

HP spying scandal back in the spotlight

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Kevin Allison

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The boardroom spying scandal at Hewlett-Packard is set to retake centre stage on Thursday as the controversy's chief protagonists appear before lawmakers in Washington. For Mark Hurd, chief executive, questions from members of the House Committee on Energy and Commerce come at a sensitive time. Last week, Mr Hurd announced that he had assumed the role of chairman following the resignation of Patricia Dunn from the board of the world's second-biggest computer group. The move, which came as Mr Hurd and his lawyers confirmed a laundry list of shady dealings by investigators hired on Ms Dunn's watch, marked an attempt to regain control of a situation rapidly spiralling out of control. While Mr Hurd's response has drawn plaudits from those who say the turmoil on the company's board left him no other choice but to assume the role of chairman, governance experts say difficult questions remain about HP's future and Mr Hurd's. "The thing that's going to be interesting is if the stories between the board members that resigned and people that are still there don't line up," says David Larcker, a professor at Stanford's Graduate School of Business. Although it remained unclear on Wednesday whether Mr Hurd, Ms Dunn, or others would be asked to testify under oath, Mr Hurd in particular is likely to face tough questions from lawmakers eager to score political points in an election year. "To the extent that Ms Dunn was held responsible one might want to ask the same questions of Mr Hurd," says Charles Elson, head of the Weinberg Center for Corporate Governance at the University of Delaware.

"I don't know if there's much difference between Ms Dunn's role and Mark Hurd's. It's ironic that she was not only dismissed as chair but dismissed from the board while Mr Hurd has been elevated and given additional [responsibilities]."

For the time being, those who say Mr Hurd should step down appear to be in the minority. Most industry watchers say Mr Hurd deserves a shot at setting things right, in spite of his admission that he approved a "sting" operation against a journalist suspected of receiving leaked details of boardroom discussions. That operation was among the least controversial to have been reported in the HP scandal, which involved the allegedly fraudulent acquisition of telephone records, physical surveillance of board members, journalists and their families. There are also allegations of discussions concerning planting spies in the offices of the Wall Street Journal and Cnet. "If the question is should Mark Hurd resign, the answer is no, unless there is some new smoking gun," says Richard Koppes, former general counsel at Calpers, the biggest US pension fund, and a partner at Jones Day.

The loss of Mr Hurd would come as a blow to HP, which has seen several quarters of stronger-

than-expected results since he took charge following the ousting of Carly Fiorina last year. Lucian Bebchuk, a professor at Harvard Law School, says efforts to clear the air have been complicated by Mr Hurd's decision to engage Morgan Lewis, attorneys, to lead an investigation into the scandal. Mr Hurd surprised observers last week when he announced that the firm's investigation had been reporting to him, rather than to the HP board. Prof Bebchuk says that Mr Hurd's decision to have the investigation report to him when the questions remain about the extent of his involvement in the scandal presented a conflict of interest, even if he felt he had no choice in the face of a dysfunctional board.

"With Pattie Dunn having left, [Mr Hurd] is the person at the top of the hierarchy," says Prof Bebchuk. "Some questions have been raised about his involvement and not fully answered. It's not the right way to go about it from a corporate governance perspective." Once the immediate crisis subsides, Mr Hurd's foremost challenge will be to rebuild a board that has been fractured by press leaks on the one hand and an out-of-control investigation on the other.

"What he is going to need to do is decide who the chairman of the corporate governance and nominating committee is going to be. That's going to be a key person for him," says Mr Koppes at Jones Day. Gary Lutin, head of Lutin and Co, an investment bank, says only a dramatically malfunctioning board could have resulted in the intrigue that prompted the crisis at HP. David Nygren, a consultant at Mercer Delta who works on governance issues for companies including HP, says the board's first order of business should be to agree to new standards of conduct that respect the confidentiality of boardroom discussions. "The board should commit to clear and compelling norms that guide board behaviour," he says. "If there is no commitment to confidentiality it is unlikely that Mark Hurd will trust the board."

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