

May 18, 2020

The Honorable Mitch McConnell  
U.S. Capitol Building, S-230  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
U.S. Capitol Building, H-204  
Washington, D.C. 20515

The Honorable Chuck Schumer  
313 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Kevin McCarthy  
U.S. Capitol Building, H-204  
Washington, D.C. 20515

Dear Leader McConnell, Speaker Pelosi, Leader Schumer, and Leader McCarthy:

On behalf of the undersigned organizations, representing taxpayers and free market advocates across the nation, we write in strong opposition to the “Pandemic Anti-Monopoly Act” from Sen. Elizabeth Warren (D-MA) and Rep. Alexandria Ocasio-Cortez (D-NY) and to similar proposals to ban all mergers from Rep. David Cicilline (D-RI) and others.<sup>1</sup>

Sen. Warren, Rep. Ocasio-Cortez, and Rep. Cicilline have painted a disturbing picture of the private sector during this economic and public health emergency, claiming that “predatory” large companies are waiting to “gobble up” small businesses and fire millions of workers in the process.<sup>2</sup> The only remedy, they claim, is to put a stop to all mergers and acquisitions for the length of the public health and economic emergencies. Even with the limited exceptions they propose, the picture the lawmakers paint and their remedies are divorced from reality.

According to Commissioner Noah Phillips of the Federal Trade Commission (FTC), “[t]here is no evidence of a merger ‘wave’... To the contrary, according to Bloomberg, monthly M&A volume hit rock bottom in April – the lowest since 2004.”<sup>3</sup> This matches trends during the Great Recession, where filings in fiscal year (FY) 2009 fell by 58.5 percent compared to FY 2008.<sup>4</sup>

It is critical to note that the FTC and the Department of Justice’s (DOJ) Antitrust Division maintained a similar level of enforcement over mergers and acquisitions in the 2009-2010 period, even as M&A filings plummeted during the Great Recession.<sup>5</sup> In the current crisis, existing FTC and DOJ capabilities are sufficient for the agencies to review mergers and acquisitions they believe could be anti-competitive.

The proposals from Sen. Warren, Rep. Ocasio-Cortez, and Rep. Cicilline to ban all mergers would do active harm to the economic recovery, by forcing small and mid-sized companies to fail rather than survive through a merger or acquisition, and by denying companies the opportunities for innovation and efficiency that come with most mergers. As FTC Commissioner Phillips notes, “[a]s a general matter, decades of research and experience tell us that the vast majority of mergers are either pro-competitive or competitively-neutral. ... American consumers stand to gain from pro-competitive mergers, during and after the current crisis”<sup>6</sup> The Council of Economic Advisors (CEA), for its part, warned in February that “[u]sing antitrust law to regulate markets in the absence of competition problems will exact costs on the economy by preventing efficient market organization.”<sup>7</sup>

<sup>1</sup> See: Kapur, Sahil. “Warren, Ocasio-Cortez propose halt to big mergers during coronavirus pandemic.” NBC News, April 28, 2020. Retrieved from: <https://www.nbcnews.com/politics/politics-news/warren-ocasio-cortez-propose-halt-big-mergers-during-coronavirus-pandemic-n1193756> (Accessed May 11, 2020.); Nysten, Leah and Woodruff Swan, Betsy. “House antitrust chairman proposes merger ban during pandemic.” Politico, April 23, 2020. Retrieved from: <https://www.politico.com/news/2020/04/23/house-antitrust-chairman-proposes-merger-ban-during-pandemic-203467> (Accessed May 11, 2020.)

<sup>2</sup> Ibid. See also: Congressman David Cicilline. (May 5, 2020). “Cicilline Leading Push for Moratorium on Unnecessary Corporate Mergers in Next Relief Package.” Retrieved from: <https://cicilline.house.gov/press-release/cicilline-leading-push-moratorium-unnecessary-corporate-mergers-next-relief-package> (Accessed May 11, 2020.)

<sup>3</sup> Phillips, Noah. “Let’s (NOT) Stop All the Mergers: The Case for Letting the Agencies Do Their Jobs.” Truth on the Market, May 5, 2020. Retrieved from: <https://truthonthemarket.com/2020/05/05/lets-not-stop-all-the-mergers-the-case-for-letting-the-agencies-do-their-jobs/> (Accessed May 11, 2020.)

<sup>4</sup> Lautz, Andrew. “Proposals to Halt All Mergers Would Stunt the COVID-19 Economic Recovery.” National Taxpayers Union, April 28, 2020. Retrieved from: <https://www.ntu.org/publications/detail/proposal-to-halt-all-mergers-would-stunt-the-covid-19-economic-recovery>

<sup>5</sup> Ibid.

<sup>6</sup> Phillips, Noah. “Let’s (NOT) Stop All the Mergers: The Case for Letting the Agencies Do Their Jobs.” Truth on the Market, May 5, 2020. Retrieved from: <https://truthonthemarket.com/2020/05/05/lets-not-stop-all-the-mergers-the-case-for-letting-the-agencies-do-their-jobs/> (Accessed May 11, 2020.)

<sup>7</sup> The Council of Economic Advisors. (February 2020). “Economic Report of the President.” Retrieved from: <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-Economic-Report-of-the-President-WHCEA.pdf>

A merger moratorium at any time would harm America's economic growth. During the COVID-19 emergency and in the immediate aftermath, it would be extremely detrimental to America's economic recovery. We urge you to reject legislation like the "Pandemic Anti-Monopoly Act," and all proposals to ban mergers now or in the future.

Sincerely,



National Taxpayers Union



60 Plus Association



ALEC Action



American Consumer Institute



Americans for a Balanced Budget



Americans for Limited Government



Americans for Prosperity



Americans for A Strong Economy



Americans for Tax Reform



Center for a Free Economy



Center for Freedom and Prosperity



Center for Innovation and Free Enterprise



Center for Individual Freedom



Club for Growth



Competitive Enterprise Institute



Consumer Action for a Strong Economy



Council for Citizens Against Government Waste



Digital Liberty



FreedomWorks



Frontiers of Freedom



The Heartland Institute



Heritage Action for America



Hispanic Leadership Fund



Institute for Liberty



The Market Institute



Net Choice



Small Business & Entrepreneurship Council (SBE Council)



Taxpayers Protection Alliance



Tech Freedom