

1           The Commission has brought its expertise to bear  
2 through the administrative process in other merger cases as  
3 well as in non-merger matters involving significant areas of  
4 antitrust law. These include pay-for-delay settlements  
5 between branded and generic pharmaceutical companies and the  
6 scope of the state action doctrine.

7           Importantly, FTC administrative decisions are subject  
8 to judicial review, and courts have affirmed Commission  
9 administrative decisions at a very high rate. This includes  
10 wins in 10 out of 13 Commission administrative competition  
11 decisions over the last two decades. This number rises to a  
12 11 once we factor in <sup>that</sup> the Commission's 2003 ruling in  
13 Schering-Plough, which was reversed by the Eleventh Circuit,  
14 was ultimately vindicated by the Supreme Court's 2013  
15 decision in the Actavis case.

16           I believe the proposed legislation risks undermining  
17 the Commission's beneficial administrative role in merger  
18 enforcement. Although the FTC's process for challenging  
19 mergers includes an administrative hearing, there is no  
20 evidence that the Commission's procedures prejudice the  
21 parties involved. In 2009, for instance, the FTC modified  
22 its rules to streamline the administrative process in  
23 response to concerns the process was too long. This  
24 included expediting the pretrial hearing and appeal phases  
25 as well as imposing tight deadlines for the Commission to

1 rule on the merits of a case. As a result, the length of  
2 FTC administrative litigation is comparable to that in  
3 ~~f~~ Federal court.

4 Additionally, although the preliminary injunction  
5 standard in the FTC Act is worded differently than the one  
6 that applies to the Department of Justice, in my view there  
7 is no practical difference between what each agency must  
8 show to obtain a preliminary injunction. Both agencies must  
9 make a robust evidentiary and legal showing that a  
10 transaction is likely to substantially lessen competition.

11 In the Commission's two most recent PI actions--one a  
12 win and another a loss--both courts made clear that they  
13 were assessing the FTC's likelihood of success on the merits  
14 as well as balancing the equities, just as occurs in a DOJ  
15 case.

16 Furthermore, this past March, the Commission reaffirmed  
17 its policy that when a ~~f~~ Federal court denies a request for  
18 preliminary injunction, it will carefully consider whether  
19 to press forward with administrative litigation. Notably,  
20 over the last 20 years, the Commission has not proceeded  
21 administratively following a loss at the preliminary  
22 injunction stage. In short, there is no evidence that the  
23 FTC's administrative process prejudices parties. In my view  
24 the bill's proposed modifications to the Commission's  
25 adjudicative authority are unnecessary and unwarranted.

1           So help me understand, Chairwoman Ramirez, is there a  
2   good reason for subjecting certain parties or certain  
3   industries to one process and other parties to another more  
4   onerous process? In other words, is there anything unique  
5   about the jurisdiction of the FTC and the types of  
6   industries or companies that are subject to the FTC's  
7   jurisdiction that makes your process uniquely suited to  
8   those types of transactions?

9           Ms. Ramirez. This was a decision that Congress made  
10   when it created the Federal Trade Commission back in 1914.  
11   It very deliberately authorized the FTC to have an  
12   administrative process. It wanted to have an expert  
13   bipartisan body that would have the ability to exercise its  
14   competition expertise in this arena. So that was a very  
15   deliberate decision made by Congress.

16           Let me also say that, first of all, ~~I want to explain~~  
17   ~~that certain~~ when the Department of Justice elects to  
18   combine its preliminary injunction phase along with the  
19   ultimate merits of the case, that is a decision that is  
20   ~~made an election that is made~~ by the Department of Justice  
21   and the parties. In litigation, typically one goes through  
22   a preliminary injunction phase and then proceeds to  
23   ultimately litigate on the merits. So that is just a choice  
24   that is made during the course of litigation by DOJ and the  
25   parties ~~again~~.

