

**QUESTIONS FOR THE RECORD  
JONATHAN KANTER  
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL  
OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR GRASSLEY, RANKING MEMBER**

1. You have often criticized the “consumer welfare standard,” the dominant approach to modern antitrust enforcement in the United States. In a 2017 speech at the Federalist Society’s National Lawyers Convention, you suggested that using the standard “sounds like judicial activism,” and that the Justice Department’s goal “is not to decide what is maximally efficient” but instead is to “enforce the law.”

- a. Please describe in detail why you believe the consumer welfare standard is inadequate and the analytical approach you would prefer courts to adopt.

**RESPONSE: In the past, I have voiced concerns that the application of the consumer welfare standard has been inconsistent, vague, and insufficient to keep pace with market realities. Effective antitrust enforcement requires a deep understanding of market realities and facts to determine whether the conduct at issue harms competition and the competitive process. Enforcement authorities should use state-of-the-art analytical tools to analyze key facts and empirical evidence with the aim of protecting competition and the competitive process.**

- b. Can courts be tasked with determining the optimal amount of competition within an industry without engaging in judicial activism? Why or why not?

**RESPONSE: Courts can engage in activism by imposing their own subjective views of economics to address questions of law rather than using economics and other tools to address questions of fact.**

2. Should antitrust laws be used to promote wage equality? Why or why not?

**RESPONSE: Antitrust enforcement is essential to promoting a healthy, competitive economy, which can lead to a wide range of benefits, including better wages, benefits, and other terms of employment for workers.**

3. Should antitrust laws be used to strengthen labor rights? Why or why not?

**RESPONSE: The effective enforcement of the antitrust laws can lead to more competitive markets, including labor markets. Healthy and competitive markets yield a wide range of benefits for many stakeholders, including small business owners, farmers, and workers.**

4. In a highly concentrated market, if breaking up one or more of the dominant firms would make consumers worse off, should the firm(s) be broken up? Please explain.

**RESPONSE: Antitrust remedies are fact specific and should be tailored to address the underlying violation of the law. In some instances, structural remedies may be necessary. In other instances, behavioral remedies may be necessary. As a general matter, structural remedies are the most common remedies imposed by antitrust enforcement agencies and are frequently used to address violations of the Clayton Act because they are “simple, relatively easy to administer, and sure.” See *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961).**

5. The market size and power of Big Tech companies like Google and Facebook has enabled them to exert substantial control over how Americans obtain and share information. With alarming frequency, these companies use their power to censor conservative political viewpoints or search results on their platforms. If you are confirmed, and assuming no changes to the current antitrust laws, what steps will you take to stop Big Tech companies from censoring political viewpoints they don’t like?

**RESPONSE: Vigorous and effective antitrust enforcement in markets affecting the political discourse can promote competition in the marketplace of ideas.**

6. You have represented many companies and interests that have advocated for more aggressive antitrust enforcement against Big Tech. Before the recent DOJ and FTC cases against Google and Facebook, the federal government had not brought a major antitrust case against a Big Tech company since the Microsoft case over 20 years ago. Do you believe that there has been lax enforcement by the agencies or does Congress need to pass additional laws for effective antitrust oversight of Big Tech companies?

**RESPONSE: I defer to Congress regarding the need for clarification or modifications to our existing antitrust laws.**

7. What is the role of data in the digital economy?

**RESPONSE: Effective antitrust enforcement should address the full range of competitive harm in markets involving the extraction and use of data. These include, among other things, harms related to privacy, innovation, resiliency of technology infrastructure.**

8. Most Big Tech companies offer products that are either free or low cost to consumers. They are able to utilize this business model by monetizing the data of their users in order to sell advertisements. Traditionally, price has been one of the main factors that agencies and courts look at for competition.

- a. Do you believe that it is more difficult to bring antitrust cases against Big Tech companies because their products are generally free to use?

**RESPONSE: As a theoretical matter, the antitrust laws as written by Congress should be sufficient to address products that are free to consumers. Modern technology companies have redefined many aspects of our economy, which may necessitate the development and use of new analytical tools to fully understand and address competitive harms.**

- b. Should other factors such as data and privacy be taken into account when looking at possible competitive harms?

**RESPONSE: Data and privacy are directly related to the core business models of many tech companies. As a result, harm to user privacy may be an actionable competitive harm.**

9. If you are confirmed, how do you plan to coordinate the Justice Department's antitrust enforcement efforts with the Federal Trade Commission?

**RESPONSE: It is important for enforcement authorities to collaborate when necessary to ensure the most efficient and effective use of resources. This includes collaboration regarding the development of policy positions and regarding enforcement when appropriate.**

10. On September 15, the FTC voted 3-2 on party lines to rescind the Vertical Merger Guidelines (VMGs) which were issued jointly with the DOJ in June 2020. It is my understanding that currently the DOJ is still operating under the 2020 VMGs. I recently sent a letter, with Antitrust Subcommittee Ranking Member Mike Lee as well as House Judiciary Committee Ranking Member Jim Jordan and Antitrust Subcommittee Ranking Member Ken Buck, to the FTC Chair and the DOJ Acting Assistant Attorney General for Antitrust expressing concerns over the application of increasingly divergent standards of review to mergers and acquisitions. If you are to be confirmed how will you ensure that the DOJ and FTC will be consistent in their application of merger review?

