# FTC - DOJ Merger Guidelines Listening Forum, April 27th, 2022

Lina Khan:

Hello, everybody. My name is Lina Khan and I'm chair of the Federal Trade Commission, and I'm joined today by my colleague, Jonathan Kanter, assistant attorney general for antitrust at the Department of Justice. We're so excited today for our third listening forum, where we're looking to hear about the firsthand effects of mergers and acquisitions as part of our revision of merger guidelines. And I'll just say generally we've been really overwhelmed and so thrilled by the incredible degree of public engagement and participation that we've had as part of this process. In addition to robust participation during these listening forums, we've also received thousands of comments in our public docket and really just want to give a big thanks to everybody who's taken the time to share your experience and your views with us. It's so critical that we're hearing from you all, and your comments are going to be invaluable as we undertake this revision.

A huge thanks as well to our speakers today for being with us as we focus on a discussion of mergers and consolidation in the media and entertainment industry and what it means for artists, content providers, journalists, and the public. As we've all seen, the media and entertainment sector have undergone significant transformation over the last decades. Movies and television have have new platforms, distribution, changing options for content creators and viewers. Music albums sales meanwhile have plummeted in favor of streaming subscriptions, and live performances are increasingly an important source of revenue for musicians. For live performances we've also seen changes in how events are promoted and tickets are sold and resold. Alongside these changing technologies and methods of distribution, we've also seen big changes in how these markets are structured. With cable and broadband companies combining and integrating vertically, in 2021 alone industry observers put the total value of media and communications mergers at over $200 billion.

Content has long been distributed through platforms that can give rise to bottlenecks, where a limited number of companies are wielding power over market participants both up and downstream. And increasingly we've heard concerns that a handful of companies may now again be controlling the bulk of the entertainment supply chain from content creation to distribution. We've heard concerns that this type of consolidation and integration can enable firms to exert market power over creators and workers alike and potentially limit the diversity of content reaching consumers. And we've also heard that smaller independent players may find themselves cut off from content or distribution that they need to stay in business. We've heard about troubling trends in new news media, where we've seen in local newspapers high turnover and growing consolidation, with roughly half of the counties in the country now only having a single newspaper. Oftentimes these papers are owned by a larger regional chain after many smaller players have been sold. And we've heard concerns about what it means for consolidation in local news, and specifically its effects on local coverage and coverage of small communities.

When reviewing potentially illegal mergers, we are working to ensure that our analytical methods are keeping up with new market realities. We really want to make sure that our approach to measuring harm that may occur through mergers and acquisitions is rigorous and fully capturing the day to day realities that a range of participants in these markets face. These guidelines really need to reflect the modern economy, and that's why we're so excited to be hearing from you all. I'll just say we are doing these listening sessions in a whole set of sectors and each sector has its own reasons for being critically important. I see news and media and entertainment as really being the lifeblood, in many ways, of our democracy. And so making sure that we're not allowing forms of consolidation that are allowing firms to wield outsized power over how information is distributed in our country is especially important. So AAG Kanter will safe his comments for the end. So I will now kick it over to our first participants, starting with Adam.

Adam:

Great. Thank you, Chair Khan and Assistant Attorney General Kanter, for the opportunity to speak today. It's an honor to be here. I'm a worker in the entertainment industry. I'm a writer and a board member of the Writer's Guild of America West, a labor union that represents over 11,000 writers who work in TV, film, news, and streaming video. I'm also an actor and a comedian, and I'm here today to talk to you about the most hilarious subject of all, corporate media mergers. I'm here in part because the show I created, Adam Ruins Everything, was killed by a corporate merger, specifically by AT&T's acquisition of Time Warner. Waves of merger in this industry, approved by regulators or the courts, have put a handful of companies in control of what stories writers are allowed to tell and what viewers are allowed to watch and done tremendous harm to the everyday workers whose labor powers the entertainment industry.

In 2015 I created an investigative comedy show for the cable network Tru TV. It ran for three seasons and 65 episodes. It was the second biggest show on the network and was described as a breakout hit by the network president. But in 2018 AT&T acquired Time Warner, Tru TV's parent company, and then, as so often happens after mergers, AT&T announced a major reorganization. Now, we all know that's boss code for layoffs, but this time it was code for basically shut down the entire network. Roughly 100 Tru TV employees were for fired, including the head of the network and the entire programming department, and AT&T then started canceling shows to cut costs. A month after our season finale aired, I got a call from the new boss at AT&T saying that they were canceling the show despite its success.

And today what was once a thriving TV network that employed thousands of artists now airs archival reruns of a single reality show over and over again. Three years after that merger turned out to be a financial disaster, Warner Media merged again, this time with Discovery. And just yesterday, two weeks after that merger closed, that new entity announced that they were ending all scripted television production at TNT and TBS, two networks that have been leading the way in cable scripted programming for over 30 years. I received texts all day from friends whose shows had suddenly been canceled in the middle of shooting. Now, why would a healthy television network, the hit shows watched in millions of households, voluntarily commit suicide? Well, the executives of the new megacorp proudly state in the press that the only reason these cuts were made was the merger.

Now, in decades past, when a show was canceled the writer and the studio could take it to another network. And that's because until recently the networks that broadcast the content competed to buy content from the studios, and the studios in turn competed for the services of writers, directors, and other artists, all to bring the best ideas to the public. But after two years of vertical and horizontal mergers, today the network that broadcasts your show also owns the studio that makes it, the IP that it's based on, and the cable infrastructure that brings it to your house. Just six companies now control the production and distribution of almost all entertainment content available to the American public in theaters, on TV, and on streaming services. And the impact on those of us who actually make all this content has been profound.

