

Hon. Pam Bondi  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Re: Merger Review Standards for Netflix-Warner Bros.

February 2, 2026

Dear General Bondi,

As former federal antitrust enforcers, we have devoted significant portions of our careers to protecting consumers and competition and we continue to support vigorous enforcement. We are writing to encourage the Department to review the pending Netflix-Warner Bros. merger based on proven standards that evaluate deals based on their impact on consumer welfare, rather than the progressive analytic framework fabricated during the prior administration.

Specifically, we recommend the following:

- *First*, we urge DOJ to evaluate the merger under proven criteria, rather than the 2023 Merger Guidelines. Those Guidelines, adopted on a straight partisan vote, minimize, ignore, or dismiss the benefits of merger efficiencies, rely on outdated structural presumptions, and adopt theories of harm unrelated to established indicia of competition. By relying on these Guidelines, the Department would effectively give the prior administration a say in reviewing this deal.
- *Second*, based on a wealth of precedent and empirical evidence, we encourage DOJ to recognize that most mergers, particularly vertical mergers, raise no competitive concerns because they are either benign or promote competition. The Netflix-Warner Bros. merger has both vertical and horizontal elements, but the crux of the deal is vertical in nature. There is a very credible argument that the deal strengthens competition by pairing world-class content creation with global distribution, allowing a newly integrated challenger to compete more effectively in a dynamic market.
- *Third*, to the extent that DOJ ultimately harbors some competitive concerns, we encourage it to consider negotiating remedies tailored to address those concerns, including the possibility of behavioral remedies, rather than seeking to block the merger outright. Across both the Department and FTC, the Trump Administration has consistently negotiated reasonable remedies that allow otherwise pro-competitive deals to move forward.
- *Fourth*, and perhaps most importantly, we encourage DOJ to avoid reliance on speculative theories, such as those based on notions of foreclosure, potential competition, or structural presumptions, all of which were embraced uncritically by the prior administration. If the evidence shows that a merger would harm consumers, it should be modified to address the consumer harm, and only if that is not possible, blocked. Merger review, however, should not be used to attack companies or engineer bureaucratic hurdles to economic freedom,

progress, and growth, particularly when, as here, a merger would improve the global position of U.S. companies in critical markets.

These principles hold true for any merger that DOJ might review. We describe them more fully below.

### **A. In Evaluating the Merger, DOJ Should Rely on Proven Criteria Rather than the 2023 Merger Guidelines**

Adopted by a purely partisan vote during the Biden Administration, the 2023 Merger Guidelines seek to rewrite decades of antitrust policy by declaring structural presumptions against mergers that increase market concentration and by downplaying the possibility of merger efficiencies.<sup>1</sup> The Guidelines rely on selective and outdated cases and economic ideas while ignoring decades of economic learning and recent court decisions that reject these flawed theories.<sup>2</sup> The Guidelines also undermine the rule of law by affording the agencies tremendous discretion to pick winners and losers, dictate market structures, and play to favored constituencies. To date, it appears that no court has cited the Guidelines for any of its more aggressive principles.

Instead of relying on the prior administration's framework, DOJ should evaluate the merger based on the proven bipartisan criteria of how a merger will affect consumer welfare, including prices, output, quality, variety, and innovation. In this case, credible evidence suggests that the Netflix-Warner Bros. merger may increase output by broadening the availability of Warner Bros.' existing library and by leading to investment in new production facilities; similarly, the merger could lower prices by reducing the need for millions of consumers to subscribe to both Netflix and HBO Max. In any event, the relevant question should be whether or not the merger is likely to harm competition and consumers. DOJ should evaluate the merger based on established antitrust jurisprudence, economic learning, and the facts and circumstances presented, not "progressive" wish lists labeled as Guidelines.

