Congress of the United States
Washington, DC 20515

April 7, 2023

The Honorable Merrick B. Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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

Dear Attorney General Garland and Assistant Attorney General Kanter,

We write to follow up on the concerns we raised in our December 2021 letter regarding the proposed WarnerMedia/Discovery transaction.[1] We respectfully urge the Justice Department to investigate the state of competition in affected labor and consumer markets following consummation of this merger, which appears to have enabled Warner Bros. Discovery (WBD) to adopt potentially anticompetitive practices that reduce consumer choice and harm workers in affected labor markets.

We applaud the antitrust enforcement agencies' efforts to modernize federal merger guidelines. We also appreciate the Justice Department's commitment to soliciting public input on these efforts. Through listening sessions, the Department heard real-world concerns and stories from the public about the importance of meaningful antitrust enforcement to protect historically marginalized communities.

As the Department continues its laudable work to protect workers and consumers, we urge the Department to closely examine consummated mergers that merit a subsequent review in light of post-consummation actions—such as those of WBD.

Warner Bros. Discovery's market share has enabled it to harm workers and heighten barriers to entry in the media and entertainment industry.

Protecting competition for workers and consumers is the essence of antitrust law. As Assistant Attorney General Kanter recently noted, "antitrust laws apply to transactions that harm content creators and workers."[2] We are concerned that the WarnerMedia/Discovery merger has proven to be such a transaction. It has enabled the combined WBD to take aggressive measures, harming workers and creatives in the media and entertainment industry while eliminating the disciplining forces of competition that provide workers with the freedom to change jobs or negotiate for better pay and working conditions.

[1] https://castro.house.gov/imo/media/doc/Letter%20to%20DOJ%20(Press).pdf

[2] https://www.justice.gov/opa/pr/assistant-attorney-general-jonathan-kanter-issues-statement-penguin-random-house-and-simon

Following the merger, WBD announced numerous labor-force reductions and product cancellations that would limit consumer and worker choice—cancelling several titles, including "Batgirl," which was deep into post-production, "Gordita Chronicles," "Demimonde," and "The Time Traveler's Wife."[3] However, these are not the only labor-force reductions WBD leadership has made.

Shortly after the merger was finalized, WBD began realizing a number of cost synergies that were used to justify the merger in the first place—including cuts to hundreds of jobs for working people. First, WBD cut the streaming platform CNN+.[4] The CNN+ cut affected about 350 employees, and four months later, CNN laid off an additional 400 employees. As part of broader restructuring, WBD also cut overall funding for CNN programming, reducing competition for news and hurting the broader ecosystem of journalism. Further cuts to CNN's planned original television series and termination of the station's documentary-buying unit illustrate that WBD is trying to sustain its entertainment business at the expense of news and journalism. WBD also enacted 100 layoffs in its company's ad sales department as another cost-cutting effort related to the merger.[5] In total, the aforementioned cuts affected thousands of people. Notably, WBD still has $3.5 billion in planned cuts—which does not bode well for workers. [6]

WBD's aggressive measures post-merger indicate that current competition in the media and entertainment industry is inadequate. The company has the incentive and ability to eliminate broad swaths of its workforce, leaving workers with fewer choices for employment and advancement. The Department should investigate the competitive consequences of this merger.

Warner Bros. Discovery has reduced the content available to consumers and will likely continue to limit consumer choice without adequate competition.

The antitrust laws seek to promote consumer choice, product variety, and industry innovation. Accordingly, if a consummated merger results in dramatically less available content and discourages innovation, the merger should be reassessed.

WBD's new ownership is hollowing out an iconic American studio. After the merger was consummated, WBD cancelled many projects in various stages of development and removed content from its platforms. For example, WBD took 68 titles off HBO Max.[7] Some content removed from HBO Max is not available for streaming, renting, or buying on other platforms—meaning consumers no longer have access to content they expected when paying for HBO Max. Moreover, audiences will never see such projects like "Batgirl," a $90 million film that was cancelled while "deep into post-production," despite consumer outcry, reportedly to allow WBD to claim a tax break.[8] One creator, Moisés Zamora, sold his show, "Whistleblower" to HBO Max in February 2021

[3] https://www.gamespot.com/gallery/17-tv-shows-and-movies-canceled-by-warner-bros-discovery/2900-4394/#16
[4] https://www.washingtonpost.com/media/2022/12/01/cnn-staff-cuts-layoffs-gannett/
[5] https://variety.com/2022/tv/news/warner-bros-discovery-layoffs-ad-sales-1235371441/
[6] https://variety.com/2022/tv/news/warner-bros-discovery-cost-cutting-3-billion-increase-1235421665/
[7] https://nofilmschool.com/removed-hbo-max-tv; https://www.engadget.com/hbo-max-removing-shows-discovery-plus-203029015.html
[8] https://www.filmstories.co.uk/news/warner-bros-cfo-dismisses-outcry-to-batgirl-cancellation; https://www.newsweek.com/warner-bros-hbo-max-batgirl-movie-cancelled-tax-1732963

after a “competitive bidding process with multiple outlets.”[9] Shortly after the merger was consummated, WBD cancelled the development of the show. These three examples are merely a prelude of what could come as WBD plans further cuts.[10] The damage to content creators whose projects are cancelled in deep development and post-production cannot be overstated. Such cancellations stain these projects, making them less appealing and marketable to other buyers—consumers will likely never be able to watch shows purchased then cancelled by WBD. WBD’s conduct amounts to a de facto “catch and kill” practice, vastly limiting consumer choice.

In addition to reducing content available to consumers, WBD is also combining HBO Max and Discovery+ into one streaming platform.[11] Currently, the plan for the combined streaming service is to keep an ad-supported plan at ten dollars and an ad-free plan between $15 and $16 a month.[12] However, WBD is offering a premium plan for consumers that will cost $20 a month “for viewers who want to view HBO’s signature shows in as high a quality as possible.”[13] This leaves questions unanswered about whether a lower-priced platform will have reduced quality from the current product—while consumers are paying the same price and lack the transparency necessary to fully evaluate the plans and their relative prices. With fewer alternatives available to consumers, there is less competitive pressure on WBD to innovate or provide a variety of quality content.

We respectfully request that the Department take another look at the transaction, considering WBD’s post-transaction conduct. We also hope that the competitive consequences resulting from the WarnerMedia-Discovery merger inform updates to the merger guidelines to ensure that the guidelines reflect the needs of workers, consumers, and content creators in the media and entertainment industry.

Thank you for your consideration. We appreciate the work you do to safeguard the American markets and to protect workers and consumers.

Respectfully,

Joaquin Castro
Joaquin Castro
Member of Congress

Elizabeth Warren
Elizabeth Warren
United States Senator

[9] https://www.wga.org/uploadedfiles/news_and_events/public_policy/broken-promises-bulletin-1-23.pdf
[10] https://variety.com/2022/tv/news/warner-bros-discovery-content-writeoffs-3-5-billion-1235461566/
[11] https://www.cnbc.com/2022/12/05/warner-bros-discovery-max-streaming-service-name.html
[12] https://collider.com/warner-bros-discovery-hbo-max-streaming-price/
[13] Id.

David N. Cicilline
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