

# Congress of the United States

Washington, DC 20515

August 6, 2024

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

The Honorable Jessica Rosenworcel  
Chair  
Federal Communications Commission  
45 L Street, NE  
Washington, D.C. 20554

Dear Assistant Attorney General Kanter and Chair Rosenworcel:

We write to express serious concerns regarding the proposed joint venture (JV) between FOX, Warner Bros. Discovery, and Disney subsidiary ESPN, named Venu Sports (Venu).<sup>1</sup> This massive new sports streaming company would be poised to control more than 80% of nationally broadcast sports and more than half of all national sports content, putting it in a position to exercise monopoly power over televised sports.<sup>2</sup> The market power of its three giant parent companies would enable it to discriminate against competitors and increase prices for consumers.

The television industry has become increasingly consolidated following decades of content providers engaged in mergers and acquisitions that continue to reduce competition.<sup>3</sup> There is no indication that this trend will abate<sup>4</sup> as content providers, broadcasters, and streaming companies vertically integrate in a bid to control content from production to consumption.<sup>5</sup> This proposed JV is a continuation of the trend. The description of this deal as a “joint venture” should not prevent antitrust and telecommunications regulators from giving it the scrutiny it deserves. We urge the Department of Justice (DOJ) and the Federal Communications Commission (FCC) to closely examine this JV and oppose it if it violates antitrust or telecommunications laws or regulations.

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<sup>1</sup> ESPN Press Room, “Venu Sports Introduced as Name for Forthcoming Sports Streaming Service,” Olivia Coryell, press release, May 16, 2024 <https://espnpressroom.com/us/press-releases/2024/05/venu-sports-introduced-as-name-for-forthcoming-sports-streaming-service/>.

<sup>2</sup> IndieWire, “A Running List of Everyone Who Already Hates the Disney, Fox, and WBD Sports-Streaming Service,” Tony Maglio, February 21, 2024, <https://www.indiewire.com/news/analysis/who-hates-the-disney-fox-wbd-sports-streaming-service-1234955403/>; The Wall Street Journal, “Why Three Media Giants Made a Hail Mary Bet on Sports Streaming,” Joe Flint, Jessica Toonkel, Isabella Simonetti, February 11, 2024, <https://www.wsj.com/business/media/disney-fox-warner-blitz-to-figure-out-sports-streaming-b5b8d8a9>.

<sup>3</sup> The Nation, “How 2 Companies Came to Dominate the Media Business,” Thomas Schatz, December 13, 2023, <https://www.thenation.com/article/society/netflix-disney-media-consolidation/>.

<sup>4</sup> Forbes, “Hollywood Huddle: Media Companies Headed to Bundles, M&A In 2024,” David Bloom, December 27, 2023, <https://www.forbes.com/sites/dbloom/2023/12/26/hollywood-huddle-media-companies-headed-to-bundles-ma-in-2024/>.

<sup>5</sup> Promarket, “How Monopolies are Making TV Worse,” G. Vaughn Joy, November 10, 2023, <https://www.promarket.org/2023/11/10/how-monopolies-are-making-tv-worse/>.

## The Joint Venture Risks Concentrating the Market for Live Sports

Venu will consolidate the sports programming of the second, fifth, and ninth highest revenue media companies in the world.<sup>6</sup> In 2023, the parent companies' combined revenues exceeded \$145 billion—Disney with over \$89 billion,<sup>7</sup> Warner Bros. with over \$41 billion,<sup>8</sup> and Fox with almost \$15 billion.<sup>9</sup> These companies command lucrative licensing deals and control viewing access to the biggest sporting events, including content from the NBA, NFL, WNBA, MLB, NHL, NASCAR, College Sports, UFC, PGA TOUR Golf, Grand Slam Tennis, the FIFA World Cup, and cycling. Because of its parent companies' vertically integrated structure, Venu would offer content from ESPN, ESPN+, ESPN2, ESPNU, SECN, ACCN, ESPNEWS, FOX, FS1, FS2, BTN, TNT, TBS, truTV, and the ABC network. All told, Venu would access and distribute more than 80% of nationally broadcast sports content<sup>10</sup> and more than half of all sports rights.<sup>11</sup>

Using its extensive control of sports licensing rights, Fox, Disney, and Warner Bros. would be able to exert joint control over live sports from distribution through broadcast. In addition to horizontally integrating across the sports licensing market, this JV will vertically integrate the sports streaming market by jointly offering a new distribution platform for the licensed content that is controlled by these companies. The proposed structure presents these companies with a clear financial incentive to preference their own streaming platform over alternative sports streaming providers in licensing and bundling deals.