When I created Adam Ruins Everything in 2015, we pitched it to Tru TV, TNT, TBS, Discovery, and HBO. But today all those buyers have consolidated into a single entity, HBO Max. With fewer employers competing for our labor, they can more easily hold down our wages and set onerous terms for our employment. For example, despite unprecedented growth and record profits, my union has found that median pay for TV writer producers is nearly the same as it was in the '90s, 30 years ago. And this problem affects every worker in our industry. Because the companies unilaterally control the schedules of so many movies and shows, crew members are now being forced to work longer and longer hours, sometimes working 18 hours a day, six days a week, for months on end for very low wages. Actors find themselves trapped in exclusive contracts that prevent them from pursuing other work even when they're not shooting.

And after Disney merged with Fox, they used their market power to end back end participation, preventing show creators and producers from sharing in the profits of the work they created. Now, the corporate lawyers will say that all of this, the layoffs, the cuts to worker pay, are good because they reduce prices for consumers. But if there's a single example of one of these media mergers reducing prices in any way, I would love to see it. In fact, a recent report by the Writer's Guild lays out the truth that every media viewer already knows. Today we pay more than ever for less choices.

Finally, the economic power wielded by this tiny group of companies means that they control what we as creators are allowed to say and what messages the public has access to. My show was well known for telling the uncomfortable truth about difficult subjects. But the only time we were censored by our network was when we did an episode called Adam Ruins the Internet, about monopolistic consolidation in the cable industry. And after it aired, Time Warner pulled the episode from reruns and streaming because they were worried it would anger AT&T and jeopardize the merger. And I know that my story is not the only one.

Without competition, these companies have no incentive to take a chance on new stories from emerging creators. Instead, they pack their services with cheap, repetitive content based on IP they already own because there's nowhere else to go. So I know I'm getting the light, so I'll wrap it up. My earnest plea is that the next time our governmental agencies review a merger, they ask the question, "Whose voices will this merger silence? Which ideas will never reach our ears? Whose stories will the public never get to see?" It's long past time to recognize the harm that mergers like these do to workers, to creators, and to the viewing public. Our media ecosystem and the workers who make their living within it must have fair competition to survive. Thank you for your time.

Lina Khan:

Thanks so much for sharing that, Adam. Had the chance to watch your show when it was still on and enjoyed it. Next we have Marshall.

Marshall Moran:

Hi, my name's Marshall Moran. I am a teacher, a musician, and an audio engineer in Brooklyn, New York. I've been working as an audio engineer for almost two decades now. And in that time my rate has barely increased, which is really incredible. And it tracks, what's interesting to me is over the past number of years I've been working with an organization called UMAW, Union of Musicians and Allied Workers. And in doing some research with that organization, I learned about the merger between Live Nation and Ticketmaster and started becoming more educated in the fallout of that, and realized that my rate and the lack of increase to my rate and the stagnation that I'd been seeing on an individual level tracked directly with the merger between Live Nation and Ticketmaster. Looking into this more and asking around to friends, I found that the same thing has happened to most of my friends, whether or not they're on tour or working locally.

It's kind of incredible. It's almost too obvious when you start getting into it. And the fallout, on a tangible level I could say something like, locally here in New York we have Webster Hall, which is an AEG venue. They shut down, and their front of house support staff was actually getting paid, I think, about $25 an hour. Now they're being paid $21 an hour because across town at a Live Nation venue their support staff is being paid $21 an hour. So AEG has been able to drive down the prices. Also, in speaking with artists and my friends who are on tour, there's other common practices, such as a well-known opener fee for bands that are not headlining that tends to be about the same as do rates for bands going out on tour. So this filters down or ends up affecting the rates for all of the workers like myself and my colleagues. So our rates never increase.

So while there's been a heavy focus on ticket prices I think over the past years, some great reporting done at the New York Times and great work done just looking into this, it really on a tangible level has affected everybody, to where rates have just stayed what they are. And as someone who works in both Live Nation and non-Live Nation venues, I have to say yeah, it's just held it in a really weird way, where outside of after 2010, I don't know many people who have seen any sort of large increase. Yeah, I don't know if I have much more to say beyond that, which is, it's a very measurable effect that not only can be seen in data, but is obvious on the ground for all of us here experiencing it. And I think a lot of us, I think most people I speak to, and myself included, are very concerned about what happens as the cost of things continue to increase but we continue to make the same amount of money. And thank you for letting me talk.

Lina Khan:

Thanks so much, Marshall. Next we'll go to Damon.

Damon:

Thank you so much for the opportunity to talk. Marshall's my colleague at the Union of Musicians and Allied Workers, UMAW, and he spoke about consolidation of live music. Live Nation and AEG now account for 90% of the live music market. It's crushing to any other potential competition, which is why those effects that Marshall was talking about, all the way down to the level of every employee, are across the board. You can't work around them. I want to talk about the recorded music industry, what's happened to that from consolidation. I play, I'm a musician, I play indie rock. That stands for independent, and what has changed from consolidation in the recorded music industry is, we've lost our independent sources of income. Like everyone else now, my recorded music income is dominated by streaming. Streaming accounts now for 83% of all recorded music revenue in the USA, according to the RIA, Record Industry Association. Streaming in turn is dominated by Spotify in particular, which has the lion's share of the market, 31% global share of the market.

