



ANALYSIS-Some fear overly aggressive US FTC after new blood

By Diane Bartz
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WASHINGTON, Oct 9 (Reuters) - The U.S. Federal Trade Commission is on the verge of getting an overhaul at a time when the antitrust community is already worried that the agency is overreaching by dipping into small mergers and aggressive consumer protection enforcement.

President Barack Obama is widely expected to nominate Washington outsiders Julie Brill and Edith Ramirez, both Democrats, to round out the commission. They would replace Republican Deborah Majoras, who stepped down in March 2008, and independent Pamela Jones Harbour, whose term ended last month.

Brill, North Carolina's top consumer watchdog, and Ramirez, who has represented corporations like Mattel Inc and Northrop Grumman Corp, will be joining an organization that works to keep advertisers honest and consumers from having their identities stolen by scam artists of all stripes.

The FTC also divides the work of enforcing antitrust law with the U.S. Justice Department. The FTC is assessing proposed pharmaceutical mega-mergers between Wyeth and Pfizer Inc, as well as between Schering-Plough Corp and Merck & Co. The commission is also looking in to whether Intel Corp cut prices for buyers who refused to do business with rival Advanced Micro Devices.

The FTC recently surprised the antitrust world by deciding to investigate a 2008 merger in which Carilion Clinic, a Virginia-based healthcare company, bought two Roanoke outpatient clinics. The company agreed to sell them again.

There is concern among some in the antitrust community that the two likely FTC nominees will do little to rein in an increasingly aggressive five-member commission.

If nominated, Brill and Ramirez would have to be confirmed by the U.S. Senate. Both women declined comment.

"Neither of them (Brill and Ramirez) is going to be an antitrust heavyweight," said one lawyer, who described the agency as "spinning out of control."

The FTC maintained a relatively business-friendly approach during the eight years of the Bush administration. The new FTC chairman, Jon Leibowitz, is a Democrat who promised more aggressive enforcement. The other two commissioners are moderate Republicans Thomas Rosch and William Kovacic.

A former enforcer in private practice said he was "astounded" by some FTC actions.

"I'm a die-hard believer personally in DOJ and FTC enforcement, but I do wonder whether the matters I've seen lately are more about grabbing headlines and looking active at the expense of well-reasoned enforcement," said the former enforcer, speaking on condition of anonymity so as to not jeopardize clients.

The decision to move against Carilion did not surprise David Wales, a former FTC competition director.

"(Carilion) had very high market shares," Wales said, noting that the number of FTC staffers does not drop when merger activity slows because of the struggling economy. "You have a bit of excessive capacity that's looking for work."

Lauren Albert of Axinn Veltrop and Harkrider LLP agreed.

"I know the people they've brought in and they're very active and sophisticated antitrust lawyers," she said. "I expect to see more activity. I don't mean that's a bad thing."

NEW TO WASHINGTON

The best-known of the two likely nominees is Brill, a privacy and consumer protection expert in the North Carolina attorney general's office.

One of those who sings Brill's praises is the FTC new chairman, Leibowitz. "(She) is the most accomplished graduate of NYU law school's class of 1984 in the room today," Leibowitz told a state attorneys general event at Columbia Law School on Wednesday. Leibowitz, he notes, was also in that class.

Brill, an avid cross-country skier and bicyclist, would make a solid FTC commissioner, said David Turetsky of law firm Dewey and LeBoeuf.

"She's very well known for her activities in consumer enforcement," he said. "She'll be an energetic force in the FTC in pursuing the consumer side of the agenda."

Ramirez, however, is a virtual unknown in the Washington antitrust world.

Ramirez worked for The Harvard Law Review in 1990 at the same time Obama was the first black president of the review. She later worked on Obama's campaign as Latino outreach director in California. Ramirez is a partner at law firm Quinn Emanuel LLP.

"She's extremely smart, (an) easy-going, genuinely nice person," said Chris Cole of Manatt, Phelps and Philips LLP.

Does she have any hobbies? Cole hesitated, then said: "She's a hard worker. They put in a lot of hours at her firm."