

The Honorable Patty Murray
Chair, Senate Appropriations Committee
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Susan Collins
Vice-Chair, Senate Appropriations Committee
413 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Durbin
Chair, Senate Judiciary Committee
Member, Senate Appropriations Committee
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member, Senate Judiciary Committee
Member, Senate Appropriations Committee
211 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeanne Shaheen
Chair, Subcommittee on Commerce, Justice Science and Related Agencies
Senate Appropriations Committee
506 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jerry Moran
Ranking Member, Subcommittee on Commerce, Justice Science and Related Agencies
Senate Appropriations Committee
521 Dirksen Senate Office Building
Washington, DC 20510

July 31, 2023

Re: S. 2321 on Antitrust Division Appropriations

Dear Chair Murray, Vice-Chair Collins, Chair Durbin, Senator Shaheen, and Ranking Member Graham,

As organizations working to protect people from unchecked corporate power, we urge you to ensure that the appropriations process supports important antitrust enforcement and regulatory action that will address high food prices, protect American workers, and prohibit

illegal mergers. We're writing today to urge you to oppose the inclusion of harmful policy riders that would block progress on these fronts. Already, House appropriators have added poison pill riders that would block the antitrust agencies' new merger guidelines.¹ We are gravely concerned, however, that despite your strong leadership in avoiding many of the poison pill riders in the Senate appropriations bills, there are two provisions in S. 2321 that would undermine important changes Congress made to buttress antitrust enforcement.

The first provision eliminates \$50 million in funding for the Department of Justice Antitrust Division, an almost 18% cut from its intended budget. Another provision reverses decades of precedent on how Hart-Scott-Rodino merger fees are allocated and how the Antitrust Division's budget is appropriated. Frustrating the goals Congress had when it passed the Merger Filing Fee Modernization Act last fall, both are inappropriate policy riders and would undermine the bipartisan consensus promoting the need for better enforcement of antitrust laws and slow the Antitrust Division's work addressing high food prices, protecting American workers, and prohibiting illegal mergers. We write to urge that these provisions of S. 2321 be removed.

The Antitrust Division is currently undertaking litigation to break up Google's monopoly over online advertising, address anti-competitive behavior in the poultry market, block JetBlue's attempted acquisition of one of the last few ultra-low-cost carrier airlines, and expand enforcement of no-poach cases to protect American workers. Likewise, the Division just recently succeeded to trial against American Airlines' collusion with JetBlue through their Northeast Alliance scheme.

The changes that would slow or end this work are as follows. The first is a straightforward cut to the division's budget, a transfer of \$50 million from the Antitrust Division to the operations division at the Department of Justice. In the section of S. 2321, concerning salaries and expenses for the antitrust division, the bill reads (lines 22-25, page 36):

“Provided further, That within the amounts appropriated, \$50,000,000 shall be transferred to ‘Justice Operations, Management, and Accountability’.”²

This language should be removed from S. 2321. Congress and the DOJ have long recognized that the Division is understaffed, with fewer employees than it had in 1979 when the economy was much smaller. This problem was among the core motivations for why Congress sought to increase the Division's resources. A \$50 million cut would subvert this goal.

¹ 118th Congress, H.R. ____, [Report No. 118-____], Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2024, and for other purposes, pages 144-145, available at <https://docs.house.gov/meetings/AP/AP19/20230714/116251/BILLS-118--AP--CJS-FY24CJSSubcommitteeMark.pdf>.

² 118th Congress, S. 2321 [Report no. 118-62], Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2024, and for other purposes, page 36, available at: https://www.appropriations.senate.gov/imo/media/doc/fy24_cjs_bill_text.pdf#page=36.

The second change breaks decades of precedent for Antitrust Division appropriations, adding unnecessary and largely unprecedented requirements on the Division's spending. Revenues for the Division from merger filing fees are expected to be \$278 million in 2024, and as currently written, the bill requires the Antitrust Division to go to Congress to use any additional funding, should revenue from Hart-Scott-Rodino filing fees exceed that. The problematic bill text reads (lines 15-22, page 36):

“That the Attorney General shall submit a spending plan to the Committees on Appropriations of the House of Representatives and the Senate for any amounts made available by the preceding proviso and such spending plan shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.”³

This language is highly problematic and should also be removed. This provision goes against decades of precedent for appropriations for the Antitrust Division, where revenue from filing fees would simply go to the Division, and it was introduced into the bill with no discussion or debate.

The Hart-Scott-Rodino program has existed since 1977, and the Antitrust Division has a successful track record using these funds without these restrictions. It is inappropriate to

³ 118th Congress, S. 2321 [Report no. 118-62], Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2024, and for other purposes, page 36, available at: https://www.appropriations.senate.gov/imo/media/doc/fy24_cjs_bill_text.pdf#page=36. Section 505 of the Commerce, Justice, Science, and Related Agencies Appropriations Act – referred to above – has read, for multiple iterations now, as follows:

“None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure ... through a reprogramming of funds that: (1) *creates or initiates a new program, project, or activity*; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) *relocates an office or employees*; (5) reorganizes or renames offices, programs, or activities; (6) contracts out or privatizes any functions or activities presently performed by Federal employees; (7) *augments existing programs, projects, or activities in excess of \$500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any program, project, or activity, or numbers of personnel by 10 percent*; or (8) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, projects, or activities as approved by Congress; unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.”

117th Congress, S.4664 - Commerce, Justice, Science, and Related Agencies Appropriations Act, 2023, available at: <https://www.congress.gov/bill/117th-congress/senate-bill/4664/text>. Emphasis added.

make a shift to decades of precedent without going through Congressional process in the relevant committees, especially when Congress passed changes to increase such fees a year ago.

In summary, we urge you to remove these two provisions from S. 2321 and continue to abide by your bipartisan agreement to oppose all poison pill riders, especially the House provision blocking funding for the new merger guidelines. Making these changes will restore to the Antitrust Division the additional resources that Congress intended when it increased the Division's budget, and increased merger filing fees last year, and help the Division continue its important work of protecting America's small businesses, workers, farmers, and consumers.

Sincerely,

American Economic Liberties Project
Americans for Financial Reform
Campaign for Family Farms and the Environment
Consumer Federation of America
Demand Progress
Demos
Economic Security Project Action
Endangered Species Coalition
Farm Action Fund
Fight for the Future
Food & Water Watch
Future of Music Coalition
Impact Fund
Institute for Local Self-Reliance
Jobs With Justice
Main Street Alliance
Minnesota Farmers Union
National Consumers League
National Employment Law Project
New Jersey Association on Correction
Open Markets Institute
Oxfam America
P Street
Public Citizen
Public Knowledge
R-CALF USA
Revolving Door Project
Service Employees International Union
Surveillance Technology Oversight Project
Tech Oversight Project
Unitarian Universalists for Social Justice

Writers Guild of America West
Yelp