

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.

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

QUESTIONS FROM SENATOR FEINSTEIN, RANKING MEMBER

1. It's my understanding that you were the primary lobbyist on behalf of Anthem and advocated in favor of its proposed merger with Cigna. The Justice Department successfully blocked that merger earlier this year. Because the litigation over the merger is still going on, you have pledged to recuse yourself from "any further involvement" in this matter if you are confirmed.
 - a. Do you believe your participation in matters related to the Anthem-Cigna merger would present a conflict of interest?
 - b. Please describe the steps you will take to recuse yourself from this matter.

RESPONSE: It is my understanding, according to press reports, that Anthem announced on May 12 that it was abandoning further efforts to complete the contemplated merger with Cigna. Having noted that, should there be any further activity associated with that merger, I will recuse myself from any involvement in this matter to avoid any conflicts of interest or appearance thereof.

2. I understand that the current Acting Assistant Attorney General, Andrew Finch, may also have a conflict of interest related to the merger because his former law firm represented Cigna.
 - a. Will you also take steps to ensure that he is recused from participation in matters related to the merger?
 - b. Assuming Mr. Finch is also recused from this matter, who will be the person in the Antitrust Division with primary responsibility for supervising the Anthem / Cigna matter?

RESPONSE: It is my understanding, according to press reports, that Anthem announced on May 12 that it was abandoning further efforts to complete the contemplated merger with Cigna. I am aware that Mr. Finch has been and is recused from working on the matter. My understanding is that a career Deputy Assistant Attorney General has the primary responsibility for supervision of the matter.

3. During a court hearing over whether Cigna could terminate its proposed merger with Anthem, Anthem's attorney repeatedly suggested that the merger would be cleared under the "new" Department of Justice in the Trump administration. Specifically, he told the court that "now Vice President Pence was supportive of the transaction as the governor of Indiana" and "we're reaching out to DOJ, which is new, by the way. There is a confirmed Attorney General, Sessions." The Anthem attorney made these statements even though the previous Attorney General concluded that the merger "would restrict competition for health

insurance products sold in markets across the country and would give tremendous power over the nation's health insurance industry to just three large companies.”

- a. Do you believe that these statements were appropriate?
- b. Do you believe that the Antitrust Division's approach to determining whether a merger would have anticompetitive effects should change based on which party is in office?

RESPONSE: As I noted at my confirmation hearing, there should be no political influence in antitrust law enforcement decisions. I cannot otherwise speak to any statements that Anthem's representatives made well after my representation of the company ended. Indeed, I have been recused from any involvement in the matter since joining the Administration. The Antitrust Division's merger enforcement should be based, in any case, on application of the laws written by Congress to the particular facts and circumstances presented by the merger regardless of the party in office.

4. In March 2017, the International Business Times submitted a Freedom of Information request to the Antitrust Division seeking correspondence between you and members of the Antitrust Division while you were lobbying on behalf of the Anthem-Cigna merger. DOJ not only denied the request—DOJ refused to confirm whether any such documents exist. According to DOJ, even acknowledging any such communications without your consent would be “a clearly unwarranted invasion of personal privacy.” I believe whether you corresponded with the Department of Justice about the Anthem merger and what you said are extremely relevant to our consideration of your nomination.
 - a. Did you correspond with DOJ during the time period you were lobbying on behalf of Anthem?
 - b. Will you agree to waive any privacy interest you might have in any DOJ documents that are relevant to the International Business Times' FOIA request?

RESPONSE: To the best of my recollection, my only communications with the federal government with respect to this matter were with Congress and I had none with the Department of Justice. The Freedom of Information Act (FOIA) promotes transparency and accountability in the government. If confirmed, I will strive to ensure that the Antitrust Division complies with all laws and regulations, including FOIA laws. I will respect any decision made by FOIA officials with respect to this request under FOIA.

5. You will oversee the Division within DOJ that is responsible for enforcing our country's antitrust laws. Many consumers don't think about antitrust laws. But the enforcement of these laws saves consumers millions, and in some cases even, billions of dollars each year. If confirmed, what will you do to protect consumers?

RESPONSE: If confirmed, my focus for the Antitrust Division would be on cartel behavior that raises prices or otherwise adversely affects the welfare of consumers; mergers and other forms of consolidation that risk a substantial lessening of competition; and single firm or collusive conduct that suppresses the free market

competition to which consumers are entitled. In recent years, international regimes have increasingly passed antitrust laws and started enforcement programs; accordingly, I believe that I should also focus on close consultation with competition enforcement officials from other jurisdictions in an effort to promote fair, transparent, and consistent application of competition principles for the benefit of American consumers, businesses and workers.

6. Over the last 12 months, we have seen an unprecedented increase in proposed mergers in the agriculture industry. Dow Chemical has proposed a merger with DuPont, Syngenta has proposed a merger with ChemChina, and Monsanto has proposed a merger with Bayer. While any of these mergers alone might not raise significant concerns, the prospect of these three mergers occurring around the same time, raises serious concerns. Will you review these mergers in isolation from each other or will you review them in light of the other pending agriculture mergers?

RESPONSE: While it would be inappropriate for me to discuss particular pending mergers, I believe in general that any merger should be evaluated in light of the facts and circumstances, including the likely future composition of the industry.

7. Many proposed mergers and investigations of anti-competitive behavior have significant impacts on my state and I believe it is important for state law enforcers to have an equal seat at the table with DOJ when that's the case. I know the Division often coordinates investigations and merger review with the states and I believe that is very important. Do you agree, and would you commit to continuing to cooperate with state attorneys general and other relevant state officials?

RESPONSE: I believe it is beneficial to both the federal antitrust agencies and the states to cooperate in enforcement actions, including sharing relevant information where lawful and appropriate. If confirmed, I will commit to cooperating in appropriate cases with my state attorney general colleagues.

8. Many online platforms benefit from network effects that make them dominant means for business to connect with consumers, giving them disproportionate power over the evolution of competition and the services available to consumers. Do you have any thoughts on competitive challenges in this area?

RESPONSE: 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.

9. In 2011, the Department of Justice sued to block AT&T's planned acquisition of T-Mobile. Since then, T-Mobile has played a critically important role in providing more choices and lower prices to consumers. Do you believe DOJ made the correct decision blocking this merger, and why?

RESPONSE: I was not privy to the confidential information and analytical data the Department had in its possession at that time, and therefore am not in a position to comment.

10. In 2014, Sprint appeared interested in acquiring T-Mobile, but was dissuaded from pursuing the transaction when the idea was met with skepticism by regulators who believed a merger that took the market from 4 national competitors to 3 wasn't good for competition or consumers. In 2013, the Department of Justice wrote to the FCC expressing concern about the threats to competition in the wireless market, specifically the concentration of valuable low-band spectrum held by the two largest carriers.
- a. What is your impression of the state of competition in the wireless market?

RESPONSE: I have not recently studied the state of competition in the wireless market and therefore do not have any particular impression regarding its competitiveness at this time. If confirmed and presented the opportunity, I look forward to studying it.