**RESPONSE: If confirmed, I look forward to working with career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines. As part of that process the Department of Justice should collaborate with the FTC to undertake a rigorous and thoughtful examination.**

11. As I mentioned during your hearing before the Senate Judiciary Committee, 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. 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: Affordable pharmaceuticals and quality healthcare are of the utmost importance. Enforcement authorities should vigorously enforce the antitrust laws to protect competition in these industries.**

12. I also have concerns about increased agribusiness concentration, reduced market opportunities, and fewer competitors in the agriculture sector. I 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. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the Antitrust Division?

**RESPONSE: Concentration hurts the agricultural economy and the freedom of individual farmers. If I am confirmed, protecting competition in agriculture will be a high priority. The Antitrust Division would benefit from additional funding so that it can devote additional resources to these extremely important issues.**

13. 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 look forward to a close and productive working relationship with the Department of Agriculture.**

14. I am concerned with Pharmacy Benefit Managers, also known as PBMs, and the possible negative effects they are having on prescription drug prices for consumers. PBMs operate with little to no transparency making it very difficult, if not impossible, to understand prescription drug prices. Today we have a complex web of list prices, rebates, and formularies that makes it near impossible to understand drug pricing. This problem is made worse by the consolidation and concentration of the PBM marketplace.

- a. Do you believe that there is anticompetitive conduct that is occurring in the PBM marketplace leading to higher costs for consumers?

**RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding potential enforcement matters. Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and I will make it an important priority if I am confirmed.**

- b. Has there been too much concentration leading to very few companies with too much power?

**RESPONSE: As a general matter, too much power in the hands of too few raises significant concerns.**

- c. Should PBMs be required to provide more transparency into how prescription drugs are priced?

**RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding potential enforcement matters. Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and will be an important priority if I am confirmed. To the extent there are violations, remedies must be sufficient to address the anticompetitive harm. In some instances, effective remedies may involve requirements for greater transparency.**

- d. If confirmed, will you take a look at PBMs and possible anticompetitive practices?

**RESPONSE: Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and will be an important priority if confirmed.**

15. I have introduced the No Oil Producing and Exporting Cartels Act the last few Congresses to help combat high gas prices. This legislation would give the administration the authority to hold OPEC accountable for anticompetitive conduct such as market manipulation and collusion. Your predecessor, Makan Delrahim, was supportive of this legislation.

- a. Are you supportive of this legislation?

**RESPONSE: If confirmed, I would want to thoroughly evaluate this legislation with the benefit of the views of others within the Antitrust Division. I understand it is customary for the Antitrust Division to provide technical assistance to Congress and, in some instances, provide input regarding competition policy. If confirmed, I look forward to working with the Department's Office of Legislative Affairs and your office to provide further assistance with respect to this legislation in response to your requests.**

- b. Will you commit to working with me to hold OPEC accountable and deliver lower gas prices to American consumers?

**RESPONSE: The antitrust laws seek to prevent harmful collusion among competitors, such as coordination to restrict supply or manipulate prices. Higher gas prices take money out of the wallets of hundreds of millions of American consumers. At the same time, I recognize that there are foreign policy implications for how the United States addresses OPEC, which must be carefully weighed as well. If confirmed, I look forward to working with the Department's Office of Legislative Affairs in response to any requests for assistance from your office.**

16. 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: Antitrust law is capable of addressing conduct in markets involving intellectual property rights. At the same time, antitrust law enforcement authorities must consider the ability of legitimate rightsholders to exercise their intellectual property rights, subject to the limitations of existing law.**

17. Please list the dates of and describe all interviews or communications you had with the White House or the Justice Department regarding your nomination.

**RESPONSE: In April 2021, the White House Office of Presidential Personnel contacted me regarding a possible nomination for Assistant Attorney General. I then took part in the Presidential Personnel Office's screening and vetting process. On July 20, 2021, I was informed that the President intended to nominate me for the position, which he did on July 22, 2021.**

18. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

**RESPONSE: No.**

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O’Connor, and/or Jen Dansereau?

**RESPONSE: No.**

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O’Connor, and/or Jen Dansereau?

**RESPONSE: No.**

19. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”

a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

**RESPONSE: No.**

- b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

**RESPONSE: No.**

- c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

**RESPONSE: No.**

20. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

**RESPONSE: No.**

- b. Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.

**RESPONSE: No.**

- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

**RESPONSE: No.**

- d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

**RESPONSE: No.**

21. The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”

- a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

**RESPONSE: No.**

- b. Are you currently in contact with anyone associated with the Open Society Foundations?

**RESPONSE: No.**

- c. Have you ever been in contact with anyone associated with the Open Society Foundations?

**RESPONSE: No.**

22. Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”

- a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

**RESPONSE: No.**

- b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

**RESPONSE: No.**

- c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

**RESPONSE: No.**

23. Please describe the selection process that led to your nomination, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

**RESPONSE: In April 2021, the White House Office of Presidential Personnel contacted me regarding a possible nomination for Assistant Attorney General. I then took part in the Presidential Personnel Office’s screening and vetting process. On**



**July 20, 2021, I was informed that the President intended to nominate me for the position, which he did on July 22, 2021.**

24. During your selection process did you communicate with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

**RESPONSE: No.**

- a. Did anyone do so on your behalf?

