

United States Senate

WASHINGTON, DC 20510

July 11, 2018

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
The United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Delrahim,

As you know, Comcast/NBCUniversal and Disney are currently in competition over the acquisition of several major entertainment assets from Twenty-First Century Fox. While the Department of Justice has proposed a settlement that would require Disney to divest regional sports networks to fully restore competition lost by the proposed merger, no such conditions have been imposed on a potential Comcast acquisition. We write to urge the Antitrust Division to conduct a thorough review of Comcast's bid that considers the heightened risk of consumer harms posed by this proposed merger, which are exacerbated by the company's history of practices after its acquisition of NBCUniversal and its unique market position.

Comcast's acquisition of NBCUniversal has been criticized by experts, who argue that the conditions imposed on the deal were insufficient and under-enforced.¹ The need to protect consumers from the harmful effects of the proposed merger is evident in the numerous settlements with Comcast regarding past anticompetitive practices, such as the use of channel listings to prioritize its content over that of outside competitors and the overbilling of customers.² Comcast has repeatedly demonstrated a willingness to use its dominance in the broadband market as leverage in video – including exempting its streaming services from data caps, withholding speed upgrades for customers not subscribed to traditional pay TV,³ and refusing to provide appropriate interconnection capacity to rivals.

Comcast will soon be completely unfettered from the federal oversight that has imposed at least a minimal set of safeguards against anticompetitive behavior. Last month, the FCC repealed the strong net neutrality rules imposed by the Open Internet Order that prevented

¹ Rogerson, William P. "A Vertical Merger in the Video Programming and Distribution Industry: The Case of Comcast-NBCU." In *The Antitrust Revolution: Economics, Competition, and Policy: The Antitrust Revolution: Economics, Competition, and Policy*. Oxford University Press, 2014; John E Kwoka and Diana L Moss, "Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," 57 *Antitrust Bull* 979, 994, 1010, 2012.

² *Bloomberg, LP v Comcast Cable Communications, LLC*. 30 FCC Rcd 5601 (7); In the Matter of Comcast Corporation. DA 16-1127. 2016.

³ Silverman, Dwight. "Comcast increases speeds again, but only for customers with cable TV." *Houston Chronicle*, April 25, 2018.

broadband providers from blocking or degrading content.⁴ Shortly thereafter, Comcast began to restrict online video for its mobile services unless customers paid more for higher quality access.⁵ This September, the conditions that governed the NBCUniversal acquisition are set to expire, including provisions that require it to not retaliate against or punish certain types of competitors. These past lessons show a clear need for a comprehensive review of further acquisitions by Comcast.

The current bidding war over Fox's assets is occurring amid industry-wide consolidation, as media and telecom companies grow bigger through mergers and acquisitions of video content. In addition to horizontal concerns over local stations and regional sports programming, further consolidation that enhances and reinforces Comcast's vertically integrated status as both a distributor and creator of media poses unique challenges, especially given that the merger would provide a majority stake in the streaming service Hulu. We were concerned that Comcast's customers could bear the burden of such an acquisition, with little benefit to them or the video market.

While we take no position regarding a desired outcome of a bidding process, we trust that the Department of Justice will conduct a meticulous review of the specific antitrust concerns that may arise from any potential acquirers of Fox's entertainment assets. We look forward to continuing to work with you to ensure fair competition in multichannel video programming distribution, online video, and broadband markets that will protect consumers and innovation.

Thank you for your attention to these important issues.

Sincerely,



RICHARD BLUMENTHAL
United States Senator



BERNARD SANDERS
United States Senator



ELIZABETH WARREN
United States Senator



EDWARD J. MARKEY
United States Senator

⁴ "Repeal of Network Neutrality Eliminates Important Antitrust-Regulation Partnership, Deprives Competition and Consumers of Needed Safeguards." American Antitrust Institute, December 2017.

⁵ Dano, Mike. "Confirmed: Comcast's Xfinity Mobile to slow video streams, hotspot connection speed." FierceWireless, July 2, 2018.