11. In 2011, DOJ approved the Comcast/NBC-Universal transaction with several conditions.
- a. Do you believe those conditions have effectively prevented the harms to consumers and competition they were designed to address?
- b. Those conditions are set to expire in 2018. Do you believe any of the conditions should remain in place?
- c. If not, how has the market changed to make these behavioral remedies unnecessary?
- d. If DOJ merger conditions are ineffective at addressing the harms to consumers and competition they were meant to stop, at what point should DOJ begin to take action to break up the merged firm?

RESPONSE: I was not privy to the information the Department had in its possession at that time, and therefore am not in a position to comment on whether the decision was correct or not.

With respect to the Comcast/NBC Universal transaction, I have not studied the merger action, nor its effects. If confirmed, I look forward to learning about the decree and its effectiveness. It is important for antitrust law enforcers to be confident that the remedies they impose will be effective with respect to the competitive problem identified when they take action against a merger. It is likewise important for parties that commit to conditions as part of the merger review to live up to those conditions and for the Department to vigorously ensure compliance.

12. Last fall, AT&T agreed to purchase Time Warner for \$85 billion. Since then, there have been suggestions that the AT&T/Time Warner deal could be a precursor for significant consolidation in the telecom, cable, broadband, and media industries - which are already significantly consolidated. As recently as last week, there were rumors that Verizon may look to purchase one of the two largest cable companies, Comcast or Charter, or a major media company like Disney or CBS.
- At what point is there too much consolidation?
 - Should merger reviews consider the potential for a transaction to spur a wave of consolidation that ultimately will prove to be harmful to consumers and competition?
 - Do you believe that vertical mergers should concern antitrust regulators?
 - If so, can you explain the harm or the danger that you think vertical mergers can present to consumers and competition?

RESPONSE: It would be inappropriate for me to discuss any pending mergers under review by the Antitrust Division. As a general matter, past consolidation is a fact that should be and is relevant in particular merger reviews, but it is hard to make any general statements regarding when a level of consolidation becomes too much. It depends on the facts and circumstances. 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 upstream or downstream competition may be foreclosed by the transaction.

13. You currently serve as Deputy Associate Counsel to President Trump. On May 9, 2017, President Trump fired the Director of the FBI, James Comey. On May 10, 2017, the Washington Post reported the following about Director Comey's firing: "Within the West Wing, there was little apparent dissent over the president's decision to fire Comey, according to the accounts of several White House officials. McGahn, the White House counsel, and Priebus, the chief of staff, walked Trump through how the dismissal would work, with McGahn's legal team taking the lead and coordinating with the Justice Department."
- When did you first hear that Director Comey might not stay in his position for the duration of his term?
 - How did you find out?
 - Who told you, and what reasons did that person give for Director Comey's removal?
 - Did you discuss it with anyone else?
 - Did you see any documents or emails about Director Comey's possible or actual removal beforehand?
 - When did you become aware that Director Comey would be removed from his position as FBI Director?
 - How did you find out?

- h. Who told you and what reasons did that person describe for his removal?
- i. Did anyone solicit your opinion as to whether Director Comey should be removed? If so, who?
- j. Did you tell anyone inside the Executive Office of the President your view as to whether Director Comey should continue as FBI Director?
- k. Did you tell anyone at the Department of Justice your view as to whether Director Comey should continue as FBI Director?
- l. Were you part of Mr. McGahn's legal team that "[took] the lead and coordinat[ed] with the Justice Department" regarding Director Comey's firing?

RESPONSE: I learned of the dismissal of FBI Director Comey on the evening of May 9, 2017, only through news reports.

14. On May 9, the President fired FBI Director James Comey. On January 30, the President fired Acting Attorney General Sally Yates. The President has made very clear that he will fire individuals who disagree with him or who pursue investigations against his wishes. Kellyanne Conway, one of the President's advisors, stated on May 11 that President Trump "expects people who are serving in this Administration to be loyal to the country and to be loyal to the Administration." Yet if confirmed, you will be called upon to exercise independence and to serve the American people, not the President.
- a. How can this Committee have confidence that you will be independent from the President?
 - b. What specific examples from your background offer evidence that you will not reflexively do what the White House wants you to do?
 - c. Do you believe it is important for the Assistant Attorney General of the Antitrust Division to be, first and foremost, "loyal to the Administration"?

RESPONSE: I believe that it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

During my time in government service and private practice, I have been called on to advise clients on many sensitive matters. To the best of my recollection, I have never been in a situation where I have had to compromise my principles due to White House or other political pressure, including, in particular, my previous service at the Department of Justice. It is important for the Assistant Attorney General for the Antitrust Division to be, first and foremost, loyal to preserving and protecting competition through the sound enforcement of the antitrust laws and, if confirmed, that will be my loyalty in addition to my loyalty to the Constitution and to my ethical obligations as an officer of the court.

15. Please describe with particularity the process by which these questions were answered.

RESPONSE: The answers are my own and reflect my views. I discussed my answers and consulted with representatives of the Department of Justice as I deemed helpful and appropriate.

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

QUESTIONS FROM SENATOR LEAHY

1. You served as Senator Hatch's Staff Director on the Judiciary Committee from December 2000 until July 2003. In that role, you hired the staff who hacked into the Democrats' computer system, including Mr. Manuel Miranda. For months during your tenure as Staff Director, Mr. Miranda and others engaged in continuing theft of the Judiciary Democratic staff's files, including over 4,000 confidential strategy memoranda. These unconscionable actions were eventually discovered after a number of leaks by Mr. Miranda. While the Sergeant at Arms investigation did not begin until November 2003, as early as February 2003 some of Mr. Miranda's leaks made it into the media. Since you were Staff Director during this period, I would request that you answer the following questions for the record:
 - a. Did you have any knowledge of the illegal accessing of Democratic computer systems and theft of documents, which took place over the course of several years?
 - b. Did Mr. Miranda ever give you any indication where he sourced his intelligence on Democrats' strategy? If so, when? If not, did you wonder or question how he accessed such information?
 - c. Do you feel responsible for the actions of your subordinates on this matter?

RESPONSE: I had no knowledge or role in the hacking by Senate Republican Staff of Democratic files between 2001 and 2003. The first I learned of the activity was through public reporting after I had left the Senate Judiciary Committee staff. At that time, I fully cooperated and assisted the Senate Sergeant-at-Arms in the investigation into the conduct. I would also like to note that to the best of my knowledge, Mr. Miranda's activities accessing the documents occurred while he was on Senator Frist's staff and not on the Senate Judiciary Committee staff.

2. As a lobbyist for Anthem, you worked to have Anthem's proposed merger with Cigna approved. Will you recuse yourself from any Justice Department involvement in this matter?

RESPONSE: Yes. I would also note that it is my understanding, according to press reports, that Anthem announced on May 12 that it was abandoning further efforts to complete the contemplated merger with Cigna.

3. When a reporter filed a FOIA request with the Antitrust Division for communications between you and the Antitrust Division during your time as a lobbyist, he reportedly received a *Glomar* response.
 - a. While working for Anthem, did you contact anyone at the Antitrust Division, in particular regarding the proposed merger with Cigna?
 - b. If confirmed, will you ensure that the Division fully complies with FOIA, including the presumption of openness that was codified last year by the FOIA Improvements Act?

RESPONSE: To the best of my recollection, my only communications with federal government with respect to this matter were with Congress and I had none with the Department of Justice. The Freedom of Information Act promotes transparency and accountability in the government. If confirmed, I will strive to ensure that the Antitrust Division complies with all laws and regulations, including FOIA laws. I will respect any decision made by FOIA officials with respect to this request under FOIA.

