

February 19, 2025

Omeed Assefi  
Acting Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Mr. Assefi:

I write to urge you to closely scrutinize Disney's proposed acquisition of FuboTV (Fubo). The deal, announced on January 6, 2025, resolves a lawsuit that Fubo filed against Disney, Fox, and Warner Bros. Discovery to block Venu Sports, an anticompetitive joint venture between the companies.<sup>1</sup> In August 2024, I wrote to express my concern about Venu Sports,<sup>2</sup> and later that month the U.S. District Court for the Southern District of New York rightly enjoined the launch of that venture. Following Disney's appeal to the Second Circuit, the Antitrust Division filed a powerful *amicus* supporting the District Courts findings that Venu Sports would have anticompetitive effects on the market.<sup>3</sup> Disney's proposed acquisition of Fubo appears to allow Disney to simultaneously circumvent the lawsuit while gobbling up a competitor. This proposed acquisition raises significant concerns under antitrust law, would give Disney increased market power and incentives to increase costs for viewers, and should be regarded as another data point in Disney's history of anticompetitive behavior.<sup>4</sup> I urge DOJ not to be fooled by Disney's attempt to purchase its way around antitrust law, and to closely scrutinize this proposed acquisition.

**The proposed acquisition is another attempt to dominate the sports streaming marketplace**

This proposed deal is inextricably linked to Disney's attempt to dominate the sports streaming marketplace through Venu Sports. In February 2024, Fubo initiated a lawsuit against Disney and co-defendants Fox and Warner Bros. Discovery seeking to enjoin the launch of Venu Sports.<sup>5</sup> Fubo alleged, among other claims, that the joint venture represented an illegal agreement that would both substantially lessen competition in the virtual Multichannel Video Programming Distributor (vMVPD) market and incentivize the defendants to limit competitors' access to

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<sup>1</sup> Fubo, "Fubo and Disney's Hulu + Live TV Virtual MVPD Businesses to Combine," press release, January 6, 2025, <https://ir.fubo.tv/news/news-details/2025/Fubo-and-Disneys-Hulu/default.aspx>.

<sup>2</sup> Letter from Senator Elizabeth Warren to DOJ and FCC, August 7, 2024, [https://www.warren.senate.gov/imo/media/doc/warren\\_castro\\_letter\\_to\\_doj\\_and\\_fcc\\_re\\_sports\\_streaming\\_jv.pdf](https://www.warren.senate.gov/imo/media/doc/warren_castro_letter_to_doj_and_fcc_re_sports_streaming_jv.pdf).

<sup>3</sup> Department of Justice Amicus Brief, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024).

<sup>4</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 68.

<sup>5</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 71.

necessary products in the form of higher carriage fees.<sup>6</sup> These actions, Fubo argued, violated Section 7 of the Clayton Act.<sup>7</sup> In August, the U.S. District Court for the Southern District of New York held that Fubo was likely to succeed in its claim that Disney and its co-defendants “will substantially lessen competition and restrain trade in the relevant market in violation of Section 7 of the Clayton Act.”<sup>8</sup>

Disney and its co-defendants appealed the decision to the Second Circuit, where the Department of Justice filed an *amicus* brief in support of Fubo.<sup>9</sup> Then, in a remarkable pivot, Disney changed tack: in January 2025, Disney agreed to purchase a 70% stake in Fubo.<sup>10</sup> In addition to ending Fubo’s lawsuit against Disney, this deal would give Disney a controlling stake in Fubo, including appointing a majority of the directors on Fubo’s board as well as allowing Disney to acquire Fubo’s sports streaming capacity and subscribers rather than developing them in-house. Fubo will receive a \$220 million cash payment from all three defendants, as well as a \$145 million term loan from Disney.<sup>11</sup> The proposed deal also states that Fubo’s current CEO and management team plan to operate both Fubo and Hulu + Live TV, Disney’s existing virtual Multichannel Video Programming Distributor (vMVPD) service.<sup>12</sup> Shortly after the announcement of the deal with Fubo, Disney announced it had put an end to Venu Sports,<sup>13</sup> but many of the antitrust concerns that the lawsuit successfully highlighted remain. It is notable that, as recently as the beginning of January, Disney and Fubo were litigation adversaries, with Fubo citing a characterization of Disney as “the final boss you must defeat after beating out all other media companies.”<sup>14</sup> By Acquiring Fubo, Disney’s dominance would be even stronger.