1 I believe that the process at the FTC, while certainly  
 2 different and including an administrative process, is ~~both~~  
 3 fair, ~~I think that it works quite well,~~ <sup>and</sup> ~~I think it works to~~  
 4 the advantage of consumers. And my concern with eliminating  
 5 this authority is that it risks undermining the  
 6 effectiveness of the FTC, which has played a very important  
 7 and beneficial role in preserving competition.

8 Chairman Lee. But you have got the authority to do  
 9 that. I mean, the FTC seeks permanent injunctions in many  
 10 other contexts, including some consummated mergers. So it  
 11 does not lack the authority to do so. It does not lack the  
 12 authority to seek a permanent injunction. So why doesn't  
 13 the FTC simply consolidate the PI with the permanent  
 14 injunction proceedings in the same manner that DOJ does?

15 Ms. Ramirez. Again, this is part of the Federal Trade  
 16 Commission's DNA. We were designed to have this  
 17 administrative function, and that is an authority that I  
 18 think the agency ought to use. And it uses it I think quite  
 19 ably as evidenced by the track record that we have.

20 I believe that the procedures, again, while different,  
 21 ~~they are comparable, but they are fair.~~ <sup>and</sup> I do not believe  
 22 that ~~the processes,~~ the differing processes result in any  
 23 different outcome for parties. They are different, but in  
 24 my mind, they are ~~both~~ fair, they work well, and I think  
 25 altering that authority risks eroding a very important

1 undermine the ability to promote competition and protect  
2 consumers.

3 Ms. Ramirez. Let me back up a bit and also just say  
4 that--~~highlight~~, as I think is evidenced by both my oral  
5 testimony here this morning as well as the written testimony  
6 that we submitted, ~~is that~~ this is authority that we use in  
7 limited circumstances.

8 Senator Klobuchar. Right. *the bill*

9 Ms. Ramirez. So, in my view, the process does work  
10 well when it is used, but ~~it~~ risks, again, eroding our  
11 ability to use authority that Congress gave us and that I  
12 believe we have used quite ably over the course of our  
13 history, including--

14 Senator Klobuchar. And you have a right to be proud of  
15 that work, so thank you.

16 Ms. Ramirez. So in addition to that, I also do not  
17 believe that there is any evidence that parties are  
18 prejudiced by the fact that our process includes an  
19 administrative component to it. If you look at the data,  
20 ~~believe that it suggests~~ and you look at how many cases are  
21 litigated as compared to the Department of Justice, if you  
22 look at how many cases are settled or abandoned when before  
23 the FTC as compared to the Department of Justice, I think  
24 you see that the numbers are quite comparable. In my mind,  
25 that suggests that the FTC exercises no greater leverage

1 to improve our Nation's antitrust laws--was wrong.

2 Ms. Ramirez. Senator, I want to ~~just~~ emphasize that ✓  
 3 the authority that we use when we exercise our authority to  
 4 go into court, challenge a transaction, and then proceed  
 5 administratively is authority that is used in very limited  
 6 circumstances. Most of the transactions that we review are  
 7 procompetitive and do not raise anticompetitive concerns.  
 8 And so we really are talking about a very small number of  
 9 transactions that ultimately are litigated.

10 As to those, I believe that, notwithstanding the  
 11 differences in procedure, parties do receive fair treatment  
 12 and that our merger enforcement process works well. I do  
 13 not believe that parties are prejudiced. I do not believe  
 14 that they face a substantially greater burden. I do not  
 15 believe that there is a difference in outcome depending on  
 16 which agency a party is before. So, in my mind, the  
 17 proposed legislation is neither necessary, ~~it is not~~ <sup>it</sup> ✓  
 18 warranted. Not

19 In addition, I feel that making such a change ~~to the~~  
 20 ~~Secretary~~ would risk hurting consumers, ~~right~~ <sup>risk</sup> ✓  
 21 ability of the Federal Trade Commission to preserve  
 22 competition in ~~implement~~ <sup>important</sup> areas, like health care, which has ✓  
 23 been a top priority for the agency over decades, among other  
 24 sectors of the economy. And I believe also that ~~the~~  
 25 ~~proposed measure~~ ✓ whenever you have this type of reform and ✓

1 suggests yet another reason why I believe this particular  
2 set of changes are unnecessary. But I think if you look at  
3 a number of merger cases, including the Evanston case, the  
4 Polypore case, the ProMedica case, we have addressed complex  
5 issues of antitrust law, and we have been affirmed by the  
6 appellate courts. And I think these have been important  
7 developments that have benefited consumers over the long  
8 term.