If this JV is permitted to proceed, competitors would be forced to negotiate with Fox, Disney, and Warner Bros. for access to over half of the major sporting licensing rights while simultaneously competing against these companies to offer the best product to broadcast or stream these programs. The terms announced for the JV suggests these companies may preference their own streaming platform as Venu is expected to carry only the parent companies' live sports programming.<sup>12</sup> However, competitors of the streaming platform have argued that the parent companies do not offer similar opportunities to carry only live sports programming, instead requiring competitors to carry a bundle of channels that often includes much less desirable programming—driving up costs for the streaming services and consumers.<sup>13</sup> For example, Disney's ESPN is a highly popular and commercially critical sports channel for sports streaming platforms. By bundling ESPN with Disney's other non-critical, low-demand channels

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<sup>6</sup> Investopedia, "10 Biggest Entertainment Companies," Nathan Reiff, April 20, 2023, <https://www.investopedia.com/articles/investing/020316/worlds-top-10-entertainment-companies-cmsa-cbs.asp>.

<sup>7</sup> Yahoo Finance, "The Walt Disney Company (DIS)," <https://finance.yahoo.com/quote/DIS/financials/>.

<sup>8</sup> Yahoo Finance, "Warner Bros. Discovery, Inc. (WBD)," <https://finance.yahoo.com/quote/WBD/financials/>.

<sup>9</sup> Yahoo Finance, "Fox Corporation (FOX)," <https://finance.yahoo.com/quote/FOX/financials/>.

<sup>10</sup> CNBC, "Disney CFO Hugh Johnston on Q1 results, new sports streaming alliance and Epic Games investment," at 05:03, February 8, 2024, <https://www.cnbc.com/video/2024/02/08/disney-cfo-hugh-johnston-on-q1-results-new-sports-streaming-alliance-and-epic-games-investment.html>.

<sup>11</sup> Complaint, FuboTV Inc. v. The Walt Disney Company, p.44, <https://deadline.com/wp-content/uploads/2024/02/fubo-tv-disney-wbd-fox-antitrust-suit.pdf>.

<sup>12</sup> Fox Sports, "Venu Sports Introduced As Name for Forthcoming Sports Streaming Service, May 16, 2024, <https://www.foxsports.com/presspass/blog/2024/05/16/venu-sports-introduced-as-name-for-forthcoming-sports-streaming-service/>.

<sup>13</sup> The Wall Street Journal, "Why Three Media Giants Made a Hail Mary Bet on Sports Streaming," Joe Flint, Jessica Toonkel, Isabella Simonetti, and David Marcelis, February 11, 2024, <https://www.wsj.com/business/media/disney-fox-warner-blitz-to-figure-out-sports-streaming-b5b8d8a9>.

and requiring that competitor sports streaming platforms purchase and display the entire bundle to access ESPN, Disney could have the power to effectively maintain a competitive advantage for Venu’s product offerings by only offering ESPN and other desirable channels while simultaneously charging competitors higher prices to access the bundle. In fact, Disney has already been accused of this very behavior when it allegedly used its significant licensing leverage to set a price floor and prevent competitors from offering cheaper, competitive bundles to consumers.<sup>14</sup>

Even the Antitrust Division under former AAG Makan Delrahim recognized that allowing companies to further consolidate sports would lessen competition. In 2018, the Division blocked Disney’s acquisition of Fox’s regional sports networks, stating that, “[i]f consummated, the proposed acquisition would eliminate the substantial head-to-head competition that currently exists between Disney and Fox and would likely result in higher prices for cable sports programming in each of the DMA Markets.”<sup>15</sup>

### **The Joint Venture Could Result in Consumer Price Increases**

The risks of corporate consolidation that Venu promises will likely be borne by American sports viewers. This proposed JV removes all economic incentive for these entities to continue competing for sports licensing rights. Fox and Disney, for example, are arguably “the two strongest and closest rivals in bidding for NFL game broadcasts.”<sup>16</sup> In the sports streaming context, the owners of broadcast rights for sporting events leverage their market power over highly demanded content to force content distributors to purchase content bundles that include essential content and related, less desirable programming.<sup>17</sup> For these companies, bundling functionally resembles a merger—allowing them to coordinate their market power over content rights to sell larger bundles and capture an expanded subscriber base.

