OVERSIGHT OF THE ENFORCEMENT OF THE ANTITRUST LAWS

- - -

WEDNESDAY, MARCH 9, 2016

United States Senate,
Subcommittee on Antitrust, Competition Policy, and Consumer Rights,
Committee on the Judiciary,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:06 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Mike Lee, Chairman of the Subcommittee, presiding.

Present: Senators Lee, Tillis, Hatch, Grassley, Klobuchar, Franken, and Blumenthal.

Also Present: Senator Durbin.

OPENING STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman Lee. Good afternoon. Welcome to the Subcommittee on Antitrust, Competition Policy, and Consumer Rights. Today we are pleased to have with us the Assistant Attorney General for the Antitrust Division, Mr. William Baer, and the Chairwoman of the Federal Trade Commission, Ms. Edith Ramirez. We appreciate both of you for taking the time to come and visit with us today and for all you do to advocate on behalf of free markets and fair competition.

This hearing marks the first antitrust oversight hearing in nearly 3 years and presents us with the opportunity to exercise one of Congress' most important responsibilities, that of ensuring that Federal agencies are operating efficiently, fairly, modestly, in accordance with the authority that we as Congress have given them.

The Department of Justice and the Federal Trade Commission, tasked with enforcing our antitrust laws, wield the power to determine the health of markets, police behavior in those markets, and prevent growth or consolidation of businesses. These powers, if abused, can result in chilling of investment, political favoritism, and regulatory capture. With proper oversight, however, antitrust enforcement agencies can enhance competition, eliminate illegal behavior, and ultimately protect consumers, which, of course, is the object of our antitrust laws in the end--to protect consumers.

These responsibilities have been especially important in the midst of what might be described as a merger wave. Mergers of significant size have drastically increased since just 3 or 4 years ago, resulting in a commensurate increase in the amount of work required of both DOJ antitrust and the ftc.

As the agencies determine what effect these mergers will have on competition in various industries across the spectrum, they will be confronted with difficult choices on whether to block mergers or on what conditions an allowed merger might preserve competition and, thus, preserve consumer welfare.

We appreciate the urgency with which these two witnesses approach their duties. These decisions have a great impact on consumers, and we take very seriously our duty to create a forum for the public to be brought in on these issues.

In the 3 years since our last oversight hearing, we have held hearings on a variety of variety of mergers, including AT&T-DirecTV, Comcast-Time Warner Cable, insurance mergers, and mergers in the beer industry. We have also held hearings on the state of competition in various markets, including markets for pharmaceuticals, patents, contact lenses, and musical compositions. And we have discussed broader competition issues such as cartels, occupational licensing, and disparity in antitrust agency processes.

We know that these hearings have helped inform the public of important issues in competition law, and we hope that they have proved helpful in the agencies' review of the underlying matters as they are considering them.

Antitrust law is designed to protect competition, not competitors. It is meant to protect consumers, not corporations. I look forward to discussing with our esteemed guests how they have been working to accomplish these goals and what plans they may have for future efforts.

Thank you. Ranking Member Klobuchar?

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Klobuchar. Well, thank you very much, Mr. Chairman.

As you all know, Senator Lee and I do this work together. And when I chaired it, we did it together, and when he chairs it, we do it together. And I think that just goes to show that these are not necessarily Republican or Democratic issues. They are competition issues. They are consumer issues. But they are issues that are a special focus of Minnesota and Utah, so they are the States--with Senator Hatch coming here, we have both Senators from both States here today.

So we are pleased that you are here today, Attorney General Bear, FTC Chairwoman Ramirez. As we come to the end of this administration, it is proper and important to review what has happened with antitrust enforcement, its remaining challenges, and as we go forward, the resource issues, what is the status of antitrust, and we think--we all know one of the answers here is we have seen a major wave of mergers, and so I guess I would start by saying you have a lot of work to do.

As you look at what has been going on, both agencies have done a lot of work. Last year, the Antitrust Division obtained a record $3.6 billion in criminal fines. It also held accountable the individuals engaged in price fixing, bid rigging, and customer allocation. Although this weapon may be a handshake, a wink, or a nod, those that fix prices are stealing just as surely as the burglar who picks the lock in your front door.

The FTC has also had some recent successes with four merger and two non-merger cases currently in litigation. It has been a long time since either of the agencies, I think, have been quite this active. So thank you for that.

A number of challenges remain. Prescription drug pricing is one of those challenges. As a country, we spent more than $297 billion on prescription drugs in 2014. That is a 12.2-percent increase over 2013 and the largest increase since 2002. A recent study showed that one out of four Americans whose prescription drug costs went up so they were unable to pay their medical bills; one out of five were forced to skip doses of their medication. We must do better.

We know that antitrust enforcement alone will not solve this problem, but American consumers have every right to demand that anticompetitive activity does not artificially inflate the cost of prescription drugs. That is why Chairman Grassley and I introduced our bill to make it easier to stop anticompetitive pay-for-delay patent settlements which cost consumers billions of dollars, cost the Government billions of dollars. I appreciate Chairman Grassley's willingness to work on this important issue.

We are also hearing of other methods to delay or limit generic competition. For example, some branded drug companies are delaying generic competition by preventing their competitors from obtaining the samples they need to obtain FDA approval. This practice began in drugs subject to risk evaluation mitigation systems.

To protect American consumers and, in particular, seniors, who struggle with high costs of prescription drugs, we need increased enforcement actions to stop and prevent anticompetitive conduct in the pharmaceutical industry and help control the cost of prescription drugs.

We are also, as I mentioned at the beginning, seeing a dramatic increase in both the number and the size of mergers which will tax the agencies' resources and could significantly alter the competitive landscape in many industries. Recently, the Chairman and I held a hearing on the beer merger with InBev and Miller. I think that had an almost more packed courtroom than we see today. I think the Beermageddon merger hearing was more interesting, but you guys can prove them wrong. The Pfizer-Allergan merger is ahead, the Charter-Time Warner merger are just examples of mergers before these agencies, before our country, that are major, major mergers.

As the merger deals have grown, so have proposed remedies. Last year, antitrust scholar John Kwoka published a study raising serious questions about merger remedies. The FTC is also revisiting its consent decrees in a formal study. We often talk about firms being too big to fail. We hear that a lot. A question from modern antitrust enforcement is whether some mergers are too big to fix.

I also worry that in the midst of a merger wave, civil conduct cases and especially monopolization cases will get lost in the shuffle. From a legal standpoint, what is the role of Section 2 of the Sherman Act in modern antitrust enforcement?

As a former prosecutor, I know how important it is to ensure that there is a cop on the beat ready and willing to go to court when necessary to enforce the law. That is good for competition. That is good for the American way of life, which has always rested on this idea that we have a competitive entrepreneurial environment. So we hope that both of you, Mr. Baer and Chairwoman Ramirez, are mindful of the special responsibility that you have to consumers in a very difficult time with so many things in front of you, that you just keep doing your job and we focus on these mergers and what is best for the public, acknowledging that we may see mergers bigger than we have ever seen before, and you have major, major important decisions to make.

Millions of consumers depend on your efforts and your judgment to ensure that the economy is sufficiently vibrant to keep prices low and quality high.

Thank you, and I look forward to hearing from you.

Chairman Lee. Thank you, Senator Klobuchar.

If I can ask both of our witnesses to stand and be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Baer. I do.

Ms. Ramirez. I do.

Chairman Lee. Thank you.

Mr. Baer, we will hear from you first.

STATEMENT OF THE HONORABLE WILLIAM BAER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. Baer. Thank you, Mr. Chairman, thank you, Ranking Member Klobuchar, and I appreciate the opportunity to be here and appreciate, as both of you mentioned, the constructive, bipartisan oversight that you conduct of the Antitrust Division and the Federal Trade Commission, where I do have some prior experience as well.

My testimony in writing tried to lay out in great detail what we have been up to the last 3 years. What I thought in summary might be helpful is to talk about how I think of what we do down the street at the Antitrust Division, and I put it basically into four buckets.

Bucket 1 is cartel enforcement, which the Supreme Court has described as the "supreme evil of antitrust." We have worked, as Senator Klobuchar said, not just to continue our investigations in traditional industries like auto parts, where we had a hearing a few years ago, but also to make sure the rules of the game apply to the financial markets as well. The FX cases we brought last May, which resulted in a near $3 billion amount of fines against four major finance institutions is a good example of our effort to make sure that consumers and mutual funds that do financial trading between the dollar and the euro are not basically subject to a little skimming off the top by coordinated trading among traders on behalf of those financial institutions.

We care, too, about individual accountability. If you look at what we have done in the last 7 years at the Antitrust Division, we have charged over 400 individuals with the supreme evil of antitrust, with cartel behavior. Corporations we prosecute vigorously, but we do not let the corporation take the rap for the individual. If there is high-level executive involvement, we hold them accountable, too. For every company we indict or charge, we on average find at least two individuals in those companies to charge as well. And we take that conduct as high as it goes within the company. CEOs, presidents, executive VPs, it does not matter. That is our job.

