

MORNING COLOR

September 25, 2019

Today's Driving Events

- **Pelosi Uses The I-Word:** The still emerging revelations of the whistleblower complaint against President Trump over his efforts to get Ukraine to investigate Joe Biden and his son have quickly changed the Democrats' political calculus regarding impeachment, resulting in House Speaker Nancy Pelosi swiftly announcing the launch of a formal impeachment inquiry
- **I-Word Could Expedite IPI:** As the Impeachment inquiry casts a shadow over almost all pending legislative efforts, including House Speaker Nancy Pelosi's drug pricing reform bill, President Trump will likely turn to a flurry of executive actions in an effort to change the media narrative. This creates an opening for the release of the International Pricing Index proposal sooner rather than later.
- **FTC at Odds Over Big Tech:** The Republican FTC chairman and an outspoken Democratic commissioner, who could be tapped as chairman in any future Democratic administration, will present competing visions of competition policy focused on the largest big tech firms at a hearing today on data protection and antitrust laws.
- **Vaping Industry Could Go Up in Smoke:** As the regulatory noose around the vaping industry tightens, acting FDA Commissioner Ned Sharpless will testify today at a hearing entitled "Sounding the Alarm: The Public Health Threats of E-Cigarettes."

Impeachment Dam Breaks: House Speaker Nancy Pelosi (D-CA) yesterday announced the beginning of an impeachment inquiry against President Trump. The change in positioning on impeachment for Pelosi and several other Democrats came from news reports last week of a whistleblower complaint against the president pertaining to his efforts to get Ukrainian President Volodymyr Zelensky to investigate former Vice President Joe Biden and his son Hunter (note that President Trump will meet with President Zelensky this afternoon on the sidelines of the United Nations General Assembly). **With several Democratic committee chairs,**

Democrats who represent a district Trump won in 2016, and Pelosi allies signaling their support for impeachment proceedings, House Democrats are bringing the issue front and center, something that will be at the top of the news cycle for the foreseeable future and crowd out almost everything else, at least on the legislative front. Pelosi also likely felt pressure to establish a clear path forward on impeachment given the recent revelations regarding the allegations against the president in light of members of Congress heading back to their districts for two weeks this Friday, as many in her caucus would not want to face their constituents without a well-articulated game plan. Meanwhile, Trump said yesterday before Pelosi announced the launch of the inquiry that he will release the transcript of a phone call between him and Zelensky later today and media reports last night indicated that the president plans to release the inspector general's report on the whistleblower's complaint as well, although he could very well choose not to do so. At the same time, Trump has staunchly defended his actions, calling this latest salvo by Democrats a "witch hunt." Acting Director of National Intelligence Joseph Maguire is scheduled to testify before an open hearing of the House Intelligence Committee on Thursday, with the House and the Senate seeking to get access to the whistleblower complaint, which Maguire to date has refused to send over to Congress. With Trump taking his usual tactical approach to being attacked and a more unified front by Democrats around impeachment this time around, it's unclear where public opinion will fall on this issue. However, as long as Trump retains support of the Republican electorate, the Senate is highly unlikely to go down the route of convicting the president of impeachable offenses. However, the Senate voted yesterday by unanimous consent on a non-binding resolution for the Trump administration to hand over the whistleblower complaint, not just the phone call transcript, meaning Senate Republicans are at the very least interested in getting the full extent of the complaint in question. **Despite the uncertainty surrounding how the inquiry will unfold, the latest impeachment imbroglio is a negative catalyst for markets. While political gridlock is often good for markets by reducing the risk of government interference, dysfunctional paralysis of government is not because it increases uncertainty over the government's ability to handle a crisis.** With the rest of 2019 at a minimum dedicated to impeachment, any remaining hope of passing the USMCA trade agreement or getting bipartisan approval for a drug pricing reform bill is gone. With respect to the one true must-pass legislation remaining on Congress's to-do list this year, FY20 appropriations, the risk of further reliance on stopgap spending measures known as continuing resolutions increases. Risks also increase of a Trump-induced event, akin to the government shutdown last year, in order to distract attention from the impeachment headlines.