It is also, no coincidence, the only music streaming platform that offers its services for free, which it was able to do by trading ownership shares with the three major labels, there are only three, in exchange for use of their copyrights at killingly low royalty rates for their artists. Apple computer, Apple music of Apple, is Spotify's nearest competitor with less than half of the market share, another 15%, and then Amazon with 13%. So we're talking about the biggest corporations in the planet. These three companies, Spotify's not on the level of a corporate level the size of Apple and Amazon, but music they're outsized, are actually double the size of either of those. They run the show. These three together account for 59% of the market. Add the Chinese streaming giant

Damon:

... 10 cent, which has another 13% global share. And four companies control three quarters of streaming globally. My income, even the income of an independent artist like me, I am not a pop star, I'm just trying to make a living as an independent artist as I have scrapping through decades of this. My income is now dependent on these massive companies. We have no negotiating power over their terms, and we have no way around them anymore because of consolidation in the marketplace. And this is the real big problem. The terms they pay are punishing similar to what Marshall was describing. As consolidation has happened and fortunes have been made on the stock market and in corporate boardrooms, the workers who supply the content for these fields are making too little to live on. What we make from streaming is unsustainable for all but a very few artists. The middle class working musicians is being eliminated by this unregulated system.

Let me share my own experience quickly. My band sees about three quarters of a million streams per month on Spotify, which is a lot. This last month, the last 28 days for 730,769 streams we grossed $2,192. That's gross. Now, we own our master rights. We're lucky. So we don't share that with a record label. Most bands would split that at least half with a record label, maybe even worse, which means 83% of their record music income is going down to just pennies. You can't survive off it. Even though we own all our stuff, obviously it's not enough. It was in a way when it was a portion of a diverse set of income sources, which is what we had 10 years ago before streaming took over the market. We had significant income from many sources that Spotify particular has driven out of the marketplace by offering equivalent services for free. Physical media, satellite radio, soundtrack licensing, licensing for commercials, all of these have been absorbed by streamings' expansion.

For example, a brand used to have to negotiate directly with us to associate themselves with our music. Now, they can build a playlist on Spotify without my permission, without any payment. They may even pay Spotify for the privilege. We don't know because they would not report that back to us as income that needed to be included as music income. Spotify, Apple, and Amazon have become also producers of audio content, as well as exclusive distributors. And you know very well, I think everybody podcasting like this. We also know in Spotify's case in particular, that they promote that content using privileged access to users.

We know because they're now asking us to pay them for the privilege to boost our songs in their algorithms. They have a program called discovery mode, which has attracted the attention of several congressional members in the House because it looks like Payola. It looks like Payola because it is a word on the radio. But on digital platforms, it's not regulated. We need help from the federal government to restrain the practices of these corporations. We need protection for competition in our industry. We need support from musicians who can no longer earn a sustainable income from recorded work. Thank you so much for your attention to this and for including us in the forum.

Lina Khan:

Thank you so much, Damon. Next we have Russell.

Russell D'Souza:

Thank you so much. My name is Russ D'Souza and I am a co-founder of SeatGeek, a technology company focused on improving the experience of purchasing tickets to live events. I am a strong believer in open and fair competition, and I commend your efforts to protect consumers from anti-competitive or monopolistic practices. Open forums like these are important opportunities for you to hear how antitrust enforcement is working in the real world. My comments today focus on the dangers of approving anti-competitive mergers with remedies that rely on assurances from the merging parties in post-merger monitoring to police monopolistic behavior. I compete in an industry that has experienced firsthand the insufficiency of such behavioral remedies in the decades since the merger of Live Nation and Ticketmaster. I want to briefly tell you about how our company's innovative products are disrupting the old paradigm for buying tickets to live events.

SeatGeek delivers the most advanced ticketing platform to empower fans to enjoy the best possible user experience. We were the first to ascribe value to a ticket by considering seat location and price, allowing consumer members to effectively compare hundreds of tickets and find the best deals. We use an open infrastructure that makes it team's primary tickets available not only through SeatGeek, but also through multiple third parties. As a result, we've been able to impress some of the world's premier sports teams and venues with our cutting edge technology. But we face a dominant competitor in our industry, Live Nation Entertainment, the product of the 2010 merger of Live Nation and Ticketmaster into a single behemoth. At the time DOJ recognized that Ticketmaster had, in DOJ's words, been the dominant primary ticketing service provider in the United States and Live Nation was the country's largest concert promoter.

That remains true today. Rather than suing to block this merger, DOJ entered into a consent decree. In 2010, that relied on behavioral remedies to police any future anti-competitive acts by the new double monopolist. It banned Ticketmaster from threatening or retaliating against potential customers by withholding Live Nation events. That didn't the work. 10 years later in 2020 DOJ found that Live Nation Ticketmaster has repeatedly violated the consent decree. DOJ highlighted many instances of threats, retaliation against customers, which had led to extend the consent decree and appoint in independent monitor. Our industries experience proves that regulatory consent decrees have many inherent problems. I want to highlight a few. First decrease with ongoing oversight impose burdens on small and less well resourced competitors who are often early observers of any compliance problems. If tomorrow we expect that Live Nation Ticketmaster has violated the consent decree, then we'll have to spend the time, energy and resources to investigate and report a violation to the DOJ or independent monitor.

Second competitive harm from decree violations is very hard to fix on an incident by incident basis. Then user teams often select ticketing partners for long term commitments. If we lose that bid, we may not get an opportunity to rebid for several years. Once a ticketing partnership is entrenched, a customer switching cost can be very high. If retaliatory conduct is used to win the contract, even if it can be proved and even if action is warranted, the customer is already lost. Competition has been harmed. For the last six years. I have been out in the market speaking with professional sports teams and arenas. They're excited to meet with me. Customers have had the chance to work with us, value our innovative platform and the choice we give to consumers. When we compete head to head with Ticketmaster on those merits, we believe we will win almost every time.