Bucket 2 is something you both have alluded to, which is merger enforcement. I think there was mention of a merger wave. We kind of look at it as a tsunami down the hill. There has been a 40-percent increase in Hart-Scott-Rodino pre-merger notification filings in the last couple of years. There has been a 200-percent increase in high-value deals, $1 billion or more. There is a lot at play, a lot of complicated deals. Some of them raise no antitrust issues at all. Most of them do not. But there are many, like the Electrolux effort to buy GE, which was abandoned after 4 weeks of trial where we were challenging the notion that

Electrolux would be able to have 70 percent of the market for low-end cooktops and consumer ranges; the Comcast-Time Warner, where we were looking more upstream, is it right to allow one firm to merge and be the sole Internet service provider of high-speed service to over 60 percent of the homes across America? We have done similar challenges in beer, airlines, agriculture, telecom, tuna.

I talk in my testimony in the merger realm about skepticism, about remedies in complex horizontal transactions. The parties who are anxious to maximize shareholder value want to get a deal done, and they are often willing to throw out some conduct promises or some modest structural remedies. And we need to scrutinize those closely, and where there is a divergence between shareholder interest and consumer interest, our job is to police the transaction to make sure the consumer interest does not get the back of the hand. That is analytically how we think about what we do. And I do share the view that settling complex, high-dollar-value, horizontal cases, we need to be very careful that we are not compromising the future of competition in that industry.

Bucket 3 relates to bad conduct, monopolization and improper coordination among rivals. The best example of that is our 6-year effort to bring Apple and the book publishers to court and hold them accountable for conspiring to raise the price of e-books. That case is now finally final. The Supreme Court denied cert. on Monday. $400 million is going to be going back to consumers over the course of the next few weeks. If you or one of your constituents bought an e-book during the period of the conspiracy, you are going to get $6 to $7 back per bestseller that you purchased due to the remedy that we and the State Attorneys General were able to work out.

Finally, Bucket 4, as I go down to about a minute and a half left, is not law enforcement but it is competition advocacy here and around the world. Part of what we see as our mission is to basically promote competition principles domestically. We work with States to help advise them on issues like occupational licensing or certificate of need requirements in the health care sectors. But equally, and maybe even more importantly, we work closely with international enforcers. If you look at the map on the last page of my testimony, we have--almost every jurisdiction around the world now has a competition regime. And by engaging multilaterally and bilaterally, talking about how to provide analytically sound, legally based decisionmaking, we ensure that we have the opposite of the Tower of Babel. People can have the same statutory language, but then enforce it in many different ways, which is to the disadvantage of the American business community and consumers. We take that responsibility about advocating sound rule of law-based transparent decisionmaking as a key part of our mission.

And with that, and 17 seconds left, I will cede my time back. Thank you.

[The prepared statement of Mr. Baer follows:]

Chairman Lee. Well done, Mr. Baer.

Chairwoman Ramirez.

STATEMENT OF THE HONORABLE EDITH RAMIREZ, CHAIRWOMAN, FEDERAL TRADE COMMISSION, WASHINGTON, D.C.

Ms. Ramirez. Thank you, Chairman Lee, Ranking Member Klobuchar, and members of the Subcommittee, for inviting me to testify regarding the Federal Trade Commission's current antitrust enforcement and policy efforts. Let me also add that it is always an honor to be here testifying with Assistant Attorney General Baer.

Mr. Chairman, as you and Ranking Member Klobuchar emphasized, competition is at the core of America's economy. Robust competition leads to lower prices, higher-quality goods and services, and innovation. The FTC seeks to promote competition through a thorough and fact-intensive approach to law enforcement, and we seek to vigorously enforce the antitrust laws to prevent both anticompetitive mergers and conduct.

In calendar year 2015, we challenged 27 mergers. In most of them, we negotiated a remedy that addressed the competitive concerns and allowed the transactions to proceed. In three cases, the parties abandoned the deals after we raised concerns.

But in six cases, the Commission authorized staff to file a complaint to stop the proposed mergers. These lawsuits show that the Commission will not hesitate to litigate when necessary to maintain competition.

In December, the Commission filed suit to stop Staples' proposed $6.3 billion acquisition of Office Depot. We have alleged that the proposed merger harms competition in the sale of consumable office supplies sold to large business customers because the merging parties uniquely constrain each other in that market. The preliminary injunction hearing is set to begin later this month in Federal court here in Washington.

The Commission also remains committed to preventing anticompetitive health care provider consolidation, and late last year, we filed suit to block three proposed hospital mergers, alleging that those mergers would lead to higher prices and lower-quality health care in three local communities: Huntington, West Virginia; Harrisburg, Pennsylvania; and the North Shore area of Chicago. These cases follow recent appellate wins in two other FTC health care provider cases, St. Luke's and ProMedica.

In addition, last June, the FTC won an important victory when we successfully blocked Sysco Corporation's proposed acquisition of rival US Foods. That merger would have combined the two largest broadline food distributors in the U.S. We argued, and the court agreed, that the deal likely would have led to higher prices and diminished service for food service customers like restaurants, hotels, and schools, both nationwide and in 32 local markets around the country. Following the court's decision, the parties abandoned the transaction.

In addition merger enforcement, the Commission maintains a robust program to identify and stop anticompetitive conduct. Last year, we won our third Supreme Court case in 3 years when the Court affirmed the Commission's ruling in the North Carolina Dental case that a State board that is controlled by private market participants is subject to antitrust scrutiny if it is not being actively supervised by the State. This ruling, as you know, is significant because occupational licensing governs the substantial and growing segment of the U.S. economy, and incumbent providers can use regulations to deter new forms of competition.

In another case, the 11th Circuit Court of Appeals agreed with the Commission's decision in the McWane case that a monopolist's exclusive dealing practices violated the antitrust laws by preventing market entrants from becoming meaningful competitors in the market for domestic pipefittings.

We also remain committed to ending efforts to prevent generic competition. The Supreme Court's landmark decision in the Actavis case strengthens our ability to stop anticompetitive pay-for-delay agreements between drug makers. Last June, the FTC settled the Cephalon case. Cephalon's parent, Teva Pharmaceuticals, agreed to pay $1.2 billion to reimburse purchasers that had overpaid for the sleep disorder drug Provigil, and they also agreed to prevent from entering into certain anticompetitive patent settlement agreements.

More broadly, we have seen a number of potential pay-for-delay settlements fall in fiscal year 2014, the first full year following the Actavis decision, down almost 50 percent from their peak in fiscal year 2012. While this data is encouraging, it continues to show the need for continued vigilance in this area.

In addition to our enforcement efforts, we also maintain an active research and policy agenda. Last summer, we held a workshop devoted to the sharing economy to explore how existing regulatory frameworks can accommodate new business models while maintaining appropriate consumer protections and a competitive marketplace. This workshop complements our enforcement and policy work in the area, including advocacies discouraging unnecessary regulations that could hamper competition from Uber and other ride-sharing services.

And, finally, we continue to engage with our foreign antitrust counterparts so that competition laws function coherently and effectively worldwide, benefiting U.S.

businesses and consumers alike.

Thank you, and I am very happy to answer any questions.

[The prepared statement of Ms. Ramirez follows:]

Chairman Lee. Okay. Thanks to both of you for your testimonies today and also for your written testimonies, which will be admitted into the record. In addition to those, we have received several letters that I would like to submit for the record, and without objection, they will be entered.

[The letters follow:]

/ SUBCOMMITTEE INSERT

Chairman Lee. Okay. I would like to start my questions. This is a question I have got for both of you. You know, the United States witnessed some recordbreaking merger activity in 2015--over $2 trillion in total deal value just in 2015 alone. And it looks so far like this trend is going to continue into 2016 based on what we are seeing so far, so I would like to ask both of you: What do you believe is the reason behind this increase? Why is it happening? And how are your agencies responding to this increased activity to ensure that competition remains protected?

Mr. Baer. We are very deferential to each other, especially when it comes to answering questions from the Senate Subcommittee. I will go first.

I think part of the answer to the question of the sheer dollar volume is that between 2008 and roughly 2012, 2013, a lot of capital sat on the sidelines. The Great Recession caused companies, understandably, to be conservative about whether or not to invest. They built up a lot of cash, and now that the economy seems in a less precarious position, they are investing that cash. That is my sense of it.

We do not think--and the Chairwoman and I have talked about this a bit--that the percentage of problematic horizontal deals has gone up, but because the sheer volume of deals has gone up, even if you are at 3, 4, or 5 percent that we view as problematic and worthy of a serious investigation, that means our volume of work has gone up in terms of sheer numbers by a fair amount.

Chairman Lee. Chairwoman Ramirez?

[Pause.]

Ms. Ramirez. I forgot to turn this on. The deals are also just more complex, so they have required a significant investment of resources. We are, of course, committed to investing the resources that are necessary to make sure that we take a deep dive when it is necessary to do so and that we look into and then seek to challenge anticompetitive mergers.

We are incredibly busy, and I will note that in connection with the President's budget for next year, we are asking for additional resources in order for us to continue doing the job that we need to do on behalf of consumers.

Chairman Lee. Good. Thank you.

I next want to ask you a question about the clearance process. While many consumers are aware that your agencies share enforcement of the antitrust laws, I would imagine that relatively few of them--in fact, probably very few of them are familiar with the process by which you decide which agency will investigate any given matter. I am referring to the clearance process in which each agency will move forward with an investigation only once each agency has cleared it with the other, with the decision being based on expertise and based on experience in a given market, in a given industry. That is to say, ironically, that our antitrust enforcers engage in market allocation among and between themselves.

But while all antitrust enforcement actions are ultimately reviewed by appellate courts, ensuring uniformity and consistency in the application of the antitrust laws, the same cannot be said of earlier steps in the process-- that is to say, in the decision of whether or not to bring a case in the first place.

