

June 11, 2019

The Honorable Makan Delrahim
Assistant Attorney General
Antitrust Division, Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear AAG Delrahim:

I am writing to urge you to recuse yourself from the Department of Justice's (DOJ) reported antitrust investigations into Google and Apple. Although you are the chief antitrust attorney in the DOJ, your prior work lobbying the federal government on behalf of these and other companies in antitrust matters compromises your ability to manage or advise on this investigation without real or perceived conflicts of interest.

The DOJ and the Federal Trade Commission (FTC) share authority to enforce federal antitrust laws. On May 31, 2019, reports emerged that the two agencies had come to an agreement that the DOJ would have jurisdiction over potential anticompetitive conduct by Google, and that the agency was "preparing to open an antitrust investigation" into the company.¹

As the head of the Antitrust Division, you are in a position to supervise that investigation. But you are also a former Google lobbyist. In 2007, Google hired you to lobby federal antitrust officials on behalf of the company's proposed acquisition of online advertising company DoubleClick Inc., a \$3.1 billion merger that the federal government eventually signed off on.² By 2018, Google accounted for nearly 40% of digital advertising spending in the U.S.³ You reported an estimated \$100,000 in income from Google in 2007.⁴

¹ Bloomberg, "Google Is in U.S. Antitrust Sights as DOJ Gears Up for Probe," David McLaughlin, May 31, 2019, <https://www.bloomberg.com/news/articles/2019-06-01/google-antitrust-scrutiny-to-fall-to-doj-under-deal-with-ftc>.

² The Mercury News, "Google hires former DOJ lawyer to lobby on DoubleClick deal," Jun. 1, 2007, <https://www.mercurynews.com/2007/06/01/google-hires-former-doj-lawyer-to-lobby-on-doubleclick-deal/>.

³ Business Insider, "The head of the Justice Department division reportedly preparing an antitrust investigation into Google used to be a lobbyist defending Google against antitrust concerns," Nick Bastone, Jun. 3, 2019, <https://www.businessinsider.com/makan-delrahim-google-antitrust-doubleclick-2019-6>.

⁴ Senate Lobbying Database, "Lobbying Report," Feb. 14, 2008, <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=61EE34D3-1E4B-462A-A17E-AFFD509B749C&filingTypeID=9>.

Additional reports indicate that, in addition to the investigation into Google, the DOJ will also have jurisdiction over Apple. In both 2006 and 2007, Apple hired you to lobby the federal government on its behalf on patent reform issues.⁵

Federal ethics law requires that individuals recuse themselves from any “particular matter involving specific parties” if “the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.”⁶ Given your extensive and lucrative previous work lobbying the federal government on behalf of Google and Apple—particularly your work to aid Google in its acquisition of DoubleClick Inc.—any reasonable person would surely question your impartiality in antitrust matters involving Google. I have also introduced legislation that would prohibit former corporate lobbyists from taking government jobs for six years after lobbying.⁷ In addition to your work for Google and Apple in 2006 and 2007, you were a corporate lobbyist until 2016, with a client list that included Anthem, Pfizer, Qualcomm, and Caesars.

Your past work as a lobbyist for two of the largest and most scrutinized tech companies in the world creates the appearance of conflict of interest. As the head of the antitrust division at the DOJ, you should not be supervising investigations into former clients who paid you tens of thousands of dollars to lobby the federal government. American consumers and markets deserve the confidence that the DOJ will conduct any antitrust investigation into Google or Apple with integrity, impartiality, and with the best interest of competitive markets and consumers in mind.

I therefore urge you to recuse yourself from any investigations or other matters involving Google or Apple, and I ask that you respond by June 14, 2019 with information on whether you are considering recusal and who you are consulting about that decision.

Sincerely,



Elizabeth Warren
United States Senator

⁵ Senate Lobbying Database, “Lobbying Registration,” May 19, 2006, <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=CF28A9A2-9A83-4147-A323-09D73AF43FBB&filingTypeID=1>.

⁶ 5 CFR 2635.502