

QUESTIONS FOR THE RECORD
MAKAN DELRAHIM
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR COONS

1. I believe that strong intellectual property protection promotes American innovation. At times, I have been concerned that our antitrust enforcement has not struck the proper balance between promoting competition and incentivizing innovation. What is your view on how these two interests should be balanced?

RESPONSE: As a registered patent attorney, I have a deep background and interest regarding the intersection of intellectual property and antitrust. Intellectual property rights are a form of property and recognized in the U.S. Constitution. I feel strongly that an intellectual property owner's rights need to be respected and protected. It is my view that the intellectual property laws combined with the proper enforcement of antitrust laws together form the basis of our successful innovation policy. At the same time, antitrust enforcers have a legitimate role in ensuring that intellectual property rights are not abused in violation of the antitrust laws.

2. In 2015, I wrote then-Attorney General Holder and Assistant Attorney General Baer regarding the request of the Institute of Electrical and Electronics Engineers Standards Association for a Business Review Letter from the Antitrust Division on patent policy changes that it proposed to adopt for the licensing of standards-essential patents. I was concerned about the potential impact on the competitiveness of American innovators and the U.S. economy if the U.S. was seen as endorsing an approach that I believed inappropriately devalued certain patents, and indeed we have seen this Business Review Letter used against U.S. companies in anti-monopoly investigations around the world.
 - a. What do you believe is the appropriate role of the Antitrust Division in relation to the licensing of standards essential patents?
 - b. How would you ensure that U.S. regulators take into account potential impacts of their actions on antitrust investigations abroad?

RESPONSE: I think it is important for U.S. officials to appreciate the potential impacts of their actions domestically and globally. The area of licensing standards-essential patents is one that has recently engendered litigation and commentary. The appropriate role for the Antitrust Division, in my view, is to ensure that a property owner's rights are respected and protected while, at the same time, ensuring that IP rights are not abused in violation of the antitrust laws. The application of the antitrust laws must not illegitimately stifle creators or innovation by condemning pro-competitive activities that would maximize incentives for investments or efficiency-maximizing business arrangements. Antitrust enforcers should also strive to eliminate as much as possible the unnecessary uncertainties for innovators and creators in their ability to exploit their intellectual property rights, as those

uncertainties can also reduce incentives for innovation. Only when the holders of intellectual property rights go beyond the legitimate exercise of these rights should antitrust laws be used to constrain their activities, and only then in a manner that is based on sound economic policies.

3. At times during the campaign, the President made comments about ongoing antitrust reviews that made me concerned that there would not be the same level of political independence we have come to expect in these reviews.
 - a. How will you ensure that decisions with respect to high-profile transactions are shielded from undue political influence?
 - b. Have you made any assurances to the President, Vice President, or any administration officials that you will make determinations in line with the President's desired outcomes?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.