IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *et al.*, Plaintiffs, v. **DRAFTKINGS INC.**, and **FANDUEL LIMITED**, Defendants.	Civil Action No. _____-cv-_____

Plaintiff Federal Trade Commission's Motion for and Statement of Points and Authorities in Support of Entry of a Temporary Restraining Order

Plaintiff, the Federal Trade Commission (the "Commission"), together with the State of California and the District of Columbia, filed this action seeking an order preliminarily enjoining the proposed merger between Defendants DraftKings, Inc. ("DraftKings") and FanDuel Limited ("FanDuel"). By this motion, the Commission, by its designated attorneys, moves this Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), for a temporary restraining order temporarily enjoining the proposed merger between DraftKings and FanDuel. In the attached signed letter agreement, Defendants agreed to file a stipulation with the Court under which DraftKings and FanDuel agree not to consummate the proposed merger, or otherwise effect a combination of FanDuel and DraftKings, until after 11:59 PM Eastern Time on the fifth business day after the Court rules on Plaintiffs' motion for a preliminary injunction. The Commission will separately submit to the Court a stipulation signed by the parties.

The proposed merger between DraftKings and FanDuel would combine the country's two largest providers of paid daily fantasy sports ("DFS") contests, resulting in a near-monopoly.

The merged company would control more than 90% in the market for paid DFS contests. The remaining competitive alternatives would not provide a meaningful constraint on the merged company and, as a result, the proposed merger is likely to cause anticompetitive effects in the market for paid DFS contests.

The Commission has determined that it has reason to believe that Defendants' proposed merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. In such circumstances, Section 13(b) of the FTC Act authorizes the Commission to seek a temporary restraining order and a preliminary injunction halting the proposed merger until the Commission "has had an opportunity to adjudicate the merger's legality in an administrative proceeding." *FTC v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 35 (D.D.C. 2009) (citing 15 U.S.C. § 53(b)). The Commission voted to issue the administrative complaint in this matter on June 19, 2017, and the trial of this case on the merits before an administrative law judge is scheduled to begin on November 21, 2017.

Absent temporary injunctive relief, Defendants will be able to consummate the merger after 11:59 PM on June 20, 2017. As a result, Plaintiffs need a temporary restraining order from this Court to prevent interim harm to competition and preserve this Court's ability to enter effective relief after consideration of Plaintiffs' motion for a preliminary injunction. The attached letter agreement reflects Defendants' agreement to stipulate to a temporary restraining order, and the Commission will submit a signed stipulation to the Court as soon as it is available.

The parties will confer regarding a proposed case management and scheduling order and the Commission respectfully requests a brief scheduling conference with the Court to facilitate these discussions and to expedite the entry of a case management and scheduling order under Rule 16(b)(1) of the Federal Rules of Civil Procedure.

Pursuant to Local Civil R. 65.1(a), counsel for the Commission certifies that, prior to filing this motion, they gave counsel for Defendants notice of the making of this motion, and offered to provide counsel with copies of the Complaint and other moving papers upon the entry of a Protective Order. Entry of a Protective Order is necessary to protect confidential and competitively sensitive information of third parties.

In accordance with Local Rule 7(m), counsel for the Commission discussed this motion with counsel for the Defendants. Defendants do not oppose this motion.

The disposition of this motion is time sensitive and we respectfully request that the Court rule on this motion as quickly as possible.

A proposed order is attached.

Dated: June 19, 2017

Respectfully submitted,



Thomas J. Dillickrath
(D.C. Bar No483710)
Bureau of Competition
Federal Trade Commission
400 Seventh Street, SW
Washington, D.C. 20024
Telephone: (202) 326-3286
Email: tdillickrath@ftc.gov

Attorney for Plaintiff Federal Trade Commission

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division

June 15, 2017

VIA E-MAIL

Scott A. Sher
Wilson Sonsini Goodrich & Rosati PC
1700 K Street NW, Ste. #500
Washington, DC 20006

Michael S. McFalls
Ropes & Gray LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006

Re: Proposed Merger of FanDuel Limited and DraftKings, Inc.

Dear Scott and Michael:

This letter sets forth understandings between the Federal Trade Commission Bureau of Competition ("FTC"), FanDuel Limited ("FanDuel"), and DraftKings, Inc. ("DraftKings") (FanDuel and DraftKings collectively "the Parties") in connection with the proposed merger of FanDuel and DraftKings (the "Proposed Merger"). It is agreed as follows:

1. In the event that the FTC files an enforcement action on or before the end of the timing agreement between the FTC and the Parties seeking to enjoin the Proposed Merger, the Parties agree to file a joint stipulation with the court as follows:

    a. The Parties shall not consummate the Proposed Merger, or otherwise effect a combination of FanDuel and DraftKings, until after 11:59 PM Eastern Time on the fifth business day after the court rules on the FTC's motion for a preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act; and

    b. In connection with the immediately above paragraph, the Parties shall take any and all necessary steps to prevent any of their officers, directors, domestic or foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures from consummating, directly or indirectly, any such merger, or otherwise effecting any combination between FanDuel and DraftKings.