So what are you agencies doing to ensure that you are both on the same page with respect to enforcement decisions so that some industries are not subject to either greater scrutiny on the one hand or weaker scrutiny on the other hand than others? We will start with you, Chairwoman Ramirez.

Ms. Ramirez. Fundamentally, the objective that each agency has is to determine whether or not a proposed transaction is going to be harmful to consumers. Is it going to potentially result in increased prices, diminished choice, lower-quality products or services? So I think that that question is the one that we are ultimately trying to answer, and we do that in an analytically similar way. So I do not believe that there are any different standards that are being applied, regardless of which agency is reviewing the transaction. And I think that in areas where--I should say that we also just collaborate in a number of different areas, and where there might be a question about what framework to apply, there is significant informal consultation between both agencies so that we continue to apply the laws in a very consistent way.

Chairman Lee. Mr. Baer?

Mr. Baer. Just to add briefly to that, since 1982, my former law professor, Bill Baxter, who is also a predecessor in the position I currently hold, there have been merger guidelines that have in the last three or four iterations been jointly published by the Federal Trade Commission and the Justice Department to make sure that the public and the business community know the framework we use. It is a common framework. The courts rely on those guidelines as authoritative, so not only are we trying to think about it the same way, we know that when we get into court, if we decide to challenge a merger, the judges are going to be applying the same standard. We are going to need to show legal soundness, a factual basis, and a solid analytical framework if we are going to prevail.

So I think we are in a pretty good place in terms of not letting choice of agency, the market allocation to which you refer, be outcome determinative.

Chairman Lee. Thank you. That is helpful.

In addition to consistency in enforcement decisions, consistency in procedural standards I believe is equally important. As you know, I, along with Senator Grassley, the Chairman of our Committee, introduced the SMARTER Act to ensure that companies seeking approval of a merger will face the same burden regardless of the fortuity of which agency happens to be reviewing the transaction. So I appreciated the opportunity to discuss that bill at the hearing we held on this subject last year, and I am hopeful that we will be able to move forward on that bill sometime in the near future. This has everything to do with the ability of parties to foresee what they will need to face and, again, they ought to have some ability to predict that in a way that does not depend on something beyond their ability to ascertain and beyond their control of having to do with the fortuity of which agency ends up reviewing it.

Senator Klobuchar?

Senator Klobuchar. Thank you very much, Mr. Chairman.

I mentioned the pay-for-delay settlements that I have worked on with Chairman Grassley, who is here with us, and I ask you, Chairwoman Ramirez, will curbing pay-for-delay settlements continue to be a priority for the FTC? And do you think that legislation would help? We know there was a Supreme Court case that made some difference, but would passing the legislation that Senator Grassley and I put together to try to really cut back and cut down on these, what we consider anticompetitive and harmful for consumers settlements?

Ms. Ramirez. Senator, combating pay-for-delay agreements is an absolutely top priority for the agency. We devote considerable resources to looking at drug markets to ensure that they are competitive. This will continue to be very important for the agency.

As I noted in my opening remarks, we did achieve a very important settlement in the Cephalon case last year in which $1.2 billion is being committed to reimburse those who overpaid for that drug. So we are going to continue doing that.

I do believe that the Actavis decision was an important victory for the agency and has allowed us to strengthen our efforts to combat these types of anticompetitive agreements, but at the same time, I also feel that your proposed legislation would also give us additional ability to do that. So I think it would be more effective, and I absolutely support your bill.

Senator Klobuchar. Thank you.

Last year, I wrote a letter expressing concern that Turing Pharmaceutical had not only raised prices on Daraprim by 5,000 percent but that it was also trying to prevent potential generic companies from obtaining samples they would need in order to receive approval from the FDA to provide a competitive drug. There are allegations that this strategy is even more widespread for products subject to risk evaluation management system, known as REMS. REMS are implement to ensure patient safety, but as the law makes clear, REMS should not prevent or delay generic approvals.

Are practices that prevent potential generic entrants from obtaining samples of the branded product a significant competitive problem? Do you think we need to put forward legislation on this subject?

Ms. Ramirez. I do think that potential abuse of safety protocols is a serious concern, and we are certainly monitoring the marketplace in order to seek to address that. We have submitted two amicus briefs addressing this issue. So I think it is an issue, it is a concern, and we certainly intend to do what we can going forward. The Commission does not take any formal position on legislation, but that may be a potential solution as well.

Senator Klobuchar. Thank you.

Assistant Attorney General Baer, recently Senator Lee and I sent you a letter regarding Canadian Pacific's proposed voting trust that it would use pending the Surface Transportation Board's review of Canadian Pacific's potential acquisition of Norfolk Southern. Under the voting trust, Canadian Pacific's current CEO would become CEO of Norfolk Southern. This type of arrangement seems inconsistent with the principles underlying the Hart-Scott-Rodino Act.

From the perspective of competition policy, maybe you cannot comment on the specific letter we sent you, but do you think that voting trusts--do you have concerns about voting trusts pending a merger review? And what are they?

Mr. Baer. Well, it was a most excellent letter, and I thank you for it. It is--

Senator Klobuchar. We wrote it together. Thank you.

Mr. Baer. The concern we have as antitrust enforcers is situations where parties propose to merge and then accomplish much of the merger prior to the antitrust review. And in the matter to which you refer, as I understand from the public documentation, Canadian Pacific is proposing to put its shares in a trust. Its CEO will resign, move over to Norfolk Southern and become CEO of Norfolk Southern. That strikes me as, you know, letting the fox into the chicken coop subject to an investigation later of why there are so many feathers lying around.

Senator Klobuchar. Nice analogy.

Mr. Baer. So it is an area of concern.

This is a decision about how to handle it that the Surface Transportation Board by statute handles. The statute, though, does ask the STB to give substantial weight to the views of the Antitrust Division. And so we will be communicating on the record our views regarding how we look at mergers and how we look at the importance of not letting the fact of merging happen, or largely happen ahead of the investigation.

Senator Klobuchar. Thank you very much.

Last, I think before we hopefully have a second round, in our capacity as Chairman and Ranking Member of this Subcommittee, Senator Lee and I also sent you and Attorney General Lynch a letter on February 17th urging you to carefully consider how Charter's acquisition of Time Warner Cable and Bright House Networks will hinder or promote the development of new alternatives for consumers to receive video content. There has been talk about imposing conditions to alleviate any potential problem. Again, maybe you cannot talk specifically about this merger because it is before you. But, in general, how do you make sure merger conditions are truly enforceable, especially when the conditions relate to a party's interactions with other companies? And are there lessons we can learn from recent mergers in the enforceability and effectiveness of conditions?

Mr. Baer. Thank you, Senator. The first question is: Is the deal fixable by conditions? And--

Senator Klobuchar. Or as I said earlier, too big to fix, but yes, go on.

Mr. Baer. Yes, which also was a good metaphor.

There are examples in connection with Comcast-Time Warner. We made the judgment that that transaction was unfixable, but conditions that would have been required to protect consumers would have had my folks as regulators, not antitrust law enforcers, and that is not a role we aspire to, nor should we be entrusted with, to be honest about it.

But in connection with the Time Warner-NBC matter, which was largely a vertical transaction, the FCC and the Antitrust Division jointly determined that there were some provisions we put in place which would protect the competitive risks associated with the deal, and the reports that I get are that we believe those are enforceable. They are getting us the information we need. They give complaining content providers an opportunity not only to talk to us and the FTC, but to go to binding arbitration over any complaints that are out there.

So there are limited circumstances where we think some conduct remedies can be effective, but we do not rush to them. We are skeptical of them, and we want to make sure that they are effective and enforceable.

Senator Klobuchar. Thank you.

Chairman Lee. Chairman Grassley.

Chairman Grassley. Thank you very much.

In my opening statement--I am just going to put it in the record, but I want people to know that I appreciate the opportunity to cosponsor Chairman Lee's bill, the SMARTER Act. And then I will also call attention to the long-term working relationship that I have with Senator Klobuchar on the anticompetitive pay-for-delay bills. And I also compliment you folks for doing what you can to protect the consumer.

[The prepared statement of Chairman Grassley follows:]

/ SUBCOMMITTEE INSERT

Chairman Grassley. I will go to questions.

I have heard about consolidation in agriculture, the seed market and other areas, specifically the proposed Dow-DuPont and then also more lately the ChemChina-Syngenta mergers. I know that the Justice Department has been tasked with conducting the Hart-Scott-Rodino review of the Dow-DuPont transaction and that it is its early process. I also understand that the FTC will be reviewing the proposed ChemChina-Syngenta merger.

Example: I have heard concerns that larger companies will be able to more easily engage in anticompetitive practices, that they will be able to restrict availability of their goods and services, and that they will raise prices for consumers. There is a concern that there will be less competition in the industry and less choice for farmers as well as less innovation and R&D investment in new products.

I am hearing concerns specifically about the potential of the ChemChina-Syngenta deal to adversely impact the U.S. food distribution chain and food safety as well as our abilities to export to foreign markets.

So for the two of you, I guess simply some sort of a commitment from you that the Justice Department and the Federal Trade Commission will take these concerns seriously as they review the transactions.

Ms. Ramirez. Absolutely. When we look at all of these transactions, we are absolutely firmly committed to ensuring that we stop any anticompetitive effect of a proposed deal. So you have my absolute commitment that we will be looking at all transactions for that purpose.

Chairman Grassley. Okay. And then, Mr. Baer, ever since the start of the--oh, I am sorry. I cut you off.