Impeachment Could Expedite IPI's Release: With yesterday's announcement of the start of a formal impeachment inquiry into President Trump's conduct, we believe that all potential compromise on legislation to reform prescription drug pricing is nearly impossible, which is a decrease from our already low probability of its passage into law. Nevertheless, the House will proceed with a series of hearings on Pelosi's bill with the first today in the House Energy and Commerce Committee's

Health Subcommittee and one tomorrow before the House Education and Labor Committee. We will continue to track these hearings and the evolution of the bill because of how these policy proposals could be picked up again by a future Democratic administration and certain elements are likely to be done unilaterally via executive order. **Just as the curtain falls on prospects for any congressional action on drug pricing, we believe that Health and Human Services (HHS) Secretary Alex Azar will try to convince President Trump to go on the offensive and release the International Pricing Index (IPI) for Medicare Part B and certain drugs in Part D sooner rather than later. With traditional conservatives in the White House who are not supporters of the IPI, led by Domestic Policy Council Director Joe Grogan, having successfully convinced the president thus far to delay a formal announcement of the IPI pending the outcome of the legislative process, the likely impeachment of Trump provides an opening for Azar to push the president to avoid any further delays.** Azar likely will try to persuade Trump that unveiling the IPI during the impeachment inquiry will enable him to change the narrative by demonstrating that he is making a difference in voters' lives by lowering drug prices, one of their top electoral priorities, while the Democrats continue to play politics rather than legislate. Our view that the president will quickly look to pivot to executive actions that can show strength in the face of the impeachment inquiry was bolstered by this statement from the White House last night: "In a far departure from all of the work and results of this President, House Democrats have destroyed any chances of legislative progress for the people of this country by continuing to focus all their energy on partisan political attacks." Although the IPI was being delayed by the hope that Congress could act, we now believe that it will return to its role as the centerpiece of the administration's cost-containment approach to drug pricing as it is the most substantive of any executive actions left in the healthcare policy pipeline, polls well with likely Trump voters, and as a bonus, it also advances an "America First" agenda by trying to shift costs onto other wealthy countries.

FTC's Simons and Chopra Testify on Competing Views of Competition Policy:

Republican Federal Trade Commission (FTC) Chairman Joe Simons and Democratic FTC Commissioner Rohit Chopra will testify today before the House Appropriations Committee's Subcommittee on Financial Services and General Government [as part of a hearing on consumer protection and antitrust laws](#). We expect today's hearing will further showcase the growing divide between Republicans and Democrats at the FTC with respect to how consumer protection and antitrust laws should be applied, specifically as they relate to Big Tech companies **Google (GOOGL)**, **Facebook (FB)**, and **Amazon (AMZN)**. **We continue to believe that the biggest threat these companies face is the potential for a Democrat to win the White House in 2020. This is true regardless of whether it is a moderate like Joe Biden or a progressive like Senator Elizabeth Warren (D-MA), given how there will be enormous pressure from the left-wing of the Democratic Party to install likeminded officials into key regulatory posts at the FTC and the Department of Justice (DOJ).** To understand the shifting dynamics at play, one has to look no further than the recent

settlements that the FTC reached in its privacy-related investigations into Google and Facebook. Despite the record-breaking fines that the FTC imposed against the two companies and Republicans' arguments that litigation would have resulted in far-less stringent penalties, neither Chopra nor Democratic Commissioner Rebecca Slaughter voted in support of the settlements and have since argued for much tougher financial penalties as well as fundamental changes to the companies' ad-driven business models in addition to penalties imposed against the companies' CEOs. As [Chopra explained in his dissenting statement](#) regarding the Facebook settlement, "[t]he behavioral advertising business model is broken, and we cannot let it continue to tear us apart." Shortly after getting confirmed as commissioner, [Chopra also issued a memo](#) in which he argued that "FTC orders are not suggestions," implying that he believes the FTC has been asleep at the wheel and has allowed Big Tech companies to engage in anti-competitive behavior. In addition, Chopra argued that the FTC should seek monetary penalties as well as "structural remedies, including the dismissal of senior management and board directors, changes to executive compensation, outright bans on adjacent business practices, and closure of appropriate business lines." We believe the shifting dynamics at the FTC will have major implications for the agency's ongoing antitrust reviews of Facebook and Amazon. Although Simons has often pointed to the "high degree of bipartisanship" that he has tried to champion throughout his tenure at the FTC, there will only be further partisan disagreements that arise, most notably as the commission pursues its antitrust investigations into Facebook and Amazon. Simons also said recently that he hopes to wrap up the Facebook investigation before the 2020 election, but we believe that will not happen given how it took the agency well over a year to conclude its privacy-related probe into the social media giant not to mention the fact that antitrust investigations, especially those involving novel antitrust issues, typically take much longer to complete. **As such, the outcome of the antitrust investigations into the Big Tech companies at the FTC and the DOJ will be determined by whoever is in the White House post-2020. If that Oval Office occupant is a Democrat, then Chopra will be on the short list for FTC chair candidates, especially if the next president is Senator Elizabeth Warren (D-MA), who has a close relationship with Chopra front their work in the creation of the Consumer Financial Protection Bureau (CFPB). Federal courts will, of course, have the final say on whether or not Google, Facebook, and/or Amazon have engaged in anti-competitive conduct, but both Chopra and Slaughter have indicated that they are not afraid to take the companies to court, even if winning there would be difficult.**

