<u>**Senator Charles E. Grassley**</u>

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Questions for the Record

1. Please give me a summary statement regarding your view on the purpose of antitrust law and the mission of the Antitrust Division of the Department of Justice?

   Response: The core purpose of the antitrust laws is to provide consumers and business with the benefits of a vigorously competitive free market system by taking action against anticompetitive conduct, whether unilateral or concerted, and anticompetitive mergers that threaten to deny consumers those benefits. Appropriate enforcement of the antitrust laws is vital to maintaining a healthy economy because competitive markets lead not only to lower prices for consumers, but also to an environment that encourages businesses to innovate. The Antitrust Division has the responsibility to ensure that the various laws Congress has enacted -- The Sherman and Clayton Acts, to cite but two examples -- are enforced in a vigorous, effective and fair manner to realize these goals.

2. What areas are you going to focus on if you are confirmed to lead the DOJ Antitrust Division? What goals do you have for the DOJ Antitrust Division?

   Response: As I noted in my testimony, I believe that the Antitrust Division has performed well in recent years. Its focus has been, and in my view, should continue to be, on cartel behavior that raises prices or otherwise adversely affects the welfare of consumers; mergers and other forms of consolidation that risk a substantial lessening of competition; and single firm or collusive conduct that suppresses the free market competition to which consumers are entitled. Part of that law enforcement responsibility entails providing as much guidance as possible to the business community and consumers. In recent years it has involved, and in my view should continue to involve, close consultation with competition enforcement officials from other jurisdictions in an effort to promote fair, transparent and consistent application of competition principles around the world. I would also work to continue to ensure close cooperation between the Antitrust Division and state antitrust enforcers, which serve an important role in effective antitrust enforcement.

3. How would you describe your approach to antitrust enforcement? How different would your approach be to antitrust enforcement than the Bush Administration's? How do you think your antitrust enforcement analysis and priorities will be similar to or differ from those of your predecessors?

   Response: I think my track record in and out of government demonstrates that I approach antitrust enforcement sensibly. Enforcers need to be vigorous, effective and fair. The goal is to provide consumers with the benefits of unfettered competition. In that regard, I do not expect my approach to enforcement to differ significantly from the approach taken by my predecessors at the Antitrust Division in recent Administrations. I was honored that prior Assistant Attorneys General going back to the early 1970s -- both Republicans and Democrats -- support my nomination. See Letter from Thomas E. Kauper, former Assistant Attorney General for the Antitrust Division, et al. to The Honorable Patrick J. Leahy, Chairman and The Honorable Chuck Grassley, Ranking Member, United States Senate Committee on the Judiciary (Feb. 28, 2012) ("[Mr. Baer] possesses the intelligence, judgment, and leadership skills essential to serve effectively as Assistant Attorney General. We are confident he will continue the strong, rational, and nonpartisan antitrust enforcement tradition of the United States Department of Justice."). Part of the recent success of antitrust enforcement is that enforcers, whether Republican or Democratic, agree on the core areas of enforcement, agree on the analytical framework that should be applied to evaluating whether certain behavior is likely to cause consumer harm and agree as well on the importance of providing guidance to the business community on the kinds of behavior that law abiding businesses should seek to avoid.

4. I'm concerned about this Administration's apparent anti-business approach, including the massive tax increase proposed on business and the President's recent statement that "If you've got a business, you didn't build that." If confirmed, should we be concerned that the DOJ Antitrust Division will be another anti-business tool of this Administration?

   Response: As noted above, I see the key role of the Antitrust Division as that of a nonpartisan law enforcer. Antitrust enforcement is most effective when it is analytically grounded and consumer-oriented. Moreover, I recognize from my years in private practice that the business community generally wants to know what the antitrust rules are so that businesses are able to comply with them. I applaud and would hope to continue the efforts of the Justice Department and the Federal Trade Commission to provide meaningful guidance to the business community on important issues, such as mergers, health care, competitor collaborations, and intellectual property.

5. The 2008 Transition Report, that you participated in, states that antitrust "[e]nforcement that is too aggressive can deter potentially efficient business relationships, while too little enforcement will have an insufficient deterrent effect and could lead to business arrangements that reduce competition in ways not outweighed by efficiencies. There is some difference of opinion, of course, regarding what constitutes too much or too little enforcement; each administration – and each senior enforcement official – grapples with finding the sweet spot in-between the two." What do you think constitutes too much or too little enforcement?

