Response to Questions from Senator Blumenthal
Professor Carl Shapiro

Senate Judiciary Committee
Subcommittee on Antitrust, Consumer Protection and Consumer Rights

"The Consumer Welfare Standard in Antitrust: Outdated, or a Harbor in a Sea of Doubt?"

23 December 2017

1. From the testimonies of the witnesses at the hearing, it appears that there is agreement that innovation is an important component of antitrust law.

Yes. Promoting innovation is a very important component of antitrust law. My paper, "Competition and Innovation: Did Arrow Hit the Bull's Eye," explains that economic theory and empirical evidence both point to a strong connection between competition and innovation. See http://faculty.haas.berkeley.edu/shapiro/arrow.pdf.

   a. Would you agree that if a merger will undermine innovation it can be challenged under the consumer welfare standard?

Yes. Consumers are harmed if innovation is stifled, so a merger that undermines innovation can very much be challenged under the consumer welfare standard.

The Horizontal Merger Guidelines, "Innovation and Product Variety" explains how the DOJ and FTC apply the consumer welfare standard to innovation when they evaluate proposed horizontal mergers. Section 6.4 begins by stating: "Competition often spurs firms to innovate. The Agencies may consider whether a merger is likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger."

A 2015 paper by Richard J. Gilbert and Hillary Greene, "Merging Innovation into Antitrust Agency Enforcement of the Clayton Act," documents that the DOJ and FTC routinely investigate and challenge mergers based on innovation effects. See http://www.gwlr.org/wp-content/uploads/2016/01/83-Geo-Wash-L-Rev-1919.pdf. Gilbert and Green report that from 2004 to 2014, the DOJ and FTC identified innovation concerns in roughly one-third of their merger challenges, i.e., 84 of 250. They further report that in highly R&D-intensive industries the DOJ and FTC identified innovation concerns in over 80% of their merger challenges.

   b. More broadly, would you agree that harm to innovation constitutes a harm to consumers under current law?

Yes, very much so. I am not aware of any serious dispute about this proposition.

2. New research has shown that more concentrated labor markets are generally correlated with lower wages.

   a. Would you agree that a more effective antitrust enforcement regime could help combat labor market monopsony, and in turn help fight stagnant wages and inequality? Why or why not?

Yes, I agree that effective antitrust enforcement can help combat labor market monopsony, which in turn helps fight stagnant wages and inequality. Antitrust enforcement could well be significant for workers who sell their services in narrow labor markets containing only one or a few employers. Relevant labor markets can be narrow based on specific skills and/or based on specific geographies.

As I explained in my opening statement, antitrust can challenge monopsony power in labor markets under the consumer welfare standard, properly interpreted. In such labor markets, workers are the "trading parties on the other side of the market" who are harmed when employers exert monopsony power. Worker harms could result from collusion among employers to depress wages, or from a merger between two employers that enhances the monopsony power of the merged firm in a relevant labor market.

However, I have not seen empirical evidence showing that employer monopsony power is a major or leading factor explaining the relatively stagnant wages and rising income inequality that we have experienced in the United States over the past several decades. Other economic forces, including technological change and globalization, have put downward pressure on the wages of many workers, especially those who lack specialized skills or a college education. Therefore, while antitrust enforcement in labor markets can help fight stagnant wages and inequality, policies to help workers build their human capital are critical to addressing these problems.