**RESPONSE: No, not that I am aware of.**

25. During your selection process did you communicate with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

**RESPONSE: No.**

- a. Did anyone do so on your behalf?

**RESPONSE: No, not that I am aware of.**

26. During your selection process, did you communicate with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

**RESPONSE: No.**

- a. Did anyone do so on your behalf?

**RESPONSE: No, not that I am aware of.**

27. During your selection process did you communicate with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

**RESPONSE: No.**

- a. Did anyone do so on your behalf?

**RESPONSE: No, not that I am aware of.**

28. Please explain, with particularity, the process whereby you answered these questions.

**RESPONSE:** Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control throughout the process and the final answers reflect my views alone.

**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR BLACKBURN**

1. The FTC and DOJ often cover similar issues in the antitrust space, and there is seemingly significant overlap between the agencies when it comes to antitrust enforcement. How do you propose to define the Dept. of Justice's authority here?

**RESPONSE: It is ultimately up to Congress how to allocate jurisdiction among federal antitrust enforcement authorities. If confirmed, I will focus on vigorous enforcement of the antitrust laws with the authority that Congress has allocated to the Department of Justice.**

2. There is increasing evidence that Chinese companies are threatening to dominate wireless telecommunication standards and are engaging in widespread hold-out practices aimed at free-riding on the patented technologies of American technology companies, threatening the continued leadership of the United States in the wireless telecommunications field. Under your leadership, will the Antitrust Division enforce antitrust laws to protect American markets and the national security of the United States from anti-competitive conduct by Chinese telecommunications product manufacturers?

**RESPONSE: Timely and effective antitrust enforcement allows the United States to continue its deep tradition of innovation. Chinese telecommunications product manufacturers, like any company, are subject to the antitrust laws when they do business with the relevant legal nexus to the United States. If confirmed, I will commit to vigorously enforcing the antitrust laws against any companies that violate them, without fear or favor.**

3. You have represented Microsoft, Yelp, and smaller technology companies in litigation against Google, and at other times, you have advocated for enforcement actions against the company. If you are confirmed, Google will likely seek your recusal from any potential enforcement actions the DOJ brings against them. How would you respond to these requests for your recusal?

**RESPONSE: If confirmed, I will consult with appropriate ethics officials at the Department of Justice.**

4. I understand the cable news network Newsmax was recently suspended from YouTube for sharing an interview with Senator Rand Paul, who is a medical doctor, in which Senator Paul expressed his views on the effectiveness of masks. The views of a US

Senator on a public policy issue would seem to be legitimate news content. In your view: (1) Can Section 230 of the Communications Decency Act be used to deplatform based on political disagreement with the views expressed? (2) Can Section 230 be used to anticompetitively deplatform potential competitors?

**RESPONSE: I believe Section 230 of the Communications Decency Act raises important questions regarding competition policy. The application of Section 230 in any specific matters depends on a full investigation of the facts.**

**QUESTIONS FOR THE RECORD  
JONATHAN KANTER  
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL  
OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR COTTON**

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

**RESPONSE: No.**

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

**RESPONSE: No.**

3. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

**RESPONSE: Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control through the process and the final answers reflect my views alone.**

4. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

**RESPONSE: Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control through the process and the final answers reflect my views alone.**

**QUESTIONS FOR THE RECORD  
JONATHAN KANTER  
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL  
OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR CRUZ**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

## II. Questions

1. If confirmed, what will your top priorities be for the Department of Justice Antitrust Division?

**RESPONSE: If confirmed, my top priority will be to protect competition through sound enforcement of the antitrust laws. I will work to ensure that the investigatory tools and analytical frameworks the Division uses are sufficient to address the market realities of the modern economy.**

2. When we met in my office, I explained my belief that big tech is the greatest threat to democracy because they control the flow of information. They can ban or throttle speech they don't like and shut down newspapers like the *New York Post* for publishing stories that don't fit the approved narratives of government officials, politicians, and a handful of Silicon Valley billionaires. You agreed with me that antitrust has a role to play in addressing these harms.

- a. If confirmed, will you treat big tech censorship and its burden on the free exchange of ideas as an antitrust harm?

**RESPONSE: Concentration of economic power is particularly concerning in markets related to the flow of news and information that impact political discourse. When appropriate, antitrust enforcement can protect competition in these markets, which are vital to the free exchange of information, news, and ideas, and to a healthy and functioning democracy.**

- b. Will you examine how tech companies use their market power in online platforms to censor political viewpoints, speakers, and publishers that they disagree with?

**RESPONSE: If confirmed, I will fight to address antitrust violations that harm the marketplace of ideas.**

- c. How can antitrust law help protect Americans' ability to express opinions online?

**RESPONSE: Concentration of economic power is particularly concerning in markets related to the flow of news and information that impact political discourse. When appropriate, antitrust enforcement can protection competition in these markets, which are vital to a healthy and functioning democracy.**

3. Both Republicans and Democrats have raised concerns about the role of Big Tech corporations—both search engines like Google and social media sites like Facebook—may operate in such a way that would demonstrate a political bias and potentially impact the outcome of elections. The parties disagree about the political biases at play, but are united in concern about Big Tech interfering in election outcomes.

