

United States Senate
WASHINGTON, DC 20510

May 13, 2020

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

Dear Secretary Mnuchin and Chairman Powell:

We write to urge you to use your broad authority under the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) to restrict large corporations that receive bailout funds from engaging in potentially harmful mergers and acquisitions. The economic collapse precipitated by the coronavirus disease 2019 (COVID-19) pandemic has created economic conditions that make it easier for large companies with access to cash reserves and credit to target struggling small and medium-sized businesses for cheap, predatory takeovers. In passing the CARES Act, Congress voted to protect American workers and companies from the devastating economic impact of this pandemic, not to finance corporate acquisitions by the very large firms best positioned to weather this crisis.

Former Assistant Attorney General (AAG) for Antitrust Bill Baer observed, “[o]ur sudden but necessary shutdown has put business of all sizes at risk of permanent closure,” and, as a result, “many markets are going to become more concentrated.”¹ Economic concentration, particularly large mergers and acquisitions, often leads to major job losses, price increases, flagging innovation, and a decrease in start-ups and entrepreneurship. Studies show that as corporate concentration rose in the last 40 years, price markups rose by an average of 42%, after remaining steady for decades.² Increasing corporate power also results in higher profits for fewer

¹ Brookings Institution, “Why we need antitrust enforcement during the COVID-19 pandemic,” Bill Baer, April 22, 2020, <https://www.brookings.edu/blog/techtank/2020/04/22/why-we-need-antitrust-enforcement-during-the-covid-19-pandemic/>.

² Roosevelt Institute, “The Effective Competition Standard: A new Standard for Antitrust,” Marshall Steinbaum and Maurice E. Stucke, September 2018, <http://rooseveltinstitute.org/wp-content/uploads/2018/09/The-Effective-Competition-Standard-FINAL.pdf>.

companies,³ while those companies pass less and less of those profits down to their workers.⁴ Recent mergers and acquisitions have led to thousands of layoffs.⁵ And as corporate power has coalesced into the hands of fewer and larger companies, startup rates have plummeted, particularly in industries that have seen the most concentration.⁶

The current economic crisis exacerbates the risks posed by corporate mergers and acquisitions. As AAG Baer put it, “[f]ewer competitors means less competition, more market power for some sellers and some buyers, and more risk of tacit price coordination.”⁷ As small businesses struggle to stay afloat, they have become potential targets of large corporations seeking to exploit the crisis to increase their market power. Reports suggest that private equity firms are preparing to swoop in on struggling companies.⁸ One executive at Goldman Sachs even suggested that “corporate raiders and [private equity] firms are sharpening their knives.”⁹

Small businesses help form the backbone of our economy, yet giant corporations are benefiting most from this bailout. Hundreds of millions of dollars have gone to large, publicly traded companies,¹⁰ and reports suggest that large banks have discriminated against smaller companies when issuing loans under the Paycheck Protection Program (PPP).¹¹ Large companies, on the other hand, have or will benefit from the \$500 billion CARES Act bailout fund, which will be administered by Treasury and the Federal Reserve. This gives giant companies additional resources with which to entrench their power and target struggling businesses, leaving the small companies with little to get them through the crisis.

³ Roosevelt Institute, “Untamed: How to Check Corporate, Financial, and Monopoly Power,” Nell Abernathy, Mike Konczal, Kathryn Milani, June 2016, <http://rooseveltinstitute.org/wp-content/uploads/2016/06/Untamed-Final-Single-Pages.pdf>.

⁴ The Hamilton Project, “The State of Competition and Dynamism: Facts about Concentration, Start-Ups, and Related Policies,” Jay Shambaugh, Ryan Nunn, Audrey Breitwieser, and Patrick Liu, June 2016, https://www.brookings.edu/wp-content/uploads/2018/06/ES_THP_20180611_CompetitionFacts_20180611.pdf.

