

December 12, 2018

Today's Driving Events

Antitrust Chiefs Testify: Assistant Attorney General for Antitrust Makan Delrahim and Federal Trade Commission (FTC) Chairman Joseph Simons will head to Capitol Hill this afternoon to testify before the House Judiciary Committee's antitrust subcommittee as part of an [oversight hearing](#).

Delrahim's prepared remarks, which can be found [here](#), reflect on the Department of Justice's (DOJ) "extensive efforts in criminal and civil enforcement" and on several initiatives that are underway "to streamline and improve the [Antitrust] Division's use of consent decrees and other remedies." Delrahim might also provide additional color about the DOJ's ongoing work with respect to updating its decades-old vertical merger guidelines. We believe that the FTC is also looking to eventually issue vertical merger guidelines, likely in coordination with the DOJ. Besides procedural reforms and new initiatives to streamline merger reviews, Simons will discuss technology and social media platforms, according to his written testimony, which can be found [here](#). Simons will say although "the widespread use of technology and data" can "offer consumer benefits, they also raise complex and sometimes novel competition issues." **Therefore, "it is critical that the [FTC] – in furthering its mission to protect consumers and promote competition – not only understand current and developing business models, but also scrutinize incumbents' conduct to ensure that they abide by the same rules of competitive markets that apply to any company.** When appropriate, the [FTC] will take action to counter anticompetitive transactions and conduct by technology firms." In terms of specific deals, we expect Democrats on the subcommittee will ask Delrahim about the DOJ's ongoing review of the T-Mobile (**TMUS**)/Sprint (**S**) merger, given how consumer groups and labor unions recently wrote a [letter](#) urging Reps. Jerry Nadler (D-NY) and Frank Pallone (D-NJ) to hold hearings on this very matter. **We believe that the TMUS/S deal is nearing the finish line, though there is a very good chance significant divestitures will be required, either involving Sprint's sizeable holdings in the 2.5 GHz spectrum band, its prepaid brands, or possibly a combination of the two. In addition, Democrats concerned about increasing media consolidation are likely to ask Delrahim about the recently announced tie-up between Nexstar Media Group (NXST) and Tribune Media Company (TRCO).** Earlier this week, Public Knowledge, a consumer advocacy group that emerged as one of the biggest opponents of the failed merger between Sinclair Broadcast Group (**SBGI**) and Tribune, published a [blog](#) arguing that

“competition, diversity, and local control in television broadcasting” would be threatened if the NXST/TRCO deal is allowed to go through. We should note that in Delrahim’s written testimony, he mentions the [settlement that the DOJ reached last month](#) with six broadcast television companies for exchanging “competitively sensitive information relevant to many advertising spot markets.” Since one of the plaintiffs was Tribune, we think there could be some questions about whether the DOJ, as part of its review of the NXST/TRCO deal, will be looking at the combined company’s ad revenues. And although the Federal Communications Commission will be conducting a separate case-by-case review to determine if the merged entity could own two ‘Top Four’ stations in the same market, it remains to be seen whether the DOJ would permit such arrangements, so any questions on this subject will be worth noting. **We do not expect Delrahim will give very many clues as to how the DOJ will scrutinize the NXST/TRCO transaction, though it will be interesting to gauge the level of support or opposition that this deal garners amongst members of the committee.** The two antitrust chiefs could also field questions about Amazon’s (AMZN) “double role” as a retailer and marketplace for sellers given the investigation into the e-commerce giant that was recently launched by German antitrust regulators. Aside from competition and antitrust issues, which will be the dominant focus of today’s hearing, investors should also expect at least some of the questions that Simons gets asked relate to privacy and data security matters, especially in light of the latest consumer data mishandlings involving Google (GOOGL) and Marriott (MAR).

