

February 28, 2024

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

Dear Chair Khan:

I am writing to express my concerns regarding the attempted hostile takeover of Wyndham Hotels & Resorts (Wyndham) by Choice Hotels (Choice).¹ The takeover would create the largest branded hotel chain in the United States,² giving one chain control over a huge portion of the hotel market.³ Such a reduction in competition would harm entrepreneur franchisees and lead to higher hotel rates for customers across the country. Accordingly, I urge the Federal Trade Commission (FTC) to closely scrutinize Choice's hostile takeover of Wyndham and oppose this deal if it violates antitrust law.

Combination of Giants Choice and Wyndham Would Compound Consolidation in the Hotel Industry

In October 2023, Choice made an unsolicited \$8 billion buyout offer for Wyndham, which was rejected by Wyndham — in part because of “regulatory and execution risk” related to antitrust concerns.⁴ In the months since, Choice has taken steps towards an apparent hostile takeover of Wyndham by directly approaching Wyndham stakeholders about the proposed deal,⁵ acquiring Wyndham shares in the open market,⁶ and preparing to nominate a slate of eight directors to

¹ Associated Press, “Choice Hotels goes hostile in \$8 billion takeover bid for Wyndham after being repeatedly rebuffed,” Michelle Chapman, December 12, 2023, <https://apnews.com/article/choice-hotels-wyndham-hostile-takeover-43171a4519287a82ec71978c03ce1d6d>.

² New York Times, “Hotel Owners Push Back on Merger of National Brands,” Lydia DePillis, December 21, 2023, <https://www.nytimes.com/2023/12/21/business/economy/choice-hotels-wyndham-merger-franchises.html>.

³ Market shares were calculated based on October 2023 STR Census Data, *see* Wyndham, “A Choice That’s No Choice At All,” December 18, 2023, p. 10, <https://staywyndham.com/wp-content/uploads/2023/12/A-Choice-Thats-No-Choice-At-All.pdf>.

⁴ Associated Press, “Wyndham Rejects \$8 billion Unsolicited Buyout Offer after Choice Hotels Goes Public With Its Bid,” Michelle Chapman, October 17, 2023, <https://apnews.com/article/choice-hotels-wyndham-acquisition-merger-a0602a987106067f25f030870bdc0262>.

⁵ Associated Press, “Choice Hotels Goes Hostile in \$8 billion Takeover Bid for Wyndham After Being Repeatedly Rebuffed,” Michelle Chapman, December 12, 2023, <https://apnews.com/article/choice-hotels-wyndham-hostile-takeover-43171a4519287a82ec71978c03ce1d6d>.

⁶ Reuters, “Exclusive: Choice Hotels Prepares to Challenge Wyndham's Board -Sources,” Anirban Sen,

replace Wyndham’s eight-member board.⁷ Wyndham has continued to oppose the attempted takeover, warning of antitrust scrutiny given the significant anticipated market share of the combined company.⁸ FTC is currently reviewing this proposal.⁹

Choice and Wyndham each boast a large portfolio of popular hotel chains across the United States.¹⁰ Choice and Wyndham each control close to 500,000 hotel rooms nationwide,¹¹ most of which are in the economy and midscale markets.¹² The dominance of Choice and Wyndham in these markets is not obvious to consumers, who interface with the companies’ large respective portfolios of hotel brands. Choice owns 22 hotel brands, including Radisson, Comfort, and Quality.¹³ Wyndham owns 24 hotel brands, including Ramada, Days Inn, and Super 8.¹⁴ Customers see the variety of different brands and believe they are making a meaningful choice between competing hotels, when they are in fact owned by the same company. If the hostile takeover of Wyndham succeeds, Choice would own 46 different hotel brands — creating a monopoly that can hide in plain sight.

Choice and Wyndham are two of the six companies — along with Marriott, Hilton, InterContinental, and Best Western — that currently control approximately 80 percent of all branded hotel rooms.¹⁵ The status quo is the result of years of consolidation in the industry. In the last seven years, Choice and Wyndham have each grown their market dominance through acquisitions. In 2018, Choice bought WoodSprings and its 240 hotels for \$231 million.¹⁶ Just two

November 27, 2023, <https://www.reuters.com/markets/deals/choice-hotels-prepares-challenge-wyndhams-board-sources-2023-11-27/>.

⁷ Law360, “Choice Ramps Up Wyndham Takeover Bid With Nominee Slate,” Jade Martinez-Pogue, January 22, 2024, <https://www.law360.com/articles/1788415/choice-ramps-up-wyndham-takeover-bid-with-nominee-slate>.