- a. Do you have any reason to disagree that search engine results may have political biases?

**RESPONSE: I have not reviewed all relevant evidence to determine whether search engine results have political biases.**

- b. Do you believe that social media platforms may have political biases in presenting speech on their platforms?

**RESPONSE: I have not reviewed all relevant evidence to determine whether social media platforms have political biases.**

- c. Do you have any reason to disagree that politically biased search results or social media feeds could influence electoral outcomes?

**RESPONSE: I have not reviewed all relevant evidence to determine the effects of search results or social media feeds on electoral outcomes.**

- d. Do you agree that politically-biased adulteration of search engine results or speech on social media sites can manipulate electoral and political outcomes in the United States?

**RESPONSE: I have not reviewed all relevant evidence to determine the effects of search engine results or speech on social media sites on electoral outcomes.**

- e. Can this type of political bias that impacts elections in the United States constitute anticompetitive conduct that is harmful to consumers?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. The types of actions that constitute anticompetitive harm are specific to the facts and circumstances of any given case. Anticompetitive harm is not limited to price effects and may include, for example, loss of competition in the marketplace of ideas and interference with the free flow of information that affects political discourse.**

4. In your experience and opinion, do Big Tech corporations, such as Google, Facebook, and Twitter, demonstrate pro-liberal or pro-conservative biases in their operations?

**RESPONSE: I have not reviewed all relevant evidence to determine the bias or lack thereof for specific corporations. I would need to see and consider the full range of evidence to make a determination.**

5. Do you believe that Big Tech censorship of political speech, including conservative speech, constitutes a consumer harm?



**RESPONSE: I have not reviewed all relevant evidence to determine whether any specific acts of censorship constitute consumer harm that would be cognizable under the antitrust laws. I would need to see and consider the full range of evidence to make a determination.**

6. In October 2020, the Department of Justice and a number of states, including Texas, brought suit against Google under Section 2 of the Sherman Act to restrain Google from “unlawfully maintaining monopolies in the marks for general search services, search advertising, and general text advertising in the United States through anticompetitive and exclusionary practices.” Should you be confirmed, will vigorously litigating *United States v. Google* be among your top priorities?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will fully and faithfully litigate the matters that are necessary to address violations of the antitrust laws.**

7. When we spoke in my office, you said that antitrust law requires “empiricism” and “vigor.” Some critics of current antitrust doctrine essentially argue that antitrust can be used as a roving authority to enact social policy.

- a. Do you believe that antitrust can be used to combat social issues?

**RESPONSE: Antitrust law protects the competitive process. A healthy and competitive economy can yield a wide range of benefits for all Americans.**

- b. If yes, which ones?

**RESPONSE: Strong competition can result in a wide range of benefits for our economy and democracy, including, without limitation, new innovations, opportunities for workers, and a more vibrant marketplace of ideas that impacts the distribution of information that is critical to political discourse.**

- c. How can antitrust law address these issues while retaining “empiricism” and “rigor”?

**RESPONSE: Antitrust law enforcement should use state-of-the-art empirical and analytical tools to understand and evaluate facts.**

8. State governments have taken a more active role, largely through state Attorney General actions, to address antitrust issues, especially to address perceived abuses by Big Tech. What do you think the appropriate role for state governments should be in the antitrust arena?

**RESPONSE: States have long played a critical role in antitrust enforcement. States were the primary antitrust enforcers prior to the Sherman Act in 1890 and many states enshrine antimonopoly principles in their state constitutions. The Texas State Constitution, for example, states that “monopolies are contrary to the genius of a free government, and shall never be allowed.” I have the utmost respect for state enforcement, and I would consider it an honor to work alongside state attorneys general and state antitrust enforcement personnel.**

9. You have been a vocal critic of the “consumer welfare standard” in antitrust enforcement. For example, in a 2017 speech at a Federalist Society conference, you called the consumer welfare standard “out of step,” “limited” and “narrow.” At the same event, you explained that, in your view, the goal of the Justice Department “is not to decide what is maximally efficient,” but instead is to “enforce the law,” and that you do not “want to turn over the keys to antitrust to economists.”

- a. If you were to craft a standard for the DOJ’s antitrust enforcement, what would it look like? Please describe in detail.

**RESPONSE: First and foremost, antitrust enforcement authorities should follow the facts and the law in each individual case to determine whether the conduct at issue harms competition and the competitive process. Effective antitrust enforcement requires a deep understanding of market realities and facts to determine whether the conduct at issue harms competition and the competitive process. Enforcement authorities should use state-of-the-art analytical tools to assess key facts and empirical evidence.**

- b. What role would consumer welfare play in your antitrust enforcement decisions if confirmed to be the Assistant Attorney General of the Antitrust Division?

