

Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Hatch

1. An area on which I place particular importance is the controversy surrounding the so-called Bowl Championship Series. Utah's Attorney General has launched an investigation and I am seeking a legislative remedy. What are your thoughts on this matter?

Answer: At this point in time, I have not formed views on this issue. If confirmed as Assistant Attorney General, I look forward to learning more about these issues, as well as working with you, the Utah Attorney General, and the Division staff on them.

2. Recently, I wrote to the Department of Justice and the Department of Transportation about DoT's review of airlines' antitrust immunity applications for code sharing arrangements. I am concerned that instead of having one set of standards and levels of scrutiny, DoT's review will create unique rules for a specific industry. How do we ensure that does not happen?

Answer: I believe that competition among businesses leads to the best products at the lowest prices and the most innovation. The antitrust laws ensure that businesses do not eliminate this competition to the detriment of consumers. The antitrust laws are fundamental to our economy, and as a consequence, antitrust exemptions and immunities are not typically favored, although they do exist in certain areas. If confirmed as Assistant Attorney General for the Antitrust Division I look forward to learning more about this application process and the Division's role in it. I also look forward to working with you and the Department of Transportation to determine whether the roles, as established, are appropriate.

3. This is more of a theoretical than a practical question. You served on the Federal Trade Commission and now are nominated to be Assistant Attorney General for Antitrust. Why do we not merge the FTC's antitrust arm with the DoJ's Antitrust Division? Would that not create a more efficient regulatory regime?

Answer: Traditionally, the Federal Trade Commission and the Antitrust Division have shared jurisdiction over civil antitrust matters, and done so very effectively and efficiently. In the recent past, there have been disagreements over certain areas. As I indicated during my confirmation hearing, if I am confirmed as Assistant Attorney General for Antitrust, the new Chairman of the FTC and I will work closely on a variety of issues with the aim of restoring harmonization of views on antitrust issues. One

specific priority I noted in my Prepared Remarks for the Judiciary Committee is the clearance process. If confirmed, I will work to ensure efficiency and transparency of the clearance process for civil matters – our area of jurisdictional overlap. I believe as a former FTC Commissioner, I am uniquely positioned to ensure that the tradition of cooperation between two antitrust agencies is maintained.

4. Do you believe that the Europeans are using their regulatory regime to unfairly discriminate against American corporations?

Answer: I believe that to date, in certain very limited areas, the Europeans have applied standards for antitrust liability that differ from the US standards. I also believe that competition law is a global issue and Antitrust Division should play a significant role in promoting antitrust policy around the world. If confirmed as Assistant Attorney General for Antitrust, I will work to ensure that it does. We must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. I am sure these goals can be achieved. I also plan to participate actively in those international organizations that have traditionally worked to ensure some level of convergence on process and substantive issues, as well as continue the Division's tradition of offering Technical Assistance to countries with emerging antitrust regimes.

5. When you were at the FTC, you raised concerns about vertical integration involving Pharmacy Benefit Managers (PBMs), specifically pharmacy manufacturers owning PBMs. Do you think similar concerns can arise from a pharmacy chain owning a PBM?

Answer: As you know, the Federal Trade Commission has traditionally handled pharmaceutical matters, which is why I commented on Pharmacy Benefit Manager (PBM) integration. I have not studied the effects of vertical integration between PBMs and pharmacy chains.

However, I believe that both horizontal and vertical mergers must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and economic theory, will be part of any merger analysis. I can also assure you that I will not shy away from considering whether the effects of the vertical integration resulting from a merger or acquisition may be substantially to lessen competition, which is the standard of review for all mergers under the Clayton Act.