   Response: It is hard to generalize because determinations as to whether specific conduct may violate the antitrust laws are intensely fact specific. That said, I am convinced that effective civil enforcement requires antitrust enforcers to be able to articulate and support factually a credible theory of economic harm to consumers before bringing an action. If enforcers hold themselves to that demanding standard, I think they can avoid both over-enforcement that chills legitimate and pro-consumer behavior and under-enforcement that puts American consumers at risk.

6. Do you believe that there are areas of under-enforcement and over-enforcement at the DOJ Antitrust Division? If so, what are those areas? What should be the right balance?

Are you concerned about over-enforcement of the antitrust laws that in effect is government regulation? If you are confirmed to lead the DOJ Antitrust Division, how do you intend to ensure that there is an appropriate level of enforcement?

Response: As noted in my response to Question 5, I believe that both over and under-enforcement are significant concerns, and, if confirmed, would be cognizant of guarding against both. Moreover, I believe antitrust enforcement in recent years -- under both Republican and Democratic leadership -- has been moving in the right direction. I view antitrust as a "law enforcement" responsibility and not a "regulatory" mission. If confirmed, I would approach the job with that distinction in mind: antitrust is most effective when it focuses on removing illegitimate barriers to free market competition -- not when it imposes such barriers itself.

7. One concern that I've heard expressed is a perceived divergence between the DOJ Antitrust Division and the Federal Trade Commission relative to their enforcement standards, which leads to different outcomes depending upon which agency is investigating a particular matter. Is this perception accurate? Do you agree that different approaches to antitrust enforcement can lead to arbitrary results and, if so, is that a good or bad thing?

   Response: As a general proposition I think the Federal Trade Commission and the Antitrust Division approach enforcement in a similar manner. This is best evidenced by the joint guidelines the two agencies have issued with respect to mergers, healthcare, competitor collaborations, and intellectual property, and by the joint hearings and workshops the two agencies have held in recent years to study new developments in areas such as patent and competition policy; international technical assistance; and single-firm conduct. There are certain inherent differences in the statutes each agency enforces and some differences in process -- for example the Antitrust Division pursues its cases in the federal courts while the FTC has the option of pursuing a violation of the FTC Act through the administrative process with a subsequent right of appeal to the federal courts of appeal. While these differences do create at least the potential for different outcomes, in my experience the agencies are at their best when they work hard to harmonize their approaches on substantive matters. If confirmed, my intent would be to continue that close coordination.

8. On a number of occasions, you've encouraged more cooperation between the DOJ Antitrust Division and the Federal Trade Commission relative to the existing antitrust clearance process, reducing the burdensomeness of second requests, and increasing productivity and efficiencies at the agencies. If confirmed, what do you intend to do to improve the merger review process to make it more accurate, transparent and efficient?

   Response: Promoting accurate, transparent and efficient merger review was a key goal of mine during my service as Director of the Bureau of Competition at the FTC during the late 1990s. If confirmed, I would bring that same priority to the Antitrust Division. To promote efficient merger review, the two agencies need to have effective processes in place that allocate promptly merger review responsibility on specific matters. In addition, both DOJ and the FTC need to issue Second Requests mindful of the costs and burdens those demands place on merging parties. At the same time, the parties to a merger need to understand that the Hart Scott Rodino process imposes tight deadlines and a real burden on antitrust enforcers to make an informed decision as to whether a merger risks reducing competition. The challenge is to balance those somewhat competing goals so as to make sound law enforcement decisions without imposing undue burdens. It is an ongoing challenge that I look forward to confronting, if confirmed.

9. In general, what is your view of the use of consent decrees as opposed to court action to accomplish the goals of the DOJ Antitrust Division? Please explain your philosophy on the use of consent decrees.

   Response: In many cases, consent decrees are preferable to protracted and expensive litigation--both from the perspective of the merging parties and that of the Antitrust Division. Often a consensual settlement can address and resolve the competitive concerns the Antitrust Division has with a transaction -- sometimes involving divestiture of assets, sometimes imposing conduct restrictions and sometimes requiring both. Consent decrees, in appropriate circumstances, have the benefit of allowing the non-problematic and potentially efficiency-enhancing aspects of a merger to go forward while addressing any areas of competitive concern. In some cases, however, the competitive problems with a deal are sufficiently pervasive that a settlement -- even one including significant concessions on the part of the merging parties -- is not a viable option; in others, the antitrust enforcers and the merging parties may not be able to agree on terms. In those situations, the Antitrust Division needs to be prepared to seek an injunction prohibiting the transaction or ending the anticompetitive conduct.