4. Last week, President Trump cited the FBI's investigation into Russian interference in the 2016 election as a basis for dismissing Director Comey. The Deputy White House Press Secretary said, "We want this to come to its conclusion . . . And we think that we've actually by removing Director Comey, taken steps to make that happen." President Trump himself admitted that "I was gonna fire [Comey] regardless of [Mr. Rosenstein's] recommendation. . . . And in fact when I decided to just do it, I said to myself, I said you know, this Russia thing with Trump and Russia is a made up story." Should those statements and justifications for FBI Director Comey's dismissal raise concerns?

RESPONSE: As the nominee for the position of Assistant Attorney General for the Antitrust Division, I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. In light of the confidentiality interests that attach to executive branch and White House decision-making, I am unable to comment further.

5. Is it proper for the President to pressure a law enforcement official to terminate an ongoing investigation into one of the President's associates?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

6. If confirmed, will you be loyal to the Constitution or to President Trump? Do you believe there is a difference? If so, will you put your obligation to uphold the Constitution above any personal loyalty to President Trump?

RESPONSE: If confirmed, I will adhere to my oath of office, which obligates me to support and defend the Constitution of the United States.

7. If anyone from the White House contacts you about a matter pending before the Antitrust Division, how would you respond? Would such contact violate Justice Department guidelines governing contacts between Department officials and the White House?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

8. Several large mergers are pending or were pending before the Justice Department's Antitrust Division, including Bayer/Monsanto, Anthem/Cigna, and AT&T/Time Warner.
 - a. Have you had any communication with anyone in the Trump administration or Trump transition team involving any such matters before the Antitrust Division and, if so, specify the nature of that communication and the identity of any administration or transition team official you communicated with?

RESPONSE: I have discussed my potential recusals with Justice Department and Administration ethics officials. I was not asked, nor have I provided, any commitments or assurances regarding any potential enforcement actions or pending matters before the Antitrust Division. In light of the confidentiality interests that attach to executive branch and White House decision-making, I am unable to comment further.

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

QUESTIONS FROM SENATOR DURBIN

1. The credit and debit card industries, which handled about six trillion dollars in electronic payments last year, are dominated by the market power of the Visa-MasterCard duopoly. These companies have the power to dictate security standards, fix interchange fee rates, mandate terms of card acceptance, and stifle market entry by potential competitors. Do you think the credit and debit card industries deserve careful antitrust scrutiny?

RESPONSE: I believe that antitrust enforcers should be keenly aware of industries that affect American consumers in their everyday lives, and the credit and debit card industries are important industries in that regard. Based on my previous experience at the Department of Justice, I know first-hand the Antitrust Division has given and, if confirmed, I pledge it will continue to give careful scrutiny to these industries.

2. What in your view is the benchmark for excessive consolidation in a market?

RESPONSE: In the abstract I think it is difficult to define such a benchmark given how markets may vary. For example, the amount of concentration that might be of concern in a market with high entry barriers could be significantly less of a concern in a market with little or no entry barriers. As a general matter, I think one could take guidance from the DOJ/FTC Horizontal Merger Guidelines which refer to a highly concentrated market when the Herfindahl-Hirschman Index exceeds 2500.

3. Do you support presumptions of anticompetitiveness for proposed mergers that exceed a certain level of market concentration?

RESPONSE: Yes, such a presumption is contained in the case law and the Horizontal Merger Guidelines.

4.
 - a. Is it appropriate for the President-elect or President to have private meetings with the CEOs of companies that are undergoing merger reviews?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, including those who may have a particular merger under review. It is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and

independence of Antitrust Division investigations.

- b. Do such meetings create the appearance that the President is involving himself in the merger review process?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, and that might include those who may have a particular merger under review. As noted above, it is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and independence of Antitrust Division investigations.

5. Was it appropriate for President-elect Trump to meet with the CEOs of AT&T, Bayer and Monsanto in private Trump Tower meetings during the transition while those companies had pending mergers under review?

RESPONSE: The President or other Federal Government officials may have a variety of reasons to discuss issues with industry CEOs, and that might include those who may have a particular merger under review. It is important to note that there are safeguards in place, as reflected in the January 27, 2017, White House Counsel Donald McGahn memo entitled "Communications Restrictions with Personnel at the Department of Justice" and the Attorney General Holder memo dated May 11, 2009. These memos were promulgated to protect cases and investigations from political influence. I will comply with these memos to ensure the integrity and independence of Antitrust Division investigations.

6.
a. Is it true that you had no knowledge of, and no role in, the hacking by Senate Republican Staff of Democratic files between 2001 and 2003?

RESPONSE: I had no knowledge or role in the hacking by Senate Republican Staff of Democratic files between 2001 and 2003. The first I learned of the activity was through public reporting after I had left the Senate Judiciary Committee staff.

- b. What did you do when you learned about your staff's involvement in this hacking?

RESPONSE: I learned of the activities by public sources after I had left the Senate Judiciary Committee staff and was working in the Antitrust Division of the Department of Justice. At that time, I fully cooperated and assisted the Senate Sergeant-at-Arms in the investigation into the conduct.

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

QUESTIONS FROM SENATOR WHITEHOUSE

1. For the last 40 years, the White House has imposed a policy restricting the communications of White House staff to the Department of Justice to avoid political influence, or even the appearance of political influence, on the Department of Justice's investigative and enforcement functions. On January 27, 2017, White House Counsel Donald McGahn issued a memo – Communications Restrictions with Personnel at the Department of Justice – to restrict communications between White House staff and DOJ.
 - a. What was your role, if any, in developing that policy?
 - b. Have you given any guidance or training on that policy to other officials in the White House?

RESPONSE: I am aware of the White House Counsel's memo entitled "Communications Restrictions with Personnel at the Department of Justice." As you note, this policy includes guidance limiting discussions between the White House and the Department of Justice regarding ongoing or contemplated cases or investigations. The White House Counsel's Office, through its ethics compliance program, provides training for White House staff.

2. This month, Senators Franken, Blumenthal and I wrote to Don McGahn asking why the White House had not made public a policy governing contacts between the White House and law enforcement agencies outside the Department of Justice.
 - a. Is there additional guidance from the White House Counsel's office akin to the above-referenced January 27, 2017 memo that restricts communications from White House staff to other agencies regarding enforcement activity at other agencies besides DOJ? If not, why?
 - b. If a written policy has been established, what steps have been taken to disseminate it to relevant federal law enforcement agencies? Have you advised other agencies to institute, or update as the case may be, agency policies related to contacts with the White House that reflect the January 27th policy?
 - c. What enforcement mechanisms does the Office of White House Counsel have in place to enforce official policy with respect to White House-law enforcement agency contacts?

RESPONSE: In light of the confidentiality interests that attach to executive branch and White House decision-making, I am unable to comment.