9 Senator Hatch. Okay. If the Commission cannot  
10 convince a court that blocking a merger is in the public  
11 interest, why does it make sense to allow the Commission to  
12 continue trying to stop a merger through its own internal  
13 administrative processes? And if an independent adjudicator  
14 rejects the Commission's arguments, why should the  
15 Commission be able to continue prosecuting a case internally  
16 as both judge and jury?

17 Ms. Ramirez. So let me ~~unpack~~ your question, ✓  
18 Senator, if I may.

19 Senator Hatch. Sure.

20 Ms. Ramirez. I want to make clear that the FTC can go  
21 into court to seek a preliminary injunction. Now, if the  
22 FTC loses that request for preliminary injunction, at that  
23 point in time the Commission--we have a policy where we will  
24 examine whether it would be appropriate for us to continue  
25 <sup>with</sup> our administrative process. It has been a very long time ✓

1 since the Commission has elected to do that, and I assure  
2 you that in instances when that happens, the Commission will  
3 examine whether it is appropriate. It may not be  
4 appropriate, and at that point the matter would then be  
5 dismissed from the Part 3 process. So that is something  
6 that just does not happen as a matter of course. It is a  
7 very serious issue. And the <sup>Commission</sup> courts will examine it and look  
8 at it very, very carefully.

9 Senator Hatch. Well, thank you.

10 Thank you, Mr. Chairman. My time is up.

11 Chairman Lee. Thank you, Senator Hatch.

12 I want to note for the record that we will include  
13 Senator Leahy's statement for the record, without objection.


14 [The prepared statement of Senator Leahy follows:]

15 / COMMITTEE INSERT

1 Chairman Lee. Senator Blumenthal.

2 Senator Blumenthal. Thanks, Mr. Chairman. And thank  
3 you for being here, Chairwoman Ramirez, and for your  
4 extraordinary and distinguished service as a litigator and  
5 now as the Chairperson of the FTC.

6 I think in my humble opinion, with the greatest respect  
7 to the proponents of this legislation, the best thing about  
8 this proposal is its title, and I admire the creativity and  
9 ingenuity of its proponents because it seems to me that it  
10 is truly a solution in search of a problem. There is no  
11 real problem here. And I want to just follow up on the  
12 point that you were just making because the Chairman of the  
13 Subcommittee has raised the specter of two separate trials  
14 or fact proceedings before two different judges imposing an  
15 inordinate burden on the parties. How often does that  
16 happen?

17 Ms. Ramirez. It happens very rarely. ~~The last time~~  
18 ~~that it happened.~~ It has been more than two decades since   
19 that has happened.

20 Senator Blumenthal. Two decades ago.

21 Ms. Ramirez. Yes.

22 Senator Blumenthal. So there has been no instance in  
23 the last two decades where, in fact, two different district  
24 court judges held factual hearings requiring the parties to  
25 come forward and present their cases.

1 Ms. Ramirez. It has been more than two decades since  
2 the Commission has lost a preliminary injunction and then  
3 proceeded administratively, correct.

4 Senator Blumenthal. Because of the policy that you  
5 just mentioned, if you lose a preliminary injunction  
6 proceeding, it is a pretty good indication as to what the  
7 merits of the case are.

8 Ms. Ramirez. That ~~is right~~ <sup>may be right.</sup>

9 Senator Blumenthal. And let me ask you, in your  
10 experience--and you are a pretty experienced antitrust  
11 litigator--does this difference in procedure involved in  
12 Department of Justice versus FTC actions result in different  
13 outcomes?

