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## Forewarned is forearmed: Prepare now for increased congressional oversight

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Senator Amy Klobuchar, the new chair of the Senate Antitrust Subcommittee, has announced that the Subcommittee will actively oversee the federal antitrust agencies, and investigate a number of antitrust issues, including monopolies, that have been on her radar for years.

Klobuchar has backed several bills concerning mergers and acquisitions, and in 2019, Klobuchar, along with Senator Richard Blumenthal (D-CT), and co-sponsors Senator Dianne Feinstein (D-CA) and Ed Markey (D-MA), introduced the *Monopoly Deterrence Act*. The bill would have given the Department of Justice (DOJ) and the Federal Trade Commission (FTC) authority to seek new civil penalties for monopolization offenses under the antitrust laws. In support of the bill, Klobuchar stated that the current available civil remedy—an injunction—isn't sufficient to deter unlawful monopolistic conduct; dominant companies, she says, should be subject to serious financial penalties.

Klobuchar has even authored a soon-to-be published book about monopolies, which discusses not only tech giants, but industries such as health care, beer, and toothpaste. See *Senator Klobuchar to Write Antitrust Book*, by Elizabeth A. Harris, *New York Times*, January 11, 2021.

Last week in a speech, Klobuchar said that tech companies would not be the only target of future congressional antitrust reviews. She noted that many markets appear to be consolidating, and Senate attention could be focused on any of those markets, which, quoting John Oliver, she said, could include anything “from sunglasses to cat food.” Klobuchar’s stated goal is to use her new role as chair of the Senate Antitrust Subcommittee to organize oversight hearings and build a bipartisan agenda to take on markets that, in her view, were “allowed to fester” in recent decades.

Whether or not one agrees with Senator Klobuchar’s views and plans, it is time to be prepared. A congressional hearing may seek testimony and information not only from companies within Congress’ sights, but also from those companies’ suppliers, customers, and competitors. Companies in concentrated industries, or who deal with companies who are, should think now about what they will do if contacted by a congressional committee. Surprisingly to some, congressional hearings can move fast. In fact, once invitation letters or subpoenas go out, staffers may start trying to set dates for testimony right away, and companies may not have the luxury to spend months

getting ready. Consulting with experienced counsel who can guide companies through the congressional thicket, which is not the same as navigating other investigations or litigation, may save much time and angst later.

Now is also a good time for companies who may be the targets of antitrust-focused congressional hearings to take steps to make sure that their antitrust house is in order, including conducting internal compliance reviews and antitrust training of employees.

In sum, given the explicit increased interest in antitrust under the new congressional regime, it is not too early for companies to start thinking about what they will do in the event they are a target of, or a witness in, a congressional antitrust hearing. With some thoughtful planning and preemptive actions, companies will be well positioned to respond.

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