⁸ Wyndham Hotels & Resorts, “Wyndham Board Urges Shareholders to Reject Inadequate and Highly Conditional Choice Exchange Offer,” December 18, 2023, <https://investor.wyndhamhotels.com/news-events/press-releases/detail/303/wyndham-board-urges-shareholders-to-reject-inadequate-and>.

⁹ Reuters, “Wyndham Gets FTC’s Second Request After Hostile Bid by Choice,” Abhinav Parmar, January 12, 2024, <https://www.reuters.com/markets/deals/wyndham-gets-ftcs-second-request-after-hostile-bid-by-choice-2024-01-11/>.

¹⁰ Choice Hotels, “Our Brands,” <https://media.choicehotels.com/our-brands>; Wyndham Hotels, “Our Brands,” <https://www.wyndhamhotels.com/wyndham-rewards/our-brands>.

¹¹ New York Times, “Hotel Owners Push Back on Merger of National Brands,” Lydia DePillis, December 21, 2023, <https://www.nytimes.com/2023/12/21/business/economy/choice-hotels-wyndham-merger-franchises.html>.

¹² CoStar, “Economy and Midscale Brands Dominate Choice, Wyndham Hotel Portfolios,” Stephanie Ricca and Rachel Daub, October 19, 2023, <https://www.costar.com/article/188160965/economy-and-midscale-brands-dominate-choice-wyndham-hotel-portfolios>.

¹³ Choice Hotels, “Our Brands,” <https://media.choicehotels.com/our-brands>.

¹⁴ Wyndham Hotels, “Our Brands,” <https://www.wyndhamhotels.com/wyndham-rewards/our-brands>.

¹⁵ New York Times, “Hotel Owners Push Back on Merger of National Brands,” Lydia DePillis, December 21, 2023, <https://www.nytimes.com/2023/12/21/business/economy/choice-hotels-wyndham-merger-franchises.html>.

¹⁶ PR Newswire, “Choice Hotels Completes Acquisition Of WoodSpring Suites Brand And Franchise Business,” Choice Hotels, February 1, 2018, <https://www.prnewswire.com/news-releases/choice-hotels-completes-acquisition-of-woodspring-suites-brand-and-franchise-business-300592336.html>.

years ago, in 2022, Choice completed its high-profile acquisition of the Radisson hotel brand for \$675 million.¹⁷ In 2017, Wyndham acquired AmericInn for \$170 million.¹⁸

The merger of Choice and Wyndham would further consolidate the market and create the largest branded hotel chain in the United States.¹⁹ The increased market dominance would be most acutely felt in the economy and midscale markets. If Choice’s hostile takeover of Wyndham is successful, data presented by Wyndham to its shareholders indicates that the combined company would control 57 percent of the national market for economy hotel franchises, with its next largest competitor controlling 14 percent of the market.²⁰ The same data reveals that the combined company would amass an even larger share of the national midscale hotel franchise market — a staggering 67 percent.²¹

Choice’s Hostile Takeover of Wyndham Would Presumptively Substantially Lessen Competition

Choice notified antitrust agencies of its intended transaction, under the Hart-Scott-Rodino (HSR) Act pre-merger notification requirements for large transactions,²² on December 12, 2023.²³ However, according to Wyndham, FTC had already launched an investigation of the potential deal in November 2023, prior to Choice’s hostile offer.²⁴ In January 2024, Wyndham confirmed receipt of a “Second Request” for information from FTC, noting that only approximately 1 percent of deals reviewed by FTC receive such a request.²⁵ Choice also confirmed they are in the process of complying with the FTC’s Second Request.²⁶ Antitrust agencies may issue a Second Request after preliminary review of a transaction when they need “more information to assess the proposed

¹⁷ Choice Hotels, “Choice Hotels International Completes Acquisition of Radisson Hotels Americas,” <https://media.choicehotels.com/2022-08-11-Choice-Hotels-International-Completes-Acquisition-of-Radisson-Hotels-Americas>.

¹⁸ Skift, “Wyndham Buys AmericInn Hotel Chain for \$170 Million,” Deanna Ting, July 18th, 2017, <https://skift.com/2017/07/18/wyndham-buys-americcinn-hotel-chain-for-170-million/>.

¹⁹ New York Times, “Hotel Owners Push Back on Merger of National Brands,” Lydia DePillis, December 21, 2023, <https://www.nytimes.com/2023/12/21/business/economy/choice-hotels-wyndham-merger-franchises.html>.

