

April 17, 2023

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chair Khan, Commissioner Slaughter, and Commissioner Bedoya:

We write to request that the Federal Trade Commission open an investigation into Energizer Holdings, Inc.'s 2018 acquisition of the battery and portable lighting business Rayovac, which at the time was owned by Spectrum Brands Holdings, Inc. Like many other ill-advised mergers and acquisitions in recent decades, it has created a very concentrated market, and the merger likewise has contributed to predictable price increases in the time since. However, particularly considering the recently announced plant closures and planned offshoring of Wisconsin jobs by Energizer earlier this year, we ask the Commission to investigate its approval of the merger and potentially unwind the combination.

Energizer Holdings, Inc. is a leading manufacturer and distributor of batteries, portable lights, auto parts, refrigerants, and fragrance products, and it holds a dominant position in many of those product markets. Pre-acquisition, Energizer had a 28.5% market share of batteries in the U.S., with Rayovac having 10% of the market.¹ As such, one analysis estimated that with this acquisition of Spectrum's battery and lighting business, Energizer will control about 40% of the U.S. market and 85% of the global battery market.² Duracell remained Energizer's primary competitor domestically with a similar market share. The two firms comprise a duopoly, with over 80% of the U.S. battery market split between them. As is the usual concern with mergers that eliminate competition between direct commercial rivals, this combination appears to have contributed to price increases. In June 2021, Energizer announced price increases across its entire battery portfolio globally.³

At the time of the acquisition, Spectrum's Rayovac Division had around 700 employees in Wisconsin.⁴ In January of this year, Energizer informed employees in Washington that it plans to close all its operations in Wisconsin – corresponding to the exact manufacturing division, with a unionized workforce, that Energizer acquired from Spectrum in 2018 – with plans to shift production abroad and to a non-unionized U.S. facility.⁵

¹ Jacob Barker, "Energizer Buying Rayovac Batteries for \$2 billion," St. Louis Post-Dispatch, January 16, 2018, https://www.stltoday.com/business/local/energizer-buying-rayovac-batteries-for-2-billion/article_ac1d41d3-ab0d-5407-8f14-8a57dd594ee3.html.

² Kirk Victor, "Mixed Signals," MLex Watch, April 23, 2018, <https://www.mlexwatch.com/articles/3104/print?section=ftcwatch>.

³ Energizer Holdings Investor Relations, "Energizer Holdings, Inc. Announces Price Increases Across its Global Battery Portfolio," Energizer Holdings, Inc., June 3, 2021, <https://investors.energizerholdings.com/2021-06-02-Energizer-Holdings,-Inc-Announces-Price-Increases-Across-its-Global-Battery-Portfolio>.

⁴ Molly Dill, "Spectrum Brands sells battery and lighting business to Energizer for \$2 billion," BizTimes, January 2, 2019, <https://biztimes.com/spectrum-brands-sells-battery-and-lighting-business-to-energizer-for-2-billion/>.

⁵ Markus Aarsvold, "Energizer posts plans to close Wisconsin battery plants," NBC 15, February 25, 2023, <https://www.nbc15.com/2023/02/26/energizer-posts-plans-close-wisconsin-battery-plants/>.

When seeking regulatory approval for this deal in 2018, however, Energizer faced little to no scrutiny from federal antitrust enforcers. While the European Commission demanded divestitures, the FTC waved the deal through without so much as a request for further information, despite the obvious risks to competition.⁶ This follows a trend of recent merger policy in the United States, where anticompetitive deals are not challenged or are approved subject to ineffective behavioral remedies.⁷

Furthermore, the recently announced plant closures highlight merger policy's past failures to address harms to labor stemming from corporate consolidation. This acquisition by Energizer is hardly the only merger in recent years which has led to workforce reductions and layoffs,⁸ despite insistence to the contrary from the merging party and protest from organized labor. For example, the T-Mobile/Sprint merger in 2020 was promised to be "jobs-positive from Day One."⁹ However, the company immediately slashed 5,000 jobs and has not made any significant hiring since.¹⁰

We applaud the current leadership of both the Federal Trade Commission and the Department of Justice for their more aggressive opposition to anticompetitive mergers, challenging acquisitions that harm workers,¹¹ and for opening a holistic review of merger policy to seek stronger enforcement and more seriously consider harms to labor.¹²

⁶ European Commission, "Mergers: Commission approves acquisition of Spectrum Brands' batteries and portable lighting business by Energizer, subject to conditions," December 11, 2018, https://ec.europa.eu/commission/presscorner/detail/it/IP_18_6765.

⁷ Kwoka Jr, J. E. (2012). Does Merger Control Work: A Retrospective on US Enforcement Actions and Merger Outcomes. *Antitrust LJ*, 78, 619, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/antil78§ion=30; Kwoka, J. (2014). *Mergers, merger control, and remedies: A retrospective analysis of US policy*. MIT Press, <https://mitpress.mit.edu/9780262536776/mergers-merger-control-and-remedies/>.

⁸ Sarah Miller and Krista Brown, "To Save Jobs and Slow Inequality, Stop the Merger Frenzy," American Economic Liberties Project, January 11, 2022, <https://www.economicliberties.us/our-work/merger-frenzy/>.

⁹ John Legere, "Just the Facts on Jobs: The New T-Mobile Will Create Jobs From Day One," T-Mobile, April 4, 2019, <https://www.t-mobile.com/news/un-carrier/new-t-mobile-creating-jobs>.

¹⁰ Drew FitzGerald and Allison Prang, "T-Mobile's Hiring Pledge Is Off to a Slow Start," Wall Street Journal, May 10, 2021, <https://www.wsj.com/articles/t-mobiles-hiring-pledge-is-off-to-a-slow-start-11620639002>.

¹¹ Department of Justice Office of Public Affairs, "Justice Department Obtains Permanent Injunction Blocking Penguin Random House's Proposed Acquisition of Simon & Schuster," October 31, 2022, <https://www.justice.gov/opa/pr/justice-department-obtains-permanent-injunction-blocking-penguin-random-house-s-proposed>.

¹² Federal Trade Commission Press Release, "Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers," January 18, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>.

Because this merger particularly appears to have been a mistake, and because it is emblematic of many approved mergers in recent decades, we join Senator Tammy Baldwin in calling attention to this acquisition's effects,¹³ and we ask that the FTC:

- Open an investigation into the merger review process that led to the approval of Energizer's acquisition of Rayovac.
- Take steps to remedy the harms stemming from the merger, including by seeking divestiture of the Rayovac division, if appropriate.
- Open a select review of other mergers in recent decades, particularly where predictable harms to labor or anticompetitive effects became apparent after the deal was closed.

Sincerely,

American Economic Liberties Project
American Family Voices
Blue Future
Demand Progress
Institute for Local Self-Reliance
Open Markets Institute
Progress America
Public Citizen
Revolving Door Project
RootsAction.org

¹³ Senator Tammy Baldwin to Chair Lina Khan, April 6, 2023,
https://www.baldwin.senate.gov/imo/media/doc/baldwin_letter_to_ftc_on_energizer_acquisition.pdf