3. Developments since the January 27th memo have also raised questions about whether that memo provides sufficient guidance to prevent inappropriate contacts between the White House and the Department of Justice and what steps, if any, the White House is taking to enforce it. Reports of the following events are of particular concern:

- a. Efforts by the White House Counsel's office on or about March 3, 2017, to secure access to what you believed to be an order issued by the Foreign Intelligence Surveillance Court authorizing surveillance related to President Trump and his associates.
- b. A request by White House Chief of Staff, Reince Priebus, to the FBI on or about February 15, 2017, asking the agency to refute reports that Trump campaign advisors had contact with Russia during the 2016 presidential campaign.
- c. A call from White House Senior Adviser Stephen Miller to the home of Robert Capers, the U.S. Attorney for the Eastern District of New York, on or about February 3, 2017, to dictate how he should defend the Administration's travel ban.
- d. A call from President Trump to U.S. Attorney for the Southern District of New York Preet Bharara on or about March 9, 2017, the day before he was asked to resign from his position.

Do you believe any of these reported contacts with the White House violate the January 27 policy contacts policy that you helped author? Are you aware whether an investigation was conducted into whether the contacts violated January 27th policy and what conclusions were made?

RESPONSE: I lack sufficient personal knowledge to express an opinion as to whether the contacts you reference are in compliance with the White House policy.

4. Under what circumstances would it be appropriate for a White House employee to communicate with DOJ about a specific pending antitrust enforcement or litigation action?

RESPONSE: The White House Counsel's memo entitled "Communications Restrictions with Personnel at the Department of Justice" provides guidance limiting discussions between the White House and the Department of Justice regarding ongoing or contemplated cases or investigations. As stated in the policy, it was issued to "ensure the DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence." I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

5. It is so important that DOJ exercises its antitrust authority impartially that Congress enacted the Tunney Act, which requires that antitrust consent decrees be subject to public comment and judicial review, and also disclose all contacts between settling defendants and any federal employees. It was passed after disclosure of President Nixon's influence on then Deputy Attorney General Richard Kleindienst to drop DOJ's antitrust suits against International Telephone and Telegraph in exchange for campaign donations.
 - a. If, as head of the Antitrust Division, you received an email or phone call from a

former colleague in the White House Counsel's office about a merger or other anti-competitive activity for which your division was either contemplating an investigation or enforcement action or was already engaged in litigation, would you take that call or answer that email? What other steps would you take?

- b. If, as head of the Antitrust Division, you receive any communications by the White House, or become aware of such communications to DOJ staff, regarding a particular antitrust matter, will you commit to informing this committee of such communications within one week of when the communication is made or attempted?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

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

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.

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

QUESTIONS FROM SENATOR FRANKEN

1. In January, after AT&T and Time Warner confirmed that they would structure their proposed acquisition to circumvent FCC review, 12 of my colleagues and I asked the companies to send us the public interest statement that they would have had to send to the FCC.

Their response did little to address my concerns and instead was so bold as to state that the deal raises no anticompetitive concerns because it is vertical in nature. Top execs from AT&T and Time Warner wrote, “[the government] typically permits such mergers to proceed, imposes conditions to address any competitive risks, and narrowly tailors those conditions to avoid undermining the mergers’ consumer benefits. Yet this merger presents no such risks at all.”

We’ve seen the risks before, and we’ve seen how successful merger conditions have been in the past. In the years since the Comcast-NBCUniversal deal was completed – a deal that you lobbied for – the combined company has faced complaint after complaint for engaging in anticompetitive behavior and not complying with conditions that the FCC and DOJ imposed on that transaction.

- a. Mr. Delrahim, without commenting on the pending transaction specifically, do you subscribe to the view that vertical mergers aren’t cause for concern by antitrust regulators? And just because vertical deals have been approved in the past, do you believe that that means that all future vertical transactions should also be approved?
- b. And to what extent do you think the Antitrust Division should consider the enforceability of behavioral conditions and other remedies when determining whether to challenge a proposal?

RESPONSE: As a general matter, while antitrust law traditionally has recognized that horizontal mergers potentially have a more direct effect on competition since they involve direct competitors, in certain circumstances vertical mergers indeed also can raise competitive concerns. I think every transaction should be reviewed based on its particular facts and circumstances. Thus, just because a transaction or particular types of transactions have been approved in the past does not mean that they could not raise competitive concerns in the future. With respect to remedies, as a general matter, I tend to believe structural relief has many advantages over behavioral relief when antitrust law enforcers are considering whether and how to remedy a competitively problematic transaction. Evaluating the enforceability of any behavioral conditions should be an important consideration in determining the appropriateness of such a remedy.

2. I’d like to highlight something you once said with respect to media consolidation. At a 2003 speech before the Recording Artists’ Coalition, you said, “media mergers do get somewhat

more public attention than other mergers because media is regarded as important to the functioning of a democracy. As a result, there has also been a fair amount of discussion of whether media deals should get a higher, or at least different, level of antitrust scrutiny.”

I agree that any further media consolidation that could impact the free flow of information deserves the highest level of scrutiny. Allowing a select few corporations to pick and choose the content available to everyday Americans would absolutely threaten the basic principles of our democracy.

- a. Mr. Delrahim, can you tell me what side of the discussion you referenced that you fall on? In other words, setting aside whether media mergers require a different standard, do you agree that the First Amendment – and democracy – should inform merger analysis in cases of media consolidation?

RESPONSE: I agree with you that media consolidation is an important public policy issue. When assessing media mergers the Division is obligated to follow the dictates of Section 7 of the Clayton Act, which provides that mergers that may tend substantially to lessen competition violate the statute. Typically, there is more likely to be antitrust concern about the competitive effects of a proposed merger in markets with a limited number of competitors. Thus, antitrust enforcement in those markets preserves additional competitors in the market. More competitors in the market often, but does not necessarily, equate with First Amendment values. For example, it likely, but not always, would be the case that Division enforcement under Section 7 of the Clayton Act to preserve competition will have the effect of preserving a diversity of media viewpoints. Also, as more programmers and media outlets compete for advertising and viewers, the likely result will be more diversity of programming choices. Additionally, as media technology improves, the likely result will be greater opportunity for diversity of programming.

3. The open internet is one of the most competitive marketplaces the world has ever seen, and the Antitrust Division needs someone who understands that net neutrality is the reason why. Because of net neutrality, an email from my constituent in rural Minnesota reaches me as quickly as an email from my bank. Because of net neutrality, the website for my local pizza parlor loads as quickly as the website for a national chain. Because of net neutrality, I can stream videos of my grandchildren just as easily as I can stream a hit TV show.

Should Chairman Pai move forward with his plan to undo the Open Internet Order, eyes may turn to the FTC and Antitrust Division to protect competition on the internet. But I don't think antitrust law alone can adequately protect the open internet.

- a. Mr. Delrahim, what do you think? What role should the Antitrust Division have in protecting net neutrality?
- b. Can you tell me then whether you agree that the FCC provides the DOJ with important industry expertise on matters of telecommunications and media competition?
- c. And do you think that the nation's antitrust laws can address all the objectives of strong net neutrality rules?

- d. Mr. Delrahim, during your time lobbying Congress on behalf of Comcast, did you ever lobby on the issue of net neutrality?

RESPONSE: To the extent that firms with market power take anticompetitive exclusionary actions to limit competition on the internet, the Antitrust Division can and should use the antitrust laws to protect that competition. It would not be appropriate to utilize the antitrust laws to reach objectives beyond protecting competition. While I have not been at the Antitrust Division for a number of years, during my time there the staffs of the FCC and Antitrust Division often communicated providing each other with insights and expertise. I expect that practice has continued and think it is valuable. With respect to my past representation of Comcast, it did not extend to issues associated with net neutrality nor its merger with Universal.