But this industry lives under the shadow of Live Nation, fearful of the types of retaliation highlighted by DOJ. Following initial enthusiasm for an innovative ticketing platform, sports arena customers inevitably express concerns about losing Live Nation concerts, which is revenue they depend on. Whether or not any direct threats have been made to these venues, the fear of losing concert revenue is always there. In contrast, when Live Nation concert revenue is not an issue, our innovative ticketing solution is readily embraced. For example, 50% of the EPL, English Premier League, teams use

SeatGeek as their primary ticketing platform. Our industry provides a cautionary tale about how behavioral remedies even when well-intentioned and enforced appropriately can not solve the problems inherent in an anti-competitive merger. It's clear that a merger will harm competition and no divestitures can solve the problem.

I respectfully suggest the right response is to block it, not to permit it with promises of good behavior with the merging parties under a supervisory process. Finally, I recognize that the president's executive order last year affirmed agency's authority to challenge transactions whose previous consummation was in violation of the antitrust laws. If there was ever a candidate for that retrospective review, it is a merger like this one where there is still a supervised consent degree in place and where DOJ has already accumulated a track record of decree violations. SeatGeek cares deeply about this industry and it's time to give fans, teams, artists, and venues, the choice they deserve. It's a privilege to be included in this discussion. Thank you for your time and attention.

Lina Khan:

Thanks so much, Russell. Next we'll go to Julie.

Julie Reynolds:

Hi. Thank you so much for having me, inviting me today. I am a journalist and I'm a member of the News Guild CWA, but I am speaking today about my personal experience and my research into the impact of consolidation on the local news environment. Excuse me. For 10 years, I was a reporter at the Monterey County Herald and I started in 2004 when it was owned by Knight Ridder. But by 2012, we had a new owner and that owner was the hedge fund, Alden Global Capital. And suddenly we had no hot water in our building, we had no office supplies, layoffs were coming every few months. And yes, there had been drastic cuts in staff and resources before Alden, but this was at an unprecedented level. They even took the word county off of our mast head, the Monterey County Herald because our coverage area shrink so much.

Alden only seemed to care about buying more newspapers and not serving the communities they were already in. I want to give an example of what can happen when the reporters are all gone. Our example is King City, which is a small farm worker community in south Monterey County. Another reporter and I had heard from the residents there that their cars were being confiscated and sold back to them at full price by the police. But we couldn't investigate it because we didn't have the staff. We were no longer allowed to cover King City. One year later, our district attorney indicted and convicted nearly half the King City Police Department including the chief. Uncovering official corruption is the kind of public service that we expect from our community newspapers. But under Alden's ownership, we failed. After 10 years, I left the Herald and I'm now a freelance reporter focusing on the impact of private equity on local news.

And what I've learned in my 6 years looking exclusively at this issue is that a news duopoly has emerged in the United States. And I mean, we all know the era of the competitive two newspaper town is long gone, but today many communities, if they have a paper at all, are grossly underserved by one of these two mega chains, Alden's Media News Group, which last year quite Tribune Publishing and Gannett which merged in 2019 with GateHouse Media. Academic research plainly shows that towns without a robust local news environment pay things like higher bond rates and taxes. They have lower voter turnout and are more likely to suffer the kind of corruption we saw in King City. Communities also suffer from a lack of competition when subscription prices go through the roof. And this is particularly targeting the elderly who prefer to read a print newspaper. At some of the Alden papers, readers are now paying more than $1000 a year just to stay informed.

The workers, meanwhile, are paid low wages that haven't kept pace with inflation. And I want to make clear here, when I say newspaper, I'm referring to a professional news gathering operation. News doesn't have to be printed on a piece of paper in this era of smartphones, but it does need to be reported by trained full-time professionals. That is the role of the community newspaper. It's what we used to call the paper of record. It's the role of a constant watchdog, an overseer, an ombudsman for community concerns, big and small. And blatant corruption is allowed to flourish in broad daylight then we no longer have an informed citizenry. And that is the exact situation that many small communities in the US now find themselves.

It's already too late to prevent the creation of the news duopoly, although some retrospective review could be in order. But I would also suggest that the review process for future news media mergers, even a large chains acquisition of just one small town paper should all be closely scrutinized. These reviews should consider and prioritize the impact of consolidation on subscribers, on news workers, but especially the broader community. And I would suggest that we invite these stakeholders to talk about the harms that they are enduring. I will continue to say it, I am beating a drum, but it is no exaggeration, what is at stake here is our very democracy. Thank you so much.

Lina Khan:

Thank you so much, Julie. Next we'll go to Brooke.

Brooke Binkowski:

I just wanted to second everything Julie said, and then some. I just... everything everybody has said so far. Thank you so much. So I really I'm glad that Julie, that you said all the things that you said because it really tees me up for my own experience. My name is Brooke Binkowski. I am a third generation journalist. My mom and dad work together. I was raised in a newsroom that was owned by my grandfather, which is how my mom and dad met as a matter of fact. And I always bring that up because it underscores the importance of institutional knowledge in journalism. Knowing how things used to be is very helpful. So I say a lot of stuff that in today's landscape sounds extremely radical and it's not. It's just like, 10 years ago or 20 years ago. I've been working in the industry since 1995 when I was 18.

