

Statement of
The Honorable Herb Kohl

United States Senator
Wisconsin
March 7, 2007

Good afternoon. Today's hearing marks the first time in more than four years that we have held an oversight hearing to examine the enforcement of our nation's antitrust laws. Today we will hear from Assistant Attorney General Barnett and FTC Chairman Majoras - both able and talented public servants. We particularly commend Chairman Majoras for her leadership and her efforts to bring more competition to the prescription drug market.

However, we are very concerned with the direction that the Antitrust Division has taken under this Administration. With the exception of criminal enforcement, there is an alarming decline in the Division's antitrust enforcement efforts across the board, particularly with respect to mergers. Compared to the last four years of the Clinton administration, the number of merger investigations initiated by the Justice Department in the most recent four years has declined by nearly 60 %, and the numbers of mergers challenged has declined by 75 %.

These aren't just statistics, these are real cases affecting consumers in many sectors of the economy. Whether it is the Whirlpool/Maytag deal, AT&T's acquisition of Bell South, or anti-competitive conduct in agriculture, the division has simply not done enough to protect consumers. As a result of this permissive, hands-off approach, the Division is encouraging even more consolidation, including companies who have lost their attempts to merge to try again in this environment. To quote the New York Times, merger policy [QUOTE] "often appears to be little more than 'anything goes.'" It is hard for us to disagree.

While all of these issues are worthy of significant attention, the most important antitrust issue for me and my constituents this year is AirTran's bid to acquire Midwest Airlines in a hostile takeover. As you know, Midwest Airlines is a true success story. Midwest Airlines is a unique company in the airline industry - an airline that offers the highest quality of service, and is actually beloved by its customers. Midwest Airlines has been recognized as the best domestic airline more than 45 times in the past 17 years by a variety of industry surveys. Beyond this, Midwest Airlines is vital to the economy of Wisconsin and the Greater Milwaukee area. It offers direct service to 36 key business centers everyday from its hub in Milwaukee. Should AirTran acquire Midwest Airlines and decide in the future to reduce service from Milwaukee, the negative consequences for the Wisconsin economy would be enormous.

Unfortunately, the business model of AirTran is very different than Midwest Airlines. It is a no frills, discount airline with low ratings for quality and customer service in industry ratings. No one doubts that the quality of Midwest's stellar service offered to consumers will suffer should AirTran complete this acquisition. Even more worrisome is AirTran's history of promising high levels of service when entering new markets and then abruptly breaking these promises and

sharply reducing service. Dallas/Fort Worth, Washington Dulles and Pittsburgh are just three examples of cities in which AirTran has sharply reduced service in recent years contrary to optimistic promises made just a few years earlier. In sum, an acquisition of Midwest Airlines by AirTran would likely cause a substantial injury to consumers - specifically the many thousands of travelers and businesses throughout Wisconsin and around the nation who rely on Midwest Airlines for reliable, high quality, and competitively priced air travel.

I was therefore very disappointed and surprised to learn that the Justice Department recently closed its investigation of the AirTran/Midwest deal after only a cursory review lasting fewer than 30 days. Despite the obvious dangers of this acquisition in terms of frequency of service and quality of service for the many thousands of Midwest Airlines customers, your division did not initiate the full "Second Request" investigation that most in the industry expected. I cannot understand how the Justice Department could conclude after such a cursory review that this deal would pose no risks to competition and consumers. Mr. Barnett, I will ask you about this very important deal and for a commitment to reopen this investigation to examine its impact to consumers and businesses in Wisconsin.

So, we will discuss this essential issue and if time permits others including: consolidation in the oil and gas industry; reverse payments in the pharmaceutical industry; mergers and investigations in the agriculture sector; the interpretation of the Tunney Act, among many others. We will be monitoring your agencies carefully, Mr. Barnett and Chairman Majoras, with respect to these and other issues as you carry out your vital responsibilities on behalf of American consumers.