HHS Secretary Pushes Back On Pharma, BIO, and Part B Access Coalition: Health and Human Services (HHS) Secretary Alex Azar is scheduled as a late addition to an [Axios event](#) this morning in Washington, DC discussing the future of accessibility and affordability in healthcare. Azar will be joined by Senators Lamar Alexander (R-TN) and Tim Kaine (D-VA) and Rep. Seth Moulton (D-MA). **We believe that Azar asked to be added to the speaking roster at this event in large part so that he can continue his department’s pushback on the increasing criticism of its [Medicare Part B "International Pricing Index" reform proposal](#).** Although most voices of opposition were muted upon its release, particularly from Republicans in Congress, a coalition of 339 patient and physician advocates, most of whom are funded at least in part by the pharma and biotech sectors, have [drafted a scathing letter raising concerns](#) about the overall construct of the proposed demonstration. **We believe that the coalition’s approach and its characterization of the proposal as "foreign-based price controls," and “interject[ing] new middlemen between physicians and patients” misses the point that the Trump administration is determined to reduce prices in Part B and thus needs some ability to negotiate those price reductions and/or cut prices paid to manufacturers.** If the coalition was writing in order to try to change the extent of a potential price reduction in certain therapeutic classes or include other safeguards for access with their own proposals, then we believe HHS would take their views into account. **But the lack of any meaningful counter-proposals to reduce prices in another manner and a preference for the status quo is untenable with the electoral and political goals of Secretary Azar and**

President Trump. In fact, the lack of substantive reform ideas from any of the stakeholders in the drug pricing debate is exactly why this proposal has been promulgated — it was chosen as a less disruptive path for reducing prices, while trying to maintain access and high levels of innovation, especially compared to other more draconian ideas from many Democrats in Congress and their allies at progressive think tanks. This type of reform will also be instructive because, as the coalition itself says in its letter, "CMS could apply the same principles to other services. The agency could tie foreign payment levels to reimbursement for medical devices, physician services, nursing care, diagnostic tests, or mental health and substance use disorder specialists." While we do not expect any such widespread shift in other parts of federal health spending, the ability to take this type of payment reform and expand it more broadly should give pause to investors and companies in the healthcare sector. This proposal is now the moderate or more conservative market-driven option compared to Democratic proposals to upend the patent system and create a national formulary with direct federal negotiations (something that could also be expanded to tests, devices, etc.) and we do not expect that it will be meaningfully changed from its current form and that it will go into effect as currently contemplated for plan year 2020.

Farm Bill Compromise Advances: Less than 24 hours after being released Monday evening, the Senate passed the compromise 2018 Farm Bill by a vote of 87 to 13. All the "no" votes came from Republicans. **The House is expected to easily pass the bill today, sending it to President Trump to be signed into law. As expected, the 807-page Farm Bill eschews the most controversial provisions in the House version, including expanded work requirements for able-bodied adults participating in the Supplemental Nutrition Assistance Program (SNAP). Additionally, Senate Majority Leader Mitch McConnell's (R-KY) provision of declassifying industrial hemp as a controlled substance and moved to the jurisdiction of the Department of Agriculture (USDA) was included.** A joint explanatory statement of the Farm Bill can be viewed [here](#). Despite Trump calling for expanded work requirements, he and House Republican leaders were supportive of the final version. Agriculture Secretary Sonny Perdue sought to allay concerns among conservatives, telling Republican Study Committee Chair Mark Walker (R-NC) that the department could move forward with regulations to "limit waivers that allow states to exempt single able-bodied adults without dependents aged 18 to 49 from work and to allow them to receive aid for more than three months out of every 36 months." While this would put constraints on some SNAP users, it is not creating any meaningful change to the program and should not constrain SNAP enrollment much.

House

The House will convene at 12:00 p.m. and is expected to consider non-controversial measures under expedited procedures. The chamber will also vote on the 2018 Farm Bill conference report.

Senate

The Senate will reconvene at 9:30 a.m. and resume consideration of a joint resolution under the Congressional Review Act that would rescind a Treasury Department rule on nonprofit disclosure requirements for donors.

White House

President Trump will participate in an "Opportunity Zones" event at 2:30 p.m. at which he will sign an executive order establishing the White House Opportunity and Revitalization Council.