I just told you all how old I am. And so, first of all, I have an anecdote that I used to illustrate this. I started in radio. I've worked across industries, but radio is my first love and probably my dearest. And I started at a radio station called KOGO in 1995, in San Diego, a news talk station. And I was just a baby intern getting sent out to cover city council meetings and gadflies and whatnot. And there were about 25 people working in the newsroom at any given time, any hour of the day or night. And I know this because I would hang out there because I was like a little radio rat, journalism nerd. I just love news. And I would talk to everybody about. I'd be like, "What's it like? What's it like being a reporter?"

And they'd say, "You should have been here last year. We just had massive layoffs. There used to be twice as many reporters on the field. We could really cover news then." So that was in 1995, 25 people at any given time was what it was like after layoffs, after the mergers. So '95, I went back for an interview, to be interviewed actually in 2017 at the same station, after all this other stuff had happened. And I went in, same place, well, actually slightly different place, but work stations looked the same, the news director's the same. Same person I knew. She came in to say hi. And between her, me and the host and the board op, four people, there were four people working. That was it. No reporters, no anchors, just the host, the board op, the news director who came in to see me and the interviewee, me. That's how bad it is. And so I walked in and I made a joke.

I was like, "Ha ha, where is everybody? They're going to keep coming along next, right?" And nobody laughed. They're just like, [inaudible 00:31:52]. And that's how it is everywhere. Everywhere is suffering because of this. And I want to make sure that I emphasize this is a national security issue.

Brooke Binkowski:

This is a global security issue because when you have this stuff happening, when you have newsrooms just devastated and journalists out of work... You have people who are working in these newsrooms who are overworked, underpaid and exhausted. They're cribbing off other people's notes and that's how the disinformation gets in. That's how disinformation campaigns happen. There would never be these types of disinformation campaigns if we had the resilience offered by a healthy journalism industry, healthy media industry or anything creative. At this point, is fighting back against the sorts of fascist maneuvers that we see right now and I'm sorry if I seem bombastic or over the top but I'm a debunker. I forgot to say this. I run a site called Truth or Fiction where we debunk disinformation campaigns and I've been working in the counter dis-info and debunking fake news, whatever you want to call it, since 2015 when I left my work at the US Mexico border as a border reporter.

So, I do see how disinformation gets into everything and these mergers in journalism, not only have devastated individual lives, I know people who went from being extremely successful journalists to not even having a place to live because I'm in Southern California, because that's our fate if we run out of work. We don't have savings. We don't have health insurance. We don't have 401Ks. Well, actually, you know what? I got real lucky. I got a 401K. I'm one of the lucky ones. It's been like that. I know people who haven't been to the dentist in 20 years because they don't get health insurance. And because they have been in this industry for so long, they've seen all the mergers happen. There's no more room for anybody anymore. I make $20,000 less now than I did 15 years ago a year and that's like what I expect to probably be making because that's how bad it is.

What am I going to do? Go find another job? Where? There's no more jobs. My industry, journalism in general, has been absolutely devastated and you see the real world effects every single day. Every time you see some terrible criminal disinformation campaign take over, still more brains of Americans and people elsewhere, understand that is happening because we don't have journalists who are the frontline against disinformation campaigns in this new type of hybrid warfare that we are all currently living through. So, it's like this huge issue. It's not just losing democracy, it's losing everything because right now we're dealing with climate catastrophes, we're dealing with hostile white supremacists gangs who are running for office. You all know and you've all seen it.

And I forgot to set my timer. So, I don't know how much time I have left. I'm sorry.

I do want to make the point that mergers also translate to paying journalists less, which is why I brought up the $20,000 less. But because of this, what this does is effectively winnows out everybody except for people like me who are just too stubborn and don't know what else we would do with our lives. It keeps people like me in journalism but other than people like me, other than the stubborn ones who are basically used to being poor, that self-selects for people who come from money, who are born into wealth, who have made their money elsewhere and so on. And that skews journalism. That skews the stories that they choose to write and it skews the angles that they take. It doesn't serve the working class at all or the creative class to have people self-selected such as rich people self-selected into journalism and them only. We need to have a diversity of viewpoints, a diversity of life experiences, a diversity of everything in order to adequately cover the United States and the world. And I have so much more else I want to say but I think I hit my four minutes.

Thank you so much, by the way. It's excellent to be listened to. And that's my qualitative analysis since we already have the quantitative.

Lina Khan:

Thanks so much, Brooke. And next we'll go to Todd.

Todd Achilles:

Great.

Chair Con, Assistant Attorney General Kanter, thank you for the opportunity to participate in this forum. I'm Todd Achilles, the co-founder and CEO of Evoca TV. We are a NextGen TV broadcaster that offers service in Idaho, Colorado, Arizona and Michigan. Americans pay too much and have too few options to watch TV. So, over the last four years, we have harnessed breakthrough new broadcast technology to bring a high quality, low cost alternative to the concentrated TV market. With our innovative media distribution platform, we offer a competitive bundle of pay TV channels using broadcast TV spectrum and an antenna in the home. Our service is particularly valuable in underserved communities with poor infrastructure. Importantly, Evoca represents the first new facilities based media distributor in over 30 years. Independent content owners are eager to distribute through our platform and we have dozens of licensing agreements. However, a handful of large vertically integrated media companies, which all came about from previously approved mergers between the content companies and cable or broadcast distribution companies are refusing to license their content to Evoca even at the highest prices they charge anyone else.