14 Ms. Ramirez. In my view, it does not.

15 Senator Blumenthal. And that is because both agencies  
16 apply the same law. Is that correct?

17 Ms. Ramirez. Absolutely.

18 Senator Blumenthal. And do the different procedures  
19 result in different costs or burdens on the parties?

20 Ms. Ramirez. The FTC procedure may be a longer  
21 procedure because typically it is a two-step process whereby  
22 we would first go into <sup>f</sup> Federal court and then proceed  
23 administratively. But I will note that parties could  
24 stipulate to a PI and then proceed immediately to a Part 3  
25 process. And given reforms that we undertook in 2009 to

1 streamline our administrative process, I believe the time  
2 frame would be comparable to that in <sup>f</sup>ederal court.

3 Senator Blumenthal. But if a merger fails to withstand  
4 the scrutiny of a preliminary injunction proceeding, it may  
5 also be an indication to the parties that they need to  
6 reconsider a merger. Correct?

7 Ms. Ramirez. Yes.

8 Senator Blumenthal. And so is it not a fact that a lot  
9 of mergers are abandoned after an unsuccessful defense in a  
10 preliminary injunction proceeding?

11 Ms. Ramirez. Yes, that is so.

12 Senator Blumenthal. So in the long run, actually it  
13 may save the parties some money and a lot of travail and  
14 inconvenience and, in fact, internal costs to know right  
15 away as a result of a preliminary injunction proceeding that  
16 they are not going to succeed.

17 Ms. Ramirez. It could very well.

18 Senator Blumenthal. Let me just say I regard this  
19 legislation simply as an attempt to tinker with the current  
20 procedure without there being a real demonstrated need for  
21 it. In fact, it could have the effect of preventing or  
22 undermining effective antitrust scrutiny, which I think is  
23 all the more important today than ever before. The trend  
24 toward consolidation in various industries--airline,  
25 telecom, pharmaceutical, health care--in my view is bad for

1 assume you have read the Commission report and why you would  
2 disagree with the Commission's report on certain things that  
3 seem to link two provisions of the SMARTER Act?

4 Ms. Ramirez. Let me address your first question, and I ✓  
5 want to clarify that I am not taking the position that the  
6 two-step process that is typically used by the Federal Trade  
7 Commission is a time saver. What I am saying is that I do  
8 not believe that our process prejudices parties.) I do not ✓  
9 believe that it enhances the leverage that the FTC exercises  
10 over parties in connection with merger challenges. I am  
11 ~~saying~~ also saying that the process does not have an impact ✓  
12 on outcomes, and that it is ultimately comparable to what  
13 transpires when the Department of Justice is looking at  
14 transactions.

15 And then with regard to your second question, I will  
16 just make two points. One is just <sup>that</sup> the overarching process ✓  
17 ~~what I believe is a~~ <sup>a</sup> ~~fair one~~ <sup>stat</sup> and an appropriate one. And, ✓  
18 again, I will emphasize that this was--

19 Senator Tillis. That does not really get to my  
20 question, though. I know that you have consistently  
21 responded with your belief that the current process is fair  
22 and open. What I am getting to specifically are some of the  
23 recommendations of the Commission report and why, rather  
24 than defending your position by saying you think it is fair  
25 and open, discuss why the proposed changes, some of which

1 map to some of the SMARTER provisions do not make sense. In  
 2 other words, let us get into a specific reason why the  
 3 proposed changes represent a problem. And to go back to  
 4 your line of responses, explain to me why the changes would  
 5 make it an unfair and inconsistent process.