### **B. DOJ Should Recognize that Most Mergers, Particularly Vertical Mergers, Either Promote Competition or are Competitively Benign**

In 2023, a review of the existing empirical literature found that "There is zero basis to doubt the once-settled wisdom underpinning the basic framework for merger review: mergers can and do advance procompetitive business objectives."<sup>3</sup> Based on this type of evidence, former Assistant Attorney General for the Antitrust Division Christine Varney declared that "the vast majority of mergers are either procompetitive and enhance consumer welfare or are competitively benign."<sup>4</sup>

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<sup>1</sup> U.S. Chamber, *The Final Merger Guidelines: A Nightmare Before Christmas?* (Dec. 19, 2023), <https://www.uschamber.com/antitrust/the-final-merger-guidelines-a-nightmare-before-christmas>.

<sup>2</sup> Jason Furman and Carl Shapiro, *How Biden Can Get Antitrust Right*, WSJ (July 27, 2023), <https://www.wsj.com/opinion/how-biden-can-get-antitrust-right-khan-ftc-justice-department-guidelines-11364639>.

<sup>3</sup> U.S. Chamber, *Evidence of Efficiencies in Consummated Mergers* (June 1, 2023), at <https://www.uschamber.com/assets/documents/20230601-Merger-Efficiencies-White-Paper.pdf>.

<sup>4</sup> Statement of Ass't Att'y Gen. Christine Varney, *Merger Guidelines Workshops*, Third Annual Georgetown Law Global Antitrust Enforcement Symposium (Sept. 22, 2009).

Similarly, both the Department and FTC have recognized that mergers “are one means by which firms can improve their ability to compete.”<sup>5</sup>

In 2018, Makan Delrahim, then Assistant Attorney General for the Antitrust Division, emphasized that “most mergers are pro-competitive, or at least competitively neutral.” Quoting one of his predecessors, he stressed that “mergers are ‘an important and extremely valuable capital market phenomenon, that they are to be in general facilitated, and that it is socially desirable that uncertainty and risk be removed wherever possible to do so, subject, of course, to the very important limitation that where a merger threatens significantly to lessen competition, it should be halted.’”<sup>6</sup> In the same vein, the FTC’s current Chairman, Andrew Ferguson, has stated that mergers “are a critical way in which capital fuels innovation” and that an acquisition, along with new management, “can unleash new vitality, innovation, and growth.”<sup>7</sup>

In particular, courts have consistently recognized that vertical mergers characteristically promote competition. In *FTC v. Microsoft*, for example, the court stated that “many vertical mergers create vertical integration efficiencies between purchasers and sellers,” that “vertical integration creates efficiencies for consumers,” and that “Vertical integration is ubiquitous in our economy and virtually never poses a threat to competition when undertaken unilaterally and in competitive markets.”<sup>8</sup> This finding is consistent with the economic literature, which recognizes the efficiencies and welfare-enhancing benefits that tend to be associated with vertical acquisitions.<sup>9</sup>

Although this merger includes both horizontal and vertical elements, the core of the merger is vertical in nature: it will allow Netflix to distribute Warner Bros.’ existing properties to millions of new customers.

### **C. If Necessary, DOJ Should Consider the Use of Tailored Remedies**

To the extent that the Department ultimately harbors some competitive concerns about the merger, we encourage DOJ to negotiate tailored remedies, including the possibility of behavioral remedies, to resolve those concerns, rather than seek to block the merger outright. Across both the Department and FTC, the Trump Administration has consistently negotiated reasonable remedies that allow otherwise pro-competitive deals to move forward. For example, in Microsoft-Activision Blizzard, Omnicom-Interpublic, and Keysight Technologies-Spirent, the

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<sup>5</sup> OECD, *Conglomerate Effects of Mergers – Note by the United States to the Organisation for Economic Co-operation and Development* (June 4, 2020) at 5, [https://www.ftc.gov/system/files/attachments/us-submissions-occd-2010-present-other-international-competition-fora/occd-conglomerate\\_mergers\\_us\\_submission.pdf](https://www.ftc.gov/system/files/attachments/us-submissions-occd-2010-present-other-international-competition-fora/occd-conglomerate_mergers_us_submission.pdf).