### **Disney’s acquisition of Fubo decreases competition and may violate antitrust law**

Disney’s proposed acquisition of Fubo threatens to significantly decrease competition in the vMVPD market in presumptive violation of antitrust law. The vMVPD market is already highly concentrated. In recent years, “extreme price increases from programmers”<sup>15</sup> like Disney have forced competitors like Playstation Vue (closed in 2020),<sup>16</sup> TVision (2021),<sup>17</sup> and Duo (2024)<sup>18</sup>

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<sup>6</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 56.

<sup>7</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), pp. 59-60.

<sup>8</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 68.

<sup>9</sup> Department of Justice Amicus Brief, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024).

<sup>10</sup> Fubo, “Fubo and Disney’s Hulu + Live TV Virtual MVPD Businesses to Combine,” press release, January 6, 2025, <https://ir.fubo.tv/news/news-details/2025/Fubo-and-Disneys-Hulu/default.aspx>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> ESPN Press Room, “Venu Sports Will Be Discontinued,” January 10, 2025, <https://espnpressroom.com/us/press-releases/2025/01/venu-sports-will-be-discontinued/>.

<sup>14</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p.15.

<sup>15</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 38.

<sup>16</sup> PlayStation Blog, “Sony Interactive Entertainment to Shut Down PlayStation Vue,” John Kodera, October 29, 2019, <https://blog.playstation.com/2019/10/29/sony-interactive-entertainment-to-shut-down-playstation-vue/>.

<sup>17</sup> The Verge, “T-Mobile is already shutting down its live TV service, partners with YouTube TV and Philo,” Chris Welch, May 29, 2021, <https://www.theverge.com/2021/3/29/22356978/t-mobile-tvision-live-plus-zone-shutting-down-youtube-tv>.

<sup>18</sup> LightReading, “Another small cable op to pull the plug on pay-TV,” Jeff Baumgartner, December 11, 2023, <https://www.lightreading.com/cable-technology/another-small-cable-op-to-pull-the-plug-on-pay-tv>.

to shut down. Today, the global market is concentrated across just four firms which account for over 90% of subscriptions worldwide.<sup>19</sup> Domestic estimates show a similar concentration. For example, by one estimate, there are approximately 17.1 million vMVPD subscribers in the U.S.<sup>20</sup> 7.9 million (46%) are YouTube TV subscribers, 4.4 (26%) are with Hulu + Live TV, 2.0 (12%) with Sling, and 1.5 (9%) with Fubo.<sup>21</sup> The DOJ uses the Herfindahl-Hirschman Index (HHI) to measure market consolidation.<sup>22</sup> An HHI in excess of 1,800 indicates a highly concentrated market.<sup>23</sup> Even acknowledging that some subscribers may have multiple services, the above estimates suggest an HHI above 3,000.<sup>24</sup> If Disney acquires Fubo, the estimated HHI would climb to approximately 3,500.<sup>25</sup> According to the DOJ's merger guidelines, an acquisition that increases the HHI of a highly concentrated market more than 100 points is presumptively illegal under antitrust law.<sup>26</sup>

Disney's acquisition of Fubo also threatens to eliminate substantial competition between current competitors, which could suggest the merger may substantially lessen competition.<sup>27</sup> Fubo considered Hulu + Live TV, which is owned by Disney, "one of Fubo's chief competitors."<sup>28</sup> Both Fubo and Disney have made strategic decisions specifically to enhance their products' competitiveness against the other.<sup>29</sup> Fubo's core business plan was to offer subscribers a narrow, inexpensive, sports-centric live streaming option. Disney, perhaps fearing subscribers would leave their service for Fubo, required Fubo to carry additional non-sports content as a condition to carry the sports content Fubo desired.<sup>30</sup> This practice, known as "bundling," drove up costs for Fubo's subscribers and was part of Disney's strategy to prevent Fubo from becoming "the next Netflix."<sup>31</sup> Disney also responded to Fubo's strategy by planning its own sports-centric live streaming services, such as the now-defunct Venu Sports and Flagship, the planned-for standalone service from ESPN, which is also owned by Disney, scheduled to debut later this year.<sup>32</sup> These products are the latest in a pattern of substantial competition between Fubo and

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<sup>19</sup> Statista, "Market shares of virtual multichannel video programming distributors (vMVPDs) worldwide as of February 2024," Julia Stoll, October 14, 2024, <https://www.statista.com/statistics/185445/market-shares-of-mvpd-technologies-in-the-us-in-2006/>.

<sup>20</sup> nScreenMedia, "4 of the top ten live, linear US TV providers are vMVPDs," Colin Dixon, September 9, 2024, <https://nscreenmedia.com/top-ten-live-linear-tv-providers-q2-2024/>.