For consumers, this consolidation could lead to higher prices and fewer choices. An empirical study of cable television found that when companies with concentrated market power bundle their products, they are able to extract higher profits from consumers as “bundling requires [consumers] to purchase unwanted channels, to the benefits of firms.”<sup>18</sup> Recent market trends support this finding. Viewers in the United States already report spending an average of \$552 on

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<sup>14</sup> The Hollywood Reporter, “Disney Hit With Antitrust Suit Over Live-Streaming TV Prices,” Winston Cho, November 22, 2022, <https://www.hollywoodreporter.com/business/business-news/disney-antitrust-suit-live-streaming-tv-prices-1235268605/>.

<sup>15</sup> U.S. Department of Justice, “The Walt Disney Company Required to Divest Twenty-Two Regional Sports Networks in Order to Complete Acquisition of Certain Assets from Twenty-First Century Fox,” press release, June 27, 2018, <https://www.justice.gov/opa/pr/walt-disney-company-required-divest-twenty-two-regional-sports-networks-order-complete>.

<sup>16</sup> Forbes, “Why Disney, Fox And ESPN’s Sports Streaming Service Might Create More Problems Than It Solves,” Marc Edelman, February 15, 2024, <https://www.forbes.com/sites/marcedelman/2024/02/15/why-disney-fox-and-espn-sports-streaming-service-might-create-more-problems-than-it-solves/?sh=346270d43987>.

<sup>17</sup> The Hollywood Reporter, “Disney Hit With Antitrust Suit Over Live-Streaming TV Prices,” Winston Cho, November 22, 2022, <https://www.hollywoodreporter.com/business/business-news/disney-antitrust-suit-live-streaming-tv-prices-1235268605/>.

<sup>18</sup> Quantitative Marketing and Economics, “The discriminatory incentive to bundle in the cable television industry,” Gregory Crawford, September 26 2007, p.69, [https://warwick.ac.uk/fac/soc/economics/staff/academic/crawford/research/bundling\\_published.pdf](https://warwick.ac.uk/fac/soc/economics/staff/academic/crawford/research/bundling_published.pdf).

streaming services every year, and 44% report that their streaming subscription costs increased over the last year amidst increased bundling and consolidation.<sup>19</sup> Dubbed “streamflation,” the average cost of major streaming services rose by nearly 25% in 2023 as streaming services capture viewership, bundle content, and raise prices to maximize profits.<sup>20</sup> For instance, Warner Bros. and Disney quickly hiked consumer prices after joining forces to bundle their streaming services.<sup>21</sup> Paramount similarly raised prices after bundling Paramount+ and Showtime.<sup>22</sup> By funneling over half of the major sporting events in the U.S. into one platform, Disney, Fox, and Warner Bros. will have the power to force out competition and set a price floor, likely resulting in “higher-priced games, fewer viewing options, and less variety of telecasts.”<sup>23</sup>

### **The Joint Venture Raises Concerns Under Antitrust Law**

Venu’s consolidation of content and power is concerning under both antitrust and telecommunications laws and regulations. Antitrust law prohibits “every contract, combination . . . or conspiracy, in restraint of trade.”<sup>24</sup> As DOJ noted in its challenge of the Northeast Alliance between American Airlines and JetBlue, “agreements between competitors to coordinate on output or to share revenues—are often condemned as per se illegal because they have the same tendencies to increase prices and reduce output as explicit horizontal agreements on price.”<sup>25</sup>

A federal court agreed with DOJ and blocked the airlines’ joint venture, holding that the benefits of the alliance “arise from a naked agreement not to compete with one another.”<sup>26</sup> The judge noted that the partnership was “just the sort of ‘unreasonable restraint on trade’ the Sherman Act was designed to prevent”<sup>27</sup> and that it would result in the parties “replacing full-throated competition with broad cooperation.”<sup>28</sup> Specifically, the court pointed to reduced competition between two entities controlling at least a quarter of a highly concentrated market with significant barriers to entry—noting that “[i]t is implausible that revenue-sharing terms designed and intended to align the parties’ economic incentives and foster decision-making in the best interests of the partnership will simultaneously spur the partners to compete vigorously.”<sup>29</sup> As in the American Airlines-JetBlue joint venture, none of the parties to Venu “will have the incentive

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<sup>19</sup> Forbes, “Streaming Trends for 2024: 44% Report Streaming Costs Increasing Over the Last Year,” Geraldine Orentas, June 13, 2024, <https://www.forbes.com/home-improvement/internet/streaming-survey/>.

