

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
COMMERCE
HEALTH, EDUCATION,
LABOR, AND PENSIONS

August 23, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chair Khan:

I write to again raise grave concerns regarding the announced Energizer plant closures in Fennimore and Portage, Wisconsin, and to urge the Federal Trade Commission to take decisive action to investigate the harmful impact that market consolidation in the battery industry has had on consumers and working people. I remain unsatisfied that the Commission's 2018 response to the Energizer-Spectrum Brands merger was adequate.

Following this merger, hundreds of Wisconsinites are now on the cusp of losing a good-paying, union job. Revisiting this merger, on behalf of these workers and the consumers who now face higher prices, is clearly in the public interest and squarely within the Commission's authority to investigate mergers both before and after they are completed. I urge the Commission to swiftly undertake a thorough investigation into the 2018 merger, which unfortunately the Commission has not yet done. I also urge the Commission to conduct a retrospective of its antitrust enforcement activity, or lack thereof, on the American manufacturing industry. This retrospective must examine the extent to which the Commission has historically stood on the sidelines while the American manufacturing sector has used consolidation to reduce the share of its workforce that is represented by a union.

The Department of Justice and the Federal Trade Commission's new draft merger guidelines rightly recognize that anticompetitive behavior harms working people and threatens Wisconsin jobs. I commend these new draft guidelines and urge the FTC to apply their principles when conducting the requested investigation of the 2018 Spectrum Brands-Energizer merger and manufacturing industry retrospective. The 2018 merger raises several red flags under the new guidelines – from increasing concentration in an already highly concentrated market, to eliminating substantial competition between firms, to increasing the risk of coordination, to entrenching and extending a dominant position.¹ Moreover, considering the harms to workers so clearly on display in Portage and Fennimore, the new draft guidelines' acknowledgment that mergers often harm workers further justifies a comprehensive investigation and retrospective analysis. The anticompetitive concerns known at the time of the merger, the plain

¹ See U.S. Department of Justice and Federal Trade Commission, Draft Merger Guidelines, at: <https://www.ftc.gov/legal-library/browse/ftc-doj-merger-guidelines-draft-public-comment>.

anticompetitive effects of the consummated merger, and the disturbing pricing behavior that has followed² suggest that it was a mistake for the agency to forego a more thorough investigation of the 2018 merger. I urge the Commission to correct this mistake immediately.

To prevent these mistakes in the future, I also urge the Commission to undertake a retrospective analysis of its antitrust enforcement, or lack thereof, on the American manufacturing industry and its workers—with a particular focus on the use of mergers and acquisitions as a tool to reduce a firm’s share of union workers. Union workers, of course, have historically been able to use collective bargaining to command higher wages and better working conditions. Relentless consolidation, however, has led to plant closures and the offshoring and loss of good-paying, manufacturing jobs in Wisconsin and nationwide. The Commission’s historical enforcement choices are an important part of this story. Prior retrospectives, including the work of the Hospital Merger Litigation Task Force, have informed the Commission’s work and given it the tools it needs to more effectively prevent market consolidation, and the retrospective proposed here would do the same for the benefit of Wisconsin.

As was rightly noted upon the release of the new draft merger guidelines, antitrust law was designed from its inception to protect American workers.³ Without a full understanding of the effect of the Commission’s enforcement actions and inactions on the manufacturing industry, the Commission will be hamstrung in helping Wisconsin’s workers, particularly its manufacturing workforce. A retrospective study analyzing the Commission’s enforcement actions and enforcement discretion for mergers involving manufacturing firms, and these decisions’ subsequent effects on working people and unionized workforces in particular, is a worthy use of resources. This effort will undoubtedly help the Commission carry out its mission to better protect American workers in the future.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Baldwin". The signature is written in a cursive, flowing style.

Tammy Baldwin
United States Senator

CC:
The Honorable Alvaro Bedoya
The Honorable Rebecca Kelly Slaughter

² See, e.g., Energizer, Walmart Sued for Conspiring to Raise Battery Prices, at <https://www.reuters.com/legal/energizer-walmart-are-sued-conspiring-raise-battery-prices-2023-04-29/>.

³ See Statement of Commissioner Alvaro M. Bedoya, Joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter, Regarding the Proposed Merger Guidelines Issued by the Federal Trade Commission & U.S. Department of Justice, July 19, 2023, at: https://www.ftc.gov/system/files/ftc_gov/pdf/p234000_merger_guidelines_statement_bedoya_final.pdf.