FDA Head Testifies Amid Vaping Crackdown: The House Energy and Commerce Committee's Subcommittee on Oversight and Investigations will hold its first hearing on e-cigarettes today, titled, "Sounding the Alarm: The Public Health Threats of E-Cigarettes." Acting Food and Drug Administration (FDA) Commissioner Ned Sharpless will be one of the witnesses at the hearing. The hearing comes from the growing uproar over e-cigarette use among minors, as well as a slew of reported respiratory illnesses and deaths from vaping. **At the hearing, it will be important**

to listen to Sharpless about any update on the Trump administration's announcement this month that the FDA would finalize a compliance policy removing all flavored e-cigarettes (including menthol and mint, but not tobacco) from the market until they receive approval via the premarket tobacco application (PMTA) which is due by May 2020. While President Trump announced the policy and had the support from First Lady Melania Trump, Sharpless, and Health and Human Services (HHS) Secretary Alex Azar, there has been pushback from conservative groups that this is a politically bad move for the president. If the president is convinced that this will hurt him in the 2020 election, he may waffle on this guidance. **Another important factor to watch is if there is bipartisan interest in passing a flavor ban for e-cigarettes in Congress.** House Energy and Commerce Committee Chair Frank Pallone (D-NJ) had previously written a flavor ban in legislation. **House Democrats likely could pass a flavor ban bill on a partisan basis, but it's the Senate which requires bipartisan approval.** Senator Mitt Romney (R-UT) introduced a bill this month that would ban e-cigarette flavors, as well as applying the cigarette tax to e-cigarettes. While there is bipartisan consensus on Congress to pass tobacco 21 (T21) legislation, a flavor ban is still not fully fleshed out among Senate Republican leadership, with Senate Majority Leader Mitch McConnell (R-KY) unlikely to go along with such a bill if it receives strong pushback. And with impeachment now looming over Washington, the prospects for any bills, even those that enjoy bipartisan support, have grown significantly dimmer.

House

The House will reconvene at 12:00 p.m. and will consider a non-binding resolution that would express the sense of the Congress that the Trump administration should provide Congress access to the whistleblower complaint against President Trump. The House will also consider the SAFE Banking Act, which would provide a safe harbor for banks to service the medicinal and recreational cannabis industry, under expedited procedures, as well as a bill that would overhaul the Department of Homeland Security's border patrol policies.

Senate

The Senate will reconvene at 10 a.m. and at 12:15 p.m., the chamber will vote on a joint resolution seeking to end the national emergency declared by the president in order to shift military construction funding to pay for partial construction of the wall along the US-Mexico border. The resolution is expected to fail to pass. The Senate will then proceed to concurrent consideration of seven different motions to instruct conferees to the FY20 National Defense Authorization Act (NDAA) until 3:45 p.m. At that time, the Senate is expected to vote on the seven motions to instruct NDAA conferees.

White House

President Trump will participate in a multilateral meeting on Venezuela at 10:00 a.m. At 12:10 p.m., the president will participate in a bilateral meeting with Japanese Prime Minister Shinzo Abe. At 2:15 p.m., Trump will participate in a bilateral meeting with Ukrainian President Volodymyr Zelensky. At 3:15 p.m., he will participate in a bilateral meeting with Salvadoran President Nayib Bukele. At 4:00 p.m., President Trump will participate in a press conference. At 7:40 p.m., the president will deliver remarks at a joint fundraising committee dinner at a private residence in New York City.

Macroeconomic

At 8:00 a.m., Chicago Federal Reserve Bank President Charles Evans will discuss the economic outlook and monetary policy at the Lake Forest Rotary Club Economic Breakfast, in Lake Forest, IL, with audience and media Q&A.

At 10:00 a.m., the House Financial Services Committee's Subcommittee on Consumer Protection and Financial Institutions will hold a hearing titled "Promoting Financial Stability: Assessing Threats to the US Financial System." Expected participants include:

- Dino Falaschetti, director, Office of Financial Research, Department of the Treasury

At 7:00 p.m., Dallas Federal Reserve Bank President Robert Kaplan will take part in a moderated discussion at a Dallas Business Club Economic Update in Dallas, TX, with audience Q&A.

Agriculture

At 10:00 a.m., the Senate Agriculture, Nutrition and Forestry Committee will hold a hearing titled "Perspectives on the Livestock and Poultry Sectors."

Antitrust and Consumer Protection

At 10:00 a.m., the House Appropriations Committee's Subcommittee on Financial Services and General Government will hold a hearing titled "Federal Trade Commission (FTC): Protecting Consumers and Fostering Competition in the 21st Century." Expected participants include:

- Joe Simons, chairman, FTC
- Rohit Chopra, commissioner, FTC

Energy

At 2:30 p.m., the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety will hold a hearing on reducing emissions while driving economic growth.

