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CHAIR, DEMOCRATIC POLICY AND
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NORTH AFRICA, AND INTERNATIONAL
TERRORISM

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

April 6, 2020

The Honorable Makan Delrahim
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Assistant Attorney General Delrahim:

I urge you to closely scrutinize the proposed acquisition of Credit Karma by Intuit, the parent company of TurboTax and Mint. I have serious concerns that this transaction is an attempt by Intuit, a dominant incumbent, to eliminate an innovative and disruptive upstart, and that if permitted, it will harm the competitive process. Additionally, in light of the nation's response to the COVID-19 crisis, as well as the effect of this crisis on tax preparation, I request that you seek additional time to conduct a thorough review of the transaction's competitive effects.

The proposed acquisition would combine the largest online tax preparation company with the most disruptive. TurboTax is by far the most dominant of the six companies in this market, with a 66.7% market share—over four times the size of the next largest competitor.¹ Credit Karma, with a small but rapidly growing market share, has shaken up the market with transparent advertising and lower cost offerings for consumers.² By buying up a fast-growing, innovative startup, Intuit's proposed deal has all the hallmarks of a "killer acquisition," where incumbents buy out and then shut down a key rival.³

¹ Analysis of Electronic Filing Data in the IRS' External Customer Data Store Database, PROPUBLICA (Feb. 28, 2020), <https://www.documentcloud.org/documents/6788961-ProPublica-Analysis-of-IRS-Electronic-Filing-Data.html>.

² Eric Newcomer, *TurboTax Owner's Acquisition of Credit Karma Could Spark Antitrust Concerns*, BLOOMBERG (March 2, 2020), <https://www.bloomberqint.com/business/turbotax-owner-s-acquisition-of-credit-karma-could-spark-antitrust-concerns>.

³ Colleen Cunningham, Florian Ederer, & Song Ma, *Killer Acquisitions*, SSRN (March 22, 2019), <https://ssrn.com/abstract=3241707>.

An acquisition that reportedly gives one company control over 70% of a market exceeds the Justice Department’s Horizontal Merger Guidelines and therefore should be intrinsically suspect. The Guidelines also explain that enforcers must pay special attention any time that dominant incumbents like Intuit seek to acquire maverick upstarts that “play a disruptive role in the market to the benefit of customers.”⁴ Specifically, the Guidelines note that a merger can reduce competition when one firm “has a strong incumbency position and the other merging firm threatens to disrupt market conditions with a new technology or business model.”⁵ Companies like Credit Karma play a special role in fostering innovation and consumer benefit, and they often punch above their weight to force incumbents to address unmet needs and improve consumer prices and service.⁶ Permitting Credit Karma to be acquired by the incumbent it is threatening would potentially jeopardize the very competitive process that the Antitrust Division is charged with protecting.

In the absence of this merger, however, Credit Karma could continue to serve as a competitive check on TurboTax’s long history of deceptive and anti-consumer practices.⁷ Extensive reporting has documented how TurboTax goes to great lengths to advertise its products as free while steering consumers into paid products, including by knowingly using deceptive marketing tactics, employing “dark patterns,” and making its free services much more difficult to find.⁸ Credit Karma itself has contrasted its services with those of TurboTax by noting, “When you file with Credit Karma Tax®, you’ll never face unexpected charges or be asked to upgrade to a paid version.”⁹ In turn, Credit Karma’s tax product has been “a major focus of concern” at TurboTax.¹⁰ “The fear was very real that Credit Karma would disrupt tax,” said one former staffer, adding, “Credit Karma was invoked over and over again” at TurboTax headquarters.¹¹ These anecdotes further suggest that TurboTax’s proposed acquisition is nothing but a ploy to snuff out an emerging competitive threat. The antitrust laws are designed precisely to stop this very type of acquisition.

Finally, I am also concerned about the impact of the proposed transaction on consumers’ privacy and data protection. As a result of the acquisition, Intuit would have access to Credit Karma’s extensive trove of consumer data, which has been reportedly collected from more than a hundred million users and includes their personal financial history along with location and online

⁴ U.S. DEP’T OF JUSTICE, HORIZONTAL MERGER GUIDELINES § 2.1.5 (2010).

⁵ *Id.*

⁶ Recognizing this dynamic, the Federal Trade Commission recently filed suit against the company that owns Schick and Gillette to oppose their acquisition of Harry’s, a similarly small but “uniquely disruptive competitor” in the shaving industry. FTC Files Suit to Block Edgewell Personal Care Company’s Acquisition of Harry’s, Inc. (Feb. 3, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-files-suit-block-edgewell-personal-care-companys-acquisition>.

⁷ Justin Elliott & Lucas Waldron, *Here’s How TurboTax Just Tricked You Into Paying to File Your Taxes*, PROPUBLICA (April 22, 2019), <https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

behavioral data.¹² In addition to providing the combined entity with new tools for harvesting data and targeting consumers with financial products and services, the proposed transaction may also provide Intuit with a significant lead in developing financial-sector machine-learning applications. As several experts have noted, these applications can be used to discriminate against borrowers, and, in particular, people with a lower socioeconomic status.¹³

Paying taxes is a basic civic requirement in the United States. It is therefore imperative that taxpayers have access to trustworthy and low-cost tax preparation services. Intuit's proposed acquisition of Credit Karma bears all the traditional signs of a dominant incumbent seeking to eliminate a maverick competitor. Our antitrust laws require that TurboTax compete on the merits rather than be permitted to purchase its way out of competing. In light of these concerns, I request that the Antitrust Division closely scrutinize this merger to protect the competitive process and the American people as they file their taxes.

Sincerely,



David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House Committee on the Judiciary

¹² See generally Nathaniel Popper and Michael J. de la Merced, *Intuit to Buy Credit Karma to Create Financial Data Giant*, N.Y. TIMES (Feb. 24, 2020), <https://www.nytimes.com/2020/02/24/business/dealbook/intuit-credit-karma.html>.

¹³ See, e.g., Rose Eveleth, *Credit Scores Could Soon Get Even Creepier and More Biased*, VICE (June 13, 2019), https://www.vice.com/en_us/article/zmpgp9/credit-scores-could-soon-get-even-creepier-and-more-biased.