10. What do you see as the biggest challenges to international antitrust enforcement? Do you believe that there has been enough harmonization and cooperation between the different antitrust authorities? Do you believe that American businesses and their transactions are being treated fairly in the international antitrust arena? What steps will the DOJ Antitrust Division take under your direction to better harmonize its antitrust reviews and investigations with other antitrust authorities?

    Response: In my most recent time at the FTC I saw, and in the intervening 12 years I have continued to see, significant improvement in international cooperation and coordination among competition enforcers. I applaud those developments. Close coordination and frequent communication helps promote better and more consistent outcomes. That is good for the American consumer and it is good for American businesses. I would continue those efforts if confirmed. My focus would include both promoting coordinated outcomes and consistent enforcement in multi-jurisdictional antitrust reviews and urging commitment by enforcers worldwide to common principles of due process and transparency.

11. In a June 2008 speech at the American Antitrust Institute, Ms. Varney, who went on to become AAG for Antitrust, described how the case against Microsoft began long before any judicial hearings took place. "Part of what you have to do when you're going to try to

bring a [Sherman Antitrust] Section Two case is you have to create the political climate," she said. Do you agree with this strategy, and if so, what ‘political climate’ will you be attempting to create?

Response: I see antitrust enforcement in largely non-partisan terms. Where there is behavior or potential future behavior that poses the threat of competitive injury, the Antitrust Division needs to investigate. Where the facts and the law confirm that risk, the Antitrust Division needs to act vigorously and in a timely fashion to enforce. There will often be critical scrutiny of those law enforcement decisions. But that comes with the job. And the job is to make sound decisions that are well-grounded factually and legally. Antitrust enforcement, like other law enforcement, should be non-political.

12. As you know, I’ve been extremely concerned about increased agribusiness concentration, reduced market opportunities and fewer competitors in the agriculture sector, and the inability of family farmers and producers to obtain fair prices for their products. I’ve also been concerned about the potential for increased anti-competitive business practices in agriculture. I believe that the DOJ Antitrust Division needs to dedicate more time and resources to agriculture competition issues. I’d like to get a commitment from you that, if confirmed, the DOJ Antitrust Division under your watch will pay heightened attention to competition issues in agriculture. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the DOJ Antitrust Division?

    Response: I appreciate the importance to the American economy of competitive markets in the agricultural sector. You have my assurance that it will be an enforcement priority for me if confirmed.

13. You’re probably aware that the Justice Department and the Department of Agriculture recently participated in a series of workshops on agriculture competition issues. Are you confident that the DOJ Antitrust Division is scrutinizing these issues as closely as it can under the law? What more can it do?

    Response: I applaud the joint workshops conducted by the Justice Department and the Department of Agriculture. I have read the Justice Department report on those workshops, as well as public remarks by DOJ officials. <u>See, e.g.</u>, *S*haris A. Pozen, <u>Agriculture and Antitrust: Dispatches and Learning from the Workshops on Competition in Agriculture</u>, ANTITRUST, Spring 2012 at 8 (“A clear message from the workshops is that antitrust enforcement has a crucial role to play in fostering such a healthy and competitive agriculture sector.”). I support the Division’s “commitment to vigorous antitrust enforcement in the agricultural sector”, <u>id.</u>, and will continue that commitment if confirmed, subject, of course, to the appropriate recusal requirements. Given the areas where DOA regulatory responsibility and DOJ antitrust enforcement duties potentially overlap, American consumers and the agricultural sector are well-served by close coordination between the two agencies. I would plan to continue that effort. Moreover, I believe close scrutiny of anticompetitive conduct in the agricultural sector should be a top priority for the Antitrust Division. Because I am not privy to the full range of non-public law enforcement efforts already underway at the Antitrust Division, I am not in a position to present an informed view on what more needs to be done. If confirmed, I can and do commit to getting up to speed on those matters very quickly to determine whether -- and what -- additional avenues of investigation by the Antitrust Division are warranted.

14. The Justice Department and Department of Agriculture workshops demonstrated the unique nature of the agriculture sector and the unique challenges that sector faces. I have a bill that would require the DOJ Antitrust Division to issue agriculture guidelines. Do you have an opinion on my bill?