4. In the past, the FCC and DOJ have shared jurisdiction over media consolidation deals. This complementary jurisdiction is important because it ensures review by the technological experts at the FCC, who may be better equipped to understand how such a deal will impact Americans' access to affordable and essential telecommunications services. It also enables the FCC to take part in crafting narrowly-tailored behavioral conditions aimed at remedying harms that the finalized deal might pose to competition and consumers.
- a. Would you say that's a fair description of the overlapping jurisdiction?

The FCC has also had a critical role in ensuring merging companies are held accountable for the benefits that they argue their deal will bring. For example, in its review of Charter's proposed acquisition of Time Warner Cable, the FCC recognized that many of the companies' claimed benefits of the deal – such as internet speed upgrades and network buildout commitments – were not transaction-specific, meaning they were things the companies could already do – with or without the merger. So, when the FCC ultimately approved the deal, it ensured that the parties made a commitment to actually follow through on those claimed benefits – a commitment that is now legally enforceable by the FCC.

So let's quickly talk about AT&T and Time Warner. In January, after AT&T and Time Warner confirmed that they would structure their proposed acquisition to circumvent FCC review, 12 of my colleagues and I asked the companies to send us the public interest statement that they would have had to send to the FCC. While the companies were silent as to whether the deal would actually result in lower prices for consumers, they did discuss a number of consumer benefits that they say will arise out of their deal – including more relevant advertising and social media sharing opportunities. The companies also suggested that one major benefit of the acquisition is that it will strengthen their incentives to invest in the deployment of wireless broadband – specifically 5G. Ultimately, they say, this will promote competition in the broadband industry by allowing them to compete head-to-head with cable.

- b. Setting aside whether wireless deployment would in fact be a merger-specific benefit in the case of AT&T's proposed acquisition of Time Warner, how would the DOJ – without the assistance and enforcement capacity of the FCC – hold a telecommunications provider accountable for such a commitment? Or, can you tell

me – assuming you cannot discuss the pending transaction – is it appropriate for the Antitrust Division to consider stated benefits of a deal – and whether they outweigh the substantial harms – if there is no way to ensure that a combined company actually acts to achieve such benefits?

RESPONSE: It would not be appropriate to discuss any merger currently pending before the Antitrust Division. Knowing of your keen interest in this area, I would like to note that in evaluating all transactions, it is important for antitrust enforcers to consider both the benefits and the harms of the deal, including the important question of whether, given the merger, the benefits alleged would, in fact, be realized and are merger-specific. With respect to shared jurisdiction, in a wide variety of markets the Antitrust Division talks to experts in particular industries to understand the implications of the merger and that can be and has been accomplished without overlapping jurisdiction.

5. In the past, I've expressed concerns about internet giants that use their positions as dominant platforms to stifle competition and may be – as a result – inhibiting the free flow of information.

In recent years, we've heard countless allegations of online intermediaries leveraging their market dominance to the detriment of content creators and innovative startups. And even more recently, we've seen how large of a role they play – particularly Google and Facebook – in shaping Americans' access to the news.

- a. What would you do to address allegations that these dominant platforms' unilateral behavior is anticompetitive and may ultimately harm the free flow of ideas and content?
- b. In the past, the FTC investigated Google's behavior in the search and online advertising markets, and it reviewed Apple's treatment of its competitors in the music streaming market. Can you explain how you believe the FTC and DOJ share authority over these online platforms? And do you think that the agencies' past divisions of responsibility should be maintained going forward?

RESPONSE: To the extent that companies with market dominance take anticompetitive actions to stifle competition, vigorous and timely antitrust enforcement is appropriate. If credible allegations of antitrust law violations are made, such allegations will be investigated if I am confirmed. 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.

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

QUESTIONS FROM SENATOR COONS

1. I believe that strong intellectual property protection promotes American innovation. At times, I have been concerned that our antitrust enforcement has not struck the proper balance between promoting competition and incentivizing innovation. What is your view on how these two interests should be balanced?

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.

2. In 2015, I wrote then-Attorney General Holder and Assistant Attorney General Baer regarding the request of the Institute of Electrical and Electronics Engineers Standards Association for a Business Review Letter from the Antitrust Division on patent policy changes that it proposed to adopt for the licensing of standards-essential patents. I was concerned about the potential impact on the competitiveness of American innovators and the U.S. economy if the U.S. was seen as endorsing an approach that I believed inappropriately devalued certain patents, and indeed we have seen this Business Review Letter used against U.S. companies in anti-monopoly investigations around the world.
 - a. What do you believe is the appropriate role of the Antitrust Division in relation to the licensing of standards essential patents?
 - b. How would you ensure that U.S. regulators take into account potential impacts of their actions on antitrust investigations abroad?

RESPONSE: I think it is important for U.S. officials to appreciate the potential impacts of their actions domestically and globally. The area of licensing standards-essential patents is one that has recently engendered litigation and commentary. The appropriate role for the Antitrust Division, in my view, is to ensure that a property owner's rights are respected and protected while, at the same time, ensuring that IP rights are not abused in violation of the antitrust laws. The application of the antitrust laws must not illegitimately stifle creators or innovation by condemning pro-competitive activities that would maximize incentives for investments or efficiency-maximizing business arrangements. Antitrust enforcers should also strive to eliminate as much as possible the unnecessary uncertainties for innovators and creators in their ability to exploit their intellectual property rights, as those

uncertainties can also reduce incentives for innovation. Only when the holders of intellectual property rights go beyond the legitimate exercise of these rights should antitrust laws be used to constrain their activities, and only then in a manner that is based on sound economic policies.

3. At times during the campaign, the President made comments about ongoing antitrust reviews that made me concerned that there would not be the same level of political independence we have come to expect in these reviews.
 - a. How will you ensure that decisions with respect to high-profile transactions are shielded from undue political influence?
 - b. Have you made any assurances to the President, Vice President, or any administration officials that you will make determinations in line with the President's desired outcomes?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

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

QUESTIONS FROM SENATOR CRAPO

For companies to accurately assess the potential regulatory risks to a proposed transaction, it is important that they know they will receive consistent and fair treatment before whichever Federal agency reviews their transaction. Otherwise, potential regulatory uncertainty may cause companies to decide not to proceed even though the transaction is pro-competitive and would benefit consumers and the economy through increased investment and job creation.

1. If confirmed to serve as an Assistant Attorney General, will you ensure that the Antitrust Division at the Department of Justice conducts fair and transparent merger investigations?

RESPONSE: Consistent and fair treatment of companies proposing transactions should be a hallmark of law enforcement and, if confirmed, I will strive to ensure the Antitrust Division achieves that goal in all of its reviews. I agree that regulatory uncertainty has the potential to deter or delay procompetitive transactions. The Antitrust Division has for many decades published Merger Guidelines to help reduce uncertainty for companies seeking to merge and I believe those guidelines provide a useful framework for merger reviews.

2. Will you work to ensure that that the standards and procedures used by the agency to evaluate a transaction are applied consistently?