**RESPONSE: Protecting the welfare of consumers is an important goal of the antitrust laws.**

10. If confirmed, how will you work to coordinate antitrust enforcement actions with the FTC?

**RESPONSE: If I am confirmed, I will endeavor to ensure the efficient and proper division of responsibility between the DOJ and FTC, including the avoidance of unnecessary duplication.**

11. Do you agree with the FTC’s rescission of the Vertical Merger Guidelines, which had been issued jointly in 2020 by the Department of Justice and the FTC’s Vertical Merger Commentary?

**RESPONSE: If confirmed, I look forward to working with career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines.**

12. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

**RESPONSE: As Assistant Attorney General for the Antitrust Division, it would be my responsibility to help enforce the law; however, an agency “generally cannot act against each technical violation of the statute it is charged with enforcing.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Therefore, an agency must have discretion to carry out its legal duty with limited resources. The Supreme Court has explained that an agency’s discretion includes but is not limited to “whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.” *Id.***

13. There have been reports of anti-competitive conduct in the aluminum industry. Purchasers of aluminum say they are encountering pricing irregularities and potentially anti-competitive conduct by aluminum producers, merchants, traders, and others. They report that the price of aluminum has increased significantly beyond what it should be in a competitive market, and that as a result, these costs are passed on to consumers. The beverage industry estimates that U.S. beer, soft drink and other consumers have paid hundreds of millions of dollars in the form of excessive inflated aluminum costs in the past year alone due to the artificially high price of aluminum. The “Midwest Premium” (MWP), for example, has reportedly seen a 450% price increase over the last year, despite the fact that the logistical costs of sourcing metal from within the U.S. and around the world has changed minimally until recently.

- a. Do you believe that these allegations warrant investigation by the Department of Justice?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.**

- b. If you’re confirmed, do you plan to examine whether anticompetitive conduct is the cause of undue price increases in the aluminum market?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.**

- c. It appears that the ratings agency setting the price of the MWP – Platts – is using bids and offers for aluminum purchases to assess the price of the MWP, rather than actual consummated purchases of aluminum. Some industry observers suspect that this practice of using bids and offers is an inaccurate method of assessing the MWP and is

responsible for the recent price spikes. Will you examine this possible practice as part of any inquiry into aluminum pricing?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.**

- d. S&P Global is the owner of Platts, the industry rating source that sets the price of the MWP. S&P Global is seeking to merge with IHS Markit, which also has similar industry commodities ratings services. This transaction is now under review at the DOJ. As part of the resolution of this merger, would you consider a behavioral remedy to prevent Platts from basing its MWP price assessment on bids and offers and compel it to use consummated transactions instead?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously and impose remedies that address the underlying violations of the law. A remedy that does not work is not a remedy.**

14. There is bipartisan concern about the lack of competition in the meatpacking industry. In 1988, the four largest companies controlled 70 percent of the market. Their share grew to 81 percent of the market in 1999. Today their market share is now at 85 percent. Should you be confirmed, what steps will you take to ensure greater transparency in pricing, enhanced market competition, and more negotiation between meat producers and meat packers?

**RESPONSE: The agricultural industry is critical to the economy and health of our nation. Our federal and state antitrust enforcement authorities have undertaken important work in this area. If I am confirmed, I will work to ensure that this remains a high priority for the Antitrust Division.**

15. The DOJ's Antitrust Division launched an investigation into the nation's four largest meatpackers in May 2020. Since then, and despite numerous requests from interested groups who have a stake in the outcome, we have not heard from the DOJ regarding the status of the investigation, the DOJ's findings, or any other updates for that matter. Do you plan to prioritize these investigations?

**RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding active or potential enforcement matters. If I am confirmed, I will work to ensure that matters related to the agriculture industry remain a high priority for the Antitrust Division.**

**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR HAWLEY**

1. Do you think the so-called “consumer-welfare standard,” which was developed long before today’s digital platforms, is an appropriate framework for the kinds of issues facing competition today?

**RESPONSE: In the past, I have voiced concerns that the application of the consumer welfare standard has been inconsistent, vague, and insufficient to keep pace with market realities.**

2. In what specific ways have dominant antitrust theories failed to evolve to capture the phenomena that we’re seeing in the tech sector?

**RESPONSE: Effective antitrust enforcement should assess the full range of competitive harm in markets involving the extraction and use of data, including harms related to privacy, innovation, resiliency of technology infrastructure, among many others.**

3. What do you suggest as a better way for courts to think about antitrust cases, beyond the current “consumer welfare” approach that either (1) focuses reductively on consumer prices, or (2) ends up being so vague as to be unhelpful?

**RESPONSE: If confirmed, I will focus on further fortifying investigatory tools and market specific expertise to accurately assess and address potential antitrust violations based on actual market realities rather than narrow assumptions.**

4. What role do you see for state attorneys general in antitrust enforcement?

**RESPONSE: States have long played a critical role in antitrust enforcement. States were the primary antitrust enforcers prior to the Sherman Act in 1890 and many states enshrine antimonopoly principles in their state constitutions. I have the utmost respect for state enforcement, and I would consider it an honor to work alongside state attorneys general and state antitrust enforcement personnel.**

5. If you are confirmed, what steps do you intend to take to ensure that the Division responds to requests for information from congressional Members in a timely fashion?