Mr. Baer. Mr. Chairman, we are committed to exploring the very issues in the Dow-DuPont matter, as we would in any matter, about whether quality would be reduced, innovation incentives will be reduced, and price will go up. And you have horizontal mergers, that is the core of what you should expect us to look at, and it is the core of what we intend to look at.

Chairman Grassley. Okay. Mr. Baer, since the start of the Affordable Care Act, I have heard from Iowans who had their health insurance premiums skyrocket. They have told me about increased co-payments and deductibles. All in all, they feel that they have been misled and nothing about the Act is affordable. I have heard concerns that these recent proposed insurance company mergers could lead to even higher premiums.

So, Mr. Baer, what are the measures you will use when analyzing insurance company mergers? And will you consider the effects of mergers on individual premiums?

Mr. Baer. Thank you for the question, Mr. Chairman.

The answer is yes, we will look at individual effect; we will look at the cost to employers, both locally and nationally, to provide health care coverage. We will look at the impact on competition in local markets, as well as statewide and nationally.

We have, without getting into the merits of any views regarding the two pending transactions before us, these are transformational mergers in a number of markets, including Medicare Advantage and commercial insurance. We will be going from five national providers down to three. That is a game changer that demands merger law enforcement officials to scrutinize very, very carefully to make sure we are not making a mistake in which shareholders benefit and the consumers pay the cost.

Chairman Grassley. This next point might not be within your jurisdiction. I do not know. But I want to know if any of these considerations you have got to go through under existing law would consider a person's ability to see their own doctor or go to their own community hospital when you evaluate the impact of these merger.

Mr. Baer. Mr. Chairman, yes, it is within our purview in the sense that if there is a reduction in quality that results from a merger, even if there is no price increase, that is a legitimate concern of merger enforcement both at the FTC and the Antitrust Division. If people are being denied competitive alternatives, they do risk being restricted in terms of who they can see. They risk not having a competitive alternative, they risk having their co-pays increase because there are fewer firms out there competing to differentiate themselves.

So a quality reduction like those you talk about falls squarely within what we need to worry about in evaluating these kinds of deals.

Chairman Grassley. I think this will have to be my last question to Chairwoman Ramirez. As Senator Klobuchar said, we have been working together on this pay-for-delay patent settlements deal because the entry of generic drugs in the marketplace and the price of life-saving drugs for consumers is very hot on people's minds. So I want to join my colleague in urging the Federal Trade Commission to protect consumers from these deals which keep drug costs unnecessarily high for Americans.

What trends are you seeing with pay-for-delay settlements? And is the Federal Trade Commission doing all it can to challenge settlements that it determines to be anticompetitive? That will be my last question.

Ms. Ramirez. Thank you, Mr. Chairman. We did recently issue a report in which we looked at data from fiscal year 2014, which is the first full fiscal year following the Supreme Court's landmark decision in the Actavis case.

Looking at that data, we have seen an important downward trajectory in the number of settlements that could potentially implicate pay-for-delay conditions. So we see that as a very good and positive trend. But at the same time, I think the numbers also just indicate that we need to continue to be vigilant in this area, and we absolutely intend to do so.

Chairman Grassley. Thank you very much.

Thank you, Chairman Lee, and thanks, Senator Tillis, for letting me go ahead.

Chairman Lee. Senator Franken.

Senator Franken. Thank you, Mr. Chairman. Mr. Baer, Chairwoman Ramirez, thank you for being here.

I am increasingly concerned about Internet giants that use their positions as dominant media platforms to stifle competition and inhibit the free flow of ideas. In recent years, we have heard countless allegations of online intermediaries leveraging their market dominance to the detriment of content creators and innovative startups. Google has preferenced its own products and services in search results while downgrading competitors' products and services. I have heard from photographers and from stock houses, photography stock houses, online stock houses, that Google may be taking original content from the website of these stock houses without appropriate compensation or attribution. Apple is preventing its competitors in the music streaming market from promoting lower prices to consumers on Apple iOS. And Amazon is using its dominance in the book market to impose unfair contractual terms on publishers and authors.

What are you doing to address allegations that these dominant platforms' unilateral behavior is anticompetitive and may ultimately harm the free flow of ideas and content?

Mr. Baer. Senator, thank you for that question. I think we both actually have areas where we are actively involved and will want to respond.

In connection with provision of content to a consumer, we are quite focused on what I call the "one-pipe problem," the fact that for most Americans they only have the choice of one or zero high-speed Internet service providers. So there is one pipeline into the home.

The incentives for the people who control that one pipeline to favor content they may have created on their own, to price differentiate in a way that denies creative works the opportunity to be seen, the incentive to discourage over-the-top transmission of content video, that is really the new wave of how we are increasingly viewing content and giving us an option to avoid the one pipe, to avoid or limit the dominance of the Internet service provider.

So in both mergers and in looking at conduct, we look at restrictions such as most-favored-nations clauses; we look at behavior that basically limits the ability of the upstream provider of the entertainment value to get to the consumer, and also potentially limits or raises the cost to consumers to get access to that conduct.

So those are areas that are of concern to us, and we have a number of active investigations going on. It is one of the factors, a key factor that led us to oppose Comcast's acquisition of Time Warner for fear that the problem--

Senator Franken. Thank you for doing that.

Mr. Baer. You are welcome.

Ms. Ramirez. Senator, we are also very focused on any industry, regardless of whether it is going to be in the online sector or elsewhere, if there is a company that has a dominant position that may be, rather than competing on the merits, competing in a way that meaningfully interferes with a rival's ability to either enter the market or to be an effective competitor. So we are going to be looking at that issue in any part of the marketplace, and if we see a problem, we are certainly going to intervene.

You are no doubt aware that the Commission did, back in early 2013, conclude that and decide unanimously not to bring an active against Google for its search practices. But I can assure you that we continue to be watching the marketplace vigilantly, and if we see a problem, we are going to take action.

Senator Franken. Have you looked at Google's practice of putting up images that stock houses have and people just take them off the Internet and do not pay for them?

Ms. Ramirez. So I am afraid that I cannot get into any details of any potential investigation by the agency, but what I can tell you is that we are looking closely at a number of different issues, and if we feel that a company is crossing the line and not competing on the merits, we absolutely will not hesitate to intervene.

Senator Franken. Okay. I want to ask you about something that has been a source of frustration for me, which is how the credit rating agency really contributed to the meltdown that led to the Great Recession. The current business model for credit rating agencies was and still is deeply flawed. It is a system that allows banks to shop around among agencies, often the Big Three--that is, Standard & Poor's, Moody's, and Fitch--to get a good initial rating for a financial product, AAA, and really encourages the different credit rating agencies to loosen their standards in order to get business from those that are creating the financial products. And the result is a pay-to-play system that encourages really risky, inflated ratings at the expense of public investors. And I still worry that this is a highly concentrate market, that these credit rating agencies have an incentive to inflate ratings. And I have worked with a bipartisan group of colleagues on this. We pushed for common-sense reforms of the system. I authored an amendment in the Wall Street reform bill that was meant to address this, but, unfortunately, it has not been fully carried out by the SEC.

Despite efforts to increase competition in the market for credit ratings, according to the SEC's annual report on credit rating agencies, more than 95 percent of ratings given in 2014 came from the Big Three--the same three whose ratings contributed to the financial crisis.

Does it not concern you that no new players have been able to pick up a significant share of this market despite the clearer failures of the Big Three?

Mr. Baer. Senator, it is legitimately concerning, and anyone who saw "The Big Short," that is a good summary of the problem to which you speak.

Most of the responsibility for those issues--

Senator Franken. I actually read "The Big Short"--

Mr. Baer. Actually, I read it, too.

Senator Franken. A time to make this legislation, but yes.

Mr. Baer. I apologize. The--

Senator Franken. No, you do not have to apologize.

[Laughter.]

Mr. Baer. The SEC and some of the financial regulators have more direct responsibility there. But to say it is a concerning situation anytime you have three or four players controlling 80, 90, 95 percent of a market, the potential for there to be adverse effect on competition and consumers is a legitimate concern.

Senator Franken. Well, I know I have run out of time, but I guess what I am saying is, yeah, the SEC has responsibility there, but they are not using it--they are not fulfilling their responsibility, rather. And I was wondering if there is any role for you to step in there when the SEC does not do what it should be doing.

Mr. Baer. There may be some regulatory limits, but I am glad to provide a more fulsome response for the record, if you want to submit that question, sir.

Senator Franken. Thank you.

[The information follows:]

/ SUBCOMMITTEE INSERT

Senator Franken. Thank you, Mr. Chairman.

Chairman Lee. Senator Hatch.

Senator Hatch. Thank you, Mr. Chairman.

Let me just ask both of you this: There is an increasing concern here the United States regarding the way other countries are enforcing their antitrust laws. To give one example, a number of companies have come to me regarding the problems they have had with the Korea Fair Trade Commission. These companies have presented troubling accounts of witness intimidation, withholding of evidence, failure to provide access to key witnesses, and an absence of transparency and predictability in the investigative process.

Now, there are reports of similar issues with other nations' competition authorities. I would like to ask this of both of you: Where do these concerns fall among your priorities? And what are you going to do to address these problems? Let us start with you, Ms. Ramirez.

