

July-August 2010

Interview with FTC Commissioner Edith Ramirez



Edith Ramirez was sworn in as a Commissioner at the FTC on April 5, 2010, to a term that expires on September 25, 2015. She holds both her law and her undergraduate degree from Harvard University, and she joins the FTC from a career as a litigation partner at

[Quinn Emanuel Urquhart & Sullivan, LLP](#) in Los Angeles. A brief bio is available on the FTC's Commissioners [page](#). The Federal Civil Enforcement Committee caught up with Commissioner Ramirez in August for a brief interview.

Federal Civil Enforcement Committee: *Congratulations on your appointment as an FTC Commissioner. You have arrived in Washington after a long career in private practice, with a focus on litigation. You also have some public service experience. Can you tell us about your priorities and goals at the FTC, and the degree to which your background informs your plans for your time at the Commission?*

Commissioner Edith Ramirez: I am delighted to be serving as an FTC Commissioner, and I appreciate this opportunity to share some details about my initial plans for my term.

My litigation background unquestionably informs my approach to this position. As a Commissioner, my job is to make informed decisions, which means I will always strive to become familiar with as much of the factual record as possible. Likewise, it is important

that I hear all opposing viewpoints and theories – from within as well as outside the Commission – to help me identify potential weaknesses and unresolved questions, and to independently evaluate staff's recommendation. Even in my short time at the Commission, I have developed a great deal of faith in our talented staff of lawyers and economists. But I nevertheless believe it is my responsibility to approach every recommendation with a fresh eye, based on all of the information available to me.

I am also very interested in matters of litigation strategy. I spent most of my career at a firm devoted solely to litigation that had a distinct trial focus. Our strategy was to develop each case in a way that would best position it for trial. Our willingness to try cases often led to successful resolution via summary judgment or settlement, but no matter how a case progressed, our strongest leverage always came from our thorough trial readiness. I believe a similar approach best preserves the Commission's options, whether or not we ultimately decide to vote out an enforcement action and send staff to court.

Because of my background, I also take a practical approach to the matters that come before me as a Commissioner, especially with respect to target selection and remedies. In the private sector, clients are rightly focused on whether their lawyers' efforts lead to tangible results. Given the agency's limited resources, the agency's target selection process should be informed by consideration of likely outcomes. Particularly on the consumer protection side, where there is an overabundance of fraud to fight, I want to cast my vote in favor of an enforcement action confident that we have selected the best possible target, based on the information available to us. Likewise, it is critical that,

from the outset of any case, we pay close attention to the relief we might seek and the likelihood of obtaining it.

While my practice spanned a wide variety of complex commercial litigation, I focused on intellectual property litigation and am particularly interested in issues involving IP and technology. I will continue to pursue those interests in the context of competition and consumer protection. For example, I plan to be involved in the FTC's work on issues relating to the intersection of patent and competition policy, and its implications for promoting innovation. Technology is also central to a great deal of the agency's work on the consumer protection front, and those matters are of particular interest to me as well. Online privacy and data security are areas in which the FTC is playing a vital role as both a thought leader and a law enforcer. I intend to be especially involved in technology issues as they relate to the cross-border dimensions of privacy and data security.

Public service has also been an important part of my life for many years. I was deeply involved with the legal services community in Los Angeles, and those experiences influence my approach to the FTC's consumer protection mission. In addition, I served for nearly five years on the Board of Commissioners for the Los Angeles Department of Water and Power (LADWP), the nation's largest municipal utility. During my tenure, the LADWP Board oversaw a budget of more than \$4 billion and tackled an array of energy and water issues. Beyond the substantive areas of energy policy, my experience as a Commissioner on the LADWP Board has been invaluable as I have transitioned into my current role as a Commissioner of the FTC.

FCEC: *With your appointment and that of Commissioner [Julie Brill](#), the FTC has a full complement of Commissioners for the first time since Chairman Majoras resigned in 2008. How does having a full complement of five Commissioners affect the work of the FTC?*

Ramirez: I've only served on a five-person Commission (Commissioner Harbour was still in office on my first day), so I have no real basis for comparison. I will say, however, that I am enjoying getting to know my four fellow Commissioners and learning about their particular interests and talents. I was happy to see, from day one, the extent to which the Commissioners and all Commission staff operate within a culture of mutual respect. I appreciate everyone's collective effort to enable each Commissioner to remain true to his or her principles, while maintaining a framework that ensures each day's decisions are sound and the Commission's agenda keeps moving forward.