**RESPONSE: Congressional oversight is a critical component of our democracy. If confirmed, I look forward to coordinating with the Office of Legislative Affairs in the Department to respond to requests for information in a timely manner.**

6. If you are confirmed, what steps do you intend to take to develop a collaborative working relationship with FTC personnel and avoid duplication of enforcement efforts?

**RESPONSE: If I am confirmed, I will commit to ensuring the efficient and proper division of responsibility between the two agencies, including the avoidance of unnecessary duplication.**

**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR HIRONO**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:
  - a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

**RESPONSE: No.**

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

**RESPONSE: No.**

**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR LEAHY**

1. When the Antitrust Division approves a merger with conditions, it is critical that enforcement authorities remain vigilant about ensuring compliance with those conditions. Under your leadership, how will the Division ensure that a merged entity subject to a consent decree remains in compliance with applicable conditions and is not taking steps to unreasonably harm competitors?

**RESPONSE: If confirmed, I look forward to working with the staff at the Department of Justice to ensure full compliance with all applicable remedies and judgments.**



**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR LEE**

1. How should antitrust enforcers view state-owned entities when assessing market structure and market power?

**RESPONSE: Effective antitrust enforcement necessitates a complete understanding of ownership structures, operational control, and competitive incentives.**

2. As I wrote in my introduction to the new edition of Judge Robert Bork's The Antitrust Paradox, while he was successful in advocating for the consumer welfare standard, Bork's advice on the limits of economic analysis went unheeded. Subsequently, we have had an overcorrection when it comes to the role of economics in antitrust analysis. What do you think is the proper role of economics in antitrust enforcement?

**RESPONSE: Economics is a tool to understand the functioning and competitive dynamics of markets.**

3. In our recent antitrust subcommittee hearings, I've advocated for viewing personal data as a form of payment for supposedly "free" online services, and that disregarding harm to one's users could be a reflection of monopoly power. How, in your view, should antitrust lawyers and economists view these concepts?

**RESPONSE: Effective antitrust law enforcement necessitates a full appreciation of market realities and the complete range of potential competitive harm. The extraction and use of data are fundamental to the economic realities of many markets involving online services. As a result, measuring the value of services that consumers receive in response to sacrificing personal data may be necessary to assess harm to consumers and the competitive process. There is a growing body of academic research and analysis in this important area.**

4. At your hearing, you advocated for the application of the antitrust laws to labor markets. Beyond basic concepts of monopsony power, what is your legal framework for such an application?

**RESPONSE: Relevant market analysis for antitrust enforcement, including analysis of labor markets is highly fact specific. Sections 1 and 2 of the Sherman Act prohibit coordinated and unilateral anticompetitive conduct, including conduct that harms workers. Similarly, Section 7 of the Clayton Act prohibits mergers and acquisitions**

**“the effect of which may be substantially to lessen competition, or to tend to create a monopoly.”**

**This may include mergers that enhance monopsony power in a labor market. Anticompetitive conduct in violation of these and other relevant statutes are violations regardless of the market in which they occur, but the application of law will depend on the facts of a specific investigation or case.**

5. How does your legal framework for the application of the antitrust laws to labor markets account for the differences between skilled and unskilled labor in the assessment of geographic product markets?

**RESPONSE: Relevant market analysis, including analysis of labor markets, is highly fact specific and requires a careful assessment of the market at issue. For example, workers with different skillsets and experience, or ability to relocate or commute, may have different employment options. These factors, among others, may bear on the contours of the relevant labor market.**

6. Will your legal framework for the application of the antitrust laws to labor markets consider putative harms to labor markets that are not merger specific (i.e., are a result of or worsened by the merger)?

**RESPONSE: No. Section 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers and acquisitions “the effect of which may be substantially to lessen competition, or to tend to create a monopoly.” A merger that creates or enhances monopsony power in a labor market violates Section 7. While Section 7 reaches only transaction-specific harms, other types of anticompetitive unilateral or coordinated conduct that harms workers may be actionable under Sections 1 or 2 of the Sherman Act.**

7. How will your legal framework for the application of the antitrust laws to labor markets account for the role of state and federal labor laws and regulations?

**RESPONSE: Antitrust analysis is fact specific and should take into account the existence of regulatory requirements in assessing whether a transaction or conduct violates the antitrust laws.**

8. Do you believe that the 2020 vertical mergers guidelines jointly prepared and approved by the Department of Justice and the Federal Trade Commission were effective?

**RESPONSE: If confirmed, I look forward to working with the career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines.**

9. How should antitrust enforcers and courts balance the rights of intellectual property holders, particularly standard essential patents, with competition concerns?

**RESPONSE: Antitrust law enforcement should consider the existence of legitimate intellectual property rights.**

10. When, if ever, does the exercise of intellectual property rights cross the line and violate the antitrust laws?

**RESPONSE: As a general matter, the presence of intellectual property rights—like other property rights—does not create blanket immunity for rightsholders to engage in conduct that otherwise violates the antitrust laws. At the same time, the antitrust laws respect the existence and exercise of valid intellectual property rights.**

11. Are disagreements relating to standard essential patents better resolved through contract law or antitrust law?

**RESPONSE: Application of the antitrust laws is highly fact specific and dynamic. Effective antitrust enforcement should reflect a balanced approach that considers the facts of any given dispute.**

12. How will you handle clearance decisions with the Federal Trade Commission to ensure that antitrust enforcement does not suffer from bureaucratic infighting and delays?