They are withholding content from Evoca because we are a threat to their distribution business. The exclusion is material because the TV network's controlled by these vertically integrated media companies are among the most watched. Using 2021 Nielsen viewership data, 84% of the sports hours watched are under their control. 81% of Spanish programming, 81% of kids programming and 70% of news programming. Beyond these national networks, we face local challenges too. Phoenix is a great example. The recently merged Sinclair Broadcast and Fox Sports Network, which now calls themselves Valley Sports, controls 83% of pro sports events in this market. Sinclair Bally's readily distributes to all the other MVPV's in the market but absolutely refuses to do business with us even though we reach twice as many homes as the local cable company. Hundreds of thousands of Arizona families pay too much or can't access local sports because of this discriminatory conduct.

Fortunately, Colorado is the exception. In Colorado, we have access to independent content that's not vertically integrated. In Denver and Colorado Springs, we are growing as fast as we can build set top boxes. We have sustainable margins at a $25 a month service price and among the industry's lowest churn. Coloradans love our service because we make regional sports accessible and we save families over $700 a year. When you compare our experience in Arizona with that in Colorado, you could see that the pro enforcement voices who have long warned about these vertical mergers, they were right. We see it firsthand. It's not a theory anymore. These vertically integrated companies are using content to protect distribution and distribution to protect content. It's also important to acknowledge that the justification this handful of vertically integrated media titans gives us for refusing to let Evoca distribute their content at their standard rates. It's not only odd, it's all odd in the same way among the companies.

We have seen both explicit and implicit evidence of coordinated behavior to boycott Evoca and exclude us from the distribution market. It's summary allowing the consolidation of content and distribution not only created moats to protect their content businesses but also made it easier and more likely for them to coordinate the protection of their distribution businesses. I urged the FTC and DOJ, not only to look harder at future mergers that combine content companies and distribution companies, but also to investigate the apparent coordinated boycotting of distribution competitors by these media titans that have already consolidated across the value chain. Blocking Evoca and other innovators from competing in the distribution market serves only to restrict consumer access and keep prices high. Thank you for your time.

Lina Khan:

Thanks so much, Todd. And thanks to everybody for these remarkable stories and experiences that you've shared with us, which I think have helped paint a very vivid picture of the very real effects that mergers and acquisitions can have in these sectors.

I'm struck, I think in particular, by both some of the very real material effects that you've described, including higher prices for content, lower quality of content as well as lower income and worse quality jobs for content producers. But also some of the broader effects that can sometimes be more difficult to quantify for enforcers but are no less real around basic questions of what it means for an increasingly small number of firms to be controlling the channels and arteries through which content and news is distributed and sometimes produced including macro effects for how information is flowing through our economy and the very real effects for our democracy. So, just wanted to give a very big and deep thank you to all of you for sharing your stories and experiences with us today.

AAG Kanter, was there anything you wanted to share?

Jonathan Kanter:

Yeah. So, thank you so much for those gripping stories and comments. I'd like to just share some observations because it hits on so many issues that are important for us to consider in the context of understanding mergers. And so, we heard about how consolidation can result in a decrease in the amount of original programming and programming that's popular and the silencing of voices. We've heard about how it can prevent from the sharing of profits by content creators. We heard a very important way of framing the issue from Adam, which is, whose voice will this merger silence? It's important for us to understand the effect on speech and the effect on the output of content. We heard about stagnant wages as a result of consolidation and support staff wage suppression in various different areas including venues and how certain effects that maybe can be portrayed by some as being ambiguous, as being obvious when you're on the ground. Independent artists being susceptible to and victims of power asymmetries and punishing firms for content creators.

Interestingly, also about how in many respects artists are paid based on distribution whereas companies are paid based on stock price growth and wealth and how the two are very much out of sync. We heard about the harm from behavioral remedies to address otherwise anti-competitive mergers and how difficult it is to truly solve an anti-competitive merger. And that conditions on a merger that are designed to preserve competition can often be difficult to administer, expensive for victims to monitor and report, and often too little too late in terms of addressing harm. Brooke spoke eloquently and passionately about being in a family business of journalism and how important journalism is to a functioning and thriving democracy and how our newsrooms have declined in size. And this creates these news deserts and the lack of professional journalism creates voids for disinformation.

Julie talked about how growing duopolies in the news industry and how the reduction in investment in original journalism and investing in newsrooms not only harms the free flow of news but harms the communities that they serve. And finally, we heard of about interesting aspects relating to vertical mergers and how much content is controlled by a small number of companies and how withholding that content can deprive companies of the ability to succeed and compete. And then an interesting natural experiment from Todd comparing an experience in one market like Arizona to another in Colorado. So, we are listening and these are very important issues and exactly the kind of information that we need to make sure we understand and can spot and that when we think about a framework to address competitive mergers that were capable of detecting.

So, with that, I think I'm going to turn it over to Peter Kaplan who is going to help us facilitate our public speaking portion of the meeting. So, Peter, take it away.

Peter Kaplan:

Thank you, Assistant Attorney General Kanter.

Before we begin, I want to remind our next speakers that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable law regulation or order. And it may be made available in whole or [inaudible 00:46:46]...

...Public record in accordance with the commission's rules. Each speaker will be given two minutes to address Chair Con and Assistant Attorney General Kanter. And our first speaker is Kevin Erickson.