    Response: If confirmed, I will consult with others in the Administration regarding your legislation. Generally, I support transparency in antitrust enforcement and, providing guidance to the business community on what behavior poses antitrust risk. Gaining an understanding of the competitive effects of prior transactions and enforcement decisions, and communicating the lessons learned to the business community provides helpful visibility into what types of transactions the federal enforcers may view as problematic in the future.

15. I believe that the Justice Department and the Department of Agriculture, which enforces the Packers and Stockyard Act, should collaborate and work together to monitor anti-competitive activity in the agriculture industry. If you are confirmed, will you commit to foster a closer and more productive relationship with the Department of Agriculture?

    Response: As noted above, I believe the joint hearings recently conducted by the two agencies represented a positive step in that direction, and I am committed to building on that progress.

16. Do you think that there is a role for antitrust law in protecting the family farmer? If so, how would you use the antitrust laws to do this? In that regard, is there anything on the horizon that we should be looking at or that you consider a challenge in this area or agriculture generally?

    Response: The family farmer must be protected by the antitrust laws both in its role as a consumer of agricultural inputs and as a supplier of agricultural commodities, just as the antitrust laws are intended to promote effective competition that protects all consumers and suppliers. If confirmed, I commit to getting up to speed on the Antitrust Division's enforcement efforts in this area as soon as possible. To the extent that there is behavior in the agricultural sector that poses a threat of competitive injury -- whether it be through concerted action, consolidation, or the exercise of monopsony power by buyers that deny suppliers competitive prices -- I would pursue appropriate law enforcement actions.

17. Could you discuss your general philosophy with respect to the intersection of intellectual property and antitrust? What challenges do you see for the DOJ Antitrust Division in this area?

    Response: I wrote and spoke about this issue at some length when I was Director of the Bureau of Competition in the late 1990s. Intellectual property rights are a form of property. As such, the owner's rights need to be respected and protected. At the same time, antitrust enforcers have a legitimate role in ensuring that IP rights are not abused to facilitate anticompetitive conduct. As this Committee's recent hearing on standard essential patents made clear, antitrust enforcers need to play close attention to the standard setting process and to be prepared to act in circumstances where antitrust laws are violated.

18. In your opinion, what is the proper role of the antitrust and consumer protection laws in a high tech, e-commerce economy?

    Response: Antitrust and consumer protection laws serve similar ends in a technology-driven economy -- in short, to ensure that consumers are not victims of "bad" behavior. The means to that end are often similar -- ensuring that consumers benefit from a competitive market place, and that innovation flourishes and that consumers benefit from innovation. However, there are some areas, such as in the privacy context, where a competitive marketplace alone may not adequately protect consumers from harmful conduct. In those situations, effective consumer protection laws and targeted enforcement are another key tool in the government's efforts to protect consumers. The antitrust and consumer protection laws therefore present both overlapping and, at times, complementary frameworks to ensure that consumers continue to be protected as economic paradigms shift and evolve.

19. In a 1999 *San Jose Mercury News & Business* article entitled "U.S. Antitrust Litigation Gets a Baer Hug," you were criticized for stepping into uncharted territory with regard to some of your legal arguments during your time at the Federal Trade Commission, including halting a Staples/Office Depot merger by narrowly defining the market involved, despite the two companies only controlling 5% of office supply sales. Similarly, you filed charges against Toys R Us based on their "significant market power" for allegedly pressing toy makers not to sell to discount stores, despite that Toys R Us was only responsible for 30% of sales by top toy makers – smaller than anything typically deemed to be a monopoly. One of your former law firm colleagues as well as a former FTC employee, William Sohn, described these actions as having "gone farther than I would have in his position."

    a. Are these tactics and understandings of market size and dominance ones which you plan to employ while at the DOJ?

       Response: The article cited correctly notes that the Federal Trade Commission's decisions to challenge the Staples/Office Depot merger and certain exclusionary activities of Toys "R" Us generated some critical scrutiny at the time the cases were initiated. But it is important to note that the federal courts ultimately agreed with the Commission's view of the facts and the law in both matters and ordered the relief the FTC had requested. In the <u>Staples</u> matter, a federal district court judge issued a preliminary injunction against the deal -- agreeing with the Commission that the evidence showed that the market at issue was for office supplies bought through the large superstore chains and that the proposed merger put consumers at risk of paying substantially higher prices than they would have paid without the merger. F.T.C. v. Staples, Inc., 970 F. Supp. 1066, 1074 (D.D.C. 1997) ("[T]he Court finds that the appropriate relevant product market definition in this case is, as the Commission has argued, the sale of consumable office supplies through office supply superstores."). A few years later the widely respected jurist from the United States Court of Appeals for the Seventh Circuit, the Honorable Richard A. Posner, devoted a chapter to the Staples case in his book on antitrust law. He praised the Commission's approach to that merger, both in terms of the analytics and the evidence and concluded with the statement that ""[e]conomic analysis of mergers had come of age." Richard A. Posner, Antitrust Law 158 (2d ed. 2001).