There is no doubt that with five Commissioners – each bringing his or her unique background and perspective to the table – our dialogue is that much richer and livelier. At times, of course, having five Commissioners with strongly-held views can make it challenging to forge a consensus. But I view the multi-member commission dynamic as an opportunity, rather than a hindrance. The need for a majority of votes typically drives an informed and highly substantive exploration of the important issues in any given matter, and I believe that process helps lead to a better outcome.

FCEC: *Is there any official or unofficial division of issues or supervisory tasks among the five Commissioners? For example, with your litigation background, do you expect to be closely involved in cases?*

Ramirez: There is no division of issues or work among Commissioners, but we all naturally gravitate to areas in which we have significant experience and particular interest. As a longtime litigator, I am especially interested in questions of litigation strategy and procedure as they are implicated in matters that come before the Commission. I understand very well the litigation demands faced by Commission staff when preparing a case. I realize that the staff handling a given

case are the most familiar with the evidence and are best suited to make day-to-day litigation decisions, with appropriate guidance and support from Commissioners. Among a litigator's greatest weapons is in-depth knowledge of the facts and documents, based on living with the case over an extended period of time. I do miss having that level of knowledge. But I am adjusting to a new and different role, and I hope that my involvement in the Commission's cases and initiatives will have an impact on Commission policy over time.

FCEC: *We note that the FTC recently has emphasized its consumer protection mission in America's growing Latino communities, and that you served as a Latino Outreach Director for President Obama's campaign in 2008. That seems like a perfect fit. Do you expect to be involved in particular initiatives with respect to Spanish-speaking consumers?*

Ramirez: Combating fraud against Spanish-speaking consumers has been a priority for the Commission since the FTC [launched](#) its Hispanic Law Enforcement Initiative in 2004. As a bilingual Mexican-American, I intend to be actively involved in FTC initiatives targeting non-English-speaking consumers, especially the large number of those who are primarily Spanish-speaking. I also look forward to further raising the profile of the agency's work on behalf of all minority and under-served communities.

With the recent economic upheaval, the FTC has redoubled its efforts to protect the most vulnerable consumers. The economic downturn has put unprecedented pressures on those who have difficulty making ends meet, and our agency has responded by bringing aggressive enforcement actions against those who prey on cash-strapped consumers. For instance, we have sued many peddlers of "loan modification" or "foreclosure rescue" services that charge large upfront fees, but fail to deliver services to consumers in dire financial straits who are desperately trying to

pay their mortgages and keep their homes. FTC studies have revealed that Latinos and members of other minority groups are disproportionately affected by these and other types of fraud. I fully support the FTC's enforcement actions against fraudsters who target Spanish-speaking consumers and members of other minority groups.

Going forward, I will also continue to push the Commission to think creatively about ways to better educate consumers about risks in the marketplace. In addition, I hope my presence will facilitate even greater outreach to the legal services community and other advocacy organizations that represent under-served communities.

FCEC: *Staying on the topic of consumer protection. In May, you and Commissioner Brill issued a strong [concurring statement](#) in the FTC's [Diamond Phone Card](#) matter. Can you explain what caused you to write separately in that matter?*

Ramirez: *Diamond Phone Card* is a perfect example of an enforcement action against fraud targeted at Spanish-speaking and other immigrant consumers, as well as military families. It was the impact on members of immigrant communities that initially caught my attention. I am well aware that for such consumers, prepaid calling cards are a crucial lifeline to family and friends in other countries. The same is true for the families and friends of American soldiers stationed abroad. Yet fraud in the prepaid calling card industry – which generates billions of dollars in sales each year – is pervasive. The FTC has been at the forefront of efforts to combat this widespread problem, but it faces substantial impediments in doing so. As my concurring statement with Commissioner Brill noted, extending the agency's jurisdiction to telecommunications service providers in the prepaid calling card industry, and giving the agency authority to seek civil penalties for those fraudulently marketing prepaid calling cards, would aid the FTC's efforts to tackle fraud in this arena.

FCEC: *Let's turn now to antitrust enforcement. How much of your time do you expect to spend on antitrust or (to use the more international term) competition enforcement and policy? Do you have particular goals there?*

Ramirez: The short answer is that I spend as much time on competition issues as is necessary to do the job right. Day by day, I allocate my time depending on which matters are the most pressing. As many readers probably have heard before, the agency's consumer protection enforcement actions far outnumber those on its competition docket, but competition cases are often much larger. Therefore, individual competition matters frequently require more time to review.

I arrived at the Commission just as a number of significant competition matters were coming to a head, among them the proposed [Google/AdMob](#) merger and the imminent release of [proposed revisions](#) to the Horizontal Merger Guidelines. Talk about trial by fire! For my first several weeks as a Commissioner, I was immersed in competition issues. And of course, the Commission's recent decision to accept a [settlement with Intel](#) also demanded a significant amount of my time.

