

Senate Committee Approves Nomination of Julie Brill and Edith Ramirez to the FTC

January 26, 2010

On December 17, 2009, the Senate Committee on Commerce, Science, and Transportation approved President Obama's nominees to the Federal Trade Commission (FTC or Commission), Julie Brill and Edith Ramirez. If confirmed, each would serve a seven-year term on the five-member commission. Brill and Ramirez will replace former Chair Deborah Platt Majoras, who stepped down in March 2008, and Commissioner Pamela Jones Harbour, whose term ended in September 2009. Current Chairman Jon Leibowitz, a Democrat, and Republicans William Kovacic and Thomas Rosch round out the Commission. If Ms. Brill and Ms. Ramirez are confirmed by the Senate, the Commission's new political composition would give Chairman Leibowitz a working Democratic majority for the first time since he became chairman on March 2, 2009.

Both new nominees would make unique contributions to the Commission's mix of expertise. Julie Brill is a nationally recognized privacy and consumer protection expert. Since February 2009, she has been the Senior Deputy Attorney General and Chief of Consumer Protection and Antitrust for the North Carolina Department of Justice. She is also currently a Lecturer in Law at Columbia Law School. Previously, Ms. Brill served as Assistant Attorney General for Consumer Protection and Antitrust for the State of Vermont for more than 20 years (1988–2009). She has also served as vice chair of the Consumer Protection Committee of the American Bar Association's Section of Antitrust Law since 2004.

Edith Ramirez is a partner in the Los Angeles office of Quinn Emanuel. She is an expert in complex business litigation matters, including copyright and trademark infringement and antitrust and unfair competition claims. She served as a deputy political director in California and director of Latino outreach for the Obama presidential campaign.

Ms. Brill and Ms. Ramirez's expertise in state enforcement and intellectual property, respectively, is likely to influence the future focus of FTC activity. It is fair to assume that there will be more joint state-federal investigations with Ms. Brill as an FTC Commissioner. Ms. Brill already has experience in this area, as she represented Vermont in its joint 2008 antitrust challenge with the Department of Justice (DOJ) against the Verizon/Rural Cellular merger. Ms. Brill was also listed as an amicus in Vermont's support of DOJ's successful judgment on appeal against Visa and MasterCard in 2003. In that case, the Second Circuit affirmed the district court's holding that Visa U.S.A.'s and MasterCard's exclusionary rules violated the Sherman Act.

It is also possible that with Ms. Ramirez on board, the FTC will further increase the level of scrutiny

given to merger-related activities and privacy protection issues. During Ms. Ramirez’s confirmation hearing before the Senate Committee on Commerce, Science, and Transportation, she noted:

Now, in these difficult economic times, the need to be vigilant and aggressive in protecting American consumers is especially pressing. The Commission’s duty to combat deceptive and unfair business practices and to foster competition has never been greater, particularly in the areas that have the greatest impact on the daily lives of ordinary Americans such as financial services, healthcare, energy, and technology.

Her stated views are in line with President Obama’s pledge during his 2008 campaign to “reinvigorate antitrust enforcement” and “step up review of merger activity.”

In her own statement to the Senate Committee, Ms. Brill noted that if confirmed, her top priority will be to focus on “economic scams that have been so pernicious to consumers during the economic crisis. There are issues like get rich quick scams, foreclosure rescue and assistance scams, bogus government grant schemes, debt settlement scams, credit repair scams, and unscrupulous debt collection practices.” In addition, in her role in Vermont’s AG’s office, Ms. Brill was a strong advocate for closer regulation of Pharmacy Benefit Managers (PBMs) and drug-company marketing. She led a coalition of 30 state attorneys general in a series of federal and state cases against PBMs for deceptive practices that ultimately led to large fines. She also helped draft a Vermont law that provided transparency in health-plan contracts with PBMs, and she is a strong advocate for patient privacy. Ms. Brill was co-leader on the state attorneys general consumer protection investigation of the off-label use of Neurontin, which resulted in a 50-state settlement agreement in 2004. It remains to be seen whether Ms. Brill will influence the FTC to take a new approach to regulating and reviewing PBM conduct and mergers. This may be even more relevant given the current healthcare debate and the increasing concern of both the federal government and state governments about rising healthcare costs.

Ms. Brill’s and Ms. Ramirez’s appointments are now subject to a vote by the full Senate.

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