

Senator Grassley's Questions for the Record, Senate Judiciary Antitrust Subcommittee Hearing "Does America Have a Monopoly Problem? Examining Concentration and Competition in the U.S. Economy," March 5, 2019

Questions for Robert Reich

1. Could you explain your position on agency retrospective evaluations of mergers? If you are supportive, would you recommend that agencies conduct retrospectives of all their decisions, or just transactions pertaining to specific industries?

ANSWER: I'd recommend that both the FTC and the Antitrust Division of the Justice Department do regular retrospective evaluations of mergers over a certain specified size, in order to help them better target what might be troublesome mergers in the future. Criteria they should consider would be effects on consumer prices, wages, jobs, and communities.

2. I'm interested in hearing your views on increased transparency with respect to Justice Department and Federal Trade Commission closing statements and other guidance. Are the Justice Department and the Federal Trade Commission currently required to do closing statements? For which transactions? How burdensome would it be to require this for all transactions?

ANSWER: I think it important and useful for both agencies to provide closing statements and guidance, especially for large mergers or acquisitions over a certain size. I don't know whether they are required to do so.

3. As Chairman of the Finance Committee, I'm particularly interested in making sure that companies in the drug and health care industries are playing by the rules. Everyone is concerned about the high cost of health care, especially the skyrocketing price of prescription drugs. Not only am I concerned about increased concentration, I'm concerned about certain practices in the health care and pharmaceutical industries that could be anti-competitive. Do you share these concerns? How can our antitrust regulators improve enforcement in this area? What about Congress?

ANSWER: I do share those concerns. I think antitrust regulators should maintain a rebuttable presumption against mergers or acquisitions in the health care and pharmaceutical industries, given how rapidly prices are rising, and that Congress should bar practices such as "pay-for-delay" agreements by which brand-name pharmaceutical companies can in effect pay generic companies for delaying the introduction of generic versions.

4. Do you believe that the agriculture industry presents unique competition concerns? How can the Justice Department and the Federal Trade Commission improve how they have been looking at this sector?

ANSWER: Yes. Farmers are getting squeezed by both suppliers of seeds and fertilizer (both industries are highly concentrated) and by food processors (which are also growing more concentrated). The FTC and the Justice Department need to take a closer look at agricultural suppliers and food processors, and to define these markets realistically.

QUESTIONS FROM SENATOR BOOKER

1. In your written statement, you referenced the extremely high levels of concentration in the food and agriculture sector. In addition, you spoke briefly at the hearing about the impact that this kind of concentration has on the small businesses and organizations at the core of our communities.

a. Can you elaborate specifically on the impact consolidation has had on rural communities and farm families?

ANSWER: Farmers are getting squeezed by both suppliers of seeds and fertilizer (both industries are highly concentrated) and by food processors (which are also growing more concentrated).

b. Can you elaborate on what was done at the turn of the twentieth century to combat consolidation in food and agriculture particularly the consolidation of meat packing? What lessons can we learn from those reforms?

ANSWER: Early antitrust enforcement was concerned with meat packing. In 1919, for example, the FTC determined that the five major meatpacking companies controlled more than half of the market, prompting Congress to enact the Packers and Stockyards Act of 1921. Yet America has an even higher degree of concentration within the meatpacking industry today, including increased vertical integration and forward livestock contracts. In my view, the largest packers' influence over the market continues to be far too strong.

c. What steps do you believe the Department of Justice, the Federal Trade Commission, or other federal agencies could take under existing law to create more open and fair markets for our family farmers and ranchers?

ANSWER: The FTC and the Justice Department need to take a closer look at agricultural suppliers and food processors, and to define these markets more realistically than is now the case.

d. What additional authority should Congress consider providing to the Department of Justice, the Federal Trade Commission, or other federal agencies in order to ensure that they are sufficiently empowered to address the current level of consolidation that exists in the food and agriculture sector and in our economy more broadly?

2. This question is about what's happening to America's entrepreneurs and small businesses—the establishments that have served as innovators and community anchors in so many places across this nation. These establishments are getting swallowed up or driven out by corporate consolidation. I'm concerned that these forces are crushing our heritage of entrepreneurship.

Earlier this month I was honored to give a keynote speech at Brown Chapel in Selma, Alabama, to mark the anniversary of “Bloody Sunday,” which changed the trajectory of my life and countless others. As I was reminded during my visit, rigorous enforcement of antitrust and anti-chain store laws during the 1920s and 1930s was key to preserving a group of independent black business owners who offered critical financial, logistical, and other support in the Civil Rights Movement.

But in recent decades we have seen the collapse of black-owned independent businesses and financial institutions that were once the anchors of communities across the country. This is due in large part to consolidation. For example, in 1985, 60 black-owned banks were providing financial services to their communities—today there are less than two dozen. And of the 50 black-owned insurance companies that were operating in the 1980s, just 2 remain today.

a. I am so deeply concerned by numbers like these because they reflect a disheartening outlook on our American ideals of opportunity and upward mobility. Perhaps worse, I worry it threatens the foundations of our democracy. Do you believe that the consolidation we see today across so many industries impedes our ability to preserve and defend our democracy?

ANSWER: Yes.

b. How can our antitrust laws be used to revive the spirit of entrepreneurship that is being crushed by corporate consolidation?

ANSWER: Antitrust enforcement needs to look beyond consumer welfare, to issues of income and wealth distribution, wages, and social justice.

2. A recent study⁴ confirmed what most of us know, that corporate concentration has a direct relationship to market power in labor markets. Using data from Careerbuilder.com, the authors found that the most concentrated labor markets saw a 15 to 25 percent decline in posted wages over those in less concentrated ones. The Federal Trade Commission has said that labor effects are already in the agency's merger guidelines, and last year Chairman Simons testified that he had instructed the Commission's staff to look at labor markets in every merger they review.

What evidence have you found that increasing corporate concentration is also squeezing labor markets—and harming workers?

ANSWER: A number of empirical studies have shown that in local markets dominated by a few major chains (such as Walmart, McDonalds, etc.), the chains essentially set effective wage rates – often at or close to the minimum wage. Monopsonistic effects must be considered in all mergers, but also must be considered in terms of large chains that have excessive economic power in local labor markets.