Financial Services

At 10:00 a.m., the Senate Banking Committee will hold a hearing titled "Facilitating Faster Payments in the US." Expected participants include:

- Esther George, president and CEO, Federal Reserve Bank of Kansas City

At 10:00 a.m., the Securities and Exchange Commission will hold a meeting to consider whether to propose amendments to Rule 15c2-11 under the Securities Exchange Act of 1934 that governs the publication of quotations for securities in a quotation medium other than a national securities exchange, whether to adopt a new rule and related amendments under the Securities Act of 1933 that permits issuers to engage in oral or written communications with certain institutional investors, whether to adopt a new rule under the Investment Company Act of 1940 that will permit exchange-traded funds that satisfy certain conditions to operate without first obtaining an exemptive order, and whether to issue a related order granting exemptive relief from certain provisions of the Securities Exchange Act of 1934 and the rules thereunder. [More information here.](#)

Geopolitical

At 8:30 a.m., Secretary of State Mike Pompeo will deliver the keynote remarks at the 2019 United Against Nuclear Iran Summit in New York, NY.

At 10:30 a.m., the Senate Foreign Relations Committee will hold a hearing titled "US Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border."

At 2:00 p.m., the House Foreign Affairs Committee's Subcommittee on the Western Hemisphere, Civilian Security and Trade will hold a hearing titled "Assessing the Impact of Cutting Foreign Assistance to Central America."

Healthcare

At 10:30 a.m., the House Energy and Commerce Committee's Subcommittee on Health will hold a hearing titled "Making Prescription Drugs More Affordable:

Legislation to Negotiate a Better Deal for Americans." The hearing will focus on various pieces of legislation, including "The Lower Drug Costs Now Act," the "Medicare Prescription Drug Price Negotiation Act of 2019," the "Medicare Drug Price Negotiation Act," and the "Medicare Negotiation and Competitive Licensing Act of 2019."

At 12:30 p.m., the Commonwealth Fund will hold a conference call briefing on a new survey that finds just over a quarter of adults favor "Medicare for All," but also indicates many need more information.

Housing

At 2:00 p.m., the House Financial Services Committee's Subcommittee on Housing, Community Development, and Insurance will hold a hearing titled "Protecting Seniors: A Review of the FHA's Home Equity Conversion Mortgage (HECM) Program."

Infrastructure

At 10:00 a.m., the House Budget Committee will hold a hearing titled "America's Infrastructure: Today's Gaps, Tomorrow's Opportunities, and the Need for Federal Investment."

Tech-Media-Telecom

Today, the 8th Annual Americas Spectrum Management Conference will conclude in Washington, DC. The discussion today will focus on recent and upcoming spectrum auctions, mmWave bands in the US, rural broadband expansion, siting policy and infrastructure reforms, and spectrum sharing initiatives. [More information here.](#) Expected participants include:

- Donald Stockdale, chief of the Wireless Telecommunications Bureau, Federal Communications Commission
- Julius Knapp, chief of the Office of Engineering Technology, Federal Communications Commission
- Nicholas Oros, chief of the Spectrum Policy Branch, Office of Engineering and Technology, Federal Communications Commission
- Jeff Stewart, assistant VP for global public policy, AT&T

At 1:00 p.m., the Congressional Multicultural Media Caucus will hold a discussion titled "Pay TV Minority Owned Media - Challenges and Opportunities." [More information](#)

[here](#). Expected participants include:

- Virginia Zigras, VP of legislative affairs, Charter Communications
- Jeffrey Blum, SVP of public policy and government affairs, DISH Network

Tobacco Regulations

At 10:00 a.m., the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations will hold a hearing titled "Sounding the Alarm: The Public Health Threats of E-Cigarettes." Expected participants include:

- Norman E. Sharpless, acting commissioner, Food and Drug Administration
- Anne Schuchat, principal deputy director, Centers for Disease Control and Prevention

Trade

At 9:00 a.m., the Washington International Trade Association will hold its 2019 Intensive Trade Seminar, focusing on digital trade and current trade negotiations with China. [More information here.](#)

At 10:30 a.m., the Center for Strategic and International Studies will hold a discussion titled "American Business and China: The View From Shanghai." [More information here.](#)

At 2:30 p.m., the Center for Strategic and International Studies will hold a discussion titled "Beyond the Brink: Escalation Dominance in the US-China Trade War." [More information here.](#)

Transportation

At 9:00 a.m., the US Chamber of Commerce and the Procurement and Space Industry Council will hold a discussion titled "Maritime Security, Trade, and Travel," focusing on the role of the Coast Guard in maintaining US waterborne trade and travel industries.

At 2:00 p.m., the House Appropriations Committee's Subcommittee on Transportation, Housing and Urban Development, and Related Agencies will hold a hearing titled "FAA Aviation Certification." Expected participants include:

- Daniel K. Elwell, deputy director, Federal Aviation Administration



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