<sup>21</sup> *Id.*

<sup>22</sup> Antitrust Division U.S. Department of Justice, "Herfindahl-Hirschman Index," January 17, 2024, <https://www.justice.gov/atr/herfindahl-hirschman-index>.

<sup>23</sup> U.S. Department of Justice and the Federal Trade Commission, "Merger Guidelines," December 2023, pp. 5, 6, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>24</sup> According to calculations based on publicly reported market share data.

<sup>25</sup> According to calculations based on publicly reported market share data.

<sup>26</sup> U.S. Department of Justice and the Federal Trade Commission, "Merger Guidelines," December 2023, pp. 5, 6, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>27</sup> U.S. Department of Justice and the Federal Trade Commission, "Merger Guidelines," December 2023, pp. 6-7, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>28</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 11.

<sup>29</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), pp. 25-29.

<sup>30</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 28.

<sup>31</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 2.

<sup>32</sup> CNBC, "ESPN will launch its own streaming service in fall 2025, alongside joint venture," Alex Sherman, February 7, 2024, <https://www.cnbc.com/2024/02/07/espn-will-launch-its-flagship-direct-to-consumer-service-in-fall-2025.html>.

Disney, and this proposed deal would presumably end that competition.

Even if Fubo and Hulu + Live TV are offered as separate services (as the initial plan suggests),<sup>33</sup> their common ownership virtually eliminates any possibility of true competition. FuboTV and Hulu + Live TV would both be owned by Disney, and would both be governed by the same board of directors “with the majority [of directors] appointed by Disney.”<sup>34</sup> Under this ownership structure, neither Disney nor the operating board of directors have a profit incentive for Fubo and Hulu + Live TV to compete.<sup>35</sup> The merging parties attempt to cloak the loss of competition with the promise of synergies between Fubo and Hulu + Live TV<sup>36</sup> that are vaguely described as “flexible programming packaging to cater to all audiences, greater innovation, and sales and marketing opportunities.”<sup>37</sup> Regardless of their specific form, the suggestion of any synergies belies the existence of substantial competition. As DOJ has advised, “[a] merger eliminates competition between the merging firms by bringing them under joint control,”<sup>38</sup> which is what would occur pursuant to Disney and Fubo’s plan.

Disney’s acquisition of Fubo may also limit access to products that rivals rely on to compete, which could also threaten competition in violation of antitrust law.<sup>39</sup> If Disney owns Fubo, it will be financially incentivized to maximize subscriptions to that platform. Disney controls 26.8% of program licensing rights to American sporting events with a footprint in all of the big four sports — MLB, NBA, NFL, and NHL.<sup>40</sup> Sports represent the backbone of the live TV market<sup>41</sup>; vMVPD services are not considered viable without them.<sup>42</sup> If Disney takes control of Fubo, Disney will also control an estimated 35% of the vMVPD market.<sup>43</sup> Given Disney’s control over sports rights, it may seek to limit competitors’ access to those rights through higher carriage costs or “bundling”

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<sup>33</sup> Fubo, “Fubo and Disney’s Hulu + Live TV Virtual MVPD Businesses to Combine,” press release, January 6, 2025, <https://ir.fubo.tv/news/news-details/2025/Fubo-and-Disneys-Hulu/default.aspx>.

<sup>34</sup> *Id.*

<sup>35</sup> See Complaint, *US v. Am Airlines Grp Inc.*, 2021 WL 4306961, ¶ 20 (D. Mass) (“While American and JetBlue technically retain the ability to price independently under the Northeast Alliance, in reality, neither airline will have the incentive to undercut the other on price because doing so would simply reduce the revenues each earns under the revenue-sharing arrangement.”). A judge ultimately struck down the venture as “just the sort of ‘unreasonable restraint on trade’ the Sherman Act was designed to prevent.” *United States v. Am. Airlines Grp. Inc.*, 675 F. Supp. 3d 65, pp. 74-75 (D. Mass. 2023).

<sup>36</sup> Fubo, “Fubo and Disney’s Hulu + Live TV Virtual MVPD Businesses to Combine,” press release, January 6, 2025, <https://ir.fubo.tv/news/news-details/2025/Fubo-and-Disneys-Hulu/default.aspx>.

<sup>37</sup> *Id.*

<sup>38</sup> U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 6, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>39</sup> U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 13, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>40</sup> *Unger v. Walt Disney Company*, 25-cv-00375, (S.D.N.Y. 2025), p. 15, <https://dicellolevitt.com/wp-content/uploads/2025/01/Case-125-cv-00375.pdf>.

<sup>41</sup> Axios, “Sports networks squeezed by rising costs and fewer subscribers,” Sara Fischer, May 10, 2022, <https://www.axios.com/2022/05/10/sports-networks-rising-costs-fewer-viewers>.