Ms. Ramirez. Yes, thank you for the question. I can tell you that if we learn of a situation where a company is not receiving due process, that is a concern to us. As enforcers, we certainly have an interest in ensuring that the international antitrust system has legitimacy and that its integrity is preserved. These are important questions that we address in a number of different ways. It includes working with multilateral organizations, important networks like the International Competition Network, in which we work with our counterparts around the world to put forth best practices in a number of areas, and I think there are three key messages that we seen to promote.

The first is that there needs to be procedural fairness so that parties that are being investigated understand the nature of the allegations that are against them. There needs to be some level of transparency to allow for that. Then you would have an opportunity to respond to allegations and concerns.

Secondly, I think it is also important to ensure and promote the sound application of the antitrust laws and ensure that they are being applied in a consistent manner. And we convey that not only through these multilateral mechanisms that I have mentioned, but we also convey that in our bilateral consultations. Mr. Baer and I often take our show on the road, and we are engaging with--you mentioned Korea. We engaged with the KFTC recently for part of a Memorandum of Understanding to enhance the formal consultation. We also do it informally. So these are all important questions for us, and we are doing what we can to, again, put forth these important messages.

Senator Hatch. Thank you. My time is running out.

Mr. Baer, do you have anything to say?

Mr. Baer. Thank you, Senator. Just a couple of brief points.

One, we do meet frequently with U.S. business interests, Chamber of Commerce and others, to hear their concerns and make sure that we understand if there is problematic treatment, discriminatory treatment abroad. And we are not at all shy about communicating those.

Senator Hatch. It looks like it in these cases.

Mr. Baer. Pardon?

Senator Hatch. It looks like it in these cases.

Mr. Baer. I am sorry. I did not hear the question.

Senator Hatch. I said it looks like it in these cases.

Mr. Baer. Well, without commenting on any specific ongoing investigation, one of the things we do, we listen to the companies and we screen them. Sometimes companies want to know on day one of an investigation, even before the foreign jurisdiction has investigated everything, all of the details: What am I being charged with? Well, nothing has happened yet. We do try to take a three-dimensional view of whether or not the complaint has a basis.

But the final point I would make--and I do not want to eat up all your time--is that I last was in Government as Director of the Bureau of Competition at the Federal Trade Commission in 1999, and the improvement in the fairness and process overseas foreign jurisdiction is dramatic. Does it have a heck of a long way to go? Yes, sir, it really, really does. But we have got the communications in place so we can work with our counterparts to make sure they know if we think they are not treating our companies fairly.

Senator Hatch. Well, thank you.

Ms. Ramirez, I would like to begin by asking some questions about the Commission's investigation of Google, which closed in early 2013. As you know, the investigation focused on allegations that Google had engaged in anticompetitive conduct by favoring Google products and services in search results. The Commission concluded that any preference Google gave to its own content "likely benefited consumers" and improved the quality of search results. Now, I would like to ask about three developments that have occurred since the Commission closed its investigation.

First, last year, the Wall Street Journal uncovered an August 2012 Bureau of Competition staff report that seems to contradict the Commission's findings. Among other things, the staff report found that Google "has strengthened its monopolies of search and search advertising through anticompetitive means, and has forestalled competitors' and would-be competitors' ability to challenge those monopolies."

Second, last year, the Commission's former Chief

Technology Officer, NYU Professor Tim Wu, published a study in which he examined whether Google's local search algorithm, which favors Google-administered content, provides better benefits for consumers than search results presented in an unbiased manner. Professor Wu found that consumers were significantly more likely to engage with search results that are presented in an unbiased manner, leading him to conclude that "Google is degrading its own search results by excluding competitors at the expense of its users."

Third, earlier this year, Utah Attorney General Sean Reyes and D.C. Attorney General Karl Racine sent a letter to the Commission expressing concern about potential anticompetitive conduct by Google in both the desktop and mobile spaces.

Now, I ask unanimous consent that this letter be entered into the record, Mr. Chairman.

Chairman Lee. Without objection.

[The letter follows:]

/ SUBCOMMITTEE INSERT

Senator Hatch. European antitrust authorities have also opened investigations into whether search result manipulation by Google is harming consumers. Now, I am interested to know what the Commission's response is to these developments.

First, what is your reaction to the Wu study? Have you considered reopening your investigation into Google's alleged manipulation of search results in light of the study's findings?

And, second, have you considered looking into reports of anticompetitive behavior by Google in the mobile space? Something that was not part of the Commission's initial inquiry.

And, third, how do you explain the apparent discrepancy between the Bureau of Competition staff report and the Commission's findings that Google's practice of favoring Google products and services likely benefits consumers?

Ms. Ramirez. Mr. Chairman, let me start by addressing the decision to close our investigation against Google with regard to its search practices. Let me correct the record because I think there were a number of misimpressions created by some of the press reports that you are referring to.

So, first of all, the decision to close that investigation was a unanimous one. Five members of the

Commission, three of us Democrats, two Republicans, we all concluded that there was no basis to proceed. We did not find there to be a violation of the antitrust laws. There was, regretfully, an inadvertent disclosure of certain internal documents, but what I can tell you is that our conclusion was, in fact, consistent with the recommendation that had been made by our Bureau of Competition staff. It was also consistent with the recommendation by our Bureau of Economics staff and also consistent with the recommendation by our General Counsel's office. So any press reports to the contrary are just flatly wrong.

I am afraid that I cannot get into details of what we have been doing since. I am aware of the concerns that you have articulated, and I am, of course, aware also of more recent developments. But what I can assure you is that we are absolutely vigilant when it comes to the practices of Google or any other company. And if we see a violation, we will absolutely not hesitate to take action. But I am afraid that I cannot go into any more detail.

Senator Hatch. Can you give your reaction to the Wu study?

Ms. Ramirez. Well, I am aware of it. Again, I can tell you that if we find a violation, we will act. But I cannot go into any detail. I am happy to provide you with more information in writing, but I am afraid I just cannot get into the specifics of particular company practices.

Senator Hatch. Thank you, Mr. Chairman.

Chairman Lee. Thank you.

Senator Blumenthal?

Senator Blumenthal. Thanks, Mr. Chairman.

Attorney General Baer and Chairman Ramirez, I want to thank both of you for your dedicated efforts as law enforcers, which I used to be and was proud to work with the many dedicated and able individuals who work with you when I was Attorney General of the State of Connecticut, and I know they are extraordinary hardworking. And they have taken some good actions: blocking the AT&T-T-Mobile merger, the Comcast-Time Warner merger, the Actavis case, the Apple e-books case, which you made reference to earlier.

At the same time, as you have correctly called it, consumers have been hit by a tsunami of consolidation with the same economic effects as a natural disaster tsunami has on people who are in its way. In many of these industries-- and I have a chart here that refers to the HHI index in food and staples retailing, Internet software, airlines, media, the merger policy of our Nation simply has failed. So I would suggest that as a national initiative, we need to rethink the approach we have taken in the past. I think that some of it has to be to pursue in enforcement bad conduct, abuses, predatory action by companies that, in effect, exploit their power in the marketplace at the expense of consumers. Sometimes it will take innovative and creative enforcement. The Microsoft case used a law enforcement theory that was regarded as novel at the time, taking advantage of the bundling theory. But I also think that, just to take the airline industry as one example--and I want to thank you for your positive response to my letter calling for an investigation--there needs to be more aggressive action. The past decade has seen rapid and relentless consolidation among U.S. airlines. Four large carriers dominate the domestic markets. You and I and my guess is most folks in this room see daily evidence of tighter capacity and rising fares and ancillary fees that are the result not only of the fact that four airlines control 80 percent of the market, but also maybe even more alarmingly, the issue of horizontal ownership.

As you probably know, between 2013 and 2015, seven shareholders who controlled 60 percent of United Air Lines also controlled roughly 25 percent of Delta, Southwest, and JetBlue. So when United is deciding how much to compete against the three other airlines, it has to make a judgment whether it is willing to harm its shareholders of those airlines, which are also its own shareholders.

I would like to ask you what action you think is appropriate, assuming that you find that there has been, in fact, violation of antitrust laws in the potential collusion among these airlines and what can be done in the face of this consolidation.

Mr. Baer. Senator, I appreciate the question, and it is a complicated answer. The easy part is where we can show collusion, we have got full authority to go after it. It has been publicly reported. We are looking at whether in the airline industry--this is the letter to which you refer that you sent us--whether or not there is ongoing capacity coordination among the Big Four. It is under investigation. I can say nothing more about that.

The tougher question really from an antitrust point of view is this common ownership issue, which you correctly raised. When you do have common shareholders and active shareholders, what incentive do they have to have one company stand out over the other? It is a little like classic oligopoly theory, but in a new environment. The common ownership thing is a phenomenon that I had not seen in my prior years of antitrust service at the FTC.

I can tell you it is an issue we are looking at, we are looking at in more than one industry, and it is an area where, if we do not think we have the authority to deal with that problem under the existing antitrust laws, we will not hesitate to come back to the Congress and inform you of that fact.

Senator Blumenthal. And, you know, I think that the brief that--the original complaint you submitted against the US Air-American Airlines merger correctly noted--and I am quoting--"the structure of the airline industry is already conducive to coordinated behavior, and coordination becomes easier as the number of airlines dwindle and their business models converge" and their common ownership creates not only the opportunity but the incentive. And so I would respectfully suggest that a conduct-oriented remedy, which you have implied may be the result, perhaps is insufficient here. Maybe there has to be a rethinking of the structure of the industry itself.