RESPONSE: I agree that the standards and procedures used by an agency should be applied consistently. If confirmed, I will pursue such consistency.

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

QUESTIONS FROM SENATOR BLUMENTHAL

Airlines

1. As a result of numerous horizontal mergers, just four airlines control 80 percent of flights within the United States. This lack of competition reduces incentives for airlines to be responsive to customer concerns – as the now-famous video of a customer being dragged off a United Airlines flight only confirmed.
 - a. Would you agree that the airline industry is over-concentrated?
 - b. What can antitrust enforcers do about it?
 - c. Do you believe the DOJ should review past decisions if the conclusions about merger's impact on competition prove to be incorrect?

RESPONSE: Competition throughout the economy helps consumers reap the benefits of innovative, high-quality products and services at the lowest prices. Competition is particularly important in the airline industry, with so many American consumers traveling by air. In the airline industry, competition can take place in particular city-pair markets, some of which may have significant concentration, while others have multiple competitors, resulting in vigorous competition. Antitrust enforcers need to be vigilant in ensuring competition in the airline industry and fully scrutinize conduct and proposed mergers that diminish competition. I think it is important to understand the effects of past decisions to identify anticompetitive conduct that harms consumers and also to inform future enforcement.

Conditions

2. Antitrust regulators reviewing a proposed merger have three options: let the merger proceed, sue to block the merger, or allow the merger to proceed under certain conditions. Conditions imposed under the third option may range from requiring the new company to sell some of its assets to imposing specific limits on the new company's behavior. However, market forces or the limited enforcement bandwidth of antitrust agencies often limits the effectiveness of these behavioral conditions, sometimes leaving consumers to face a more concentrated market that provides worse quality at a higher prices, especially if those conditions are violated with impunity.
 - a. What is your view of how merger conditions should be imposed?
 - b. Can you name a merger for which conditions were not imposed but you believe they should have been?
 - c. Can you name a merger for which conditions were imposed but you believe they should not have been?

- d. Can you explain, in general, when you would reject suggested merger conditions and what you would do instead?

RESPONSE: As a general matter, I tend to believe structural relief has many advantages over behavioral relief when antitrust law enforcers are considering whether and how to remedy a competitively problematic transaction. I do not have the information and analytical data the agencies had before them in making individual determinations in past cases and therefore cannot judge the propriety of those decisions or whether conditions should or should not have been imposed on particular past mergers. Each case presents unique facts and circumstances that need to be taken into account in making any particular enforcement decision. As I noted above, I generally favor structural relief, where possible, over long-term behavioral relief.

Cooperation with State Attorneys General

3. Historically, State Attorneys General often work with the Department of Justice to enforce both state and federal antitrust laws.
- If you are confirmed, will you commit to cooperating with State Attorneys General, including sharing relevant information with State Attorneys General should they seek it?
 - If I hear from one or more State Attorneys General that they have not received a response from your office about an antitrust matter, will you assure me that you will provide a response should I seek one?

RESPONSE: I believe it is beneficial to both the federal antitrust agencies and the states to cooperate in enforcement actions, including sharing relevant information where lawful and appropriate. If confirmed, I will commit to cooperating in appropriate cases with my state attorney general colleagues. As part of that cooperation, I can assure you that communications from the Antitrust Division will be timely and responsive to the extent information can be shared consistent with any constraints on sharing such information.

Transparency

4. During the presidential campaign, then-candidate Trump objected to AT&T's proposed merger with Time Warner, arguing that CNN—which is owned by Time Warner—has been unfair to him. Since President Trump made that statement, he has met with the CEO of AT&T. Separately, Jared Kushner has reportedly met with top Time Warner executives and complained about CNN's news coverage.
- What will you do to ensure that there is no political interference with your work, from the President and his associates or otherwise?
 - Will you commit that if President Trump or anybody working on his behalf contacts you about a pending antitrust matter, you will inform the American people of that contact and make its contents of that communication public?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

4. On January 27, 2017, White House Counsel Donald McGahn issued a memo entitled “Communications Restrictions with Personnel at the Department of Justice.”¹ The first section of that memorandum details limitations on discussions between the White House and the Department of Justice regarding ongoing or contemplated cases or investigations.
- a. Are you aware of this policy?
 - b. Have you undergone any guidance or training on this policy?
 - c. Do you agree that it would be inappropriate for a White House employee to communicate with the DOJ about a specific pending antitrust enforcement or litigation action?
 - d. Do you agree that it would be inappropriate for a White House employee to direct the DOJ not to file a lawsuit in a contemplated case or to continue an investigation?
 - e. Are you familiar with any other policies currently in place that limit or otherwise address communications between the White House and all other law enforcement agencies, including those policies that affect active cases, contemplated cases, or investigations? What are those policies?
 - f. Do you agree that imposing limitations on this type of communication between the White House and law enforcement agencies is important for the integrity of our nation’s justice system?

RESPONSE: I am aware of the White House Counsel’s memo entitled “Communications Restrictions with Personnel at the Department of Justice.” As you note, this policy includes guidance limiting discussions between the White House and the Department of Justice regarding ongoing or contemplated cases or investigations. The White House Counsel’s Office, through its ethics compliance program, provides training for White House staff.

As stated in the policy, it was issued to “ensure the DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence.” Under the policy, White House staff are required to coordinate and clear with the White House Counsel’s Office any communication with the DOJ on pending or contemplated investigations or enforcement actions and such communications are made only through certain designated senior officials at the DOJ.

I believe that it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without

¹ Memorandum to All White House Staff: Communications Restrictions with Personnel at the Department of Justice, available at: <http://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

regard to political considerations. Contacts from the President or the White House must comply with applicable Department policies and guidance. It is important to ensure that all antitrust investigations comply with these policies, and that partisan considerations do not influence the handling of particular cases.

6. Please provide your opinion on the following recent mergers, including answers to the specific questions listed for each.
- a. American Airlines and U.S. Airways – This merger was approved with the condition that the merged company had to divest landing rights at key airports across the country.
 - i. In your view, was this condition sufficient to protect consumers?
 - ii. Is there anything that you would have done differently regarding approval of the merger, such as imposing additional conditions?
 - b. United Airlines and Continental Airlines – This merger was approved only under the condition that the takeoff and landing rights for Newark Liberty Airport were transferred to Southwest.
 - i. In your view, was this condition sufficient to protect consumers?
 - ii. Is there anything that you would have done differently regarding approval of the merger, such as imposing additional conditions?
 - c. AT&T and DirecTV – This merger was cleared by the DOJ without conditions; the FCC later imposed its own restrictions on the deal. But the Department of Justice concluded that there was no significant risk to competition.
 - i. Do you agree with this outcome?
 - ii. Is there anything that you would have done differently regarding approval of the merger, such as imposing additional conditions?
 - d. AT&T and T-Mobile – This merger was ultimately abandoned by the companies after the DOJ and the FCC opposed the deal.
 - i. Do you think this merger should have been approved?
 - ii. Is there anything that you would have done differently regarding the Department of Justice’s handling of the merger?
 - e. Time Warner Cable and Comcast – This merger was abandoned after the Department of Justice expressed concerns that Comcast would become the gatekeeper for Internet-based services.
 - i. Do you think this merger should have been approved?
 - ii. Is there anything that you would have done differently regarding the Department of Justice’s handling of the merger?

