

September 29, 2021

Re: Ensuring a fully independent Antitrust Division

Dear Attorney General Merrick B. Garland,

We write to you as a broad coalition of organizations committed to holding corporations that engage in anti-competitive behavior accountable. For far too long, Washington has sat by as technology industry giants have accumulated monopoly power at the expense of consumers and competitors alike.¹ The nomination of Jonathan Kanter to serve as Assistant Attorney General for the Department of Justice Antitrust Division is a strong step toward turning President Joe Biden's vision of an open economy into reality.²

To ensure Kanter's success, the DOJ must provide him with all available resources to ensure that Big Tech monopolists are held accountable. This includes providing him and the Antitrust Division with sufficient independence and discretion. Independence includes making decisions on who to sue, when and how to settle, and who to hire. And, in particular, that means limiting interference from officials at DOJ who have histories representing Big Tech companies.

Throughout his career, Kanter has affirmed his credentials as a talented plaintiff's attorney and advocate for reining in monopoly power.³ Unfortunately, Kanter's strong advocacy for reining in anti-competitive behavior has led one of the most powerful monopolies to work to sabotage his tenure before it has even begun. Recent reports suggest that search engine giant Google, currently the subject of DOJ antitrust enforcement action,⁴ is likely to seek Kanter's recusal from the Department's lawsuit against the company.⁵ To be sure, such an effort is predicated on the absurd notion that holding strong positions against monopoly power constitutes a "conflict of interest" and is as frivolous as Amazon's attempt to remove Federal Trade Commissioner chair Lina Khan from all matters concerning that company.⁶ The Biden Administration must resist such pressure from Big Tech to influence antitrust enforcement actions.

In the face of this de facto intimidation campaign, it is also all the more crucial that the DOJ provide Kanter with sufficient resources and independence to execute his statutory responsibilities upon taking office. We stress this as, in stark contrast with Kanter, multiple officials within the Department have dangerous conflicts of interest owing to their private sector history. For example, Deputy Attorney General Lisa O. Monaco counted Big Tech giant Apple

¹ <https://www.nytimes.com/2020/10/06/technology/congress-big-tech-monopoly-power.html>

² <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

³ <https://www.nytimes.com/2021/07/20/business/kanter-doj-antitrust.html>

⁴ <https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws>

⁵ <https://www.protocol.com/policy/kanter-recusals>

⁶ <https://www.jurist.org/commentary/2021/07/2021-07-darren-bush-curious-case-of-khans-recusal/>

as a client during her time as partner at O'Melveny & Myers.⁷ Despite this easily-identifiable conflict of interest, Monaco has not been forced to recuse herself from an investigation into the Trump Administration's subpoena of Apple or on matters relating to the Antitrust Division likely to affect the company.⁸ This conflict, as well as other similar ones across the senior ranks of the DOJ, is troubling and may ultimately undermine the credibility of the Department's antitrust and corporate accountability work.

The Biden Administration has a once-in-a-generation chance to hold Big Tech and other monopolists accountable and to set the stage for building a more competitive economy. It is crucial that the DOJ provide Kanter with independence necessary to succeed and in no way allow Monaco or others with private sector conflicts of interest to interfere with his work.

Sincerely,

Blue Future
Center for Popular Democracy
Demand Progress Education Fund
The Freedom BLOC
Institute for Local Self-Reliance
Jobs with Justice
Other 98%
Project Blueprint
People's Parity Project
Revolving Door Project
X-Lab

⁷ <https://www.law.com/nationallawjournal/2021/02/25/compensation-snapshot-omelvenys-lisa-monaco-biden-pick-for-deputy-attorney-general/>

⁸ <https://apnews.com/article/justice-official-demers-resigning-secretly-seized-records-e9fd00c31fc53f827a8921f551b4008e>