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Antitrust Chief to Step Down

By THOMAS CATAN AND GINA CHON

Christine Varney, the assistant attorney general who spearheaded the Obama administration's drive to reinvigorate antitrust enforcement, plans to step down next month to join the law firm Cravath, Swaine & Moore LLP.

Her departure, after two years in the post, deprives the administration of an antitrust chief widely viewed as tough and politically savvy when the Justice Department is conducting several high-profile merger reviews, including AT&T Inc.'s \$39 billion purchase of T-Mobile USA from Deutsche Telekom AG.

A successor hasn't been identified and people familiar with the matter said an interim antitrust chief would likely be picked from inside the department. The White House has been seeking to soften its anti-business image without alienating its core supporters, so it may seek a pragmatist in Ms. Varney's mold.

As a Cravath partner, Ms. Varney will work on antitrust issues related to mergers and acquisitions. Her hiring is a rare move for the prestigious New York firm, which almost never recruits partners from the outside.

When Ms. Varney took her post in April 2009, she vowed to clamp down on anticompetitive practices, following what she suggested was a period of lax enforcement.

"I came in with President Obama committed to fulfilling his promise to reinvigorate antitrust law, and I think we've done that," Ms. Varney said in an interview Wednesday. "It's the right time to move on."

As one of her first acts in office, Ms. Varney tore up a set of guidelines drafted by the Justice Department under President George W. Bush that significantly raised the bar for challenging alleged monopolistic behavior by companies.

In practice, Ms. Varney sought a middle road between those who wanted the Justice Department to challenge more deals as anticompetitive and those who said the market should be left largely to its own devices.

Some proponents of more aggressive antitrust enforcement were disappointed that the Justice Department allowed some deals they saw as anticompetitive, such as Ticketmaster Entertainment Inc.'s merger with Live Nation Inc. and Comcast Corp.'s purchase of NBC Universal from General Electric Co.

From the other side, Ms. Varney faced criticism that the remedies she fashioned in those cases and others—effectively having the government monitor a company's behavior for a lengthy period after an acquisition—threatened to turn the Justice Department into a regulator from a law-enforcement agency.

Ms. Varney held that, in some "vertical" mergers between

companies that aren't direct competitors, it sometimes is better to specifically address threats to competition than to simply block a deal outright.

"I don't think that these are binary choices," she said. If the Justice Department can come up with a remedy that addresses its competitive concerns whilst recognizing the economic efficiencies of a deal, she said, "I think that's a good thing for the economy."

Her new approach was spelled out last month in a revision to guidelines on remedies to anticompetitive deals.

The earlier guidelines, issued in 2004, held that "structural" remedies—such as selling off an overlapping business asset or blocking a deal outright—were almost always preferable to "conduct" remedies that spelled out what behavior the companies could engage in.

Under her tenure, the Justice Department blocked several "horizontal" mergers between direct competitors.

In May, Nasdaq OMX Group Inc. abandoned its bid to buy NYSE Euronext after the Justice Department threatened a court challenge.

The Justice Department also challenged several smaller deals, including H&R Block Inc.'s purchase of TaxACT and VeriFone Systems Inc.'s proposed purchase of rival electronic-payment provider Hypercom Corp.

But she approved some deals unconditionally, including Oracle Corp.'s purchase of Sun

Microsystems Inc. and Microsoft Corp.'s advertising agreement with Yahoo Inc.

Despite her tough rhetoric about challenging monopolistic abuses by companies, during her tenure the Justice Department mounted just one challenge under the relevant statute, Section 2 of the Sherman Antitrust Act.

Comments Ms. Varney made before her appointment led many to believe that she would bring a broad antitrust case against Google Inc. She ceded jurisdiction over that matter to the Federal Trade Commission.

Last month, the FTC issued Google with civil subpoenas as part of a broad antitrust investigation into whether the Internet search giant has abused its dominance of the Web.

Before joining the Justice Department, Ms. Varney worked at Hogan & Hartson (now called Hogan Lovells), where she represented Internet browser pioneer Netscape in its lengthy antitrust battle with Microsoft. She was an FTC Commissioner for five years and, before that, the White House Secretary to the Cabinet under President Clinton.

Ms. Varney is expected to leave on Aug. 5. Ms. Varney is the latest in a string of senior officials to leave the Justice Department's antitrust division during the past year.

At Cravath she likely will have to refrain from working on matters that she handled while she was at the Justice Department.