2. In computing any period specified in this Agreement, the day of the act, event, or default that triggers the period shall be excluded. The term "business day" as used in this letter refers to any day that is not a Saturday, Sunday, or federal holiday.

If you agree to the terms set forth in this letter, please indicate your agreement by countersigning below and returning to us.

Sincerely,

Alexis Gilman
Assistant Director

Agreed to By:

Scott A. Sher, Esq.
Counsel for FanDuel Limited

June 15, 2017
Date

Michael S. McFalls, Esq.
Counsel for DraftKings, Inc.

June 15, 2017
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2017, I served the foregoing on the following counsel via electronic mail:

Catherine A. Jackson
Assistant Attorney General
Office of the Attorney General
441 Fourth Street, N.W., Suite 630-S
Washington, DC 20001
Tel: (202) 442-9864
catherine.jackson@dc.gov

Counsel for the District of Columbia

Paul A. Moore III
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94012-7004
Tel: (415) 703-2372
paul.moore@doj.ca.gov

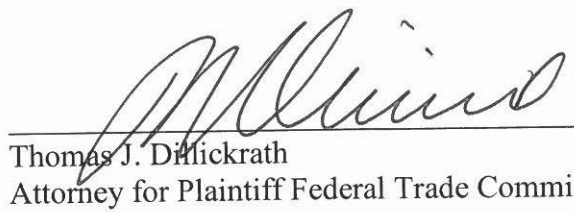
Counsel for the State of California

Michael S. McFalls, Esq.
Ropes & Gray LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006
Tel: (202) 508-4684
Michael.McFalls@ropesgray.com

Counsel for DraftKings, Inc.

Scott A. Sher, Esq.
Wilson Sonsini Goodrich & Rosati
1700 K St., NW
Washington, DC 20006
Tel: (202) 973-8822
ssher@wsgr.com

Counsel for FanDuel Limited



Thomas J. Dillickrath
Attorney for Plaintiff Federal Trade Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

DRAFTKINGS, INC. and
FANDUEL LIMITED,

Defendants.

Civil Action No. _____-cv-_____

[PROPOSED] TEMPORARY RESTRAINING ORDER

WHEREAS, Plaintiffs, the Federal Trade Commission (the "Commission"), the State of California, and the District of Columbia, filed their Complaint in this matter on June 19, 2017, seeking, among other relief, a temporary restraining order and preliminary injunction enjoining Defendants DraftKings, Inc. ("DraftKings") and FanDuel Limited ("FanDuel") from merging (the "Proposed Merger"); and

WHEREAS, in the absence of temporary relief, Defendants would be able to consummate the Proposed Merger after 11:59 PM on June 20, 2017;

WHEREAS, the parties have agreed that Defendants will not consummate the proposed merger until after 11:59 PM Eastern Time on the fifth business days after the Court rules on Plaintiffs' motion for a preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b);

NOW, THEREFORE, IT IS

ORDERED, that DraftKings, Inc. and FanDuel Limited shall not consummate the Proposed Merger or otherwise effect a combination of DraftKings, Inc. and FanDuel Limited,

until after 11:59 PM Eastern Time on the fifth business days after the Court rules on Plaintiffs' motion for a preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b); and it is further

ORDERED, that in connection with the paragraph immediately above, DraftKings, Inc. and FanDuel Limited shall take any and all necessary steps to prevent any of their officers, directors, domestic or foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures from consummating, directly or indirectly, any such merger, or otherwise effecting any combination between DraftKings, Inc. and FanDuel Limited; and it is further

ORDERED, that the parties shall appear before this Court in Courtroom No. _____, on the _____ day of _____, 2017, at _____ a.m./p.m. for a status conference.

ISSUED this _____ day of _____, 2017, at _____ a.m./p.m.

ORDERED:

_____
United States District Court Judge

NAMES OF PERSONS TO BE SERVED

Thomas J. Dillickrath
Federal Trade Commission
Bureau of Competition
400 Seventh Street, NW
Washington, DC 20024
Telephone: (202) 326-3286
Email: tdillickrath@ftc.gov

Counsel for Plaintiff Federal Trade Commission

Catherine A. Jackson
Assistant Attorney General
Office of the Attorney General
441 Fourth Street, N.W., Suite 630-S
Washington, DC 20001
Tel: (202) 442-9864
catherine.jackson@dc.gov

Counsel for Plaintiff District of Columbia

Paul A. Moore III
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94012-7004
Tel: (415) 703-2372
paul.moore@doj.ca.gov

Counsel for Plaintiff State of California

Michael S. McFalls, Esq.
Ropes & Gray LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006
Tel: (202) 508-4684
Michael.McFalls@ropesgray.com

Counsel for Defendant DraftKings, Inc.

Scott A. Sher, Esq.
Wilson Sonsini Goodrich & Rosati
1700 K St., NW
Washington, DC 20006
Tel: (202) 973-8822
ssher@wsgr.com

Counsel for Defendant FanDuel Limited