Julie Reynolds:

Hello, I am Kevin Erickson with Future of Music Coalition. For more than 20 years now, we've been looking at the problems with consolidation in music. We've seen it in every part of the industry and in every adjacent industry. And unfortunately, we've mostly felt undefended. One thing that we have observed is that regulators tend to follow the lead of economists who used to assume that companies would behave in ways that increase profits. That was always an incomplete picture because in creative industries, sometimes musicians or independent labels or independent venues make creative business choices that some economists call rational that are core to their creative intent or music community values like elevating unheard voices. Now, that kind of stuff is a public good. It's really important to preserve the ability to have a broad range of choices and think about that when you're thinking about harms. But at some level, economists are right that the work does have to be profitable enough to be sustainable but not everybody's playing by those rules with the rise of financialization,

Julie Reynolds:

Profitability and indeed sustainability can be less important than speculative valuation, data hoarding, returns for private equity or hedge funds. And so, in various parts of music and adjacent businesses, we've seen consolidation lead to the adoption of extraction based business models. And there can be a predatory element. There are different incentives. Buyer specific factors haven't been adequately considered in that and that has resulted in real harms to musicians, music communities and to cultural diversity. We've seen this printed in online journalism, the loss of local music coverage, the decimation of all weeklys. We've seen radio conglomerates fire all the DJs and replace them with robots. And when we think about ticketing markets, we do need to look at the secondary market ticketing companies the same way. Consolidation's happening there too and many artists feel these companies drive up ticket prices way up past face value and funnel that revenue away from artists and independent venues just extracting it for the benefit of investors.

I agree with the wrestle of that conduct remedies being wholly inadequate that we have to understand as well that Ticketmaster is not the only problem here. More broadly, if we look back at Ticketmaster Live Nation, I think that it did place an enforcement burden on the people with the least amount of resources, musicians, venues and promoters. They are folks at DOJ who genuinely wanted to be helpful and responsive. Artist groups like us tried to explain the grievance process but it essentially created uncompensated labor. So, let's not do that again. Thanks.

Peter:

Thanks, Kevin. Our next speaker is John Bergmayer.

John Bergmayer:

Hello. My name is John Bergmayer. I work at the public advocacy group, Public Knowledge. And in my work, I represent consumers and speak to many smaller media companies. Many of whom say they're afraid to speak publicly of their experiences for fear of retaliation from major business partners. Consolidation concentration loosens media regulations and new technology and new business models have upended the media industry, which is fragmenting and consolidating at the same time in a different way is adding to the complexity and can be even simplistic.

To talk about the media industry, the situation is very different with book publishing, TV, movies, journalism and in music. My comments focus on the video marketplace where the effects have been mixed for both creators and consumers. One way to ensure that the benefits of new technology and methods of distribution accrue mostly to consumers and creators is through strengthened antitrust and media ownership policy. I think the current FTC and DOJ leadership understands the importance of strength to antitrust throughout the economy, including media, but media specific policies are also essential, including clear limits on consolidation and cross ownership, banning unfair contractual terms like most favored nation clauses that prevent creators from selling to all willing buyers and hold back the development of new competitors. Policy makers also need to ensure that public safety information and local news and programming continue to be available to people who primarily access content online.

Finally, there need to be clear rules to limit self-preferencing. For example, the rise of video streaming services and the lesson importance of the cable TV bundle give people more choice and flexibility and can save the money. Managing this complexity can be its own challenge in terms of finding content, managing subscriptions. And additionally, catalog content is being licensed less widely, driving people to services launched by legacy media companies like Disney. Finally, devices and software that people use to access streaming video can be invasive of people's privacy and offer opportunities for platforms to preference their own programming and can even act as gatekeepers charging a toll to creators and programmers that want to reach an audience. Even the rise of self-publishing platforms like YouTube, while creating new opportunities for creators, can lock those same creators into unfair terms since they have very few alternatives. In short, while new technologies and distribution models are very promising, policymakers need to take action to ensure that the promise will be realized by everyone, not just media conglomerates and technological gatekeepers. Thank you.

Peter:

Thanks, John. Our next speaker is Charles Sanders.

Todd Achilles:

Thank you. Thanks for the opportunity to speak today. I'm going to be very brief because I've submitted written comments on behalf of the songwriters, Guild of America, the society of composers and lyricists and Music Creators North America. And without going into great detail, I'm not here to complain about consolidation in the music industry or to alleged that there isn't a way to move forward through best practices rather than through litigation under the antitrust provisions of law. What I do want to point up is that vertical integration in a cultural industry, like the music industry, can be very damaging to the ability to individual creators and to continue to influence the direction in which their art form is going and their ability to make a living in the 21st century. And we now are faced in the music industry with three companies, multinational conglomerates, that control over 70% of the recorded music in the world. And those same companies own almost two thirds of the musical compositions created and still under copyright.

That creates a situation where you have people sitting vertically integrated on the same side of a table when negotiating deals that eventually will form the terms that are going to compensate the creators on whose backs the industry is built. What we would truly like to see as independent music creators is the imposition or at least the suggestion by FTC and DOJ. The best practices must include the kind of inclusion and meaningful participation in rate setting and rule making and other issues that involve music creators livelihoods in ways that allow the people, the creators who are protected under article one section eight and the first amendment, to actually participate in this process and not to be victimized constantly.

So, we are inviting DOJ and FTC to call on us for any information that you may require in framing how you may want to address these issues. And it would certainly be a welcome series of discussions to let you know, in much greater detail, what is going on inside the music industry, how creators can be helpful in correcting what we see is an unfair system at a very un-level playing field, much in the same way as was described by many of the other speakers. So, I will leave it at that but thank you for your interest. It's important to American culture and to free speech and we know that you guys understand that and look forward to working with you.

Peter:

Thanks, Charles.

Our next speaker is John Breyault.

Damon:

Good afternoon, Chair Con and Assistant Attorney General Kanter.

