J. Phillips, Commissioner, Federal Trade Commission  
  
The Honorable Rohit Chopra, Commissioner, Federal Trade Commission  
  
The Honorable Rebecca K. Slaughter, Commissioner, Federal Trade Commission  
  
The Honorable Christine S. Wilson, Commissioner, Federal Trade Commission