6 Ms. Ramirez. <sup>A</sup>~~The~~ key concern expressed by the  
 7 Commission was an issue about the preliminary injunction  
 8 standard that is used by the Federal Trade Commission in  
 9 contrast to the Department of Justice. I have to say that  
 10 if one looks at how the courts have applied those standards,  
 11 the standards are, in fact, stated differently. ~~But~~ <sup>--but</sup> the way  
 12 that the courts have applied them, they apply them in the  
 13 same way. Both the Federal Trade Commission and the  
 14 Department of Justice have to make a rigorous evidentiary  
 15 and legal showing that the proposed transaction is likely to  
 16 substantially lessen competition, and it is only when that  
 17 showing has been made ~~will~~ <sup>that</sup> a court <sup>will</sup> grant a preliminary  
 18 injunction. ~~that~~ <sup>that</sup> ~~is~~ <sup>is</sup>

19 So ~~that~~ <sup>the</sup> central concern of the Commission is one that  
 20 ~~believe~~ when one actually examines what transpires in the  
 21 courts ~~I~~ <sup>I</sup> do not believe ~~that~~ <sup>that</sup> is justified.

22 Senator Tillis. Mr. Chair, I was running late to this  
 23 Committee because I was in a Senate Armed Services Committee  
 24 hearing. I repeatedly say in Senate Armed Services that I  
 25 never want our men and women in uniform to go into a fair

1 the bite at the apple tends to be at the preliminary  
 2 injunction phase, then why not have the more fulsome type of  
 3 review that you have when you have a whole review on the  
 4 merits? Why not have that all at once?

5 I am sympathetic to the view in this and in every other  
 6 area of the law that we do not want to adopt things that are  
 7 solutions in search of problems. But I think the same  
 8 criticism can be made of the existing provision of law. If  
 9 the existing provision of law is itself a solution in search  
 10 of a problem, then why not make the two standards the same?  
 11 Why not put people through the same process?

12 Ms. Ramirez. Mr. Chairman, I would argue that the  
 13 parties can under our current system--what they can do is  
 14 that they can stipulate to a preliminary injunction, which  
 15 is something that we seek in order for ~~us~~ to enable <sup>us</sup> to  
 16 obtain meaningful relief at the conclusion of a merits  
 17 trial. So the parties could very easily stipulate to not  
 18 consummate the particular merger or to <sup>a robust</sup> ~~robust~~ to hold  
 19 separate, and then proceed to a merits trial, and there you  
 20 would then be before the Commission, and you would go  
 21 through the merits trial before a Commission and then  
 22 obviate a step before a <sup>f</sup>ederal court.

23 So that is a process, if parties so choose, that is  
 24 available to them. So I would argue that that is another  
 25 route that one can take, and one need not alter the existing

1 system in order to allow for that, to address the concerns  
2 that you have expressed.

3 Chairman Lee. And yet that does not happen in this  
4 context, at least not with the same regularity that it  
5 happens--

6 Ms. Ramirez. Well, parties actually--no, that

7 Chairman Lee. --when a matter is before the DOJ.

8 Ms. Ramirez. Apologies for interrupting you, but it  
9 actually does occur on occasion.

10 Chairman Lee. With the same regularity--

11 Ms. Ramirez. On occasion. ~~These are~~ <sup>gWe</sup> we are speaking  
12 about ~~already~~ a very small number of matters. The Ardagh  
13 case, that was a situation where there was <sup>such</sup> a stipulation,  
14 and then it proceeded to ~~merits~~ <sup>a</sup> merits trial. Ultimately  
15 the case ~~that~~ was resolved via settlement. But, again, we are  
16 speaking ~~just as an initial matter~~ about a very small  
17 universe of cases, and so the numbers are not large.

18 Chairman Lee. Now, I want to make sure I understand  
19 your position correctly. Do you believe there is no  
20 difference between the preliminary injunction standard  
21 prescribed for the FTC under Section 13(b) of the FTC Act  
22 and the one that applies to the DOJ?

