

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

QUESTIONS FROM SENATOR DURBIN

1. The credit and debit card industries, which handled about six trillion dollars in electronic payments last year, are dominated by the market power of the Visa-MasterCard duopoly. These companies have the power to dictate security standards, fix interchange fee rates, mandate terms of card acceptance, and stifle market entry by potential competitors. Do you think the credit and debit card industries deserve careful antitrust scrutiny?

RESPONSE: I believe that antitrust enforcers should be keenly aware of industries that affect American consumers in their everyday lives, and the credit and debit card industries are important industries in that regard. Based on my previous experience at the Department of Justice, I know first-hand the Antitrust Division has given and, if confirmed, I pledge it will continue to give careful scrutiny to these industries.

2. What in your view is the benchmark for excessive consolidation in a market?

RESPONSE: In the abstract I think it is difficult to define such a benchmark given how markets may vary. For example, the amount of concentration that might be of concern in a market with high entry barriers could be significantly less of a concern in a market with little or no entry barriers. As a general matter, I think one could take guidance from the DOJ/FTC Horizontal Merger Guidelines which refer to a highly concentrated market when the Herfindahl-Hirschman Index exceeds 2500.

3. Do you support presumptions of anticompetitiveness for proposed mergers that exceed a certain level of market concentration?

RESPONSE: Yes, such a presumption is contained in the case law and the Horizontal Merger Guidelines.

4.
 - a. Is it appropriate for the President-elect or President to have private meetings with the CEOs of companies that are undergoing merger reviews?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, including those who may have a particular merger under review. It is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and

independence of Antitrust Division investigations.

- b. Do such meetings create the appearance that the President is involving himself in the merger review process?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, and that might include those who may have a particular merger under review. As noted above, it is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and independence of Antitrust Division investigations.

- 5. Was it appropriate for President-elect Trump to meet with the CEOs of AT&T, Bayer and Monsanto in private Trump Tower meetings during the transition while those companies had pending mergers under review?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, and that might include those who may have a particular merger under review. It is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and independence of Antitrust Division investigations.

- 6.
 - a. Is it true that you had no knowledge of, and no role in, the hacking by Senate Republican Staff of Democratic files between 2001 and 2003?

RESPONSE: I had no knowledge or role in the hacking by Senate Republican Staff of Democratic files between 2001 and 2003. The first I learned of the activity was through public reporting after I had left the Senate Judiciary Committee staff.

- b. What did you do when you learned about your staff's involvement in this hacking?

RESPONSE: I learned of the activities by public sources after I had left the Senate Judiciary Committee staff and was working in the Antitrust Division of the Department of Justice. At that time, I fully cooperated and assisted the Senate Sergeant-at-Arms in the investigation into the conduct.