<sup>42</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), pp. 49-50 (“Bob Iger, CEO of Disney, said unequivocally: ‘You cannot launch a new multichannel platform or bundle successfully without ESPN.’”).

<sup>43</sup> nScreenMedia, “4 of the top ten live, linear US TV providers are vMVPDs,” Colin Dixon, September 9, 2024, <https://nscreenmedia.com/top-ten-live-linear-tv-providers-q2-2024/>.

requirements similar to those that were at issue in Fubo’s litigation.<sup>44</sup> Because the merged firm would have “the ability and incentive to limit access to [‘skinny’ sports packages] so as to weaken or exclude some of its [vMVPD] rivals,” the proposed deal may substantially lessen competition.<sup>45</sup>

I also urge DOJ to rely on Disney’s past behavior and statements of intent while considering the risk that the new company will use its market power to abuse its dominance.<sup>46</sup> As a partner in Venu Sports, Disney intended to use the streaming service, and its control over sports media rights, to limit access to the market for competing operators so that “by the time they renew [they] won’t be big enough to really matter.”<sup>47</sup> Disney also denied Fubo content features including DVR, video-on-demand, and interactive overlays.<sup>48</sup> Disney does not restrict Hulu + Live TV from integrating these features and advertises the upcoming standalone ESPN+ as having “many more features and provid[ing] a much more immersive experience for the sports fan,”<sup>49</sup> all while historically preventing rivals’ like Fubo the use of similar features. Even if the details of Disney’s acquisition of Fubo differ from the terms of the Venu Sports joint venture, Disney’s history of anticompetitive practices, including its role in the joint venture, demonstrates its willingness to engage in similar behavior. This background is crucial to “examining the ‘structure, history and probable future’ of the market at issue” when “making the predictive judgment that Section 7 [of the Clayton Act] calls for.”<sup>50</sup>

### **Disney’s acquisition of Fubo tends to give Disney greater market power, likely leading to increased costs for viewers**

Most troubling, Disney’s acquisition of Fubo will likely result in increased costs for viewers. Since acquiring Hulu in 2019, Disney has raised the price of Hulu + Live TV 85%, from \$45 per month<sup>51</sup> to \$82.99 per month.<sup>52</sup> Disney had also planned to consistently increase the price of Venu by \$5 every year (on top of its expected price at launch of \$50).<sup>53</sup> Disney has done this while using its market power to lead competitors to raise prices as well.<sup>54</sup> In the same timeframe, Fubo has

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<sup>44</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 10.

<sup>45</sup> U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 13, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>46</sup> U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 13-14, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf> (“Because the merged firm could use its ability to limit access to the related product in a range of ways, the Agencies focus on the overall risk that the merged firm will do so, and do not necessarily identify which precise actions the merged firm would take to lessen competition.”),

<sup>47</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 49.

<sup>48</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 39.

<sup>49</sup> *Id.*

<sup>50</sup> Department of Justice Amicus Brief, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 26.

<sup>51</sup> Variety, “Hulu Hikes Prices of Live TV Packages by \$10 per Month,” Todd Spangler, 16 November, 2020, <https://variety.com/2020/digital/news/hulu-live-tv-price-increase-1234833102/>.

<sup>52</sup> Hulu, “Select your Live TV Plan,” January 2025, [hulu.com/live-tv](https://hulu.com/live-tv).

<sup>53</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 53.

<sup>54</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 37.

raised its prices from \$54 to \$79.99 per month.<sup>55</sup>

Disney has several tools available to drive these price increases. First, Disney forces competitors to accept “bundled” packages. Disney permits distributors like Fubo to carry desired sports channels, most notably ESPN, only if it also carries, and pays for, an array of undesired channels.<sup>56</sup> This practice has historically precluded “skinny” bundles, like the sports-centric package Fubo hoped to provide,<sup>57</sup> driving up costs for the distributor and, in turn, the customer.<sup>58</sup> In fact, in ruling against Disney, a federal judge observed of “bundling” that, “it is difficult to avoid the conclusion that, on balance, these practices are bad for consumers.”<sup>59</sup> (After an extended dispute, Disney has recently allowed DirecTV Stream to provide a skinny sports package,<sup>60</sup> MySports(beta), priced at \$69.99.)<sup>61</sup> Second, Disney sets a price floor through “Most Favored Nation” (MFN) clauses with other distributors like YouTube TV.<sup>62</sup> These agreements require that, if a service carries ESPN as part of any bundle, it must carry ESPN as part of the cheapest bundle.<sup>63</sup> On average, a distributor (like Fubo) pays \$1.30 per subscriber per month to license a sports network; distributors pay an average of \$9.42 per subscriber per month for ESPN.<sup>64</sup> As a consequence of these MFN clauses, market rivals cannot offer subscribers a less expensive option by forgoing the most expensive channel on TV.<sup>65</sup> Third, Disney controls ESPN licensing costs. Were Disney to raise the cost of ESPN, competitors would likely have to pass that cost onto subscribers. Disney, however, would be able to recapture this “expense” for Hulu + Live TV as it merely moves money from one pocket to another.<sup>66</sup>

