

United States Senate
WASHINGTON, DC 20510

December 5, 2024

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

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Re: Possible Anticompetitive Conduct by FanDuel and DraftKings

Dear Assistant Attorney General Kanter and Chair Khan:

We write to raise concerns regarding FanDuel's and DraftKings's conduct that may be violating Section 1 of the Sherman Act prohibition on coordination to obstruct or impair competition. We urge you to look into these allegations to ensure that competition is protected and consumers continue to benefit from innovation and new offerings in sports entertainment.

In 2016, FanDuel and DraftKings attempted to merge. The FTC, California, and the District of Columbia successfully blocked the transaction after finding that it would have given the combined firm a 90% market share—substantially lessening competition in violation of the Clayton Act.¹

Shortly after their failed merger, FanDuel and DraftKings expanded their dominance by leveraging their positions in fantasy sports to become online sports betting giants. FanDuel and DraftKings may be compounding these harms through anticompetitive conduct. Their market

¹ *FTC and Two State Attorneys General Challenge Proposed Merger of the Two Largest Daily Fantasy Sports Sites, DraftKings and FanDuel*, June 19, 2017, <https://www.ftc.gov/news-events/news/press-releases/2017/06/ftc-two-state-attorneys-general-challenge-proposed-merger-two-largest-daily-fantasy-sports-sites>.

power is being challenged by a number of innovative companies.² Yet, rather than competing with these new entrants on the merits, public reports have alleged that FanDuel and DraftKings, together and through their trade association the Sports Betting Alliance, have undertaken a coordinated effort to pressure crucial business partners not to do business with these new players.³

For example, there are concerning reports that FanDuel and DraftKings have worked in concert to exert pressure on smaller rivals to stymie market access.⁴ This reportedly includes interfering with their rivals' relationships with major sports leagues, marketing partners, payment processing companies, and critical vendors.

Such coordinated attacks risk cutting off these new, innovative competitors from critical technology inputs and marketing partnerships. Even modest obstruction in these negotiations can delay entry and expansion, and potentially deprive the new entrants of access to the capital needed to vigorously compete with the larger players, FanDuel and DraftKings.

After their merger to monopoly was blocked, it seems that FanDuel and DraftKings have arguably acted as one company, violating our antitrust laws. Your agencies are charged with protecting competition and consumers from exactly this kind of anticompetitive behavior. Accordingly, we ask that you give serious attention to these allegations, and to undertake any investigative or enforcement actions necessary to protect competition. Effective enforcement of antitrust law protects consumers—something that is especially important in a new industry like sports betting where the risk of addiction is far greater than most industries.

FanDuel and DraftKings were prevented from merging because it would have substantially lessened competition and harmed consumers by forming a monopoly. They should not be allowed to accomplish through collusion what was prevented through acquisition.

Sincerely,



Senator Mike Lee
United States Senator



Senator Peter Welch
United States Senator

² *Antitrust Regulators Must Protect Fantasy Sports Competition*, Mar. 18, 2024, <https://www.law.com/therecorder/2024/03/18/antitrust-regulators-must-protect-fantasy-sports-competition/?slreturn=20241202154027>

³ *Id.*

⁴ *Id.*