²⁰ Market shares were calculated based on October 2023 STR Census Data, *see* Wyndham “A Choice That’s No Choice At All,” p. 10, <https://staywyndham.com/wp-content/uploads/2023/12/A-Choice-Thats-No-Choice-At-All.pdf>.

²¹ Market shares were calculated based on October 2023 STR Census Data, *see id.*

²² Thompson Reuters, “What is the Hart-Scott-Rodino Act?,” <https://legal.thomsonreuters.com/en/insights/articles/navigating-the-hart-scott-rodino-act->.

²³ Choice Hotels, “Choice Hotels Launches Exchange Offer to Acquire All Outstanding Shares of Wyndham Hotels & Resorts,” December 12, 2023, <https://media.choicehotels.com/2023-12-12-Choice-Hotels-Launches-Exchange-Offer-to-Acquire-All-Outstanding-Shares-of-Wyndham-Hotels-Resorts>.

²⁴ Wyndham, “A Choice That’s No Choice At All,” p. 5, <https://staywyndham.com/wp-content/uploads/2023/12/A-Choice-Thats-No-Choice-At-All.pdf>.

²⁵ Wyndham, “Wyndham Confirms Receipt of Expansive FTC Second Request Under HSR Act for Choice’s Unsolicited Hostile Offer to Acquire Wyndham,” January 11, 2024, <https://investor.wyndhamhotels.com/news-events/press-releases/detail/306/wyndham-confirms-receipt-of-expansive-ftc-second-request>.

²⁶ CoStar, “Choice CEO Confident Wyndham Deal Will Receive Regulatory Approval This Year,” Trevor Simpson, February 21, 2024, <https://www.costar.com/article/1950294905/choice-ceo-confident-wyndham-deal-will-receive-regulatory-approval-this-year>.

deal,” including regarding the likely competitive effects of the merger.²⁷ Once Choice has substantially complied with the Second Request, FTC would have 30 days to review the materials and take action if necessary, including suing to block the transaction if FTC determines that the transaction would violate antitrust laws.²⁸

The Merger Guidelines developed by FTC and DOJ note that “[m]arket concentration and the change in concentration due to the merger are often useful indicators of a merger’s risk of substantially lessening competition.”²⁹ As noted above, per Wyndham’s data, if Choice’s takeover succeeds, the combined entity would control 57 percent of the economy hotel market and 67 percent of the midscale hotel market nationwide.³⁰ The economy hotel market and midscale hotel market are already highly concentrated, according to FTC’s standards,³¹ reaching 2,343 and 2,877 respectively on the Herfindahl-Hirschman Index (HHI), and would rise to 3,591 and 5,011 respectively if this transaction proceeds, according to analysis provided by Wyndham.³² FTC and DOJ’s Merger Guidelines characterize a change of more than 100 points as a “significant increase” in market concentration.³³ Antitrust agencies presume that a transaction that causes such a change in a highly concentrated market will “substantially lessen competition or tend to create a monopoly.”³⁴ Transactions that result in a company with a market share greater than 30% and a change of more than 100 HHI points are similarly presumed to substantially lessen competition or tend to create a monopoly.³⁵ Based on HHI market concentration, HHI change, and market share, Choice’s takeover of Wyndham appears to substantially lessen competition or tend to create a monopoly.

Section 7 of the Clayton Act prohibits mergers and acquisitions where “the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”³⁶ As such, and given the apparent presumption that this transaction would substantially lessen competition or tend to create a monopoly, FTC should carefully examine Choice’s proposed takeover and block it if it violates antitrust law.

²⁷ Federal Trade Commission, “Premerger Notification and the Merger Review Process,” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process>.

²⁸ *Id.*

²⁹ U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 5, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

³⁰ Market shares were calculated based on October 2023 STR Census Data, *see* Wyndham, “A Choice That’s No Choice At All,” p. 10, <https://staywyndham.com/wp-content/uploads/2023/12/A-Choice-Thats-No-Choice-At-All.pdf>.

³¹ U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 5, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

³² Market concentration was calculated based on October 2023 STR Census Data.

³³ U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 5, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

³⁴ U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, pp. 5-6, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

³⁵ U.S. Department of Justice and the Federal Trade Commission, “Merger Guidelines,” December 2023, p. 6, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

³⁶ 15 U.S.C. 18.

