

United States Senate

WASHINGTON, DC 20510

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

April 6, 2023

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

Dear Chair Khan:

I write to express deep concerns regarding the effects of Energizer's 2018 acquisition of Spectrum Holdings and to inquire about the basis of the Federal Trade Commission's (FTC) failure to challenge this merger. From price increases to the announced closure of two plants in Wisconsin, this merger has been profoundly and predictably damaging to Wisconsin families. Energizer's dominant position in the battery market even before the acquisition and its post-merger behavior in labor and consumer markets raise material questions regarding the Commission's 2018 decision that demand immediate explanation.

In 2018, the FTC unconditionally cleared Energizer's acquisition of Spectrum Holdings. This approval shocked Energizer's own investors¹ – and understandably so. The deal, which was estimated to give Energizer control of 40 percent of the United States' battery market, 60 percent of the world hearing aid battery market, and 85 percent of the total battery market,² was a boon to investors. A market analyst noted at the time that the merger created a “functional duopoly” that was expected to “yield pricing and margin benefits for both companies for years to come.”³

Such a drastic restructuring to the benefit of two dominant firms would seem to “scream out”⁴ for an in-depth transaction review. In fact, the deal garnered a more thorough review in the European Union. Unlike the FTC, the European Commission found that the proposed transaction “would have significantly reduced competition” for disposable household batteries, rechargeable household batteries, specialty batteries, hearing aid batteries, and portable battery chargers.⁵ The potential harm from increased prices and reduced choice was great enough that the European Commission required divestitures of certain business lines and exclusive supply and license agreements to mitigate these

¹ J. Fineman & H. Levitt, Energizer Deal's Antitrust Approval Shocks Investors, at: <https://www.bloomberg.com/news/articles/2018-04-02/energizer-deal-s-antitrust-approval-shocks-investor-m-a-logic#xj4y7vzkg>; K. Victor, Mixed Signals? Dissecting FTC's Decision to Clear Energizer-Spectrum Deal, at: <https://www.mlexwatch.com/articles/3104/print?section=ftcwatch>.

² Victor, *supra* 1.

³ *Id.*

⁴ *See, id.*

⁵ European Commission, Mergers: Commission Approves Acquisition of Spectrum Brands' Batteries and Portable Lighting Business by Energizer, Subject to Conditions, at: https://ec.europa.eu/commission/presscorner/detail/it/IP_18_6765.

consumer-damaging effects⁶ – despite the European market being comparatively less concentrated.⁷ The FTC, on the other hand, seemed to only pursue a cursory investigation of the merger by foregoing a standard second review, leading to a duopoly that continues to dominate the U.S. market.

This duopoly has caused predictable harms to consumers. In June of 2021, Energizer notified customers in the United States and Canada of its intent to implement higher prices across 85 percent of its North American portfolio, despite net sales growth, increased adjusted free cash flow, and higher adjusted earnings.⁸ Given its dominant market position, Energizer was able to raise its prices with little fear of losing its customers. These price increases, which contributed to the bottom line of an already profitable corporation, were made possible by a seemingly cursory review by the nation’s top consumer watchdog.

Even worse is that this merger may potentially lead to the loss of hundreds of union jobs in Wisconsin. In January of this year, Energizer told union representatives that it plans to offshore Wisconsin manufacturing jobs and send other jobs to states with fewer worker protections.⁹ In February, Energizer posted “Shutdown Plans” in employee breakrooms, detailing the phased closure of plants in Portage and Fennimore,¹⁰ both of which were included in the 2018 merger. These proposed shutdowns, which appear to be part of the company’s “Project Momentum,”¹¹ could lead to the elimination of 600 good-paying, union jobs in Wisconsin. These families – who may lose their livelihoods to benefit an already sizeable profit margin¹² – deserve answers from the agency that failed to challenge this merger.