RESPONSE: With respect to each of the past merger decisions referenced above, I was not privy to the confidential information and analytical data the Department had in its possession at that time, and therefore am not in a position to comment. I can say that I have tremendous respect for the individuals who have served the American public in leadership roles and the career civil service staff at the Antitrust Division.

Vertical Mergers

7. As you know, a vertical merger is a merger between two companies in different points in the supply chain and do not compete directly against each other. For example, when a widget manufacturer buys a widget distributor, this is a vertical merger. Some economists believe that vertical mergers are always good for consumers. However, others have raised concerns that this kind of merger can increase companies' incentives and abilities to reduce competition and raise prices.
- a. Do you believe that vertical mergers can present competition concerns?
 - b. If so, please describe the factors that you believe the DOJ ought to scrutinize particularly carefully when reviewing vertical 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.

Market Scrutiny

8. Every potential merger presents a unique set of circumstances, including the industry in which the merger is taking place. Some industries have a history of questionable conduct, in some cases because a structural characteristic of the industry makes collusion or other abusive practices a tenable strategy. Separately, some industries implicate fundamental rights. For example, concentration in the marketplace for news doesn't just undermine the American economy, it undermines American democracy. Concentration in the marketplace for health care or health insurance denies Americans access to a commodity – health care – that is and ought to be a basic human right.
- a. In your view, are there any industries that require a greater level of scrutiny by the Department due to these or related factors?
 - b. Specifically, do you believe there are industries with a track record of questionable behavior in the marketplace that merits additional scrutiny – for example, industries in which there are high barriers of entry, monopoly-like tendencies, or concentrated geographical areas?
 - c. Do you believe that there industries in which consolidation may present a threat to core fundamental rights?
 - i. Specifically, do you believe that media consolidations may merit additional scrutiny for this reason?
 - ii. Do you believe that health industry consolidation may merit additional scrutiny for this reason?

- d. The University of Chicago recently hosted a conference that discussed whether there is a concentration problem in America. What do you think the answer to that question is?

RESPONSE: It is certainly relevant for antitrust enforcers to understand the history of an industry, especially when that history involves previous antitrust law violations. The structural characteristics (e.g., high entry barriers) of an industry are also relevant to evaluating conduct and mergers under the antitrust laws. I believe that antitrust enforcers should be keenly aware of industries that affect American consumers in their everyday lives, such as health care and media. I did not attend the University of Chicago conference and I am not familiar with the discussions they held. I do believe that antitrust analysis is typically very fact based and focuses on particular markets. That said, when there is high concentration associated with a particular matter under review, closer scrutiny of the conduct or merger being reviewed may be appropriate.

Sherman Act Section Two

9. Over the last few decades, there has been a trend toward narrowing the scope of liability under Section 2 of the Sherman Act, and the Department of Justice and Federal Trade Commission have brought only a handful of cases under this law in recent years. The cases of *U.S. v. Microsoft* and *U.S. v. AT&T* demonstrated how important this law – and people willing to enforce it – are. As we see even more modern technologies, platforms, and complex intellectual property issues, Section 2 may be one of antitrust’s most important tools for protecting competition.
- a. Do you believe that Section 2 can be used effectively to address harmful conduct that is the product of high levels of concentration?
 - b. Will you commit to actively and aggressively using Section 2 when warranted and appropriate as one of the tools available to the Justice Department to protect the competitive process and benefits for consumers?

RESPONSE: I believe that Section 2’s prohibitions on anticompetitive monopolization and attempted monopolization are an important component of the nation’s antitrust laws. If confirmed, I will support the Antitrust Division’s efforts to enforce Section 2 actively and aggressively when warranted and appropriate to protect competition and consumers.

Online Platforms

10. Many large online platforms, in addition to providing access to users and a marketplace for suppliers, operate a variety of innovative health, content, banking, and other services themselves in direct competition with other suppliers.
- a. What should be done to ensure that these online platforms, which act as general Internet gatekeepers, don’t discriminate in favor of their own downstream services to the detriment of robust competition and innovation?

RESPONSE: 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.

11. Internet-based platforms are highly valuable as well as extremely powerful, as they can often serve as both an operating system and a storefront for online services. Without safeguards, however, these tech platforms can create anticompetitive obstacles for rivals and tip the scales in an already sensitive market.
 - a. What are the existing laws and guidelines that govern the competitive behavior of internet-based platforms and how they operate in the market?
 - b. Can dominant platforms treat themselves differently than rivals or impose obstacles that keep rivals from competing?

RESPONSE: Section 1 and Section 2 of the Sherman Act govern the competitive behavior of businesses throughout the economy, including Internet-based platforms. Those laws prevent companies from engaging in conduct that harms competition without appropriate justification. Whether any particular conduct is an antitrust law violation will depend on the facts and circumstances surrounding the conduct. As a general matter, however, platforms with monopoly power may not engage in exclusionary conduct that harms consumers in violation of the antitrust laws.

Wages and Labor Conditions

12. Last year, the Obama administration called on states to take steps to reduce the use of non-compete contracts. The Department of Justice and the Federal Trade Commission also released guidance for human resources departments to identify wage collusion and announced that all such incidents of wage collusion would be criminally investigated.²
 - a. Will your Department continue efforts to monitor and bring charges against wage collusion?
 - b. Will you pledge to continue and strengthen the previous Administration's efforts to prevent employers from colluding to set wages and labor conditions, including but not limited to scrutinizing the use of non-compete contracts?

RESPONSE: If I am confirmed, the Antitrust Division will continue its efforts to prevent employers from colluding to set wages or engage in illegal anti-poaching agreements that hurt American workers. Companies that compete for workers that agree to end that competition by reaching an illegal agreement on the amount of

² The White House, "Fact Sheet: The Obama Administration Announces New Steps to Spur Competition in the Labor Market and Accelerate Wage Growth," October 25, 2016, available at <https://obamawhitehouse.archives.gov/the-press-office/2016/10/25/fact-sheet-obama-administration-announces-new-steps-spur-competition>.

wages they offer violate the antitrust laws and should be subject to full and vigorous antitrust condemnation.

Enforcement of Remedies and Consent Decrees

13. The strict enforcement of remedies is crucial to the work of the Antitrust Division. Currently, the Office of the General Counsel evaluates and oversees adherence to those remedies.³ But with the advancement of data capabilities and technological innovation, proper oversight is only growing more challenging.⁴ For example, the rise of algorithmic pricing and machine learning is bringing new dynamics to antitrust law.⁵
- a. What will you do to ensure that enforcement of conduct remedies and consent decrees is implemented effectively and consistently?

RESPONSE: I believe it is important to ensure that companies are abiding by the commitments they made in the Division's consent decrees and will be aggressive to ensure they are doing so.

³ U.S. Department of Justice Antitrust Division, *Antitrust Division Manual*, April 2015, available at <https://www.justice.gov/atr/file/761166/download>.

⁴ John Kwoka, Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy.

⁵ David Lynch, "Policing the digital cartels, Price-setting algorithms mean regulators must now tackle collusion among machines" *Financial Times*, January 8, 2017, available at <https://www.ft.com/content/9de9fb80-cd23-11e6-864f-20dcb35cede2>; Jerry Useem, "How Online Shopping Makes Suckers of Us All" *The Atlantic*, May 2017, available at <https://www.theatlantic.com/magazine/archive/2017/05/how-online-shopping-makes-suckers-of-us-all/521448/>.

