

United States Senate
WASHINGTON, DC 20510

January 22, 2026

Ted Sarandos
Greg Peters
Co-CEOs, Netflix, Inc.
121 Albright Way
Los Gatos, CA 95032

David Zaslav
CEO, Warner Bros. Discovery, Inc.
230 Park Avenue South
New York, NY 10003

Dear Messrs. Sarandos, Peters, and Zaslav:

I write as Chairman of the Antitrust Subcommittee of the U.S. Senate Judiciary Committee to request information regarding the proposed purchase of certain Warner Bros. Discovery (“WBD”) elements by Netflix. This merger raises concerns about potential abuse of the merger review process, particularly the exchange or misuse of competitively sensitive information and the competitive harm that can arise while a transaction remains under review. I am also concerned that this proposed transaction could operate as a so-called “killer non-acquisition,” effectively weakening a major competitor through the pendency of the merger review process.

Congress enacted the Hart-Scott-Rodino Antitrust Improvements Act of 1976 to provide federal antitrust agencies with advance notice and an opportunity to review significant mergers before completion. That process, however, can be misused if an acquiring firm seeks to tie up a rival for an extended period, weaken that rival as a competitive constraint, or obtain competitively sensitive information under the guise of due diligence. Even when a transaction is ultimately blocked or abandoned, such conduct can distort competition by chilling the target’s ability to compete and by providing the acquirer with information that could later be used anticompetitively.

Netflix’s reported proposed acquisition of WBD’s studios and streaming business raises these concerns. Based on publicly available information, this transaction appears likely to raise serious antitrust issues, including the risk of substantially lessening competition in streaming markets. If consummated, the acquisition could eliminate a major competitor, consolidate control over an extensive content library, and increase bargaining power over creators and talent.

The anticipated merger review process will likely be extensive. Lengthy merger reviews can weaken target firms by creating uncertainty for employees, business partners, and content creators; delaying strategic decisions; and impairing the firm’s ability to compete effectively. During this period, creators deciding where to pitch new projects may question whether WBD

can make and honor long-term commitments. Producers evaluating distribution strategies may also be uncertain about WBD's approach to theatrical versus streaming release windows. These dynamics may advantage Netflix while imposing competitive harm on WBD, the broader market, and consumers.

Although the merger agreement reportedly includes a termination fee of approximately \$5.8 billion if regulatory approval is not obtained, that amount represents a small portion of Netflix's market capitalization. It is therefore appropriate to examine whether the costs to Netflix of a prolonged review are outweighed by any competitive benefits that might accrue during that period. These considerations raise serious questions about the incentives underlying the proposed transaction, particularly given WBD's ongoing efforts to expand its competing streaming services internationally.

Recent actions taken by Netflix underscore these concerns. Last week, Netflix announced a multi-year global Pay-1 licensing agreement with Sony Pictures Entertainment, granting Netflix exclusive worldwide streaming rights to Sony's feature films following theatrical and home entertainment windows. This arrangement brings additional high-value content behind the Netflix paywall and may further limit competing services' ability to secure comparable offerings. When considered with the WBD acquisition, these developments raise broader questions about cumulative content concentration and the potential for reduced competition across streaming markets.

I am also concerned about the potential exchange or misuse of competitively sensitive information during due diligence and merger review. Access to such information could enable anticompetitive behavior, including replication of projects in development, strategic planning, or algorithmic targeting. Past enforcement actions demonstrate that merger processes can undermine rivals even without completion and that access to sensitive information can facilitate anticompetitive conduct.

These concerns are not hypothetical. Companies have used merger agreements as vehicles to slow or stop rivals without ever completing the transactions, in what has been described as "killer non-acquisitions."¹ Large technology platforms also have long practiced a strategy of copying the products and services of disruptive competitors,² a strategy that would most certainly be aided by access to competitively sensitive information.

Please direct your responses to the Subcommittee regarding the following inquiries within fourteen (14) days of receipt of this letter:

1. Confirm whether any Netflix or WBD board member, executive, or advisor has expressed the view that a prolonged merger review, independent of consummation, could weaken WBD or otherwise benefit Netflix.

¹ Steven Salop, *Novo Nordisk's Killer Non-Acquisition Merger Contract Proposal Is a Case of "Heads I Win, Tails You Lose"*, PROMARKET (Nov. 11, 2025), <https://www.promarket.org/2025/11/11/novo-nordisks-killer-non-acquisition-merger-contract-proposal-is-a-case-of-heads-i-win-tails-you-lose/>.

² See, e.g., Alex Harman, *Big Tech Platforms Stifle Innovation Through Anticompetitive Conduct*, HILL (Oct. 23, 2021), <https://thehill.com/blogs/congress-blog/technology/578133-big-tech-platforms-stifle-innovation-through-anticompetitive/>.

2. Confirm that no Netflix personnel will have access to WBD's competitively sensitive information from the date of this letter through shareholder approval of the proposed transaction.
3. Confirm that no Netflix personnel will have access to WBD's competitively sensitive information from the date of this letter through shareholder approval of the proposed transaction.
4. Confirm that no Netflix personnel gained any competitively sensitive information from the licensing agreement with Sony Pictures Entertainment.
5. Confirm that no Netflix personnel has shared, or will share, any competitively sensitive information from the licensing agreement with Sony Pictures Entertainment with WBD.
6. To the extent any Netflix personnel has had access to WBD's competitively sensitive information during due diligence (a) identify each such individual; (b) describe the information accessed; (c) specify when access was provided; and (d) confirm that all related documents and communications are being preserved.
7. To the extent any WBD personnel has had access to Netflix's competitively sensitive information during due diligence: (a) identify each such individual; (b) describe the information accessed; (c) specify when access was provided; and (d) confirm that all related documents and communications are being preserved.
8. If any individual with access to competitively sensitive information prepared summaries or analyses shared with individuals without such access, provide copies of those materials and identify the recipients, purposes, and dates of dissemination.

Sincerely,



Senator Mike Lee
Chairman, Subcommittee on Antitrust, Competition Policy, and Consumer Rights
United States Senate Committee on the Judiciary

cc: The Honorable Abigail Slater, Assistant Attorney General, Antitrust Division, U.S. Department of Justice

The Honorable Pam Bondi, Attorney General, U.S. Department of Justice