United States Senate
WASHINGTON, DC 20510

May 10, 2024

The Hon. Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chair Khan:

I write to urge you to use all existing authority to require parties that meet the size and value requirements for commercial acquisitions of residential and investment property to report those acquisitions to the Federal Trade Commission (FTC) pursuant to the Hart-Scott-Rodino Antitrust Improvements (HSR) Act.

Typically, when a company of sufficient size makes a large acquisition, the HSR Act requires the parties to report it to government antitrust enforcers so that the FTC or Department of Justice (DOJ) may investigate the transaction to determine whether it may substantially lessen competition or creates a monopoly under the Clayton Act. But the FTC does not require parties that buy up residential properties, including private equity firms that may buy thousands of homes in a single area, to report those transactions for antitrust review because section 7A of the HSR Act exempts “acquisitions of goods or realty transferred in the ordinary course of business” from these reporting requirements. The FTC has interpreted this to exempt acquisitions of all residential and other property used solely to generate rental income from reporting requirements in the HSR Act regardless of the size or effect of the transaction.[1] These exemptions were created nearly 30 years ago when it was widely believed that such acquisitions could never violate the antitrust laws. This is no longer the case.

Today, more than half of rental units are owned by institutional investors. One report recently found that a quarter of single-family rental homes in the United States are owned by institutional investors, and that more than 200,000 families pay rent to only nine Wall Street-backed firms. In Minnesota, institutional investors own more than 20 percent—and as high as 30 percent—of all residential properties in multiple Minneapolis neighborhoods. Like far too many sectors in our economy, housing is becoming more concentrated in the hands of large corporations.

Given this reality, commercial acquisitions of housing-related properties should not be exempt from antitrust reporting requirements intended to protect consumers from harms that can occur when markets consolidate, such as high prices, reduced service, and less innovation. When

[1] 16 CFR § 802.2; 16 CFR § 802.5.

institutional investors, including private equity firms, control large swaths of residential housing in a market, consumers pay the price.

Last year, I held a hearing on competition issues in housing markets. In that hearing, I heard testimony about how corporate landlords contributed to sky-high housing costs, raised rents, inundated tenants with junk fees, and used algorithmic tools to collude to set even higher rents. The Department of Housing and Urban Development has found that “because investors tend to concentrate their purchases in particular markets, even particular ZIP Codes or neighborhoods, they can significantly affect home prices, rents, and options for prospective homebuyers.” And a survey by the National Association of Realtors found that institutional investors typically charged higher rents and were more likely to tack on fees for the same quality property than individual landlords. Institutional investors are also more likely to evict tenants than individual landlords.

And while private equity firms typically purchase properties to rent, their acquisitions also affect prospective home buyers. One study found that institutional investors in the single-family residential market were responsible for 9 percent of the increase in housing prices and 28 percent of the changes in homeownership rates. These are exactly the type of harm to consumers that antitrust laws were intended to stop.

Commercial transactions of residential and rental properties should no longer fly under the radar. They should be reported to the FTC when they meet the size and value requirements just like any other acquisition and investigated under the antitrust laws when appropriate. I strongly urge you to revisit the FTC’s rules exempting commercial transactions of residential and rental properties and request the FTC to identify in a response any legal barriers to doing so that should be addressed by Congress by June 7.

Sincerely,

Amy Klobuchar

Amy Klobuchar
United States Senator