In the Toys "R" Us matter, the Federal Trade Commission issued a decision finding that the company had abused its position as the leading toy retailer by forcing manufacturers to agree collectively to deny competing discount retailers access to certain popular toys. The Commission's decision was unanimously upheld by the Seventh Circuit Court of Appeals, which concluded that "the Commission's decision is supported by substantial evidence on the record . . . ." Toys "R" Us, Inc. v. F.T.C., 221 F.3d 928, 940 (7th Cir. 2000).

If confirmed, I would hope to bring analytically sound and factually supported antitrust challenges where there exists real potential for antitrust harm to consumers. In both of the cases cited above, the federal courts agreed that the Federal Trade Commission challenges had met those standards.

b. What is the line point in defining what constitutes a monopoly, or when a company has "significant market power"?

Response: It is important to note that the Toys "R" Us case involved allegations that the retailer had acted to orchestrate a horizontal conspiracy among manufacturers, which would be viewed as an antitrust violation regardless of what market share was held by Toys "R" Us. Moreover, I do not believe it is possible to draw a bright line in terms of what level of market share constitutes monopoly power. The key determination is not what specific market share percentage is held by a competitor, but rather what ability that competitor has to restrain competition. Toys "R" Us, Inc. v. F.T.C., 221 F.3d 928, 937 (7th Cir. 2000) (citation omitted) ("[T]he share a firm has in a properly defined relevant market is only a way of estimating market power, which is the ultimate consideration."). Ultimately, questions of antitrust are fact-specific and a determination of what constitutes market power depends on the circumstances of that individual market.

c. Staples and Office Depot together would only have controlled 5% of office supply sales. When a proposed merger would result in the merged company's control of only 1% of a market, can the DOJ intervene?

Response: In my years in public service and in private practice, I have not seen a horizontal merger involving such small market shares that warranted government intervention. That said, the proposed merger of Staples and Office Depot involved two firms whose respective market shares in the relevant antitrust market were quite large. The federal court firmly rejected the contention of the parties that the market was vast and that their respective market shares were low. Instead, the court found that the merger would have created monopolies in many local markets and duopolies in many others. In Staples/Office Depot, as in all antitrust cases, a careful and reasoned analysis of what constitutes the relevant market -- the market affected by the conduct in question -- is key to determining whether a proposed merger will cause economic harm to consumers and was key to the court's decision to issue a preliminary injunction in Staples/Office Depot.

20. A 1998 *Legal Times* article entitled "The Other Antitrust Chief," characterized your work at the FTC Competition Bureau as "activist approach to nonmerger conduct."

    a. Would you consider your general approach to non-merger conduct "activist"? Why or why not?

    Response: The activist label is not one I would have applied to myself during my time leading the FTC's Competition Bureau. As an antitrust enforcer I have always tried to focus on behavior that caused or created a real risk of causing consumer harm. Where that determination could be confidently made, I recommended that the Commission pursue vigorously its law enforcement options. To me that is not "activist"; that is doing the job Congress directed the Federal Trade Commission to do. I would bring that same attitude to the Antitrust Division if confirmed by the Senate.

    b. How would you define an "activist" approach to addressing non-merger conduct?

    Response: I think the term "activist" is inapt in this context. Whether the Antitrust Division is dealing with mergers, cartels or other conduct, my job, if confirmed, would be the same. I would be charged with investigating situations where the conduct in question creates a risk of significant consumer harm and pursuing vigorously those situations where careful consideration of the evidence and the law confirm the existence or potential for a violation of the antitrust laws.

