

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

QUESTIONS FROM SENATOR GRASSLEY, CHAIRMAN

1. As you may know, I am very concerned with the rising cost of prescription drugs. The Justice Department has an important role to play in ensuring that drug companies do not engage in anti-competitive practices or monopolistic behavior.
 - a. If you are confirmed to lead the Antitrust Division, what steps will you take to make sure that both brand name and generic drug companies play by the rules?

RESPONSE: I agree that the Department of Justice has an important role to play in ensuring that drug companies do not engage in anti-competitive practices, criminal or civil, or monopolistic behavior. If confirmed, working with our colleagues at the Federal Trade Commission, I will ensure potential antitrust violations in this industry are investigated and, if any Department of Justice investigation uncovers a violation of the antitrust laws, pursue that violation aggressively.

2. I have additional concerns about increased agribusiness concentration, reduced market opportunities, and fewer competitors in the agriculture sector. I also worry about the potential for increased anti-competitive business practices in agriculture. Right now, there are a number of mergers occurring in the agriculture sector that could completely change the market and impact the agriculture industry and consumers. I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues.
 - a. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the Antitrust Division?

RESPONSE: The agricultural sector, including farmers, is important to the nation's economy. I know firsthand from my previous service at the Senate and the Department of Justice your commitment and interest in ensuring a vibrant and robust agriculture industry. I agree that the Antitrust Division needs to devote the time and resources necessary to understand the competitive implications of proposed transactions or conduct in agriculture. If confirmed, I commit to you to make that a priority.

3. Some of my constituents have expressed concerns with a meeting between then President-Elect Trump and Monsanto and Bayer executives about the proposed merger between the two companies. Did anyone involved in your nomination at the White House ask you, at any time, to take a pre-determined position on the Monsanto-Bayer merger as a condition of your nomination?

RESPONSE: No.

4. 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: If confirmed, I will take any necessary steps to foster a close and productive relationship with the Department of Agriculture with respect to anticompetitive conduct in the agriculture industry.

5. A March 2017 International Competition Policy Expert Group report, commissioned by the U.S. Chamber of Commerce, raises concerns about whether foreign competition authorities are using their antitrust laws to benefit national champions. The report asserts that “[c]ertain of our major trading partners appear to have used their laws to actually harm competition by U.S. companies, protecting their own markets from foreign competition, promoting national champions, forcing technology transfers and, in some cases, denying U.S. companies fundamental due process.” Are you concerned about the use of foreign competition laws to assist national champions and to advance an industrial or trade policy? Do you agree with the findings and recommendations of the report? If you are confirmed, what steps will the Antitrust Division take under your direction to address these challenges and better harmonize/cooperate with other international antitrust authorities?

RESPONSE: I firmly believe that antitrust laws should not be misused by foreign authorities to defend their national businesses or to try to exclude American businesses from foreign markets. The underlying basis for all antitrust actions, in the United States and elsewhere, should be appropriate legal and economic analysis. I understand that the Antitrust Division communicates this message to the international community in a number of ways. When I was a Deputy Assistant Attorney General at the Antitrust Division, one of my primary responsibilities was representing the Division’s international affairs. In that capacity, I advocated strongly for foreign enforcers to apply sound, competition-based principles in their own enforcement efforts. If I am confirmed as Assistant Attorney General, I will support the continuation and strengthening of those contacts as well as exploring additional avenues to ensure American businesses and consumers are not harmed by discriminatory antitrust enforcement by foreign antitrust authorities.

6. I understand that when competition law enforcement concerns are raised with the government, it is the practice of the Justice Department and the Federal Trade Commission to discuss the issues raised and determine which agency will take the lead on investigation of the allegations. How are these assignments of responsibility decided? What is the criteria utilized for these decisions? Do you intend to continue this practice?

RESPONSE: The FTC and Department of Justice share certain antitrust jurisdiction over merger and civil nonmerger matters in many, but not all industries. For example airline and telecommunications mergers are subject to the jurisdiction of only the Department of Justice. Over the years the two agencies have developed a clearance process to ensure that only one agency reviews particular

transactions or conduct. If I am confirmed, I will work closely with the Federal Trade Commission to review past divisions of responsibility and ensure that future divisions of responsibility between the agencies are both appropriate and efficient.

7. Media, entertainment, information and telecommunications markets are rapidly evolving, with internet and technology firms challenging traditional telecom companies. In your opinion, how should the Justice Department analyze this market? Do traditional merger analysis methods work for mergers that involve converging platforms and technologies? How should the Antitrust Division determine the competitive effects of mergers between different complex, interconnected platforms?

RESPONSE: The antitrust laws have been in place for well over 100 years and continue to play a vital role in protecting competition despite how the economy and industries have evolved. I believe those laws are flexible enough to take into account industries that are rapidly evolving and involve converging platforms and technologies. It is incumbent on antitrust enforcers to understand changing and evolving industries, but I believe they can apply traditional analysis to determine whether antitrust violations exist. I will investigate and vigorously enforce the antitrust laws with respect to online platforms as I would in any industry, based on the economic and analytical tools appropriate to the circumstances and to ensure robust competition and innovation.

8. What is the proper role of the antitrust and consumer protection laws in a high tech, e-commerce economy?

RESPONSE: Antitrust has a vital role to play in the high-tech, e-commerce economy to protect consumers. Actions by firms that threaten competition in the high-tech, e-commerce economy, whether by merger or conduct, should be investigated and pursued if the investigation uncovers an antitrust law violation.

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

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. One of challenges I foresee in this area is dealing with international enforcers who may not necessarily place the same value on intellectual property rights abroad that we do in the United States, or that may enforce their antitrust laws in ways that could stifle innovation.