Mr. Baer. Senator, I appreciate that, agree with that, and if you look at the challenge we filed a few months ago with regard to United's effort to increase its dominance over takeoff and landing slots at Newark airport, their argument is that at 73 percent, how does it matter if we get just a little bit bigger by a few slots from Delta and go to 75 percent. The answer is it matters a heck of a lot. And we cannot have dominant firms subtly increasing their dominance. There is no good that is going to come of that for the American consumer, for the traveling public.

Senator Blumenthal. And I would just say, in the brief time I have left, in some of the very prominent mergers you have under review, both of your agencies, whether it is ABI-

Miller--I have raised very strong questions about the ability to, in effect, guarantee benefits for consumers, and the Cigna-Humana-Aetna merger, that there are lessons to be learned here, lessons about the effects of consolidation but also the futility and the failure of divestiture as a remedy. And I am just going to reel off some examples here: Safeway-Alberton's, Hertz-Dollar Thrifty, Sysco-US Foods, Staples-Office Depot, where there was no viable buyer for the assets, and as you well know, in 2012 Humana made divestitures to three separate buyers--Cigna, WellCare, and Advantage Health--in order to acquire Arcadian, and only one of the three buyers, Vantage, has managed to remain viable. Both Cigna and WellCare exited over 50 percent of divested markets, within 3 years of the merger closing. There are lessons to be learned here that I hope will prompt greater vigilance and vigor in your use of enforcement authority, and I say that not because I think you are unsympathetic to that goal, but I think you have been very able and dedicated enforcers, and I appreciate your efforts in that regard.

Thank you.

Mr. Baer. Thank you, Senator.

Senator Klobuchar. [Presiding.] Thank you very much, Senator Blumenthal.

Senator Tillis?

Senator Tillis. Thank you both for being here. You know, this discussion about these new technologies, the things that we are dealing with today, is very different from just a few years ago, and it raises a question in my mind about how modern or up-to-date some of our antitrust laws are, especially with emerging technologies.

I think the Antitrust Modernization Commission was established in 2002. I think it was terminated in 2007. At that time they felt like the laws were sufficient for the world that we were dealing in. We are in a very different world now. I think Facebook was founded in 2003; Instagram and Snapchat were not even heard of. Blockbuster was where you got your videos, and it required a drive. Now it requires a couple of mouse clicks with the different video content providers.

So with some of the cases before the FTC and the DOJ, it really does seem to suggest the need to look again at our antitrust laws. I think the Time Warner Cable-Charter merger and the dispute with HBO and Netflix is another example of a phenomenon that we simply were not dealing with 10 years ago.

So do you all have a position on the modern entity of our antitrust laws now? And do you think that it may be a time where we really should look at reactivating the Antitrust Modernization Commission? How do you feel about that? And, Chair Ramirez, we will start with you.

Ms. Ramirez. Yes, thank you. My view is that the antitrust laws are, in fact, sufficiently flexible to really adapt to what we are seeing today. That being said, though, I think it is really important for the antitrust agencies to continue refining their understanding of these various markets. Let me just give you a couple of examples.

We devoted a considerable amount of resources to the health care industry, and together with the Department of Justice, for instance, a year ago we held a workshop looking at the changes that we are seeing as a result of reforms, and also just to make sure that we are looking at markets in an appropriate way, so that if we need to take a harder look, take a different look, we are going to be doing that. There have been a number of concerns that you mentioned and others have mentioned about, you know, is the proposed transaction perhaps too big to fix. We are going to want to be looking at different angles to make sure that at the end of the day we are doing what is best both in the short term and in the long term for consumers. So I can assure you that we are thinking about these new changing and dynamic markets.

Let me also just mention something about remedies. At the FTC we are also undertaking a look back to see whether our remedies and our consent orders have been effective, because I think it is important for us to continuously assess whether we are achieving our objectives of restoring competition that might have been lost through a transaction.

So I think that constant process of trying to learn more and to assess the work that we have done is critically important for us to do.

Senator Tillis. Mr. Baer?

Mr. Baer. Well, as usual, I concur in the views of my colleague in antitrust enforcement, Chairwoman Ramirez. I would say that I think as a general matter these statutes we enforce--mergers, monopolization, cartel--are broad enough, are flexible enough that we can accommodate the new economy. The thing we need to do is to be smart enough to understand the new economy and how the potential anticompetitive effects might grow out of certain forms of behavior or be enhanced by mergers.

If we understand them and we have got smart lawyers and a heck of a lot of smart IO economists working with us, I think we are in a position to go at this and go at it right. The one exception I would refer to is Senator Blumenthal's question about this common ownership thing. This is new. It is not clear to me that the antitrust laws as existing today do fully reach it. We want to think about it more and come back to you if we have concerns.

Senator Tillis. Thank you.

I want to go back to something that Senator Hatch touched on, and that is, there seems to be a growing trend where particularly Asian countries, their foreign antitrust authorities are instituting cases against American companies, especially, I think, in the high-tech sector, for reasons other than legitimate competition concerns. It seems that antitrust enforcement is being used for protectionist purposes, including advancement of indigenous innovation and domestic industrial practices.

What is your reaction to this? Do you agree that you see that trend? And what actions should we take?

Mr. Baer. Senator, we worry about it a lot. This administration worries about it a lot. It has been the subject particularly with China but also with Korea in the KORUS understandings reached a couple years ago, to make sure that the antitrust laws around the world are applied transparently, in a non-discriminatory fashion, meaning do not favor your domestics over your foreigns, and with kind of an analytical framework and opportunity to be heard and access to the courts that we routinely provide both U.S. business interests and foreign interests doing business in the United States. It is, as Chairwoman Ramirez said in response to Senator Hatch's question, an area of concern to us, commitment to us. I do think there is both progress and the potential for further progress to make sure we achieve those goals.

I do not suggest to you for a moment that I think we have the same commitment to those fundamental principles around the world that we have here, but I think there is movement in that direction. And it takes a lot of quiet and public urging by the U.S. Government, including the antitrust enforcers, to help us move in that direction.

Senator Tillis. Chair Ramirez?

Ms. Ramirez. I generally concur in Mr. Baer's comments. I do think that there is a basis for being cautiously optimistic in this area. Over the course of the last couple of decades, we have made tremendous progress, particularly in the area of cartel enforcement as well as merger enforcement. So I think we are heading in the right direction. And while there still are differences and concerns, I think with continual urging on the part not only of the U.S. antitrust agencies but other more mature agencies around the world, I think we will continue to make progress, slow perhaps but I think progress in the right direction.

Senator Tillis. Thank you.

Senator Klobuchar. Thank you very much, Senator Tillis.

Last, but not least here, Senator Durbin. Thank you for your patience.

Senator Durbin. I want to thank this Subcommittee for allowing me to hitch a ride on this hearing. I thought it was important and timely, and I am glad you have let me join you.

I have several topics, but I will not have time for all of them. But I was at Norma's Restaurant in Jacksonville, Illinois, on Saturday, and a lady asked me, "What are you doing with the high price of drugs? And what about these people that are ripping us off?" And I think she might have referred to the notorious Mr. Shkreli and his Turing Pharmaceutical raising the price of a tablet from $13.50 to $750. I recognize there is no Federal law against price gouging per se and that sometimes spikes in drug prices simply are due to changes in supply and demand. But they can also be the result of anticompetitive activity.

So when we have this spike in prices that catches the attention of America, what should be the response of the Department of Justice and the FTC? Should there be an immediate response, questions asked to try to allay the fears of America that they are defenseless against this price gouging?

Ms. Ramirez. Senator, I think you are posing a really important question, and we share the concerns that your constituent articulated. I know that many others have expressed that same concern about recent price hikes that we have seen in the drug markets. I can assure you--while I cannot get into the details of any particular investigation, I can tell you that this is something that, of course, we are aware of, and over time we have looked at a number of situations where we do see significant price increases. Where there is a problem, we tackle it. We have done a great deal of work in what we call the pay-for-delay arena to try to preserve generic competition. So I can assure you that wherever we find an anticompetitive problem, we are going to do something about it.

In addition, we are also looking very carefully at consolidation in the pharmaceutical industry. But as you noted, there are situations when the antitrust laws simply do not reach the conduct, so there may be--

Senator Durbin. And it is amazing to me that we live in a country surrounded by like countries where they pay close attention so their consumers are not subjected to this kind of abuse--Canada, Europe, and other places. And in the United States it is a hands-off attitude, let the market decide.

Can I switch to another topic?

Ms. Ramirez. Absolutely.

Senator Durbin. There is an industry called the For-Profit Colleges and Universities. They have as their students about 10 percent of high school graduates go to for-profit colleges and universities. They receive about 20 percent of all the Federal aid to education because they are so much more expensive than most. And they account for at least 40 percent of all the student loan defaults, students who went to for-profit schools, paid too much tuition, dropped out, got a worthless diploma, defaulted on their college loans.

The FTC is now in the process of taking, along with other agencies, a closer look at this industry, which is rife with deception and misleading students into believing they are going to end up making a lot more money than they could ever possibly make.

So I would like to ask you, Ms. Ramirez, what role are you playing to protect families and students who are being exploited by this industry?

Ms. Ramirez. Let me also say that this is another area where we are paying very close attention. I am firmly committed to making sure that educational institutions make representations that are accurate. We recently brought an action against DeVry University because they were making recruitment claims that, in fact, were not substantiated, so we took action.

So we are aware of the serious concerns about for-profit colleges and other educational institutions that may be making misrepresentations to potential students. We are aware of them, and here, too, we are not going to hesitate to take action as appropriate.