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

QUESTIONS FROM SENATOR HIRONO

1. President Trump has met with the CEO of AT&T, as well as those of Bayer and Monsanto. These companies have pending mergers subject to review by the Antitrust Division.
 - a. Should the President have such meetings, and should he attempt to involve himself in these mergers?
 - b. Should the President disclose transcripts of his meetings with the CEOs of companies with mergers subject to US government approval?
 - c. How can you ensure that the Antitrust Division will be independent from the White House when evaluating and investigating merger activity so as to uphold America's antitrust laws?
 - d. Will you pledge to disclose any White House contacts on pending or potential antitrust matters?
 - e. Given concerns about the President discussing his disapproval of specific companies, including his opposition to the AT&T-Time Warner merger in particular, during his campaign, as well as about White House interference with the Department of Justice, what steps will you take to ensure a fully independent Antitrust Division?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

2. Sinclair Broadcast Group's proposed merger with the Tribune Media Company would give Sinclair stations in 42 cities, expanding its reach to a total of 108 communities. This merger has raised questions about media concentration as the combined company would serve close to three-quarters of U.S. households. In the past, Sinclair has drawn criticism for programming that benefitted then Republican presidential candidates Donald Trump and George W. Bush. Given reports of the President's continued attacks on the press, including reports of his threats to jail journalists, it imperative that consumers retain access to a diversity of news sources.

Not only can concentration in the media can lead to higher prices, but concentration can have the effect of limiting the number or diversity of viewpoints in a media market. Should consideration of effects like these be considered by the DOJ when examining a media merger? How?

RESPONSE: It would be inappropriate for me to discuss a pending merger. As a general matter, however, I agree with you that media consolidation is an important public policy issue. When assessing media mergers the Division is obligated to follow the dictates of Section 7 of the Clayton Act, which provides that mergers that may tend substantially to lessen competition violate the statute.

3. Regarding the AT&T-Time Warner merger, you've commented that you didn't believe it posed a "major antitrust problem." What specifically did you mean by that? And do you believe that by nominating you to head the Antitrust Division, the President is endorsing your view and that, despite his claim on the campaign trail, he won't act to stop the merger?

RESPONSE: As a general matter, antitrust law traditionally has recognized that horizontal mergers potentially have a more direct effect on competition since they involve direct competitors, than do vertical mergers and my comment was pointing out that understanding. I have had no conversations with the President regarding this merger. Nor have I been privy to the information currently being reviewed by the Antitrust Division. No one should infer from my comment that I have any preordained outcome in mind for this merger investigation, or was privy to any information necessary for a complete antitrust analysis. I think every transaction should be investigated and analyzed based on its particular facts and circumstances.

4. If confirmed, you will oversee the proposed merger of Monsanto and Bayer. Many small farmers in Hawaii are concerned about the potential increase in costs for inputs, such as seed and fertilizer, that this could cause. In January, the CEOs of Monsanto and Bayer reported in a joint statement that they had a "very productive meeting" with the President about the merger.
 - a. Has the President discussed the Monsanto-Bayer merger with you?
 - b. Do you know what was said in the meeting between the President and the CEOs of Monsanto and Bayer?
 - c. Soon, only three companies could control the entire agrochemical market, as opposed to the six that controlled most of the market in 2013. If only a few companies own the patents for seeds, this may be good for their shareholders, but small farmers could become completely dependent on them. Do you believe that this consolidation will harm small Hawaii farmers?

RESPONSE: I have not discussed this merger with anyone at the White House and I have no knowledge of anything that was said in the meeting your question references. Moreover, it would be inappropriate for me to discuss any pending merger investigation. I can say that the agricultural sector, including farmers, is important to the nation's economy, and I commend your and Chairman Grassley's vigilance in oversight of competition issues in this sector.

5. Last year, Aetna announced it would be pulling out of Affordable Care Act Exchanges in eleven states less than a month after the Administration announced it would sue to block their merger with Humana. In January, U.S. District Court Judge John Bates found that Aetna's public claims about their reasons for pulling out of the Exchanges were largely untrue, that

the withdrawal was retaliatory, and that Aetna's methods to conceal their process for deciding on withdrawal were done in a manner "specifically to evade judicial scrutiny." If confirmed, how would you address a case like this? Would this kind of pressure by a company—improperly using political leverage—impact your decisions and approach to mergers?

RESPONSE: I believe it is essential that all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. Contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It is important that all antitrust investigations comply with Department policies, and that political considerations do not influence the handling of particular cases.

6. In a February court hearing regarding the Anthem-Cigna merger, Anthem's lawyer repeatedly implied that the merger would be cleared under the new Trump administration's Department of Justice. He said: "I think it's important for the Court to understand that there are at least two pathways to a closing here. One is through appeal and the other is through resolution with a new DOJ. And the motion is intended to preserve those options, primarily." The American Medical Association subsequently wrote a letter to the Acting Assistant Attorney General for the Antitrust Division to express its "alarm" regarding these statements and stating its belief that "political influence should play no role in the enforcement of antitrust laws." At the end of April, the U.S. Court of Appeals for the D.C. Circuit ruled that the lower federal court did not abuse its discretion in preventing the two health insurers from merging.
 - a. Should politics play a role in the application of antitrust laws?
 - b. You lobbied on behalf of Anthem in its ongoing effort to merge with Cigna. Do you think your past relationship caused them to view the Trump administration as likely to be more favorable to them?
 - c. In 2012, you said that lobbying Congress on antitrust regulation could be effective, saying "[t]here's not a single assistant attorney general or FTC chair past or present that would admit he or she didn't care about or at least didn't listen to what members of Congress told them. They are always going to listen." Is this the advice you gave Anthem?
 - d. In your questionnaire, you said that you are "recused from any further involvement" in the Anthem-Cigna merger. What specific steps will you take to ensure that you will fully recuse yourself from the matter, and how will you avoid the type of influence you highlighted in your 2012 comments?

RESPONSE: It is my understanding, according to press reports, that Anthem announced on May 12 that it was abandoning further efforts to complete the contemplated merger with Cigna. To the extent this matter is still active, I will recuse myself and follow the Department and Antitrust Division's policy of informing all appropriate personnel of my recusal. There should be no political influence in antitrust law enforcement decisions. I cannot speak to any motivations or considerations that Anthem's representatives had in making particular arguments

that were developed well after my representation of the company ended. My advice to Anthem was consistent with my advice to other clients that they should present the benefits of their transaction to a variety of people and groups that were interested in the effects of the transaction.

7. For years, US businesses and their mergers have been targeted for antitrust prosecution abroad—often in cases where the US agencies have decided that there is no antitrust concern.
 - a. Do you think that this is a problem that the Antitrust Division should address and, if so, how would you engage with foreign jurisdictions on this issue?
 - b. In some cases, US companies and their mergers have faced foreign antitrust reviews that appeared motivated by a desire to protect local competitors, or by other non-antitrust industrial policy considerations. How can the US help encourage antitrust enforcers to focus their efforts on protecting competition, rather than helping competitors or satisfying other political considerations?

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.