Inadequate antitrust enforcement has real and predictable effects on Wisconsin families, including price increases, offshoring, and plant closures.¹³ While I appreciate the Commission’s renewed commitment to antitrust oversight and enforcement,¹⁴ this appropriate oversight must benefit Wisconsin workers and consumers. Given the seemingly brief review of the Energizer-Spectrum

⁶ *Id.*

⁷ Fineman, *supra* 1.

⁸ Reuters, Battery Maker Energizer to Raise Prices, Offset Higher Costs, at: <https://www.reuters.com/article/energizer-hldgs-prices-idUSL3N2NK2W4>; Energizer Holdings, Inc., Energizer Holdings, Inc. Announces Price Increases Across its Global Battery Portfolio, at: <https://investors.energizerholdings.com/2021-06-02-Energizer-Holdings,-Inc-Announces-Price-Increases-Across-its-Global-Battery-Portfolio>.

⁹ M. Aarsvold, The Future is Uncertain for Wisconsin Energizer Battery Plants, at: <https://www.nbc15.com/2023/01/20/future-is-uncertain-wisconsin-energizer-battery-plants/>.

¹⁰ M. Aarsvold, Energizer Posts Plans to Close Wisconsin Battery Plants, at: <https://www.nbc15.com/2023/02/26/energizer-posts-plans-close-wisconsin-battery-plants/>.

¹¹ Energizer Holdings, Inc. Announces Fiscal 2022 Fourth Quarter and Full Year Results and Financial Outlook for Fiscal 2023, at: <https://www.prnewswire.com/news-releases/energizer-holdings-inc-announces-fiscal-2022-fourth-quarter-and-full-year-results-and-financial-outlook-for-fiscal-2023-301678158.html> (noting that Project Momentum is intended to generate annualized savings of \$80 to \$100 million over the next two fiscal years).

¹² See Energizer Holdings Inc., Energizer Holdings, Inc. Announces Fiscal 2023 First Quarter Results, at: <https://investors.energizerholdings.com/2023-02-06-Energizer-Holdings,-Inc-Announces-Fiscal-2023-First-Quarter-Results> (demonstrating a first quarter adjusted net earnings of \$51.8 million).

¹³ See, S. Miller, Corporate Mergers Hurt Workers – and Drag Down the Job Market, at: <https://www.washingtonpost.com/outlook/2021/10/21/corporate-mergers-layoffs-antitrust/>; S. Miller & K. Brown, To Save Jobs and Slow Inequality, Stop the Merger Frenzy, at: <https://www.economicliberties.us/our-work/merger-frenzy/>.

¹⁴ Memo from Chair Lina M. Khan to Commission Staff and Commissioners, Vision and Priorities for the FTC, at: https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf.

Holdings merger and the potential loss of 600 good-paying union jobs, Wisconsin families deserve to know why the FTC failed to challenge this deal. To that end, I respectfully request answers to the following questions by May 6, 2023:

- On what basis did the Federal Trade Commission approve the 2018 merger between Energizer and Spectrum Holdings?
- Why did the Commission decline to make a second request for information regarding the acquisition, a decision that was incongruent with other mergers reviewed at the time?
- To what extent did promised “efficiencies” contribute to the FTC’s assessment of the merger? Did these “efficiencies” include potential plant closures, job relocations, or offshoring?
- What procedures are in place, if any, for the Commission to study the later effects of consummated mergers?
- Under what circumstances would the Commission deem it appropriate and important to reopen an earlier investigation into a completed merger?
- To what extent did the Commission consult with the Wisconsin Department of Justice regarding the proposed merger?
- How did the Commission define the relevant market when examining the proposed merger between Energizer and Spectrum Holdings? To what extent did the Commission consider specific market segments – e.g., hearing aid batteries – when examining its potential effects?
- To what is the different approach to the merger as compared to the European Commission attributable – i.e., why did the FTC decline to require divestment of certain business lines or other protective measures?
- To what extent did the Commission consider the effect of the merger on workers employed by Energizer and Spectrum Holdings?
- To what extent did the Commission examine the potential for price increases across the consumer battery market because of the merger?

Thank you for your prompt attention to this matter.

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