



September 18, 2023

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

The Honorable Alvaro Bedoya  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General,  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

**Re: Draft Merger Guidelines (Docket FTC-2023-0043)**

Dear Chair Khan, Commissioner Slaughter, Commissioner Bedoya, and Assistant AG Kanter:

On behalf of our members, supporters, and allies, including nearly 100,000 individuals who have signed our petitions in support of strong final merger guidelines, Demand Progress Education Fund submits this public comment letter in response to the Federal Trade Commission's (FTC) and Department of Justice (DOJ) Antitrust Division's request for public feedback on the proposed merger guidelines.<sup>1</sup> We applaud your effort to modernize the merger guidelines to truly address the dangers of mergers that consolidate corporate power in too few entities, which harms consumers,<sup>2</sup> workers,<sup>3</sup> innovators,<sup>4</sup> families,<sup>5</sup> and ultimately the entire

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<sup>1</sup> U.S. Federal Trade Commission, "FTC and DOJ Seek Comment on Draft Merger Guidelines" (July 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-doj-seek-comment-draft-merger-guidelines>.

<sup>2</sup> See, e.g., U.S. White House, "Fact Sheet: Executive Order on Promoting Competition in the American Economy" (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>; Jan De Loecker, Jan Eeckhout, and Gabriel Unger, "The Rise of Market Power and the Macroeconomic Implications" (Nov. 15, 2019), <https://www.janeeckhout.com/wp-content/uploads/RMP.pdf>.

<sup>3</sup> See, e.g., Alexander Colvin and Heidi Shierholz, Economic Policy Institute, "Noncompete Agreements" (Dec. 10, 2019), <https://www.epi.org/publication/noncompete-agreements/>; Jose Azar, Ioana Marinescu, and Marshall Steinbaum, "Labor Market Concentration" (Dec. 19, 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3088767](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088767).

<sup>4</sup> See, e.g., Open Markets Institute, "Innovation & Monopoly" (accessed on Sept. 14, 2023), <https://www.openmarketsinstitute.org/learn/innovation-monopoly>.

<sup>5</sup> See, e.g., American Economic Liberties Project, "Confronting America's Concentration Crisis: A Ledger of Harms and Framework for Advancing Economic Liberty for All" (July 2020), <https://www.economicliberties.us/wp-content/uploads/2020/08/Ledger-of-Harms-R41.pdf>.

system in which all companies operate.<sup>6</sup> Given the serious shortcomings of the status quo merger guidelines, which have failed to keep pace with changes that led to 75 percent of U.S. industries having become more concentrated over the last quarter century,<sup>7</sup> clearly the time for an overhaul is long overdue.

With this joint DOJ-FTC endeavor being so critical, we urge you to move swiftly in evaluating the public's input—including key recommendations to strengthen the proposal even further—and finalizing the merger guidelines accordingly. As you do so, we hope that you will proceed with the confidence of knowing the American public's strong opposition to corporate monopolies and broad support for robust government action to combat them.

For example, polling shows that the majority of voters support breaking up large tech firms into smaller entities to promote competition.<sup>8</sup> Another survey, which Demand Progress commissioned,<sup>9</sup> found that large bipartisan majorities—including two-thirds of Democrats and two-thirds of Republicans—are concerned that the economic power of Big Tech companies is a problem facing our economy. As a testament to the grassroots energy focused on these issues, online petitions led by Demand Progress and allies calling for strong DOJ-FTC merger guidelines have further generated nearly 100,000 signatures.

These results reflect the reality faced by ordinary Americans from all walks of life that mergers are "hugely consequential for people's lives"—as Chair Khan noted at a recent event at which Demand Progress and other civil society organizations also spoke.<sup>10</sup> We are thus pleased that you are undertaking this vital effort and stand ready to assist you as you move forward.

Sincerely,

Maricelly Malave  
Co-Executive Director  
Demand Progress Education Fund

David Moon  
Co-Executive Director  
Demand Progress Education Fund

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<sup>6</sup> See, e.g., Vinod Kumar and Priti Sharma, "Why Mergers & Acquisitions Fail, An Insight Into Mergers And Acquisitions: A Growth Perspective" (2019).

<sup>7</sup> Gustavo Grullon, Yelena Larkin, and Roni Michaely, Swiss Finance Institute, "Are U.S. Industries Becoming More Concentrated?" (Oct. 25, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2612047](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047); The American Economic Liberties Project, "Economic Liberties Decries Trump Embrace of Corporate Monopolies" (Feb. 20, 2020), <https://www.economicliberties.us/press-release/economic-liberties-decries-trump-embrace-of-corporate-monopolies/>.

<sup>8</sup> Brian Burton and Ethan Winter, Data for Progress, "Voters Want to Take On Big Tech Companies" (June 2021), <https://s3.documentcloud.org/documents/20950023/voters-want-to-take-on-tech-companies-2.pdf>.

<sup>9</sup> Demand Progress and Data For Progress, Polling Results (Oct. 2020), [https://www.filesforprogress.org/datasets/2020/10/dfp\\_dp\\_antitrust\\_charts.pdf](https://www.filesforprogress.org/datasets/2020/10/dfp_dp_antitrust_charts.pdf).

<sup>10</sup> American Economic Liberties Project, "FTC Chair Khan, Antitrust AAG Kanter, and Advocates Discuss Draft Merger Guidelines" (Aug. 10, 2023), <https://www.economicliberties.us/press-release/ftc-chair-khan-antitrust-aag-kanter-and-advocates-discuss-draft-merger-guidelines/>.