23 Ms. Ramirez. There is no question that the standards  
24 are worded differently. There is different language that is  
25 used under the authority that we exercise. But in my--

1 Chairman Lee. But, in effect, though--

2 Ms. Ramirez. But in my view, in effect, ~~you know,~~ <sup>they are</sup>  
 3 ~~courts,~~ <sup>the same.</sup> I believe district courts take their role very  
 4 seriously. They absolutely understand the importance of  
 5 this preliminary injunction phase. I think we see that  
 6 evidenced by the two most recent matters in which we have  
 7 sought a preliminary injunction: the Sysco matter, in which  
 8 we prevailed and did get a grant of an injunction. The  
 9 court wrote this incredibly detailed ~~140~~ <sup>130</sup>-page opinion. It  
 10 was thorough, careful. Courts undertake this role very  
 11 seriously, and I believe that they end up applying the same  
 12 standard that ~~ends~~ <sup>they</sup> up applying when the Department of  
 13 Justice seeks the preliminary injunction.

14 Chairman Lee. So if they are, in effect, the same, if  
 15 they have the same practical effect, why not have them also  
 16 be the same?

17 Ms. Ramirez. ~~So~~ <sup>ultimately</sup> ultimately, in the abstract, I have  
 18 no issue with harmonizing the preliminary injunction  
 19 standards. ~~My fear and my concern,~~ <sup>Street My fear</sup> again, and I say this  
 20 with 20 years of litigation experience and in my experience  
 21 of several years as a law enforcer with the Commission, my  
 22 fear is that a change in the standard--given that right now  
 23 it is the same standard as the Department of Justice, my  
 24 fear is that courts would then not understand the purpose of  
 25 the change and perhaps end up imposing either a higher

1 standard or <sup>it</sup> simply <sup>stet</sup> would create uncertainty as to what ✓  
 2 exactly the new standard ought to be. So I think ~~that~~ <sup>it</sup>  
 3 ~~creates~~ <sup>risks</sup> uncertainty, but in theory, harmonization of the ✓  
 4 standards I do not see as a problem. I believe they are  
 5 already de facto similar standards. ~~effectively.~~

6 Chairman Lee. Okay. I think I understand your  
 7 position there. I struggle with it just the same because if  
 8 I am understanding you correctly, you are saying we have got  
 9 two different standards, but they are interpreted the same  
 10 way by courts. If we make the standards as they are written  
 11 into the law literally the same, then the courts might make  
 12 them different. I do struggle with that.

13 Ms. Ramirez. Senator, my point is simply that I do not  
 14 believe there is a need to make a change here. My worry is  
 15 that with any change, attorneys who zealously advocate for  
 16 their clients and parties who, <sup>as</sup> you know, look for any  
 17 argument that they <sup>can</sup> ~~want to~~ make, I just fear needless ✓  
 18 litigation over issues about what the standard might mean if  
 19 there is a change, given that in my mind it is being applied  
 20 appropriately today. So why make a change?

21 Furthermore, ~~I also, of course--you know,~~ this ✓  
 22 particular bill goes far beyond that and then addresses,  
 23 again, the adjudicative authority that we have. And so my  
 24 concerns extend beyond simply harmonization of the PI  
 25 standard.

1 Chairman Lee. What would you say responding to my  
2 concern that the courts, as a matter of--canons of statutory  
3 construction tell judges that they are not supposed to  
4 assume that differences in legislative language are  
5 irrelevant. They are not supposed to just lightly ignore  
6 surplus or minor differences. I mean, I think I could--if  
7 what you are worried about is consistency in the application  
8 of the law, I could make a corresponding argument to yours  
9 that would say the greater risk is that at some point courts  
10 are going to realize, hey, these are not the same standard,  
11 there must be a difference, and that could change that way.

12 We, of course, do not have control over what the courts  
13 do, but we do have control over what the law says. And if  
14 what you are telling me is that the law ought to provide for  
15 the same substantive standard, the same standard in effect,  
16 I do struggle with the idea that we should not change the  
17 law to make sure that the law actually says the same thing  
18 in these two areas.