If the takeover of Fubo is successful, Disney and Fubo will only increase their leverage, and could use the reduced competition and the resultant market power to raise prices even further for sports fans across the country. By simultaneously marketing Fubo and Hulu + Live TV, Disney could disguise their concentration of power in the vMVPD market, giving customers the illusion of choice while raising prices for both offerings.

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<sup>55</sup> *Id.*

<sup>56</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 10.

<sup>57</sup> Complaint, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 2.

<sup>58</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 10.

<sup>59</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 45.

<sup>60</sup> DirecTV, “DirecTV and the Walt Disney Company Reach Agreement in Principle for Distribution of Disney’s Linear Networks and Direct-to-Consumer Services,” September 14, 2024, <https://www.directv.com/insider/disney-resolution/>.

<sup>61</sup> DirecTV, “MySports from DIRECTV Changes the Game with More Flexibility and Choice for Die-Hard Sports Fans,” January 14, 2025, <https://www.directv.com/insider/mysports-changes-the-game/>.

<sup>62</sup> Complaint, *Unger v. Walt Disney Company*, 25-cv-00375, (S.D.N.Y. 2025), p. 19, <https://dicellolevitt.com/wp-content/uploads/2025/01/Case-125-cv-00375.pdf>.

<sup>63</sup> *Id.*

<sup>64</sup> Opinion and Order, *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 16.

<sup>65</sup> Complaint, *Unger v. Walt Disney Company*, 25-cv-00375, (S.D.N.Y. 2025), p. 19, <https://dicellolevitt.com/wp-content/uploads/2025/01/Case-125-cv-00375.pdf>.

<sup>66</sup> Complaint, *Unger v. Walt Disney Company*, 25-cv-00375, (S.D.N.Y. 2025), p. 21, <https://dicellolevitt.com/wp-content/uploads/2025/01/Case-125-cv-00375.pdf>.

## Conclusion

Disney is already one of the most powerful media companies in the world.<sup>67</sup> Threatened by Fubo’s lawsuit and in an apparent attempt to keep Fubo from “becoming the next Netflix,”<sup>68</sup> Disney has proposed a plan to acquire its competitor, and, in the process become an even more powerful force in an already highly-concentrated market. DOJ powerfully pushed back on the attempt by Disney, together with Warner Bros. and Fox, to dominate the sports streaming market through Venu Sports.<sup>69</sup> I urge DOJ to continue this work on behalf of viewers by closely scrutinizing this proposed deal and blocking it if it violates antitrust law. As the companies have acknowledged,<sup>70</sup> the sports streaming market is rapidly changing. This uncertainty only underscores the need for antitrust enforcers to carefully assess the potential impacts this proposed deal will have on competition, the broader streaming industry, and millions of sports fans across the country.

Sincerely,



Elizabeth Warren  
United States Senator

CC:  
Gail Slater  
Nominee for Assistant Attorney General  
Antitrust Division

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<sup>67</sup> Forbes, “The World’s Largest Media Companies In 2023: Comcast And Disney Stay On Top,” Marisa Dellatto, June 23, 2023, <https://www.forbes.com/sites/marisadellatto/2023/06/08/the-worlds-largest-media-companies-in-2023-comcast-and-disney-stay-on-top/>.

<sup>68</sup> Complaint, fuboTV Inc., et al. v. The Walt Disney Company, et al., 24-cv-01363-MMG, (S.D.N.Y. 2024), p.27.

<sup>69</sup> Department of Justice Amicus Brief, fuboTV Inc., et al. v. The Walt Disney Company, et al., 24-cv-01363-MMG, (S.D.N.Y. 2024), p. 36.

<sup>70</sup> Hollywood Reporter, “Bob Iger on Disney M&A Under Trump: ‘We Don’t Really Need More Assets Right Now,’” Caitlin Huston, November 14, 2024, <https://www.hollywoodreporter.com/business/business-news/bob-iger-disney-trump-deals-1236061942/> (“We, in many respects, have already consolidated. We don’t really need more assets right now, either from a distribution or from a content perspective, to thrive in basically a disruptive media world.”).