⁵ Fortune, “As Disney Lays off 3,000 Workers Post-Merger, Fox Corp. Gives Every Employee Stock Bonuses,” Kevin Kelleher, March 21, 2019, <https://fortune.com/2019/03/21/disney-layoffs-fox-employee-stock-bonus/>; Market Realist, “T-Mobile Hit by Layoffs amid Sprint Merger,” Amrishi Shah, March 2, 2020, <https://marketrealist.com/2020/03/t-mobile-hit-by-layoffs-amid-sprint-merger/>; CNN Business, “Bayer is cutting 12,000 jobs in the wake of its Monsanto deal,” Charles Riley, November 29, 2018, <https://www.cnn.com/2018/11/29/business/bayer-job-cuts-monsanto/index.html>.

⁶ The Hamilton Project, “The State of Competition and Dynamism: Facts about Concentration, Start-Ups, and Related Policies,” Jay Shambaugh, Ryan Nunn, Audrey Breitwieser, and Patrick Liu, June 2016, https://www.brookings.edu/wp-content/uploads/2018/06/ES_THP_20180611_CompetitionFacts_20180611.pdf.

⁷ Brookings Institution, “Why we need antitrust enforcement during the COVID-19 pandemic,” Bill Baer, April 22, 2020, <https://www.brookings.edu/blog/techtank/2020/04/22/why-we-need-antitrust-enforcement-during-the-covid-19-pandemic/>.

⁸ The American Prospect, “Unsanitized: Private Equity Licks Its Chops,” David Dayen, March 19, 2020, <https://prospect.org/coronavirus/unsanitized-private-equity-licks-its-chops/>.

⁹ *Id.*

¹⁰ CNBC, “Here are the largest public companies taking payroll loans meant for small businesses,” Thomas Franck, April, 21, 2020, <https://www.cnbc.com/2020/04/21/large-public-companies-are-taking-small-businesses-payroll-loans.html>.

¹¹ Common Dreams, “Big Banks Sued for Putting Large Corporations Ahead of Main Street Small Business Owners for Covid-19 Rescue Loans,” Julia Conley, April 21, 2020, <https://www.commondreams.org/news/2020/04/21/big-banks-sued-putting-large-corporations-ahead-main-street-small-business-owners>.

The CARES Act gives you the authority to make discretionary decisions about recipients of this government-funded bailout of big corporations, including the terms under which they receive benefits. First, the CARES Act gives the Secretary of the Treasury (the Secretary) the discretion to impose conditions on companies receiving bailout funds. The law explicitly gives the Secretary broad authority to attach “such terms and conditions and...covenants, representations, warranties, and requirements...as the Secretary determines appropriate.”¹²

The Federal Reserve Board (Federal Reserve) also has discretion to impose conditions on the eligibility of corporations to participate in lending programs funded with CARES Act money. By attaching “any applicable requirements under section 13(3) of the Federal Reserve Act” to the bailout funds, Congress specifically invoked the Federal Reserve’s authority to impose on beneficiaries “such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.”¹³

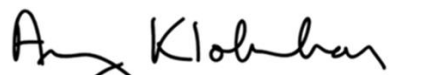
As you have noted, the Federal Reserve’s goal is “to provide as much relief and stability as we can during this period of constrained economic activity.”¹⁴ But publicly subsidizing the exploitative takeover of small and medium-sized companies would have the opposite effect, upending competition that helps keep markets functioning and stable.

The American taxpayer should not be financing opportunistic corporate deal making. As painful as this economic crisis already is, the Federal Reserve and the Treasury Department must use their full authority to ensure that predatory corporate behavior during the pandemic does not make our long road to recovery even more painful. To protect small businesses and their workers, and to ensure a functioning, competitive economy as we emerge from this crisis, we urge you to use your broad authority and discretion to restrict large companies that receive taxpayer-subsidized bailout funds from engaging in mergers and acquisitions.

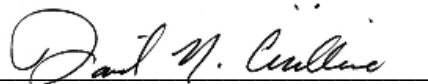
Sincerely,



Elizabeth Warren
United States Senator



Amy Klobuchar
United States Senator



David N. Cicilline
Member of Congress

¹² CARES Act, § 4003.

¹³ CARES Act, § 4003.

¹⁴ Board of Governors of the Federal Reserve System, “Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy,” press release, April 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.