<sup>20</sup> The Wall Street Journal, “Streamflation is Here and Media Companies Are Betting You’ll Pay Up,” Robbie Whelan, Joe Flint, Nate Rattner, August 15, 2023, <https://www.wsj.com/business/media/disney-max-hulu-netflix-streaming-price-2c3bac2a>.

<sup>21</sup> CNBC, “Warner Bros. Discovery hikes prices for Max streaming service,” Ece Yildirim, June 4, 2024, <https://www.cnbc.com/2024/06/04/max-price-increases.html>.

<sup>22</sup> CNBC, “Paramount+ plans price increases as it hits 56 million subscribers,” Lillian Rizzo, February 16, 2023, <https://www.cnbc.com/2023/02/16/paramount-plans-streaming-price-increases.html>.

<sup>23</sup> Forbes, “Why Disney, Fox And ESPN’s Sports Streaming Service Might Create More Problems Than It Solves,” Marc Edelman, February 15, 2024, <https://www.forbes.com/sites/marcedelman/2024/02/15/why-disney-fox-and-espn-sports-streaming-service-might-create-more-problems-than-it-solves/?sh=346270d43987>.

<sup>24</sup> 15 U.S.C. 1.

<sup>25</sup> Complaint, United States Of America v. Am. Airlines Grp. Inc., 2021 WL 4306961, ¶ 20 (D.Mass.).

<sup>26</sup> United States v. Am. Airlines Grp. Inc., 675 F. Supp. 3d 65, 74 (D. Mass. 2023).

<sup>27</sup> *Id.*, pp. 74–75.

<sup>28</sup> *Id.*, p. 128.

<sup>29</sup> *Id.*, p. 86.

to undercut the other on price because doing so would simply reduce the revenues each earns” as part of the streaming service.<sup>30</sup>

Crucially, framing the deal as a joint venture rather than a merger should not exempt it from antitrust scrutiny. Indeed, PGA Tour and LIV Golf have similarly been attempting to combine certain aspects of their businesses into a new for-profit entity.<sup>31</sup> Though the parties tried to characterize their deal as an “investment” rather than a merger, the plan nevertheless has drawn scrutiny from DOJ,<sup>32</sup> and has not yet been completed more than one year after its announcement.<sup>33</sup>

FTC and DOJ have clarified that “in some cases, competitor collaborations have competitive effects identical to those that would arise if the participants merged in whole or in part.”<sup>34</sup> Antitrust agencies have treated a collaboration like a merger for the purposes of antitrust law when, among other factors, “the participants are competitors in [the] relevant market, . . . the formation of the collaboration involves an efficiency-enhancing integration of economic activity in the relevant market, . . . the integration eliminates all competition among the participants in the relevant market, and . . . the collaboration does not terminate within a sufficiently limited period.”<sup>35</sup>

Were DOJ to treat this collaboration as a merger, it would raise additional issues under antitrust law, given that the law prohibits any merger that may substantially lessen competition,<sup>36</sup> and the finalized Merger Guidelines note that “a merger between competitors that . . . creates or further consolidates a highly concentrated market may substantially lessen competition.”<sup>37</sup> DOJ uses the Herfindahl-Hirschman Index (HHI) to measure market concentration, assessing a market with an HHI greater than 1,800 as “highly concentrated.”<sup>38</sup> According to a complaint filed by Fubo, the coordination between Venu’s three parent companies would lead to an HHI score of 3,400—more than doubling concentration in nationwide sports licensing,<sup>39</sup> and amply surpassing DOJ’s threshold for a highly concentrated market. The consolidation in the sports licensing market resulting from this JV could therefore violate antitrust law.

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<sup>30</sup> Complaint, United States Of America v. Am. Airlines Grp. Inc., 2021 WL 4306961, ¶ 20 (D.Mass.).

<sup>31</sup> CNBC, “Justice Department to probe PGA Tour deal with Saudi-funded LIV Golf,” Kevin Breuninger, Jessica Golden, June 15, 2023, <https://www.cnbc.com/2023/06/15/pga-tour-liv-golf-merger-justice-department-to-investigate.html>.

<sup>32</sup> Reuters, “U.S. Justice Department to investigate PGA Tour-LIV Golf pact, Wall Street Journal reports,” June 15, 2023, <https://www.reuters.com/sports/us-doj-investigate-pga-tour-liv-golf-pact-wsj-2023-06-15/>.

<sup>33</sup> Golfweek, “A year after LIV Golf-PGA Tour 'framework' shocked the world, here's a timeline of what's happened,” Tom D’Angelo, May 31, 2024, <https://golfweek.usatoday.com/2024/05/31/liv-golf-pga-tour-framework-agreement-timeline-one-year/>.

