

# Happy Birthday? FTC Commissioners Testify Before House Subcommittee as Commission Turns 100

December 4, 2013

Yesterday morning, the House Energy & Commerce Committee's Subcommittee on Commerce, Manufacturing, and Trade held a hearing, "The FTC at 100: Where Do We Go From Here?" The Subcommittee, chaired by Rep. Lee Terry (R-NE), questioned the four FTC Commissioners – Chairwoman Ramirez and Commissioners Brill, Ohlhausen, and Wright – about the FTC's role protecting consumers, focusing in particular on consumer privacy. At the end of the hearing, Rep. Terry noted that an impressive 22 representatives were present for the hearing.

The Commissioners' testimony described factors that have contributed to the FTC's success in recent years, such as the Bureau of Economics' collection and analysis of data that allows for targeted enforcement. These data keep the agency attuned to fraud trends and have shifted its focus towards scams targeting vulnerable populations like seniors and military service members and their families. Additionally, the Commission's practice of analyzing the impact of its regulations to ensure that they remain cost-effective has resulted in the rescission of 13 trade rules over the last two decades, reducing the regulatory burden on industry. Rep. Marsha Blackburn (R-TN) noted, however, that it has been almost two years since the FTC first released its request for comments on the Magnuson-Moss Warranty Act Rule review, and the Commission has taken no public action since. When asked about the review's anticipated timeline, Chairwoman Ramirez stated that the agency anticipates completing the review in the upcoming year. While Rep. Terry expressed concern that the Consumer Financial Protection Bureau might be duplicating the FTC's efforts, Chairwoman Ramirez stated that she had seen no duplication and that the agencies have an agreement to implement a process to ensure that they collaborate effectively and efficiently and without duplication.

The Commissioners responded to many questions about consumer privacy, touting the 47 data security cases and 40 privacy cases the Commission has filed in the last 10 years. They reiterated the agency's belief that, as articulated in the March 2012 Privacy Report, companies should: (1) think about and incorporate "privacy by design" as they develop a program, service, or app; (2) provide simplified notice and choice; and (3) be open and transparent about how they collect and use personal information. Chairwoman Ramirez and Commissioner Brill noted, however, that baseline privacy legislation is necessary. Currently, the FTC can only enforce a company's adherence to its privacy policy, but it cannot evaluate whether a company's practices are harmful to consumers, or even require that the company have a privacy policy. Noting additional limitations to the FTC's enforcement authority, Commissioner Ohlhausen lamented the current exemption for communications common carriers, testifying that the exemption frustrates effective consumer protection with respect to privacy and data security and, in particular, the privacy issues raised by the use of new technology.

Chairwoman Ramirez also asserted that consumers need more control over data collected online. As articulated in the Privacy Report, the FTC prefers that companies require consumers to opt in to the collection of sensitive data, such as health information. Furthermore, the Commissioners stated that they support the goals of legislation introduced by Rep. Joe Barton (R-TX) that would strengthen privacy protections for children and teenagers online through, for example, the use of an “eraser button.” However, none of the Commissioners was willing to endorse the bill or call for revisions to the Children’s Online Privacy Protection Act (“COPPA”) Rule. Finally, in response to questioning from Rep. John Dingell (D-MI), Chairwoman Ramirez stated that consumers would benefit from a uniform federal data breach notification law, enforceable by the FTC and state attorneys general, that would require both consumer and credit reporting agency notification.

Our team will continue to track these issues as they develop.