19 Do you want to respond to that?

✓ 20 Ms. Ramirez. Senator, let me ~~just~~ take issue with the  
21 way that you have constructed your comment. The courts are  
22 not comparing the FTC standard ~~to compare~~ to the Department  
✓ 23 of Justice standard. And let me also ~~just~~ state that the  
24 standard that is applied, of course, with the Department of  
✓ 25 Justice is ~~just~~ the traditional preliminary injunction

1 standard that is in the common law, that is articulated by  
2 courts. But they are not comparing the language that is in  
3 the FTC Act ~~as compared to that traditional standard.~~ So I  
4 think ~~there is a~~ your point about statutory construction, I  
5 do not believe <sup>it</sup> is apposite to the way courts approach this  
6 issue.

7 ~~If you look, again,~~ I would urge the members of the  
8 Committee to look closely at the way that the courts in the  
9 Sysco matter, the decision in June, and also the recent  
10 decision in the Steris case, see how those courts apply the  
11 standard and compare that to the way courts have applied the  
12 standard in Department of Justice cases; you will see that  
13 ~~there is still there is that~~ same requirement <sup>---</sup> that the FTC must  
14 establish a likelihood of success on the merits. And,  
15 again, in my mind, the way the standards are articulated end  
16 up no differently, and outcomes in my mind are also not  
17 determinative, depending on who it is that you are in front  
18 of.

19 Chairman Lee. So harm could come from additional  
20 efforts at statutory clarity.

21 Ms. Ramirez. I am sorry?

22 Chairman Lee. If we attempt to clarify the standard,  
23 harm could come from that. That is your concern.

24 Ms. Ramirez. That is a worry. But more fundamentally,  
25 my concerns go beyond the issue of harmonization of the PI

1 standard. My major concern about this proposed legislation  
2 is ~~about the~~ ~~is~~ with regard to the effort to eliminate the  
3 administrative process. That is the fundamental concern.

4 Chairman Lee. Got it. Thank you.

5 Senator Klobuchar?

6 Senator Klobuchar. Thank you very much. I just had  
7 one side question about pharmaceuticals. As you know,  
8 Turing Pharmaceuticals announced a 5,000-percent price  
9 increase on Daraprim, a drug used to prevent malaria and  
10 treat toxoplasmosis. Yesterday, I sent a letter to the FTC  
11 asking you to investigate whether Turing was restricting  
12 supply, and we are well aware of the price increase, but  
13 this is about whether or not they are restricting supply to  
14 prevent generics from getting on the market and to delay  
15 generic competition.

16 On Monday, the New York Times also covered price  
17 increases by Valeant Pharmaceuticals. What role do you see  
18 antitrust laws in general, without maybe commenting on the  
19 specific situation as you look into it, what role does the  
20 FTC and antitrust laws have to play in this clearly emerging  
21 problematic area?

22 Ms. Ramirez. Senator, as I think you are well aware,  
23 ~~this is~~ <sup>it is</sup> a top priority for us to monitor the pharmaceutical  
24 industry. It is an area that we have been active in for  
25 decades. We share <sup>your</sup> ~~the~~ concern when we see significant price

1 hikes. We ~~will be looking~~ we look closely when we do see  
2 price hikes. As a general matter, price hikes alone may not  
3 necessarily mean that there is anticompetitive conduct. But  
4 if there is, we certainly will be taking appropriate action  
5 should we find there has been a violation of the antitrust  
6 laws.

7 Senator Klobuchar. Do you think we are going to need a  
8 different legislative solution rather than antitrust laws if  
9 this kind of behavior is allowed and these patients are just  
10 at the mercy of people increasing prices if, in fact, there  
11 is not per se an antitrust violation?

12 Ms. Ramirez. Well, I think that is an issue that  
13 certainly your Committee and other Members of Congress  
14 should examine. In the meantime, we are certainly going to  
15 do our job and ensure that the antitrust laws are  
16 appropriately enforced and that we do what we can to protect  
17 consumers.

18 Senator Klobuchar. Okay. Thank you very much.

19 Chairman Lee. Thank you very much, Chairwoman Ramirez.  
20 We will give our next panel a few minutes to get situated,  
21 and then we will resume.

22 Ms. Ramirez. Thank you.

23 Chairman Lee. Thank you very much.

24 [Pause.]