<sup>34</sup> U.S. Department of Justice and the Federal Trade Commission, “Antitrust Guidelines for Collaborations Among Competitors,” April 2000, p.5, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-doj-issue-antitrust-guidelines-collaborations-among-competitors/ftcdojguidelines.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> 15 U.S.C. 18.

<sup>37</sup> U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” December 18, 2023, p. 2, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>38</sup> U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 18, 2023, p.5, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023\\_merger\\_guidelines\\_final\\_12.18.2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf).

<sup>39</sup> Complaint, FuboTV Inc. v. The Walt Disney Company, p.44 <https://deadline.com/wp-content/uploads/2024/02/fubo-tv-disney-wbd-fox-antitrust-suit.pdf>.

## The JV is Not Consistent with the Goals of FCC’s National Ownership Cap

The FCC has broad authority to promote competition and protect against consolidation in media, including statutory duties to promote “vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity”<sup>40</sup> and to ensure that proposed transactions will serve the “public interest, convenience, and necessity.”<sup>41</sup> The Commission fulfils this duty in part by ensuring that no single company owns stations that reach more than 39% of U.S. television households and reviewing transactions in the media and telecommunications space.<sup>42</sup> At the heart of the national ownership cap is a mandate from Congress to protect localism and competition. The cap protects “the incentives and ability of licensees to provide programming responsive to the needs and interests of the local communities in which they are licensed,”<sup>43</sup> and is “essential [in order] to limit the growth of the largest group owners while giving smaller group owners some opportunity to expand.”<sup>44</sup>

Chair Rosenworcel has publicly stated that FCC regulation of virtual service providers like video streaming companies is “complex” and “doesn’t fit neatly in the law.”<sup>45</sup> However, given Venu’s potentially wide-reaching and complex framework, which is expected to involve the parent companies’ broadcast stations and affect other broadcasters, we believe that the FCC should carefully consider whether broad authority extended by Congress covers this transaction or portions of the transaction. Disney owns ABC broadcast network, as well as eight broadcast television stations in eight markets, and Fox Corporation owns the Fox broadcasting network and 29 stations in 18 markets.<sup>46</sup> A Gray TV earnings call revealed that Venu will retransmit ABC and Fox broadcast network feeds via the local stations affiliated with each network.<sup>47</sup>

As the Supreme Court has recognized, the Commission’s authority “covers new and rapidly developing fields, and its rules address “public protection against . . . consolidation.”<sup>48</sup> In extending this authority to the FCC, “Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domain in the broadcasting field.”<sup>49</sup> The Court has emphasized the FCC’s duty to promote

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<sup>40</sup> 47 U.S.C. 257(b).

<sup>41</sup> 47 U.S.C. 214(a) & 310(d).

<sup>42</sup> See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, § 629 (1)-(2) (2004); <https://www.fcc.gov/consumers/guides/fces-review-broadcast-ownership-rules>.

<sup>43</sup> Federal Communications Commission, “In the Matter of Mission Broadcasting, Inc., Nexstar Media Group, Inc. Notice of Apparent Liability for Forfeiture,” March 20, 2024, <https://docs.fcc.gov/public/attachments/FCC-24-34A1.pdf>.

<sup>44</sup> Federal Communications Commission, “In the Matter of Amendment of Section 73.3555(c) of the Commission’s Rules, National Television Multiple Ownership Rule,” August 24, 2016, <https://docs.fcc.gov/public/attachments/FCC-16-116A1.pdf>.

<sup>45</sup> Energy & Commerce Committee Democrats, “Hearing on Oversight of the Federal Communications Commission,” November 30, 2023, at 01:01:40, <https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-oversight-federal-communications-commission>.

<sup>46</sup> Securities and Exchange Commission, “Form 10-K Fox Corporation,” August 11, 2023, p. 7, [https://investor.foxcorporation.com/node/12561/html#ib411ff85f0f54549b88846a66dbf40b7\\_13](https://investor.foxcorporation.com/node/12561/html#ib411ff85f0f54549b88846a66dbf40b7_13).

<sup>47</sup> Seeking Alpha, “Gray Television, Inc. (GTN) Q1 2024 Earnings Call Transcript,” May 7, 2024, pp. 13-14, <https://seekingalpha.com/article/4690325-gray-television-inc-gtn-q1-2024-earnings-call-transcript>.

