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ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 19, 2019

Mr. Pat Cipollone
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Makan Delrahim
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Cipollone and Assistant Attorney General Delrahim:

The House Judiciary Committee is examining allegations of obstruction of justice, public corruption, and other abuses of power by the President. We write to obtain information regarding President Trump's latest apparent attempt to deploy the Justice Department's legal antitrust authority for partisan political purposes—in this case against the State of California and automakers with which it has reached an emissions agreement. The Department's dedication of resources to obstruct California's and these automakers' efforts to protect the environment appears to be yet another example of the Administration's weaponization of the antitrust laws for political purposes.¹ The potential abuse of the Department of Justice's enforcement authorities to target perceived political adversaries of the President are of significant interest to the Committee.

According to recent reports, the Justice Department initiated an antitrust investigation into the four automakers that reached an agreement with California on the state's heightened limits for greenhouse-gas vehicle emissions—Ford Motor Co., Volkswagen AG, BMW AG, and

¹ See, e.g., Letter from Reps. Jerrold Nadler (D-NY), David N. Cicilline (D-RI), Elijah E. Cummings (D-MD), and Gerald E. Connolly (D-VA) to the Honorable Jeff Sessions, Attorney General, U.S. Dep't of Justice (May 15, 2018). See also Letter from Sen. Amy Klobuchar (D-MN), Ranking Member, Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary, and Rep. David N. Cicilline (D-RI), Ranking Member, Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, to the Honorable Makan Delrahim, Assistant Attorney General, U.S. Dep't of Justice (May 9, 2018).

emissions standards than those supported by the Administration. This decision by the Department comes only a few weeks after it was reported that President Trump was “enraged by California’s deal”³ and after President Trump attacked publicly the State of California and the automakers on social media.⁴ In a further possible abuse of executive power, the President announced this week that he is revoking California’s decades-old authority to set more aggressive emissions standards than those issued by the federal government.⁵

We are concerned the Department’s investigation is no more than a pretextual attack by the Trump Administration on the four automakers’ legitimate use of the governmental process. As Assistant Attorney General Delrahim acknowledged before the Senate Judiciary Committee this week, the Department cannot point to any evidence of an anticompetitive agreement in support of its investigation.⁶ On this point he testified, “I have nothing, that’s the purpose of an investigation.”⁷

Importantly, in the 1960s, the Supreme Court struck a balance between the interests of antitrust law and the First Amendment right to free speech.⁸ The Supreme Court’s *Noerr-Pennington* doctrine provides a limited antitrust exemption for companies, even competitors, to jointly petition or urge government action. According to reports, it appears that the four automakers were engaged in just this type of protected activity. Conversely, according to reports, the President’s personal grievances remain the primary driving force for the Administration’s decisions related to the State of California:

Mr. Trump went so far as to propose scrapping his own rollback plan and keeping the Obama regulations, while still revoking California’s legal authority to set its own standards, according to the three people familiar with the meeting. The

³ Coral Davenport & Hiroko Tabuchi, *Trump’s Rollback of Auto Pollution Rules Shows Signs of Disarray*, N.Y. TIMES, Aug. 20, 2019.

⁴ Donald J. Trump (@realdonaldtrump), TWITTER (Aug. 21, 2019, 4:01 PM), <https://twitter.com/realDonaldTrump/status/1164311594081247233> (“Henry Ford would be very disappointed if he saw his modern-day descendants wanting to build a much more expensive car, that is far less safe and doesn’t work as well, because execs don’t want to fight California regulators. Car companies should know that when this Administration’s alternative is no longer available, California will squeeze them to a point of business ruin. Only reason California is now talking to them is because the Feds are giving a far better alternative, which is much better for consumers!”); Donald J. Trump (@realdonaldtrump), TWITTER (Aug. 21, 2019, 6:38 AM), <https://twitter.com/realDonaldTrump/status/1164169890917433346> (“My proposal to the politically correct Automobile Companies would lower the average price of a car to consumers by more than \$3000, while at the same time making the cars substantially safer. Engines would run smoother. Very little impact on the environment! Foolish executives!”).

⁵ Associated Press, *Trump Says California Can’t Set Car Emissions Standards*, LOS ANGELES TIMES, Sept. 18, 2019.

⁶ *Oversight of the Enforcement of the Antitrust Laws: Hearing before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 116th Cong. (Sept. 17, 2019) (response to questions of Sen. Sheldon Whitehouse (D-RI)).

⁷ *Id.*

⁸ *E. R.R. Presidents’ Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965) (collectively comprising the *Noerr-Pennington* doctrine).

president framed it as a way to retaliate against both California and the four automakers in California's camp, those people said.⁹

As we have previously made clear, any political abuse of the Department's antitrust enforcement power is unacceptable.¹⁰ Antitrust enforcement must be conducted in accordance with the rule of law, never wielded as a political weapon to retaliate against perceived political enemies of the President. This is particularly shocking where it appears that a state representing approximately 40 million people and a set of important individual companies are being targeted for simply participating in the political process.

To date, the Justice Department's responses to concerns about political interference with the Department's antitrust law enforcement activities have been insufficient, untimely, and incomplete. For example, requests for documents and information about allegations that President Trump improperly interfered with the Department's review of AT&T's acquisition of Time Warner were included in a series of letters, beginning in February 2018,¹¹ but the Department did not respond until a year and a half later on July 5, 2019.¹² Furthermore, it appears that key documents were inappropriately withheld or heavily redacted on the basis of executive privilege.

In its July 2019 response, the Justice Department stated that "each antitrust decision must be made on the merits based on the law and the available facts and evidence, and the Department shares [our] view that politics has no place in such a determination."¹³ Last year, in a May 2018 response, the Department stated that it is "committed to ensuring" that "political considerations

⁹ Coral Davenport & Hiroko Tabuchi, *Trump's Rollback of Auto Pollution Rules Shows Signs of Disarray*, N.Y. TIMES, Aug. 20, 2019.