21. In 1999, an *Investor's Business Daily* article entitled "Antitrust Targets Vertical Deals" noted that the Federal Trade Commission under the Clinton Administration challenged nearly two dozen vertical agreements, whereas the Reagan and Bush Administrations combined had challenged only two. The article contended that this increase in vertical merger challenges made for an uncertain business environment, and you were quoted as saying, "Because we've got a pretty good track record of deliberating carefully and quietly, it is hard to predict (what deals might be reviewed)," and that such unpredictability "might be cause for a little caution in investment strategies."

a. Where do you draw the line in terms of deciding what type of vertical mergers warrant closer scrutiny?

Response: Most vertical mergers, in my experience, do not raise competition concerns. Indeed, there are instances where a vertical merger may have significant procompetitive aspects that outweigh any risks to competition that might also flow from the transaction. As with any potential enforcement action, it is therefore important to carefully and closely assess the facts to determine whether there is, on balance, a harm to consumers flowing from the proposed transaction. The vertical mergers most likely to require a close look by government enforcers are those where there is risk that competition may be foreclosed by the transaction or other anticompetitive effects. Even where there is a risk of anticompetitive harm, it is often possible for the Antitrust Division to obtain remedies that prevent that harm (such as requiring firewalls that prevent the flow of competitively sensitive information from customers of the acquired firm that compete with the acquirer) while allowing the transaction to proceed and the efficiencies of a vertical merger to be recognized.

b. Are you concerned with the effect that unpredictability of antitrust oversight could have on the business environment?

Response: I applaud efforts to provide as much predictability as possible in antitrust oversight, and therefore I believe it to be fundamentally important to provide the business community appropriate guidance on merger enforcement. That is why I, as a private practitioner, was an active supporter of the 2010 effort by DOJ and the FTC to update and clarify the Merger Guidelines. The point is to provide the business community the tools necessary to assess in advance the likelihood that the proposed course of conduct poses a serious antitrust risk and potential for an enforcement action.

c. How do you plan to strike a clear balance between valid oversight and the potential for chilling positive business development?

Response: I think it is important for enforcement officials to be as transparent as possible in explaining what causes them to act, or not act, in a particular matter. As a private practitioner for many years, I found that kind of transparency helped me counsel clients on what mergers posed serious antitrust risk and what mergers did not. Upfront guidance is the most efficient deterrence for problematic transactions because it enables the business community to decide in advance whether a proposed transaction poses serious antitrust risk. I see it as an important part of the job of the Assistant Attorney General for Antitrust.

d. Would you expect vertical merger challenges to constitute a significant portion of the DOJ Antitrust Division's workload?

Response: It is hard to answer that question in the abstract. As I noted, many vertical mergers pose little or no antitrust risk and accordingly require little or no scrutiny. In my experience a higher percentage of horizontal mergers in concentrated markets are likely to require closer investigation, but ultimately the answer will depend necessarily on what transactions the business community chooses to pursue and the specific facts of individual transactions.

22. In 1998, during your time at the Federal Trade Commission, the Federal Trade Commission brought a case against Intel based on its business relationship with three customer companies and Intel's refusal to give up some of its technology to these companies unless they licensed their own technology to Intel. What was considered unusual about this case was that these companies were *customers* of Intel's, a relationship that is not typically regulated by antitrust law.

    a. Are relationships with customers such as these companies an appropriate area of regulation for the DOJ's antitrust division?

    Response: The Commission's complaint in the 1998 Intel case focused on concerns that certain customers were also potential or actual competitors of Intel and that Intel's actions were inappropriately restraining horizontal competition in the market for general purpose microprocessors. Specifically, the complaint charged that Intel suspended its traditional information sharing practices with certain customers in order to compel those companies to end intellectual property disputes with Intel and to grant Intel licenses to patented technology developed and owned by those companies. The FTC's complaint focused primarily on restraint of horizontal competition. The consent agreement that was ultimately reached between the FTC and Intel focused on resolving those concerns to the satisfaction of both parties.

    b. How do you distinguish between Intel's conduct and the type of conduct engaged in by nearly all businesses in negotiations between suppliers and business customers?

    Response: The Commission's concern in that case was whether a critical supplier was unfairly disadvantaging potential rivals who were also customers.

    c. Where do you draw the line between valid business negotiations and antitrust violations?

    Response: The line in my view needs to be drawn in a fashion that provides for antitrust enforcement where single firm conduct risks adversely affecting competition. Our competitive market system needs to leave plenty of room for aggressive competition. That rivalry benefits consumers through lower prices and through innovation. However, in those limited circumstances where behavior by a dominant firm forecloses competitors and thereby denies consumers the benefits of a competitive marketplace, antitrust enforcement has an important role to play.