<sup>48</sup> U.S. v. Storer Broadcasting Co., 351 U.S. 192, 203 (1956).

<sup>49</sup> Federal Communications Comm. v. Pottsville Broadcasting Co., 309 U.S. 134, 137 (1940).

competition in media, stating that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”<sup>50</sup>

Venu will enable three companies to control the distribution of more than 80% of nationally broadcast sports games.<sup>51</sup> In keeping with the Commission’s duty to prevent a single entity from reaching more than 39% of households, and its broader mandate to promote competition as a public interest, the FCC should examine whether a violation of the national ownership cap would result from the parties’ involvement in the JV, including through non-attributable investments or other methods of control.

### **The Joint Venture is a Transaction with the Potential to Harm the Public Interest**

Congress has specifically directed the FCC to review certain telecommunications industry transactions to determine whether they would serve “the public interest, convenience, and necessity.”<sup>52</sup> This ensures that companies that have been granted licenses to use the public spectrum are good stewards of this spectrum, and assists in the FCC’s spectrum management in the public interest.<sup>53</sup> The parties carry the burden of proving the proposed transaction would serve the public interest.<sup>54</sup> In determining whether a transaction is in the public interest, FCC assesses several factors including costs to consumers and parties’ market power.

For instance, in 2018, FCC reviewed and ultimately rejected a proposed merger between Sinclair Broadcast Group and Tribune Media, in part due to concerns that the merger would give Sinclair “too much power over licensing deals with cable and satellite companies that retransmit their broadcasts.”<sup>55</sup> In 2002, FCC declined to approve a merger between content distributors EchoStar and DirecTV, in part based on the conclusion that it would harm consumers by eliminating an existing viable competitor in every market and creating the potential for higher prices and lower service quality.<sup>56</sup> These concerns are especially salient in this proposed JV and we urge you to bring the same level of scrutiny to this proposal.

While this transaction is styled as a joint venture rather than a merger, we urge the FCC to recognize the ultimate merger-like effects of consolidating the live sports broadcasting assets of broadcasting giants in one entity, and assess potential harms to the public interest of this functional merger accordingly.

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<sup>50</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972)).

<sup>51</sup> CNBC, “Disney CFO Hugh Johnston on Q1 results, new sports streaming alliance and Epic Games investment,” at 05:03, February 8, 2024, <https://www.cnbc.com/video/2024/02/08/disney-cfo-hugh-johnston-on-q1-results-new-sports-streaming-alliance-and-epic-games-investment.html>.

<sup>52</sup> 7 U.S.C. 214(a) & 310(d).

<sup>53</sup> FCC, “FCC Transaction Review: Competition and the Public Interest,” Jon Sallet, August 12, 2024, <https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest>.

<sup>54</sup> 47 U.S.C. 214(a), 310(d). *See also* Federal Communications Commission, “AT&T Inc. and BellSouth Corp. Application for Transfer of Control, Memorandum Opinion and Order,” p. 11, March 26, 2007, <https://docs.fcc.gov/public/attachments/FCC-06-189A1.pdf>.

<sup>55</sup> The New York Times, “Sinclair Deal With Tribune Hits Complications in Washington,” Cecilia Kang, Sydney Ember, February 27, 2018, <https://www.nytimes.com/2018/02/27/business/sinclair-tribune-merger-antitrust.html>.

<sup>56</sup> “FCC Declines to Approve EchoStar-DirecTV Merger,” press release, October 10, 2002, <https://www.fcc.gov/general/echo-star-directv-merger-page>.

## Conclusion


The market for live sports is dominated by giant vertically integrated companies that grow increasingly massive and interconnected while leaving viewers spending more and more money to watch the sports and entertainment they care about.<sup>57</sup> Under the guise of consumer choice, Fox, Disney, and Warner Bros. have proposed to stop competing for live sports and jointly develop a product that could allow them to leverage their joint dominance over sports programming to favor their own streaming network, reducing competition and depriving consumers of choices in over-the-air, cable, or streaming providers. DOJ and FCC should closely scrutinize this transaction and take immediate action to block it if it violates antitrust law, or if it does not serve the ‘public interest, convenience, and necessity.’

Sincerely,



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Elizabeth Warren  
United States Senator



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Joaquin Castro  
Member of Congress



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Bernard Sanders  
United States Senator

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<sup>57</sup> Forbes, “Streaming Trends for 2024: 44% Report Streaming Costs Increasing Over the Last Year,” Geraldine Orentas, June 13, 2024, <https://www.forbes.com/home-improvement/internet/streaming-survey/>.