Reduced Competition in the Hotel Industry Would Increase Costs for Franchisees and Customers

Nearly 100% of Choice and Wyndham hotels operate as franchises,³⁷ owned and run by entrepreneur franchisees who usually own just a few hotels.³⁸ Hotel franchisees receive benefits from the brands' recognized name, business plan, and "collective purchasing that is supposed to give small businesses the benefits of scale."³⁹ In exchange, hotel franchisees pay a fee to join, as well as ongoing royalties and marketing, technology, and consulting costs.⁴⁰

Robust competition in the hotel market means brands must compete against each other for the consideration of franchisees, who may make their decision based on the fees and other costs that the brands charge. Reduced competition from mergers would mean "fewer options and, thus, less leverage to demand better services for a lower cost."⁴¹ With profit margins becoming "thinner and thinner,"⁴² it is highly likely that customers will end up bearing the brunt of reduced competition.

If the takeover of Wyndham is successful, Choice could use the reduced competition to raise prices and increase their profits, all while using dozens of brands to hide the fact that customers have fewer travel options. Choice could disguise their concentration of power behind their new 46-brand portfolio, giving customers the illusion of choice.⁴³ Customers may assume that each of these brands is competing for their hard-earned dollars by price and quality, when, in reality, they are all owned by the same company. A rate increase within the midscale and economy markets would necessarily lead to disproportionate harm to lower-income and younger customers, many of whom already have limited choices for hotel and travel options that fit their budget.

I welcome FTC's increased attention towards the franchise business model across industries, including the Commission's request for public comment on "how franchisors may exert control over franchisees and their workers."⁴⁴ FTC is also developing a rule to ban employers from imposing noncompete provisions on their workers⁴⁵ which would potentially ban franchisors from doing the same to their franchisees.⁴⁶ This work is critical and will help protect workers and

³⁷ Skift, "Wyndham Vs. Choice: Charting the Midscale Hotel Rivalry – New Skift Research," Pranavi Agarwal, August 24, 2023, <https://skift.com/2023/08/24/wyndham-vs-choice-charting-the-midscale-hotel-rivalry-new-skift-research/>.

³⁸ New York Times, "Hotel Owners Push Back on Merger of National Brands," Lydia DePillis, December 21, 2023, <https://www.nytimes.com/2023/12/21/business/economy/choice-hotels-wyndham-merger-franchises.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Choice Hotels, "Our Brands," <https://media.choicehotels.com/our-brands>; Wyndham Hotels, "Our Brands," <https://www.wyndhamhotels.com/wyndham-rewards/our-brands>.

⁴⁴ Federal Trade Commission, "Submit a Comment on Franchise Request for Information," <https://www.ftc.gov/policy/studies/submit-comment-franchise-request-information>.

⁴⁵ Federal Trade Commission, "FTC Extends Public Comment Period on Its Proposed Rule to Ban Noncompete Clauses Until April 19," press release, March 6, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-extends-public-comment-period-its-proposed-rule-ban-noncompete-clauses-until-april-19>.

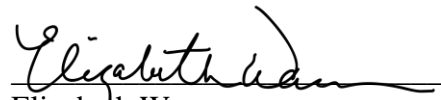
⁴⁶ Federal Trade Commission, "FTC Extends Comment Period for Request for Information Related to Franchise Agreements and Business Practices Until June 8," April 13, 2023, <https://www.ftc.gov/news-events/news/press->

franchisees from being taken advantage of by large corporations. In addition, the Biden administration has launched a whole-of-government effort to fight junk fees, in which FTC has been an active participant. FTC's proposed rule to ban junk fees⁴⁷ stands to significantly benefit hospitality industry customers, who currently may end up spending hundreds of extra dollars per stay on resort fees.⁴⁸ Consistent with FTC's focus on protecting consumers, workers, and franchisees, FTC should carefully consider the potential effect of Choice's attempted takeover of Wyndham on hotel costs and fees.

Conclusion

If Wyndham is acquired by Choice, it will significantly increase concentration in a market that is already highly concentrated. The takeover has the potential to further entrench the largest companies' dominant positions in the hotel market. I am encouraged by FTC's examination of the transaction thus far and the Commission's broader efforts to fight consolidation and protect customers, workers, and franchisees. In line with these efforts, FTC should carefully scrutinize Choice's attempted takeover of Wyndham and block the takeover if it violates antitrust laws.

Sincerely,



Elizabeth Warren
United States Senator

[releases/2023/04/ftc-extends-comment-period-request-information-related-franchise-agreements-business-practices-until](https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees).

⁴⁷ Federal Trade Commission, "FTC Proposes Rule to Ban Junk Fees," October 11, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees>.

⁴⁸ Conde Nast Traveler, "Hidden Resort Fees Could Soon Be a Thing of the Past," Jessica Puckett, October 18, 2023, <https://www.cntraveler.com/story/biden-administration-junk-fees-ban-proposed-rule>.