<sup>6</sup> Delrahim, *Remarks at the 2018 Global Antitrust Enforcement Symposium* (Sept. 25, 2018) (quoting William Baxter), <https://www.justice.gov/archives/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-2018-global-antitrust>.

<sup>7</sup> Statement of Chairman Ferguson, Joined by Commissioners Holyoak and Meador, *In the Matter of Synopsys, Inc. / Ansys, Inc.* (May 28, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf).

<sup>8</sup> *FTC v. Microsoft Corp.*, No.23-cv-2880-JSC, 2023 WL 4443412 (N.D. Cal. Jul. 10, 2023) (citations omitted).

<sup>9</sup> See, e.g., Francine Lafontaine & Margaret Slade, *Vertical Integration and Firm Boundaries: The Evidence*, 45 J. ECON. LIT. 629, 677 (2007) (“In spite of the lack of unified theory, over all a fairly clear empirical picture emerges. The data appear to be telling us that efficiency considerations overwhelm anticompetitive motives in most contexts. Furthermore, even when we limit attention to natural monopolies or tight oligopolies, the evidence of anticompetitive harm is not strong.”).

antitrust agencies worked closely with the merging companies to resolve their concerns, all mergers that benefited consumers and that allowed U.S. companies to improve their global competitiveness. In contrast, when the antitrust agencies fully block mergers rather than address specific concerns with tailored remedies, the agencies often reduce competition, harm consumers, and degrade the U.S. economy. For instance, the antitrust agencies' inflexibility resulted in bankruptcies and lost jobs in both the failed Amazon-iRobot and Jet Blue-Spirit mergers. In this merger, and similar to the deals approved in Microsoft-Activision Blizzard and Amgen-Horizon Therapeutics, Netflix has already committed to licensing Warner Bros.' properties to other platforms.

#### **D. DOJ Should Avoid Speculative Theories, Particularly When a Merger Would Improve the Global Position of U.S. Companies in Critical Markets**

The prior administration consistently embraced speculative theories, such as those based on notions of foreclosure, potential competition, or structural presumptions, to block mergers that would have enhanced competition. The list is long: Nvidia-Arm, Lockheed-Aerojet, Meta-Within, Illumina-Grail, Amazon-iRobot, and Microsoft-Activision Blizzard. These were all mergers with vertical components that, if consummated, would have enhanced competition and improved the global position of U.S. companies in various critical markets, including chip design, rocket motors for missiles, robotics, the metaverse, cancer treatments, and the gaming industry. In other words, during the prior administration, merger review often reached a point where the antitrust agencies were pursuing speculative theories in ways that undermined our national interests in globally competitive markets.

To be clear, antitrust agencies should examine mergers. After all, antitrust law protects competition and consumers, not companies seeking to merge, nor their competitors. Our laws do not and should not give preferential treatment aimed at promoting "national champions." If the evidence shows that a merger likely would harm consumers, it should be modified to address the consumer harm, and only if that is not possible, blocked. Merger enforcement, however, should never be used to attack companies, pick winners and losers, or engineer bureaucratic hurdles to economic freedom, progress, and growth, particularly when a merger would improve the global position of U.S. companies in critical markets.

The proposed Netflix-Warner Bros. merger holds the potential to enhance competition, as well as to improve the global competitiveness of U.S. companies in the entertainment sector.<sup>10</sup>

Thank you for your consideration.

cc: Hon. Gail Slater  
Hon. Mike Lee  
Hon. Cory Booker

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<sup>10</sup> See Asheesh Agarwal, *Netflix-Warner Bros. Merger Will Enhance America's Global Influence*, Townhall (Jan. 29, 2026), <https://townhall.com/columnists/asheeshagarwal/2026/01/29/netflixwarner-bros-merger-will-enhance-america-global-influence-n2670259>.

Signed,

Former federal antitrust enforcers<sup>11</sup>

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<sup>11</sup> Every signatory is signing in his or her individual capacity, rather than on behalf of an organization.