My name is John Breyault and I'm the Vice President of Public Policy, Telecommunications and Fraud with the National Consumers League. Founded in 1899, NCL is America's oldest consumer advocacy organization. I appreciate the opportunity to speak today about the troubling impacts consolidation in the marketplace for live event entertainment. As the commission and department are aware, just one company, Live Nation Entertainment, controls roughly 80% of the primary ticketing market. In the DOJs own words, Ticketmaster benefits from, "High barriers to other companies successfully, substantially and profitably entering or attempting to expand in the market for primary ticketing services." Since its merger with Ticketmaster in 2010, Live Nations ambitions to dominate the live event industry have not abated.

According to MandAsoft, Live Nation has made more than 50 acquisitions post-merger. While the DOJs decision to extend the length of its consent decree with Live Nation was welcome, the department has continued to bless consolidation in the industry. For example, in April 2020, the department approved Live Nation's acquisition of a competing ticketing platform that was literally called Rival. Consumers continue to be harmed by conduct enabled by Live Nations market dominance. In 2018, the GAO found that, on average, purchasers paid an additional 27% of the tickets original value in add-on fees. Recent media reports have found add-on fees as high as 78% of the ticket starting price. This is after consumers must contend with rampant ticket hold backs that artificially limit supply, scalpers employing illegal ticket buying bot software and look alike white label resale sites masquerading as the box office. The harmful impacts of Live Nations near monopoly are unacceptable. We urge the DOJ and FTC to conduct a thorough investigation of these practices and act to ensure market health and consumer protection. Thank you.

Peter:

Thank you, John. And our next speaker is Brian Hess.

Brian Hess:

Thank you. I represent Sports Fans Coalition. Founded in 2009, we are a national nonprofit advocacy group devoted to representing fans wherever public policy impacts the games we love. We're best known for leading the campaign to end the FCC sports blackout rule, which we accomplished in 2014. We're also the creators of the sports betters bill of rights, a set of consumer protection principles that should accompany legalization of sports betting. Opening the ticket resale market and combating ticket fraud has been a priority of ours for many years. And in 2018, we participated in the FTCs online event ticket workshop. Today, I hope to reiterate some of those concerns and call on the commission to do more to protect consumers from the monopolistic practices of companies like Ticketmaster.

When Ticketmaster and Live Nation merged, the DOJ estimated that the Live Nation Ticketmaster merger would increase the HHI to more than 6900, astronomically higher than the 1800 that the horizontal merger guidelines considered to be a highly concentrated market. Nonetheless, the deal was given the green light and since 2010, no new competitive entrants have emerged as a significant competitor to Ticketmaster in the primary live event ticketing market. As the industry's dominant primary ticketer, Ticketmasters restrictive ticketing policies artificially depressed supply, being higher than normal prices on both the primary and secondary markets. They embrace non-transferrable ticketing practices, which creates a burden for consumers, limiting the ability for fans to transfer, giveaway or resale tickets that they have rightfully purchased.

While this may increase the barriers to ticket scalping, it also prevents fans who purchased a ticket and can no longer attend the event from easily giving that ticket away to a friend, family member or charity and possibly recouping their cost. This of course assumes the fan was fortunate enough to get the ticket in the first place. Thanks to widespread and undisclosed ticket hold-backs and special agreements with secondary ticket brokers, less than half of the tickets on average for a live event are ever made available to the public. Of that smaller supply of tickets, brokers utilizing ticket buying bot software continue to acquire large numbers of tickets despite the anti-scalping technology employed by Ticketmaster and threat of prosecution under the BOTS Act. Especially now as live events begin happening again, I'd like to call on the commission to reengage with the consumer advocates who called the reforms in 2018 and actively seek to protect consumers from the anti-competitive practices rampant in the marketplace. Thank you. I

Peter:

Thank you, Brian. And that concludes our comments from members of the public. I'll now turn it back over to Assistant Attorney General Kanter.

Jonathan Kanter:

Thank you, Peter. And thank you to all the folks who bravely stood up to provide public comments. It's not lost on us that speaking out publicly against monopolies requires courage. It requires the ability to go up against very powerful companies and interests. And so, we recognize that and also appreciate how you shared your stories and shared your firsthand experiences. We need that information in order to understand what's working in our process, but frankly, what's not working in our process. And as we're revising the merger guidelines, we're making an effort, hopefully the first of many, to reach out beyond just the insular Washington DC community and make sure we're speaking to those who are living and breathing the effects of corporate concentration and consolidation. Without that, we can't fully assess what it takes to address anti-competitive conduct, anti-competitive mergers and truly understand market impacts. And in these listening sessions, including today, have been enormously valuable for us in that process. I certainly want to thank my colleagues at the FTC and at the DOJ for the hard work in preparing this.

I thank all of you for participating and also just share that with respect to media, we're talking about news, we're talking about music and video. This is the lifeblood of our democratic society. Free speech, open sharing of views and information. It's so much more than just a price. It goes really to the essence of what makes our country amazing. And it's absolutely critical that when we are thinking about the effects of concentration, that we make every effort to ensure that we are protecting that which makes us great. And I'm just so moved by so many of the stories we heard today and recognize that without vibrant news media of professional journalists, without content creators, without the professionals that work to support content creators in the distribution of information, news and art, we cease to be the great nation that we've become. And so, thank you for sharing your stories. We are listening. And as I said, hopefully this will be the first of many opportunities for us to continue our dialogue.

So, with that, I want to thank all of you, thank the FTC and I think that's a wrap.