But the FTC's consumer protection agenda has also occupied a great deal of my time and attention. The Commission has a very active enforcement and policy agenda on both the consumer protection and competition fronts, and it is an exciting time to be at the FTC.

FCEC: *What merger issues – substantively or procedurally – should the bar be watching most closely at the Commission right now?*

Ramirez: One trend I have seen in the matters that have come before me during my short tenure at the Commission is an increasing number of mergers playing out in the bankruptcy context. Among other challenges, the overlay of a concurrent bankruptcy proceeding places extraordinary

time pressures on our merger staff and on the Commissioners. That, in turn, may frustrate the Commission's goals of conducting a meaningful and thorough investigation while preserving remedial options in the event of a challenge. It remains to be seen whether a further wave of bankruptcy-related acquisitions is to come.

Merger review is particularly complex and challenging in industries characterized by rapid transformation, and this dynamic will continue to impact our work in the health care and technology sectors. For example, current health care reform efforts include various Medicare programs and mechanisms – such as accountable care organizations and bundled payments – that likely will affect competition in a variety of commercial health care markets as well. As Chairman Leibowitz recently [announced](#), the Commission soon will be hosting a public workshop to explore some of these policy issues.

Likewise in technology markets, we are obligated to stay abreast of market developments and appropriately calibrate our enforcement efforts. I believe the Commission's [decision](#) in the *Google/Admob* merger investigation reflects such an approach. That case was my first major competition enforcement matter as a Commissioner, and my deliberations were greatly aided by staff's in-depth and constantly-expanding knowledge of the industry, as well as their day-by-day efforts to predict where the market was heading.

Of course, we will all be watching to see how the [new Horizontal Merger Guidelines](#) are received by practitioners, the business community, and the courts. And on the procedural front, now that the [Part 3 administrative litigation reforms](#) have been in place for awhile, the bar may be in a position to evaluate whether the more compressed discovery, trial, and appeal schedules have indeed made Part 3 more suitable to merger challenges.

FCEC: *What other key issues interest you, and what other priorities do you have?*

Ramirez: International issues will also be an important part of my agenda, and in the next several months I look forward to representing the Commission at a number of international events.

On the competition side, Commissioner Kovacic and I will be traveling to Mexico City in September to meet with our counterparts from Mexico's Federal Competition Commission (CFC), as well as Mexican legislators and business leaders. The Mexican legislature currently is considering a package of amendments that would strengthen the country's existing competition laws and expand the CFC's enforcement authority, and the Commission has been invited to participate in discussions relating to those reform efforts. International cooperation and relationship-building are fundamental to the Commission's competition mission, and I look forward to participating in those efforts.

Today's consumer protection issues likewise involve significant cross-border dimensions, as is particularly clear in the privacy arena. This is due to the globalized nature of the economy as well as technological developments that enable consumer data to travel around the world. I am interested in helping the agency forge relationships with foreign consumer protection and privacy enforcement agencies, and also strengthen coalitions with global enforcement networks.

In particular, I intend to focus on some of the more challenging aspects of the cross-border flow of consumer information. This fall alone, I will be participating in global initiatives such as the International Consumer Protection and Enforcement Network (ICPEN), the Asia-Pacific Economic Cooperation (APEC) E-Commerce

Steering Group, the Ibero-American Forum of Consumer Protection Agencies (FIAGC), and the Ibero-American Data Protection Meeting.

FCEC: *Thanks for speaking with us. One last question, on a personal note. How are you handling the move to DC, and should we take any signal from the fact that you timed your start date for Major League Baseball's opening day? Just coincidence?*

Ramirez: I admit that before I moved here I had some concerns about how a Southern California native would adjust to DC. I grew up in San Clemente, a small beach town, and after graduating from law school I moved to Los Angeles, where I spent my entire legal career until this point. I now realize, as I confront DC's sweltering summers, how much I have taken for granted the near-perfect weather I had back in California.

Heat and humidity aside, my transition to DC has gone much more smoothly than I ever expected. Everyone at the FTC has been extraordinarily gracious and welcoming as I settled into the agency. Overall, I think I've adjusted fairly well. I'm living in the District and even walking to work, which, for someone from Los Angeles, is saying a lot.

The fact that my first day as a Commissioner coincided with the start of the baseball season was pure happenstance. I used to be an avid baseball fan in my youth, but these days I follow the NBA much more closely. You'll always find me cheering for the Lakers. In fact, one of the biggest hardships of my move to Washington may have been that it caused me to miss the LA celebration when the Lakers won the NBA championship. That aside, I'm incredibly excited to be here in Washington and am looking forward to a very rewarding tenure at the FTC.