**RESPONSE: If I am confirmed, I look forward to working collaboratively with the Federal Trade Commission to ensure the efficient and proper division of responsibility between the two agencies.**

13. How should antitrust enforcers and treat out-of-market efficiency claims?

**RESPONSE: As a general matter, courts do not generally recognize out-of-market efficiency claims to mergers and acquisitions that otherwise violate the antitrust laws.**

14. What standard will you apply to decide whether or not to issue a Second Request? Will you require a reasonable suspicion that the merger would substantially lessen competition?

**RESPONSE: The Antitrust Division Manual explains that staff should draft and seek a Second Request if they believe “that a transaction might raise competitive problems and more information is needed to evaluate it.” I would continue to treat that as the operative framework for deciding whether to issue a Second Request.**

15. Should antitrust enforcers require merging parties to wait out the entire 30-day period provided for in the HSR Act even after determining that the transaction raises no competition concerns?

**RESPONSE: Antitrust enforcers should work efficiently to review pending transactions within applicable HSR waiting periods subject to operational and resource constraints.**

16. What factors will you consider in determining whether or not to investigate or seek to unwind a consummated merger?

**RESPONSE: Antitrust law enforcement is highly fact specific. There may be instances in which evidence reveals a violation of the Clayton Act, and thus weighs in favor of challenging a consummated merger.**

17. Is it ever appropriate for antitrust enforcers to attempt to prevent a merger from closing through means other than a challenge on the merits, such as through delay tactics or procedural tricks?

**RESPONSE: Antitrust enforcement authorities should intervene as appropriate based on the facts and the law, to prevent the closing of mergers that violate the law. Agencies should seek information when it is necessary to conduct a legitimate and thorough investigation.**

**QUESTIONS FOR THE RECORD**  
**JONATHAN KANTER**  
**NOMINEE TO BE ASSISTANT ATTORNEY GENERAL**  
**OF THE ANTITRUST DIVISION**

**QUESTIONS FROM SENATOR TILLIS**

1. The Antitrust Division under the previous Administration took the view that the policies of the patent laws and the antitrust law are aligned, with the mutual aim of fostering dynamic competition through innovation. However, in June of this year, Acting Assistant Attorney General Richard Powers stated that the Antitrust Division is rethinking its approach to the intersection of antitrust and intellectual property. In that regard:

- a. Do you agree that reliable, predictable, quality patent rights promote vigorous, dynamic competition to the benefit of consumers and that the Antitrust Division should continue to support patent rights as a key driver of innovation and a competitive American economy?

**RESPONSE: Reliable, predictable, and valid patent rights can play a critical role in encouraging innovation and competition. Intellectual property rightsholders should be able to exercise these rights, subject to the limitations of antitrust law and other applicable law.**

- b. Do you agree that universities, companies and small inventors that commit time, resources and capital to engage in risky R&D activities to develop the next generation of standards and that seek to be rewarded for their successful innovations to obtain fair and adequate compensation for the use of their patented technologies should be allowed and encouraged to assert their IP rights in good faith without being labeled as “patent trolls” or chilled by threats of antitrust enforcement action or private antitrust litigation?

**RESPONSE: Antitrust law enforcement should consider the ability of rightsholders to exercise their intellectual property rights, subject to the limitations of existing law.**

- c. Do you intend to withdraw or revise the 2019 Joint USPTO, NIST and DOJ Policy Statement on Remedies for Standards-Essential Patents subject to Voluntary F/RAND Commitments, and in particular do you intend to change the Antitrust Division’s policy, as reflected in that Policy Statement, that antitrust law should not normally play a role in FRAND licensing disputes between SEP holders and potential licensees?

**RESPONSE: If confirmed, I plan to consult with relevant personnel at the Department of Justice and stakeholders at USPTO and NIST to determine whether changes to the policy are necessary and appropriate.**

2. The Supreme Court has recognized that private standards can have significant procompetitive advantages but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, are you prepared to enforce Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?

**RESPONSE: Standard setting can yield significant benefits to innovation and the economy. Like any other company or entity, standard-setting organizations and their participants are subject to the antitrust laws. Depending on the facts, enforcement of the antitrust laws may be appropriate to address illegal restraints of trade or monopolization by standard-setting bodies and/or its participants.**

3. An issue that is particularly important to me is the relationship between IP theft and competitiveness. Do you believe it is important for there to be confirmed leadership before any drastic changes are made to how this Administration treats patent protections?

**RESPONSE: Antitrust enforcement authorities should undertake a thoughtful, and careful process before making changes.**

- a. How will you specifically take into account global competitiveness with China when it comes to evaluating patent policy?

**RESPONSE: Antitrust law enforcement should reflect an assessment of market realities, which may include considerations of widespread intellectual property theft.**

4. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree—that the consent decrees are outdated – especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees with ASCAP and BMI untouched.

- a. What are your thoughts about whether and when it would be appropriate to lift the consent decrees?

