

**Congress of the United States**  
**Washington, DC 20515**

December 4, 2021

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

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

Dear Attorney General Garland and Assistant Attorney General Kanter,

We write to express serious concerns over WarnerMedia’s proposed \$43 billion merger with Discovery.<sup>1</sup> This transaction raises significant antitrust concerns. In particular, the merger threatens to enhance the market power of the combined firm and substantially lessen competition in the media and entertainment industry, harming both consumers and American workers. In light of these concerns, we respectfully urge the Department to conduct a thorough review of this transaction to ensure that it does not harm American consumers and workers by illegally harming competition.

As you know, President Biden issued Executive Order 14036 to promote competition across the U.S. economy.<sup>2</sup> As the Order notes, “excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.”<sup>3</sup> Furthermore, it warned of mergers that eliminate competition between merging parties and increase a firm’s market power over workers, and urged the Justice Department to “enforce the antitrust laws fairly and vigorously”<sup>4</sup> and “challenge transactions whose previous consummation was in violation of” the antitrust laws.<sup>5</sup>

We appreciate the Justice Department’s efforts to underscore the importance of competitive labor markets in recent months. For example, Associate Attorney General Vanita Gupta explained in September that there has been a “realization that robust antitrust enforcement is critically important for advancing economic justice.”<sup>6</sup> In October, Acting Assistant Attorney General

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<sup>1</sup> Steve Kovach & Sam Meredith, *AT&T Announces \$43 Billion Deal to Merge WarnerMedia with Discovery*, CNBC (May 17, 2021), <https://www.cnbc.com/2021/05/17/att-to-combine-warnermedia-and-discovery-assets-to-create-a-new-standalone-company.html>.

<sup>2</sup> Exec. Order No. 14036 of July 9, 2021, 86 Fed. Reg. 36,987 (July 14, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-07-14/pdf/2021-15069.pdf>.

<sup>3</sup> *Id.* at 36,987.

<sup>4</sup> *Id.* at 36,991.

<sup>5</sup> *Id.* at 36,988.

<sup>6</sup> Vanita Gupta, Assoc. Attorney Gen., U.S. Dep’t of Justice, Remarks at Georgetown Law’s 15th Annual Global Antitrust Enforcement Symposium (Sept. 14, 2021), <https://www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-georgetown-law-s-15th-annual>.

Richard A. Powers of the Antitrust Division explained that “[c]ompetitive labor markets are essential to a properly functioning market-based economy,” and that the Antitrust Division “has become increasingly alert to and concerned by business conduct and transactions that harm competition for working people.”<sup>7</sup> Most recently, the Department filed a lawsuit to enjoin Penguin Random House’s proposed acquisition of Simon & Schuster, explaining that it “will cause harm to American workers, in this case authors, through consolidation among buyers—a fact pattern referred to as ‘monopsony.’”<sup>8</sup>

We wholeheartedly agree with the importance of protecting workers and pursuing economic justice through vigorous antitrust enforcement. Competitive markets create more high-quality jobs and give workers more freedom and flexibility to change jobs and negotiate for better pay and working conditions. Furthermore, in the absence of competition, the rise of employers’ market power reduces the power of workers to “voice and exit,”<sup>9</sup> increasing their risk of exploitation. Enforcing the antitrust laws to stop mergers that enhance this type of monopsony power is critical to promoting free and fair labor markets and economic opportunity for workers. Enforcement of our anti-merger laws is especially critical for workers from marginalized communities. In the past, mergers across all industries have disproportionately led to job losses for workers identifying as racial and ethnic minorities compared to their white counterparts.<sup>10</sup>

The media and entertainment industry already suffers from a lack of Hispanic representation in its workforce. In September, the Government Accountability Office reported that the media and entertainment industry had a lower rate of Hispanic workers than any other sector, and the data show that Hispanic workers fill a remarkably low number of professional, management, and executive roles in the industry.<sup>11</sup> Last year, the House Judiciary Committee had a hearing that examined the lack of diversity of people of color in the media.<sup>12</sup> Hearing witnesses underscored that “[t]he systematic exclusion of U.S. Latinx voices in film and media stifles creativity and imagination and fails to convey that our stories are American stories.”<sup>13</sup> Additional consolidation is likely to eliminate competition for these workers and reduce the number of employment opportunities for Hispanic individuals looking to enter the industry. That is why it is so crucial

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Richard A. Powers, Acting Assistant Attorney Gen., U.S. Dep’t of Justice, Remarks at Fordham’s 48th Annual Conference on International Antitrust Law and Policy (Oct. 1, 2021), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-richard-powers-antitrust-division-delivers-remarks>.