Senator Durbin. Please do, and for the record, the most heavily subsidized private for-profit companies in America, for-profit colleges and universities. DeVry of Chicago received $1 billion last year in Federal funds through Government loans and grants, and their CEO did quite well when it came to his own compensation. I am glad you took that action.

Ms. Ramirez. Let me also just add a note that we are also cooperating with the Department of Education here, so I want to also just acknowledge their efforts in this area.

Senator Durbin. Last question, and fairly technical. I got into the world of swipe fees a few years ago, and to some acclaim and some criticism, and I noticed you did, too, recently, Mr. Baer, in a landmark decision involving American Express. And I think you properly noted, or your agency did, the Department did, that the ruling in the American Express case would benefit millions of merchants who pay more than $50 billion a year in credit card swipe fees as well as the consumers who ultimately bear these costs.

The mega banks that own the big cards and the lion's share of the business, think Visa and MasterCard and the big banks, clearly are imposing swipe fees when it comes to credit cards. We have some regulation now on the debit card side. But I want to address one particular issue. I draw your attention to an entity called EMVCo, which controls the standards and specs for EMV chip card technology that is now used in approximately 3.4 billion credit and debit cards worldwide. EMVCo is essentially setting the rules when it comes to the deployment of chip cards in our payment card system. Were you notified recently your debit card had to have a chip on it? Yes, you were. And this has an enormous impact on competition and choice in the electronic payment system.

But EMVCo is owned and controlled by the six giant card network companies--Visa, MasterCard, American Express, Discover, a Japanese company called JCB, a China company called Union Pay. No other stakeholder has any meaningful decisionmaking authority in EMVCo. There is reason to question whether the standards established by them are enabling smaller payment networks to fairly compete for consumer business against these giant networks. I am troubled by the decision of EMVCo's member networks to discourage the use of PIN technology on chip cards in the United States while encouraging it all around the world.

The decision to discourage PINs has less to do with preventing fraud and more to do with giving EMVCo six member networks and a competitive advantage. Ever wondered why it takes so long when you put the chip in the machine, a little longer than it does to swipe? They want you to get a little frustrated with this. They do not want you to use the PIN.

I am going to send a letter to EMVCo asking for information about their operations and standards. I want to ask you, has either of your agencies looked at this industry, at EMVCo to see if it is helping or hindering competition and choice?

Mr. Baer. This is an area that would typically fall under my watch over at the Justice Department, and I can say to the best of my knowledge we have not looked at it, to be totally candid, and it is the sort of thing about which, if there is bad behavior going on, is an area where you can reasonably expect us to be vigilant and active, just as we were in bringing the cases against American Express, Visa, and MasterCard for restricting the ability to compete over swipe fees and to allow competition to go forward to the benefit of retailers ultimately to consumers.

Senator Durbin. We will send you a letter.

Thanks, Madam Chair.

Senator Klobuchar. Thank you very much, Senator Durbin, and thank you for joining us on the Subcommittee. We welcome you back.

I just wanted to follow up. I know that Senators Hatch and Tillis asked about this, but this is the issue of the--we have been hearing some complaints about countries that appear to use their antitrust laws to protect their companies from competition in the U.S. And I know you have answered some of this, but do you see this as a situation--either of you can answer--that is worse, improving, or the same with both of your vast experience in these areas? Mr. Baer.

Mr. Baer. I said earlier to Senator Hatch that I actually think since the last time I was in Government, 1999, we have seen improvements. We have seen convergence on substantive principles, and that is an encouraging thing. The convergence is more on cartels, agreeing that cartel enforcement is problematic; no matter where it occurs, consumers are injured. We see increasing similarity in our analytical approach to mergers. We see still some considerable clear space between us and some other foreign competition enforcers about what constitutes inappropriate monopolization. And there is the potential if an agency is not applying its law in a non-discriminatory fashion for one to favor a domestic industry over a foreign competitor, whether it be a U.S. competitor or some others.

And to the extent we see that behavior occurring, we have a candid enough and frank enough relationship with our foreign counterparts that they will not be surprised to hear from one or both of us, and we are not at all shy to communicate that.

Senator Klobuchar. And you mentioned cartels, and I know that you have seen an increase in these price-fixing cases, and you talked at the beginning of why you think you are seeing--having more merger cases, and that is in part because of the market and the money that has been on the side, and now companies, and there is also other outside forces. But do you think part of why you are seeing these kinds of cases on the rise is because we are starting to see more concentrated markets so it allows for this--or engenders it, I should say?

Mr. Baer. In terms of cartel behavior, I am not sure it is--to the extent there is a trend toward concentration that it is--that there is more of it going on. I think what has happened is through our leniency program, where the first company to come in on a conspiracy and blow the whistle on itself and everybody else, they will get certain benefits in terms of non-prosecution of the company and the cooperating individuals. That has actually created an unusual incentive structure, and it has been now copied around the world for companies when they discover a problem, the lawyers are very incentivized to come in and confess.

So I do not know that we have got increased prevalence of cartel behavior as much as we have found ways to encourage people to come and own up before we find out and come after them hammer and toe them.

Senator Klobuchar. Okay. I just want to go to a few more specific industries. We talked some with my colleagues about communications. I mentioned beer. We have talked about a number of other mergers. But in the hotel, the travel agency market, with expediency, as you know, I have been concerned about concentration in the online travel agency market, and recently Expedia announced the accelerated program under which a hotel can pay Expedia more and obtain a better position in search results.

Now, as we know, there is starting to be some incredible concentration in this market. People think they are getting different sites, but they are owned by oftentimes the same company. And this announcement of this kind of program arising so soon after Expedia closed its transaction, is it possible that the elimination of competition gave Expedia the power to implement this plan? Can you continue to commit to me that you are going to look at the repercussions of this merger of which I raised concerns?

Mr. Baer. Senator, I can make that commitment to you. I think we, I, made the decision in the Expedia-Orbitz matter that Orbitz was such a modest competitive presence, it had really declined in its significance, that allowing Expedia to acquire it would not change in an adverse way the competitive dynamic. I still believe that was the right call. But if there is behavior that is exclusionary, that is resulting from the exercise of market power, we will go after it. It is our job to go after it, and we will do that.

Senator Klobuchar. Okay. Chairwoman Ramirez, in 2013, you sent letters to search, travel, and retail sites, reminding them that they must be clear when the results are not natural search results, like as in they are not fooling around by paying money to make consumers think they are getting the best deal. You explained that if search results are based in whole or in part on payments from a third party, it is a form of advertising and must be disclosed.

Would you look into whether Expedia's newly announced policy complies with Section 5 of the Federal Trade Commission Act?

Ms. Ramirez. I commit to certainly looking at that concern, yes.

Senator Klobuchar. Okay. Thank you very much. As you know, I think we have two, or three, at best, of these major companies now in this market, and all the consumers think they can try all these different sites, and they never know that they are owned by the same company. So I appreciate that.

Just to follow up on pay-for-delay, last year, with you, Chairwoman Ramirez, I know you mentioned this settlement, which is unprecedented, the $1.2 billion settlement involving the pharmaceutical company Teva. And as I understand it, the FTC estimated that, in fact, the total harm in that case was somewhere between $3.5 billion and $5.6 billion, which would mean that the defendant kept 70 to 80 percent of its illegal profits. Obviously, a big amount and a reason for a major victory, but at the same time, it would be unfortunate if paying 30 percent of illegal profits became a ceiling or even a starting point in the future. Do you want to comment on that?

Ms. Ramirez. With any proposed remedies, we certainly seek to estimate an appropriate amount of redress. Here we felt that $1.2 billion was an appropriate amount. But we certainly do not see that to be a ceiling.

Senator Klobuchar. Okay. Thank you. I think that is important for people to know.

On patent trolls, in the last oversight hearing we discussed this, and I supported your call for a Commission study on the issue. Three years later, the issue remains as important as ever. I am an original sponsor with six other members of this Committee, including members of this Subcommittee, Senators Lee and Hatch and Grassley, of the PATENT Act. When can we expect the FTC to finish its report on this important issue?

Ms. Ramirez. We are working feverishly, and I do expect the report to issue this spring.

Senator Klobuchar. Okay. Very, very good. Well, that is a good ending. I actually have to leave. As the important head of the Canadian-American Inter-Parliamentarian Group, I say it is good because you used the word "feverishly" as the town is taken over by "Justin Fever." And I have to go to deal with some issues related to our positive relationship with Canada and America, and I am more than happy to turn this over to Senator Blumenthal. And I believe Senator Lee may be returning as well. Again, I thank him for his chairmanship of this Committee and our good working relationship, and clearly we have a lot of work to do, and I thank you for your work.

Thank you.

Senator Blumenthal. [Presiding.] I wish I could say that the United States Senate is working feverishly and effectively, but not always. And I want to join Ranking Member Klobuchar, Senator Klobuchar, in thanking you for the good work that you have done on pay-for-delay. And as Senator Durbin remarked, the increasing price of pharmaceutical drugs is very much on the minds of our constituents. There have been a lot of high-profile examples of spikes in drug prices over the last year, and most consumers saw the 5,000-percent increase in the price of Daraprim, a medication for AIDS patients, by Turing

Pharmaceuticals. What they took less note of was the terms of the sale by which Turing bought Daraprim from Impax Laboratories. Turing conditioned the sale, as you probably know--I am sure you know--on Impax removing the drug from the supply chain, thereby giving Turing complete control of the market for that pill and preventing would-be competitors from testing genetics and entering the market.