¹⁰ See, e.g., Letter from Reps. Jerrold Nadler (D-NY) and David N. Cicilline (D-RI) to the Honorable Makan Delrahim, Assistant Attorney General, U.S. Dep't of Justice (Mar. 7, 2019); Letter from Reps. Jerrold Nadler (D-NY), David N. Cicilline (D-RI), Elijah E. Cummings (D-MD), and Gerald E. Connolly (D-VA) to the Honorable Jeff Sessions, Attorney General, U.S. Dep't of Justice (May 15, 2018); *Oversight of the Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 135 (2017) (questions of Rep. David N. Cicilline (D-RI), Ranking Member, Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary).

¹¹ Letter from Reps. Jerrold Nadler (D-NY) and David N. Cicilline (D-RI) to the Honorable Makan Delrahim, Assistant Attorney General, U.S. Dep't of Justice (June 21, 2019); Letter from Reps. Jerrold Nadler (D-NY) and David N. Cicilline (D-RI) to the Honorable Makan Delrahim, Assistant Attorney General, U.S. Dep't of Justice (Mar. 7, 2019); Letter from Reps. Jerrold Nadler (D-NY), David N. Cicilline (D-RI), Elijah E. Cummings (D-MD), and Gerald E. Connolly (D-VA) to the Honorable Jeff Sessions, Attorney General, U.S. Dep't of Justice (May 15, 2018); Letter from Sen. Amy Klobuchar (D-MN), Ranking Member, Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary, and Rep. David N. Cicilline (D-RI), Ranking Member, Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, to the Honorable Makan Delrahim, Assistant Attorney General, U.S. Dep't of Justice (May 9, 2018); Letter from Reps. Jerrold Nadler (D-NY), David N. Cicilline (D-RI), Elijah E. Cummings (D-MD), and Gerald E. Connolly (D-VA) to the Honorable Jeff Sessions, Attorney General, U.S. Dep't of Justice (Feb. 8, 2018).

¹² Response Letter from the Honorable Stephen E. Boyd, Assistant Attorney General, to Reps. Jerrold Nadler (D-NY), Chairman, H. Comm. on the Judiciary, and David N. Cicilline (D-RI), Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary (Jul. 5, 2019).

¹³ *Id.*

do not influence the handling of particular investigations or cases,” and that “all investigations conducted by the Antitrust Division are initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations.”¹⁴ And only this week, Assistant Attorney General Delrahim again claimed within the context of the automakers investigation that “I am not doing this for political reasons.”¹⁵ We are extremely disturbed that the Justice Department’s rhetoric does not appear to match up with reality. Even the appearance of White House interference in antitrust law enforcement matters undermines public trust in the Department of Justice’s integrity and calls into question meritorious enforcement by the Antitrust Division. The fact of actual interference would of course constitute a serious abuse of power.

In light of these recent reports, we request you provide more responsive answers to our earlier letters referenced in footnote 11 and provide responses to the following questions and document requests no later than October 2, 2019.¹⁶

1. Documents and communications between President Trump or officials or employees of the Executive Office of the President and the Department of Justice relating to the Department of Justice’s investigation into alleged antitrust violations by Ford Motor Co., Honda Motor Co., BMW AG, Volkswagen AG, and any other entity, in connection with an agreement to follow California auto emissions standards (the “Investigation”).
2. Documents and communications relating to President Trump, the Office of Attorney General, or the Executive Office of the President’s involvement in the Investigation, including but not limited to the decision to initiate the Investigation in the first place.
3. Documents and communications relating to any communications by the President concerning Ford Motor Co., Honda Motor Co., BMW AG, and Volkswagen AG’s agreement to follow California auto emissions standards.
4. Documents and communications relating to the President’s dispute or disagreement with the State of California’s position on the auto emissions standards.
5. Please identify the number of attorneys and number of attorney hours that the Antitrust Division has devoted to the Investigation from the date the Investigation was initiated to the present.

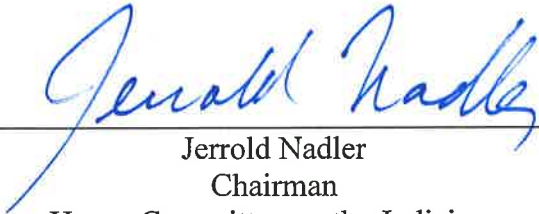
¹⁴ Response Letter from Stephen E. Boyd, Assistant Attorney General, to Sen. Amy Klobuchar (D-MN), Ranking Member, Subcomm. Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary, and Rep. David N. Cicilline (D-RI), Ranking Member, Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary (May 30, 2018).

¹⁵ *Oversight of the Enforcement of the Antitrust Laws: Hearing before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 116th Cong. (Sept. 17, 2019).

¹⁶ In keeping with precedent and practice established in the 115th Congress, we assume you will not assert deliberative process privilege for relevant Department documents and communications, and those responsive materials will be provided to the Committee. *See* Department of Justice’s Document Production in Response to the Joint Judiciary Committee and Oversight & Government Reform Committee’s Investigation into the FBI’s Actions During the 2016 Election (115th Cong.). *See also* Subpoena from the H. Comm. on the Judiciary to the Honorable Rod J. Rosenstein, Deputy Attorney General, U.S. Dep’t of Justice (Mar. 22, 2018).

Thank you for your prompt attention to this request.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



David N. Cicilline
Chairman
House Subcommittee on Antitrust,
Commercial and Administrative Law

cc: The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary

The Honorable James F. Sensenbrenner, Jr., Ranking Member, House Subcommittee on
Antitrust, Commercial and Administrative Law