

QUESTIONS FOR THE RECORD
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QUESTIONS FROM SENATOR KLOBUCHAR

1. Historically, horizontal mergers have drawn more attention than vertical acquisitions. More and more, I am hearing concerns about vertical mergers. For example, both independent video content providers and independent video distributors worry that they may be discriminated against if video distributors acquire their own content providers. And farmers have raised concerns that the combination of seed companies with companies focused on genetic traits will result in less innovation.
 - a. Do you believe vertical mergers can be anticompetitive?
 - b. How would you analyze such mergers?

RESPONSE: I think the majority of antitrust scholars recognize that most vertical mergers raise less serious competition concerns than horizontal mergers, which bring together firms competing directly against one another. One reason is that certain vertical mergers can create efficiencies that benefit consumers in a way that horizontal mergers may not. At the same time, there are instances where a vertical merger may have anticompetitive effects. 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 either upstream or downstream competition may be foreclosed by the transaction.

2. The Antitrust Subcommittee took a close look at Anheuser-Bush InBev's acquisition of Miller-Coors. We held a hearing, and Senator Lee and I jointly raised concerns with the Department of Justice that the merger could limit the ability of independent wholesalers to carry craft beer, which, in turn, could stifle the growth of craft beer. The Department of Justice eventually reached a settlement with the merging companies with conditions to protect competition, including an independent monitor.
 - a. Can you commit to me that you will make sure the companies abide by those conditions?

RESPONSE: It is important to ensure that companies are abiding by the commitments they made in the Division's consent decrees. I will commit to you to take vigorous steps to ensure that the companies in this transaction abide by the commitments they made.

3. According to some, newspapers face internet platforms with market power. Instead of using that power to increase choices for consumers, the concern is that those platforms may use it to extract a greater share of advertising revenue at the expense of newspapers or other media. I raise this example because a reduction in the quality of the press threatens not just the press,

but the vibrancy of our democracy. Some have suggested to me that antitrust enforcement should not be concerned with monopsony issues. What is your view?

RESPONSE: I believe that antitrust laws are concerned with and should be concerned with monopsony issues. The antitrust laws cover unilateral and coordinated conduct in industries throughout the economy, including companies operating on the Internet such as online platforms. Over time, these laws have proven effective and adaptable to various types of anticompetitive conduct even as industries have evolved and technology has created new markets. If I am confirmed, the Antitrust Division 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.

4. Our antitrust laws are rooted in the sound principle that competitive marketplaces form the foundation of a thriving economy. A century later after their passage, the antitrust laws are as important as ever. But railroads and oil companies have given way to platform technology companies. Oil and steel have given way to ones and zeros. Today, our economy is dominated by a small number of tech companies that serve as platforms for a digital economy. Just as oil companies and railroads provided amazing benefits and opened the doors to new markets, they also functioned as gateways with enormous power. The same holds true for dominant technology platforms.
 - a. In your opinion, what should the DOJ be doing to ensure that these markets remain open and competitive?

RESPONSE: The Department should be evaluating these industries as it evaluates other industries – that is protecting them from anticompetitive mergers and anticompetitive conduct that harms consumers. In addition, please refer to my answer to your previous question which I believe is relevant.

5. I have also spoken about the issue of whether merger conditions work. One issue is that we have little information after the fact. I have proposed requiring parties to provide information after their transaction closes, so that the antitrust agencies can gauge the effectiveness of remedies in real time.
 - a. Do you have any thoughts on this idea?

RESPONSE: I agree with you that having a good analytic understanding of the effectiveness of previous merger enforcement actions would help improve future enforcement. I have not studied this issue, but if confirmed and presented the opportunity, I look forward to studying it.