Now, to most people, that would sound like anticompetitive conduct. Turing appears to have taken actions designed to eliminate competition.

Would you agree that it is illegal for a drug company to maintain its monopoly by refusing to sell to a potential competitor? And I wonder whether the FTC sees other cases like this one that might constitute a violation of the antitrust laws.

Ms. Ramirez. Senator, we are always going to be very concerned about a situation when a player that has a dominant position imposes conditions. We are going to be looking at it very closely to see if that ends up creating structural problems for the market as a whole. So I cannot get into specifics, but I can tell you, again, if we were to find a company that crosses the line and violates antitrust laws, we are certainly going to go after that kind of company.

Senator Blumenthal. Thank you.

Mr. Baer, as you may recall, we had a hearing on the ABI-Miller merger. The CEO of ABI stated that ABI's distribution system will remain unchanged. In fact, he committed that approximately 10 percent of the company's volume will continue to be distributed by its wholly owned distributorship. In effect, he put a cap on it. I asked him whether he would be willing to commit, as a condition for regulatory approval of ABI's merger with Miller, to limit the merged company's ownership of wholesalers to no more than 10 percent. He passed the buck to you and said that he had no problem with that condition, but that it as the responsibility of the Department of Justice to decide what conditions to impose on a merger.

I know you are not going to commit sitting here to what the conditions might be, but I would ask that you review the transcript of this Subcommittee's hearing and consider holding Mr. Brito to his word by imposing a wholesaler ownership cap on the merged entity. Can you make at least that commitment?

Mr. Baer. I can, and I can also thank you for apparently obtaining a blank check from Mr. Brito on behalf of sound antitrust enforcement.

I will say we did challenge, as you will recall, ABI's acquisition of Grupo Modelo, and one of the terms of the settlement, which was structural largely, but we also had a concern about swallowing up of distributorships--and there is a notification provision in that decree relating to further acquisitions which would give us notice and the chance to review. In the course of this investigation, that is the sort of thing we would look at to see whether we need more. And so I can give you the commitment you seek.

Senator Blumenthal. Thank you.

Moving to another industry and another proposed set of mergers in the health care insurance area, in United States v. UnitedHealth Group, as you will recall, the Department of Justice argued that Medicare and Medicaid--Medicare Advantage--are two separate and distinct markets. This point is very relevant and important to the two mergers or the set of mergers you have under consideration now. And the reason for that distinction is because of the way that private plans compete for inclusion in local markets and the special services and benefits that they offer.

Private insurance companies, as you know, compete to offer the most attractive Medicare Advantage benefits to enrollees in a region, typically offering substantially richer benefits at lower cost to enrollees than traditional Medicare. And these distinctions have extraordinarily ramifications for consumers.

Based on what you know, would you agree that those distinctions continue to be valid and are still appropriate to consider?

Mr. Baer. Without commenting on two pending investigations, I will say the way you frame up the issue is well within the scope of the things we would look at, and I can assure you are looking at in conjunction with any pending matter in the health insurance market.

Senator Blumenthal. Since your answer is a very careful and cautious one, I am not going to press you for more specifics. But let me just ask, since in my request for these investigations, I cited the need to view the market as a whole, not the mergers separately and distinctly--in other words, the impact on entire markets--is that the approach that you are taking in your investigation?

Mr. Baer. The short answer is yes. The slightly longer answer is whenever you have two major transactions in an already concentrated industry occurring roughly at the same time, one needs to look at the interaction between two transactions and look down the road. It also affects one's view of whether or not one or both transactions are really fixable because it could be a game changer in terms of competition in the market you are looking at.

And so, once again, the way you appropriately frame the question is the sort of thing that an antitrust enforcer should be looking at.

Senator Blumenthal. Thank you.

I want to finish by stating to you sort of three general propositions and asking for your reaction, propositions based on your testimony but also on a more general knowledge of what you and your predecessors have done.

First, Senator Tillis referred to the need to update our antitrust laws. As you know, approving any legislative change in this body is a daunting exercise, sometimes extraordinarily difficult, both in the time and the intellectual and political obstacles. So one proposition I have is that the fight to protect consumers requires more resources, more police on the beat, and that the constraints on your ability to enforce existing law resulting from lack of sufficient resources is as big an obstacle as any lack of authority.

Second is that, as I mentioned earlier, effective enforcement often requires risk taking, meaning you have to be prepared to lose cases. As a U.S. Attorney, as a State Attorney General, I lost cases. Any trial lawyer who says he has never lost a case is either lying or has only taken easy cases. And yet the oversight that we exercise sometimes, in effect, penalizes you for that risk taking. Still, you have to be willing to take those risks as the then Assistant Attorney General of the Department of Justice did in the <u>Microsoft</u> case, as we did as Attorneys General.

And, third, if we were to change the law--or perhaps it is simply a matter of enforcement in this area--more vigorous enforcement should focus on individual liability. It can be civil liability, but it also has to include criminal liability. And there I am making a highly unoriginal point. In fact, the Deputy Attorney General of the United States, Sally Yates, made it in a memo that she released last September, and I cited it today in my conversation with Attorney General Lynch here in this very room where you are sitting as an example of how the real deterrence to lawbreaking has to focus on holding individual corporate officers responsible. Partly it is a matter of fairness because imposing fines and penalties on a company for their wrongdoing means shareholders pay or perhaps even consumers in the form of higher prices. But also it is the most effective means of deterring lawbreaking.

So I have tried to state those three propositions as simply and straightforwardly as possible. I apologize for the long-windedness, but I would be interested in your reactions either now or later in written form. Thank you.

Mr. Baer. Let me give quick reactions and then hand it over to Edith.

On resources, the President in his budget for fiscal year 2017 has actually proposed for both the FTC and the Department of Justice a modest increase in our funding. We hope Congress will look favorably upon that. We have people at both agencies who are working 24/7, and the family-work balance is an imbalance because they are so dedicated. And with more, we can do more.

Second, you talk about our friend Joel Klein as a model risk taker. I agree with that. Bringing the Microsoft case, winning it, affirmed en banc by the D.C. Court of Appeal 9-0, is representative, I think, of using imagination, new economic thinking, and hard work to advance the antitrust laws. I think those statutes are flexible enough for us to do more. We need to convince a court, as we should, that this is an analytically sound, factually based application of the antitrust laws. We want to do it.

On individual accountability and what is referred to as the Yates memorandum, although I saw last week she would prefer it just be called the "individual accountability memorandum," if you look at my testimony, we lay out the extent to which we have been able to hold in criminal cases both corporations--corporate execs liable, but corporations should not take the hit. It should not simply be a cost of corporate doing business and the folks who actually engaged in the wrongdoing walk. That is not the right way to look at it, and the individual accountability memo that Sally Yates issued emphasizes that point nicely.

I do think--and the Deputy Attorney General and the

Attorney General and I have talked about this. We need to look, as you said in your opening remarks, with regard to civil misconduct. You know, that is misconduct, too, and if it is a clear antitrust violation engaged in by senior officials at a company, why shouldn't their name be on the cease-and-desist order as well? Traditionally, our agencies have not done that, but I think that is an appropriate thing for us to look at. It ups the stakes for bad behavior.

Senator Blumenthal. Thank you.

Chairwoman Ramirez?

Ms. Ramirez. Briefly, I will make a couple of main points.

With regard to your question about the need to update the antitrust laws, I really do believe that, as a general matter, we are well equipped to tackle the problems that impact competition. I would say that on my wish list are a couple of things. I think the FTC does need some updating in a couple of regards, and that is, eliminating the common carrier exemption as well as an exemption that we have with regard to nonprofits. So that would be on my wish list.

Resource-wise, we are right now stretched. Our folks are really working very hard because right now we have an unprecedented level of litigation that is taking places. We are in the midst of challenging four different mergers right now, so I think a few more resources would be beneficial, although I will say that I think we are doing the job that we need to even at our current level of resources.

With regard to your question about risk taking, I could not agree more with you that the antitrust enforcers need to take risks. We brought an action last year that we lost. It was a merger challenge involving a company called Steris. The trial court decided against us in our request for a preliminary injunction, but I would bring that case again, notwithstanding that loss. I think it is important for antitrust enforcers to really push to advance antitrust doctrine because sometimes judicial doctrine takes time to evolve, and it happens more closely than perhaps our own thinking, economic thinking. So I think we are well positioned to really move doctrine forward and to tackle problems when we see them.

Senator Blumenthal. Great. Well, your comments are very insightful and well taken, and I look forward to continuing this conversation. I hope that antitrust enforcement will be recognized as a completely nonpartisan, non-ideological consumer protection effort, and I commend both of your agencies and the dedicated professionals, again commend them for the hard work and the 24/7 work that you do.

I might just note as a footnote on the Microsoft case, the State Attorneys General retained none other than now

Chief Justice Roberts to assist us, so just to show the non-ideological nature of this enforcement effort--not that he agreed with everything necessary personally that we were saying or advocating at the time. I am not attributing that to him. But I do think that protecting consumers is what you do, and we should be assisting you with more resources, and I hope that we can achieve those resources in the President's budget. So thank you very, very much.

I am informed that Chairman Lee is not returning. For the record, his staff is nodding. So I am going to adjourn this hearing, and the record will remain open for 1 week. Thank you all for being here.

[Whereupon, at 3:58 p.m., the Subcommittee was adjourned.]

C O N T E N T S