<sup>8</sup> Press Release, U.S. Dep’t of Justice, Justice Department Sues to Block Penguin Random House’s Acquisition of Rival Publisher Simon & Schuster (Nov. 2, 2021), <https://www.justice.gov/opa/pr/justice-department-sues-block-penguin-random-house-s-acquisition-rival-publisher-simon>.

<sup>9</sup> David Seligman & Brian Shearer, *Protecting Worker Power with Antitrust*, ONLABOR (Feb. 19, 2019), <https://onlabor.org/protecting-worker-power-with-antitrust/>.

<sup>10</sup> Alexandra Kalev, *How “Neutral” Layoffs Disproportionately Affect Women and Minorities*, HARV. BUS. REV. (July 26, 2016), <https://hbr.org/2016/07/how-neutral-layoffs-disproportionately-affect-women-and-minorities>.

<sup>11</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-21-105322, WORKFORCE DIVERSITY: ANALYSIS OF FEDERAL DATA SHOWS HISPANICS ARE UNDERREPRESENTED IN THE MEDIA INDUSTRY 7 (2021), <https://www.gao.gov/assets/gao-21-105322.pdf>.

<sup>12</sup> Press Release, H. Comm. on the Judiciary, House Judiciary Committee to Hold Hearing Examining the Lack of Diversity in Media with a Focus on Hollywood (Sept. 24, 2020), <https://chc.house.gov/media-center/press-releases/house-judiciary-committee-to-hold-hearing-examining-the-lack-of>.

<sup>13</sup> *Id.*

for the Department to vigorously enforce the antitrust laws to combat monopsony power, leading companies to compete for the most talented, productive, inclusive, and diverse workforces. Economic justice cannot be realized without ensuring that all communities—especially low-income and minority communities—are protected from the exploitation and abuse that often accompanies concentrated economic power.

We also respectfully urge the Department to thoroughly examine whether the proposed combination of Discovery and WarnerMedia will reduce the amount of diverse and inclusive media and entertainment content available to consumers. The antitrust laws have long sought to promote greater innovation, consumer choice, and product variety. The Horizontal Merger Guidelines indicate that the antitrust agencies should consider whether a merger would “diminish innovation competition” or incentivize a firm to “withdraw a product that a significant number of customers strongly prefer.”<sup>14</sup> These considerations are particularly vital in the media and entertainment industry. Consumers increasingly want diverse film and television content that reflects our diversifying nation.<sup>15</sup> However, today’s media and entertainment marketplace is not providing consumers with the content they want, as people of color continue to be underrepresented in the cable, broadcast, and streaming video programming available to Americans.<sup>16</sup> In 2020, Nielsen reported: “Across all TV, Hispanic’s share of screen is only one-third of their presence in population estimates. Even though Hispanics make up 18.8% of the population, they only account for 5.5% of share of screen across all of TV.”<sup>17</sup> Despite representing nearly one-fifth of the population, Hispanics are systematically the most underrepresented on-screen compared to other demographics’ population share.<sup>18</sup> A more consolidated, less competitive marketplace may only reduce the competitive pressure on media companies to provide consumers with more diverse and inclusive programming. For example, Discovery’s planned acquisition of WarnerMedia has already led it to eliminate up to \$35 million it had planned to invest in programming.<sup>19</sup>

Less diversity and inclusion on-screen and across the media industry leads to a perpetuation of harmful stereotypes. As it stands, minorities are largely missing from American media. And, when they are portrayed, it is often done using harmful stereotypes. For example, Latinos are most often portrayed as criminals, maids, or gardeners.<sup>20</sup> Lack of representation coupled with

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<sup>14</sup> DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES (2010), <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

<sup>15</sup> DARNELL HUNT ET AL., UNIV. OF CAL., L.A., HOLLYWOOD DIVERSITY REPORT 3 (2018), <https://socialsciences.ucla.edu/wp-content/uploads/2018/02/UCLA-Hollywood-Diversity-Report-2018-2-27-18.pdf>.

<sup>16</sup> NIELSEN, BEING SEEN ON SCREEN: DIVERSE REPRESENTATION & INCLUSION ON TV 16 (2020), <https://www.nielsen.com/us/en/insights/report/2020/being-seen-on-screen-diverse-representation-and-inclusion-on-tv/>.