**RESPONSE: If confirmed, I will consult with career staff at the Department of Justice and follow relevant ethics guidelines before providing input regarding an active enforcement matter.**

- b. Do you believe there should be a free market in music? If not, why not?

**RESPONSE: Open and competitive markets are important in all industries, including music.**

- c. Wouldn't a truly free market in music licensing encourage innovation?

**RESPONSE: Open and competitive markets are important in all industries, including music.**

- d. What is the rationale for allowing some companies to operate outside of consent decrees but not ASCAP and BMI?

**RESPONSE: I am not currently at the Department of Justice and, therefore, cannot speak to the rationale employed by the Department of Justice's Antitrust Division in connection with any enforcement matter.**

5. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google.

- a. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. As a general matter, the antitrust laws can play a vital role in protecting competition in markets involving the distribution of news and information.**

- b. The Copyright Office is undertaking a public study at the request of Congress to evaluate current copyright protections for publishers, and includes an inquiry about a "competition-law-based approach to addressing the relationship between news publishers and online intermediaries..." If confirmed, will you work with the Copyright Office on competition issues, including this notice of inquiry?

**RESPONSE: If confirmed, I plan to join the Department of Justice in its efforts to promote sound and effective competition policy, including at the Copyright Office.**

6. What is your opinion about whether certain large market players like Google and YouTube have an obligation under antitrust law to make tools that help creators license and protect their content available on equal terms to all creators?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. As a general matter, antitrust remedies are highly fact specific. In theory, there may be instances where effective remedies necessitate obligations to license content on nondiscriminatory terms.**

7. Parties attempting to conclude a merger will often make commitments that try to address competitive concerns the Division might have. T-Mobile has announced plans to accelerate its timeline for shutting down the legacy Sprint 3G CDMA Network (“CDMA network”) to January 1, 2022. I understand that millions of Boost prepaid customers (divested to DISH in the T-Mobile/Sprint merger) currently rely upon the CDMA network for wireless connectivity, including access to 911. This January 1, 2022 shutdown is significantly sooner than the three-year timeline T-Mobile provided to regulators while their merger was under review.
  - a. If the Antitrust Division under your leadership concludes that T-Mobile’s premature shutdown of the CDMA network is contrary to T-Mobile’s commitments and obligations and/or raises competitive concerns, do you commit that the Division will take prompt remedial action?

**RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. It is the duty of the Antitrust Division to monitor and enforce compliance with existing consent decrees and final judgments.**

8. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?

**RESPONSE: Appropriate and effective use of antitrust enforcement can address a wide range of competitive harms in tech, including harms related to privacy, innovation, resiliency of technology infrastructure, among many others.**

What do you think of the role of data in the digital economy, and what role does it have in antitrust? Please explain how you define “data” in your response.

- a. If confirmed, how will you encourage the Antitrust Division to approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns? For example, interoperability?

**RESPONSE: Data is a broad term and the meaning of the word “data” will vary based on the market and use case. For example, in consumer tech, data may refer to behavioral information. As a general matter, effective antitrust must reflect the full range of competitive harm in markets involving the extraction of data, including harms related to privacy, innovation, security, resiliency, among many others.**

9. In your testimony, you ask for adequate funding to complete operations. Would consolidating antitrust efforts under one politically accountable entity, as proposed in the



One Agency Act that Senator Lee and I re-introduced in March help streamline efforts? For example, resources would not be spent combatting different agency viewpoints as happened in *FTC v. Qualcomm*?

**RESPONSE: It is important for the Antitrust Division to direct its limited resources to activities that will best promote a competitive economy. It is ultimately up to Congress how to allocate jurisdiction among federal antitrust enforcement authorities, and to fund those authorities so that they can enforce the law effectively.**

- a. If confirmed, how will you assess what resources are needed by the DOJ's Antitrust Division?

**RESPONSE: If confirmed, I plan to work with the expert staff of the Antitrust Division and budgeting officials in the Department of Justice and the Administration more broadly to determine appropriate levels for funding requests.**

- b. If confirmed, will you track and assess the extent to which DOJ resources are spent coordinating with or negotiating with the FTC, in particular where your antitrust policy positions may differ?

**RESPONSE: If confirmed, I will work to assess the Antitrust Division's coordination with the FTC and, if appropriate, takes steps to improve its efficiency and effectiveness.**

- c. If confirmed, how do you plan to coordinate your actions with the Federal Trade Commission?

**RESPONSE: If confirmed, I plan to promote an ongoing and effective dialogue between the Department of Justice and the FTC. As a former FTC lawyer, I am hopeful that my perspective will enhance collaboration between the two agencies.**

- d. If confirmed, what do you see as your role in domestic and international antitrust policy issues, including with respect to the FTC?

**RESPONSE: As an Executive Branch agency responsible for competition, the Department of Justice plays an important role in domestic and international antitrust policy issues. As to domestic competition policy, it is important that the Antitrust Division share its substantial competition policy and industry-specific expertise with other federal agencies. Similarly, with respect to international competition policy, effective enforcement of U.S. antitrust laws in a global economy requires cooperation with competition agencies outside the U.S. If confirmed, I would work with the Antitrust Division to provide guidance, expertise, and U.S. leadership regarding competition policy and law enforcement.**