

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

April 10, 2020

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission (FTC)  
600 Pennsylvania Ave NW  
Washington, D.C. 20580

Dear Chairman Simons:

We write to express our deep concern about Covidien's 2012 acquisition of a rival manufacturer of ventilators, Newport Medical Instruments. As a nation, we find ourselves experiencing a massive and unnecessary shortage of essential medical devices like ventilators.<sup>1</sup> We owe it to all of the affected patients and medical professionals to understand whether this merger was indeed a "killer" acquisition that is partly to blame for the current scarcity of ventilators during a viral pandemic.

On March 29, the *New York Times* reported that as far back as 2007, U.S. public health officials recognized that our health care system would suffer from a catastrophic shortage of ventilators in the event of a serious pandemic.<sup>2</sup> In response, government officials contracted to secure inexpensive and accessible ventilators from a small but innovative manufacturer, Newport Medical Instruments. This endeavor fell apart after Newport was acquired by a much larger devicemaker, Covidien, in May of 2012.<sup>3</sup> After acquiring a competitor that appears to have threatened to undercut the prices of its own ventilators, Covidien withdrew from the project because it was "not sufficiently profitable."<sup>4</sup> Covidien's purchase of a potentially market-disrupting competitor that threatened to drive prices down has all the hallmarks of a killer acquisition, where an incumbent firm acquires and then shuts down a key rival.

As you know, the FTC approved this acquisition under the fast-track, early termination process one month after the deal was announced with minimal scrutiny.<sup>5</sup> Commissioner Slaughter

---

<sup>1</sup> The Society of Critical Care Medicine estimates that over the course of the pandemic, 480,000 ICU admissions will require ventilatory support. Optimistic estimates place the number of ventilators available nation-wide at roughly 200,000. (Mar. 19, 2020) (online at <https://sccm.org/Blog/March-2020/United-States-Resource-Availability-for-COVID-19>).

<sup>2</sup> Nicholas Kulish, Sarah Kliff, & Jessica Silver-Greenberg, *The U.S. Tried to Build a New Fleet of Ventilators. The Mission Failed*, NY TIMES (Mar. 29, 2020) (online at <https://www.nytimes.com/2020/03/29/business/coronavirus-us-ventilator-shortage.html>).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Early Termination Notice 20120682 (April 24, 2012) (online at <https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20120682>); *Covidien to Acquire Newport Medical Instruments* (Mar. 23,

has rightly called for an inquiry into the FTC's brief review of this merger.<sup>6</sup> It is possible that lives could be saved today had this emergency ventilator supply project continued. The FTC's expedited approval of this merger raises many questions, to which we believe Congress deserves answers.

Accordingly, we request that you provide copies to the Committee of all documents relating to the FTC's investigation of Covidien's acquisition of Newport Medical Instruments, including but not limited to recommendations submitted to the relevant assistant director or to the pre-merger notification office, by April 24, 2020. We also request you contact Committee staff by that date to schedule a briefing.

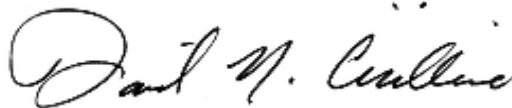
Thank you for your prompt attention to this matter.

Sincerely,



---

Jerrold Nadler  
Chairman  
House Committee on the Judiciary



---

David N. Cicilline  
Chairman  
House Subcommittee on Antitrust, Commercial  
and Administrative Law



---

Hank Johnson  
House Subcommittee on Antitrust,  
Commercial and Administrative Law



---

Jamie Raskin  
House Subcommittee on Antitrust, Commercial  
and Administrative Law



---

Pramila Jayapal  
House Subcommittee on Antitrust,  
Commercial and Administrative Law



---

Val Demings  
House Subcommittee on Antitrust, Commercial  
and Administrative Law

---

2012) (online at

[https://www.integrisequipment.com/Covidien\\_to\\_Acquire\\_Newport\\_Medical\\_Instruments\\_s/2202.htm](https://www.integrisequipment.com/Covidien_to_Acquire_Newport_Medical_Instruments_s/2202.htm)).

<sup>6</sup> Ben Remaly, *Ventilator Merger Scrutinized as Potential "Killer Acquisition"* GCR (Mar. 31, 2020) (online at <https://globalcompetitionreview.com/article/usa/1222543/ventilator-merger-scrutinised-as-potential-%E2%80%9Ckiller-acquisition%E2%80%9D>).



---

Mary Gay Scanlon  
House Subcommittee on Antitrust,  
Commercial and Administrative Law



---

Joe Neguse  
House Subcommittee on Antitrust, Commercial  
and Administrative Law



---

Lucy McBath  
House Subcommittee on Antitrust,  
Commercial and Administrative Law

cc: Jim Jordan, Ranking Member, House Committee on the Judiciary

F. James Sensenbrenner, Ranking Member, House Subcommittee on Antitrust, Commercial and Administrative Law