



June 24, 2020

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
Washington, D.C. 20510

The Honorable Michael S. Lee
Chairman
Senate Judiciary Subcommittee on Antitrust,
Competition Policy and Consumer Rights
Washington, D.C. 20510

Dear Chairman Graham and Chairman Lee:

In light of recent, deeply troubling testimony before the House Judiciary Committee, we write to request that the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights convene a hearing to examine whether political considerations are playing a substantial and inappropriate role in guiding investigatory and enforcement decision making at the Department of Justice's Antitrust Division. We also request that Assistant Attorney General Makan Delrahim and career Justice Department attorney John W. Elias be subpoenaed to testify at the hearing.

Mr. Elias's testimony before the House Judiciary Committee is damning. It eviscerates the notion that investigations and enforcement decisions at today's Antitrust Division are based on impartial assessments of law and fact. Instead, it describes an agency led by those who ignore the advice of career staff, in favor of wasting considerable public resources to indulge the Attorney General's personal dislike for cannabis and to act on the President's anger—as divined from his tweets—at an emissions deal between automakers and the California Air Resources Board (CARB). Especially disturbing is Mr. Elias's testimony that AAG Delrahim acknowledged that the investigation of ten cannabis-related mergers were driven by the cannabis industry's unpopularity on “the fifth floor,” referring to Attorney General Barr's offices. That the Division would squander public resources and impose unnecessary costs on parties in this manner, based on the Attorney General's personal antipathy for an industry, is nothing short of malfeasance.

We are certain that you agree that the public should be able to trust that antitrust enforcement is impartial and free of political influence. The impression that federal law enforcement is a tool to serve the political and personal interests of our leaders is corrosive to our entire system of government, which is based on the rule of law. That is why we request a hearing to get to the bottom of these allegations and to determine whether these problems are more widespread.

Since the beginning of this Administration, we have raised concerns about the risk that political considerations could interfere in antitrust law enforcement decision making at the Department of Justice. These concerns are not without foundation. President Trump has made no secret of his views regarding mergers and has made frequent references to using the antitrust laws against companies that displease him.

Over the last several years, reported comments from the President and Administration officials have repeatedly prompted some of us to send letters to the Justice Department urging Department officials to resist political interference from the White House and making clear that political considerations have no place in law enforcement. These letters raised concerns regarding investigations of the AT&T/Time Warner merger and the T-Mobile/Sprint merger, as well as the Department's recent dubious investigation into several automakers' emissions negotiations with CARB. We still await answers to some of these letters, all of which were sent months ago. These issues have also been raised during oversight hearings before the Antitrust Subcommittee.

To date, the Department's answers to our inquiries—when they have been willing to respond—have been little more than perfunctory. They repeatedly deny any knowledge of inappropriate political influence and point to Department policies and guidance, including a 2009 memorandum from then Attorney General Eric Holder, limiting discussions between the White House and the Department of Justice regarding ongoing or contemplated cases or investigations. But merely invoking a memorandum from a former Democratic Attorney General is not enough, not for us and not for the American public. It has become painfully clear that Department officials no longer need to have direct communications with the White House to be improperly influenced by political considerations when the President freely broadcasts his views on antitrust and those who displease him—be it CNN, Jeff Bezos, California emissions regulators, or anyone else.

Of course, it is incumbent upon Department officials to ignore the political noise and focus on enforcement guided by the facts and the law. But the Department's leadership appears to have fallen far short of this ideal. As Mr. Elias's testimony makes clear, it is one thing to have policies and procedures and quite another to follow their letter and spirit.

Accordingly, we respectfully request that the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights convene a hearing to examine whether political considerations are playing a substantial and inappropriate role in guiding investigatory and enforcement decisions at the Antitrust Division, and that this hearing include testimony from Assistant Attorney General of Antitrust Makan Delrahim and career Justice Department attorney John W. Elias.

Thank you for your consideration in this matter.

Sincerely,



Amy Klobuchar
United States Senator



Patrick Leahy
United States Senator



Sheldon Whitehouse
United States Senator



Christopher A. Coons
United States Senator



Richard Blumenthal
United States Senator



Cory A. Booker
United States Senator



Kamala D. Harris
United States Senator