

# Congress of the United States

Washington, DC 20515

March 5, 2024

The Honorable Patty Murray  
Chair, Senate Appropriations Committee

The Honorable Susan Collins  
Vice-Chair, Senate Appropriations Committee

The Honorable Jeanne Shaheen  
Chair, Subcommittee on Commerce,  
Justice Science and Related Agencies

The Honorable Jerry Moran  
Ranking Member, Subcommittee on Commerce,  
Justice Science and Related Agencies

The Honorable Kay Granger  
Chair, House Appropriations Committee

The Honorable Rosa L. DeLauro  
Ranking Member, House Appropriations Committee

The Honorable Hal Rogers  
Chairman, Subcommittee on Commerce,  
Justice, Science, and Related Agencies

The Honorable Matt Cartwright  
Ranking Member, Subcommittee on Commerce,  
Justice, Science, and Related Agencies

Dear Chairs and Ranking Members,

We write with regard to the Commerce, Science, and Justice (CJS) appropriation language released on March 3, 2024, which undermines the Congressional intent codified by the passage of the *Merger Filing Fee Modernization Act*, a bill originally introduced in the Senate by Senators Grassley and Klobuchar and in the House by Representatives Neguse and Spartz. The Act—along with the *State Antitrust Enforcement Venue Act*—was passed on an 88-8 vote in the Senate in 2022 as an amendment by Senators Klobuchar and Lee to the Consolidated Appropriations Act of 2023. The bill then passed the Senate on December 22, 2022 on a vote of 68-29. It passed the House a day later on a vote of 225-201 and was signed into law by the President on December 29, 2022.

The Act increases the amount that merging parties are required to pay to the government for review of most mergers above \$500 million in value and decreases the fees required of merging parties under \$500 million. Since Congress amended the Hart-Scott-Rodino Antitrust Improvements Act to add merger filing fees in 1989, the Antitrust Division of the Justice Department has received a budget made up partially of fees and partially of appropriated funds from Congress. The purpose of the recently passed legislation was to provide additional fees from merger filings to the Antitrust Division of the Department of Justice. The 2022 amendment received significant bipartisan support in the Senate and the clear intent of the provision was best captured by the title which states it is “to increase antitrust enforcement resources,” in order to “protect competition and promote antitrust enforcement.”

The newly-released CJS bill caps appropriations to the Antitrust Division at \$233 million for FY2024, regardless of fees collected. This is \$45 million below the original FY2024 Congressional Budget Office fee estimate of \$278 million and fails to provide any additional appropriations for non-fee-generating work, such as criminal price fixing cases and crucial monopolization cases, including the Antitrust Division's challenges to Google's search and online advertising monopolies.

By diverting these fees from the Antitrust Division, appropriators are also imperiling the viability of future cases, including that which might stem from the reported investigation into anticompetitive behavior by Live Nation-Ticketmaster. It is also important to note that the Antitrust Division has been active in many areas outside of tech. It has secured more than \$90 million in restitution in agricultural antitrust actions and brought multiple major criminal prosecutions resulting in forty criminal convictions in just the last two years. Yet, the cap on merger fees available to the Antitrust Division will tie its hands to do this work in the event of a significant increase in merger and acquisition activity because the work would increase without any commensurate increase in funds.

It was Congress's intent, and consistent with decades-old precedent, to allow the Antitrust Division to retain the increase in merger filing fees. During the first year of implementation, the process designated by Congress brought in significantly more in merger fees than the original merger fee formula. The Congressional Budget Office estimated that the new fee structure passed by Congress would increase \$88 million in FY2024 when compared to the FY2023 estimate. These additional fees, should they materialize, should go to the Antitrust Division for enforcement activities, but the newly released appropriations language will divert these fees away from the Antitrust Division to be used for purposes unrelated to antitrust enforcement. And contrary to congressional intent, the newly released appropriations language appears to wall off merger fees collected over the \$233 million cap, making them unavailable for the Antitrust Division's use unless Congress passes a new appropriations law. This unacceptable limitation contradicts the 2022 amendment and reverses decades of precedent on how the Antitrust Division is funded and how merger fees are allocated.

In addition, the conference report text includes language noting the amount appropriated to the Antitrust Division but then ties that amount to the Antitrust Division's projected merger fee collection for FY2024. The report then claims the Antitrust Division is a "fee-funded agenc[y]" which has never been entirely the case. The report is presented as "indicat[ing] congressional intent," and that is not true based on the 88-8 Senate vote and the on-the-record discussion leading up to the vote. The misleading report could set a harmful precedent that can be used to further divert merger fees from the Antitrust Division in the future.

Ahead of Wednesday's vote in the House of Representatives, we urge appropriations leadership to (1) strike the phrase "not to exceed \$233,000,000 to be derived from" from the first proviso of the bill text regarding Antitrust Division funding, and strike the final proviso that states the same, and (2) strike all but the first sentence of the conference report section regarding Antitrust Division funding. This will bring the bill into compliance with the law and congressional intent.

Sincerely,



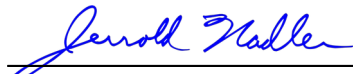
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Amy Klobuchar  
United States Senator



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Elizabeth Warren  
United States Senator



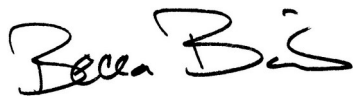
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Jerrold Nadler  
Member of Congress  
Ranking Member,  
Committee on the Judiciary



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Jan Schakowsky  
Member of Congress



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Becca Balint  
Member of Congress



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Henry C. "Hank" Johnson,  
Jr.  
Member of Congress



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Pramila Jayapal  
Member of Congress



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Katie Porter  
Member of Congress



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Summer Lee  
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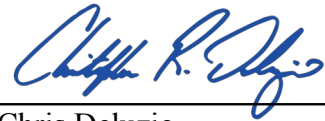
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Mary Gay Scanlon  
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Jesús G. "Chuy" García  
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Alexandria Ocasio-Cortez  
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Richard Blumenthal  
United States Senator



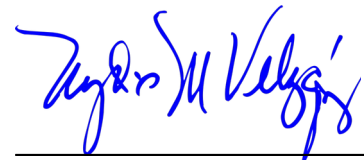
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Christopher S. Murphy  
United States Senator



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Lori Trahan  
Member of Congress



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Nydia M. Velázquez  
Member of Congress



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Jamaal Bowman, Ed.D.  
Member of Congress



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Sheila Jackson Lee  
Member of Congress



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Bernard Sanders  
United States Senator



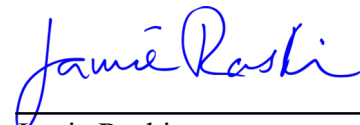
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Member of Congress



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Glenn Ivey  
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Alma S. Adams, Ph.D.  
Member of Congress




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Cori Bush  
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United States Senator