<sup>17</sup> *Id.*

<sup>18</sup> STACY L. SMITH ET AL., UNIV. OF S. CAL. ANNENBERG SCH. FOR COMM’N & JOURNALISM, INEQUALITY IN 900 POPULAR FILMS: EXAMINING PORTRAYALS OF GENDER, RACE/ETHNICITY, LGBT, AND DISABILITY FROM 2007-2016 (July 2017), [https://annenberg.usc.edu/sites/default/files/Dr\\_Stacy\\_L\\_Smith-Inequality\\_in\\_900\\_Popular\\_Films.pdf](https://annenberg.usc.edu/sites/default/files/Dr_Stacy_L_Smith-Inequality_in_900_Popular_Films.pdf).

<sup>19</sup> Brandon Katz, *Why Discovery+ Cut Ties with Kevin Costner, Lupita Nyong’o and The New York Times*, OBSERVER (Oct. 25, 2021), <https://observer.com/2021/10/discovery-warnermedia-merger-hbo-max-cuts-programming-strategy/>.

dehumanization on screen leads to aggression towards Latinos in the United States and abroad.<sup>21</sup> In fact, in August 2019, a man targeted and killed Hispanics in El Paso, Texas in part because he believed negative stereotypes about Hispanics that have been perpetuated in entertainment and American media.<sup>22</sup>

Finally, recent consolidation in the media and entertainment marketplace has led to higher prices for consumers,<sup>23</sup> and all too often the merging parties have failed to deliver benefits and broken promises made to the public, to Congress, and to antitrust enforcers.<sup>24</sup>

In light of these serious concerns, we respectfully urge the Department to closely scrutinize the Discovery-WarnerMedia transaction and whether it violates the antitrust laws.

Thank you for your attention to this matter.

Sincerely,



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David N. Cicilline  
Member of Congress



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Elizabeth Warren  
United States Senator



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Joaquin Castro  
Member of Congress



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Pramila Jayapal  
Member of Congress

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<sup>20</sup> NAT'L HISPANIC MEDIA COAL., THE IMPACT OF MEDIA STEREOTYPES ON OPINIONS AND ATTITUDES TOWARDS LATINOS 2 (2012), <https://www.chicano.ucla.edu/files/news/NHMCLatinoDecisionsReport.pdf>.


<sup>21</sup> Eva Longoria & Stacy L. Smith, *Hollywood Has the Power to Combat Damaging Stereotypes About Latinos. Here's Proof That It's Utterly Failing*, TIME (Aug. 27, 2019), <https://time.com/5662739/latino-hollywood-representation/>.


<sup>22</sup> Tim Arango et al., *Minutes Before El Paso Killing, Hate-Filled Manifesto Appears Online*, N.Y. TIMES, (Aug. 3, 2019), <https://www.nytimes.com/2019/08/03/us/patrick-crusius-el-paso-shooter-manifesto.html>.


<sup>23</sup> Jon Brodtkin, *AT&T Raises DirecTV Price—Again—After Promising Lower Post-Merger Bills*, ARSTECHNICA (Mar. 12, 2019), <https://arstechnica.com/information-technology/2019/03/att-raises-directv-now-price-again-after-promising-lower-merger-bills/>.

<sup>24</sup> Jon Brodtkin, *AT&T Is Doing Exactly What It Told Congress It Wouldn't Do with Time Warner*, ARSTECHNICA (Feb. 4, 2020), <https://arstechnica.com/information-technology/2020/02/att-lost-1-2b-by-preventing-time-warner-shows-from-airing-on-netflix/>; Jasmin Melvin, *FCC Sides with Bloomberg over Comcast Dispute*, REUTERS (May 2, 2012), <https://www.reuters.com/article/us-fcc-comcast-bloomberg/fcc-sides-with-bloomberg-over-comcast-dispute-idUSBRE8411LT20120502>; Geoff Colvin, *AT&T's Warner Media Debacle Broke the Two Most Fundamental Principles of M&A Strategy*, FORTUNE (May 17, 2021), <https://fortune.com/2021/05/17/atts-warner-media-merger-hbo-warner-bros-discovery/>.


  
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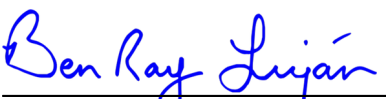
  
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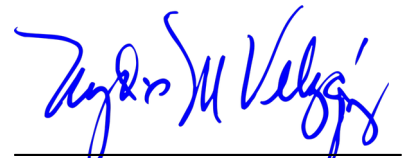
  
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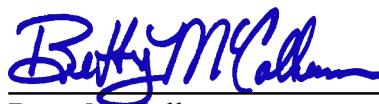
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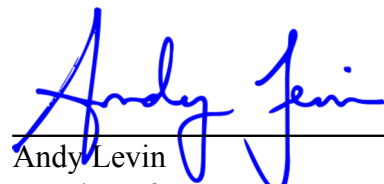
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