Macroeconomic

At 10:00 a.m., the House Financial Services Committee's Subcommittee on Monetary Policy and Trade will hold a hearing titled "Evaluating the Effectiveness of the International Financial Institutions." Expected participants include:

- David Malpass, under secretary for international affairs, Department of the Treasury

Antitrust and Consumer Protection

At 9:30 a.m., the Federal Trade Commission (FTC) will hold a discussion on data security and data breaches as part of its competition and consumer protection hearing series. [More information here.](#) Expected participants include:

- Rebecca Kelly Slaughter, commissioner, FTC

At 10:30 a.m., the Economic Policy Institute will hold a discussion titled "Monopoly, Monopsony and the Labor Market: Declining Worker Power in an Era of Market Concentration." [More information here.](#) Expected participants include:

- Rohit Chopra, commissioner, Federal Trade Commission

At 2:00 p.m., the House Judiciary Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law will hold a hearing titled "Oversight of the Antitrust Enforcement Agencies." Expected participants include:

- Makan Delrahim, assistant attorney general for antitrust, Department of Justice
- Joseph Simons, chairman, Federal Trade Commission

Energy

At 10:15 a.m., the House Energy and Commerce Committee's Subcommittee on Energy will hold a hearing titled "Public Private Partnerships for Federal Energy Management."

Geopolitical

At 9:30 a.m., the Senate Armed Services Committee's Subcommittee on Emerging Threats and Capabilities will hold a hearing titled "Implications of China's Presence and Investment in Africa."

At 10:00 a.m., the Senate Judiciary Committee will hold a hearing titled "China's Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses."

Government Information Technology

At 10:00 a.m., the House Oversight and Government Reform Committee's Subcommittee on Government Operations and Subcommittee on Information Technology will hold a joint hearing titled "Federal Information Technology Acquisition Reform Act (FITARA) Scorecard 7."

Healthcare

Today and tomorrow, the Department of Health and Human Services will hold a meeting of the National Committee on Vital and Health Statistics' Standards Subcommittee on regulations adopting standards, code sets and identifiers to support the exchange of electronic health information between covered entities.

At 8:00 a.m., *Axios* will hold a discussion on the future of accessibility and affordability in healthcare. [More information here.](#) Expected participants include:

- Alex Azar, secretary, Department of Health and Human Services
- Senator Lamar Alexander (R-TN)
- Senator Tim Kaine (D-VA)

- Rep. Seth Moulton (D-MA)

At 11:00 a.m., the Rural Health Information Hub will hold a webinar titled "Insights on Rural Health Insurance Market Challenges from the National Advisory Committee on Rural Health and Human Services." [More information here.](#)

Intellectual Property

At 9:00 a.m., the US Chamber of Commerce will host its 12th annual US Patent and Trademark Office Attache Roundtable, focusing on intellectual property and global economic developments.

Medical Marijuana and Cannabinoids

At 12:00 p.m., the Congressional Dietary Supplement Caucus will hold a briefing titled "Legal, Regulatory Considerations for Cannabidiol (CBD): Current and Future."

Tech-Media-Telecom

At 10:00 a.m., the Information Technology & Innovation Foundation will hold a discussion titled "Is 'Big Tech' Now Synonymous with Big Oil or Big Tobacco?" [More information here.](#)

At 10:30 a.m., the Federal Communications Commission will hold its monthly open meeting to consider a communications marketplace report and a notice of proposed rulemaking that would initiate the 2018 Quadrennial Review of certain broadcast ownership rules. The commission will also consider a proceeding involving spectrum in the 37 GHz, 39 GHz, and 47 GHz bands, a proceeding involving incentive-based universal service support, a proceeding that would create a comprehensive database to enable callers to verify whether a telephone number has been permanently disconnected, a declaratory ruling that would classify two forms of wireless messaging (SMS and MMS) as information services under the Communications Act, and a proceeding that would eliminate certain rules which require local posting and maintenance of broadcast licenses and related information in specific locations. [More information here.](#)



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