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Big leadership changes afoot at the FTC, DOJ and on the Hill

Big changes are afoot in consumer protection and antitrust enforcement as key people in the arena move out of their spots and new players take their places.

FTC Chairman Jon Leibowitz has one foot out the door, and so does David Vladeck, director of the bureau of consumer protection. Many people believe FTC Commissioner Julie Brill is the leading candidate to replace Leibowitz; no names have emerged yet as Vladeck's replacement.

At the Justice Department, assistant attorney general nominee Bill Baer has advanced to possible confirmation on the Senate floor, though under mysterious circumstances.

Sen. Herb Kohl, D-Wisc., is retiring as chairman of the Antitrust, Competition and Consumer Rights Subcommittee, and his likely replacement—at least as of press time, and if the Democrats hold the Senate—is thought to be U.S. Sen. Amy Klobuchar, the Minnesota Democrat whose antitrust and consumer protection interests make her a significant contender for the post.

In the first of these changes, as Election Day approaches, speculation is intensifying that Chairman Jon Leibowitz will be departing. That move, which several sources told *FTC:WATCH* is all but certain, already is fueling still more speculation about who might be the next chairman.

"Leibowitz has not made it a secret around town that he's working on an exit strategy that is likely to come before the

end of the year," a business source said. When asked about the possibility of Leibowitz departing in the next few months, an FTC spokesman declined to comment.

Of course, the next president will choose Leibowitz's successor and that choice is seen as critical to the direction of the agency. "It is a huge deal if the Republicans win the White House because [the new president] would appoint the chairman and the agency is a strong chairman model," Albert Foer, president of the American Antitrust Institute said in an interview with *FTC:WATCH*.

The name most frequently mentioned if President Obama is re-elected is current commissioner Julie Brill, a choice that pleases consumer activists since her background includes more than 20 years as assistant attorney general for consumer protection and antitrust in Vermont and a stint at the North Carolina Department of Justice where she was a senior deputy attorney general and chief of consumer protection and antitrust.

"Julie Brill brings with her a real consumer perspective that is very much welcome and needed," Sally Greenberg, executive director of the National Consumers League, said in an interview with *FTC:WATCH*.

If Mitt Romney wins, there is some chatter that he might nominate Joshua Wright for the chairmanship. Wright was recently nominated as the GOP replacement for outgoing Commissioner J. Thomas Rosch, who is completing his seven-

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year term. Wright's nomination already is seen by some as contributing to a change in the dynamics of the agency since he is a prolific writer who hails from the Chicago School—a contrast to Rosch, who was viewed as not especially ideological and willing to work closely—although not without occasional fireworks—with Leibowitz and the Democratic commissioners.

The possibility of a Wright chairmanship clearly pains Foer even as it pleases some business representatives. "If he were named chairman it would have a huge impact on the direction of the commission—no question about it," Foer said. "It would be a major deviation from the current vector. It would probably mean he would put up a very high screen before any positive action is taken by the commission. He is much more concerned about over-deterrence than about under-deterrence. The current commission has been on a moderately progressive direction under Leibowitz's leadership and that would be reversed."

But others see the possibility as reason to celebrate. "Wright would bring heavy economic rigor—he's a PhD economist," said a business source who declined to go on the record about leadership issues. This source noted that Wright would favor an "evidentiary approach," and his appointment would "send a strong message about the limited use of antitrust." "Of course Maureen is not to be overlooked," he added.

That reference is to current Commissioner Maureen K. Ohlhausen, who was sworn in to her post in April and is a veteran of the agency. She served at the FTC eleven years, including as director of the Office of Policy Planning, where she led the FTC's Internet Access Task Force. She also was an attorney-advisor for former FTC Commissioner Orson Swindle, and began her career at the FTC in the general counsel's office. After leaving the FTC, Ohlhausen was a partner at Wilkinson Barker Knauer, where she focused on FTC issues, including privacy, data protection, and cybersecurity.

The business source was especially upbeat about changes to the agency. "Regardless of who wins the election, the FTC is likely to take a less adventurous approach to antitrust with the departure of Leibowitz and Rosch. You can't overstate the significance of having Maureen and Josh—assuming Josh is confirmed—serving full terms and having Leibowitz and Rosch leaving."

Not everybody buys into the notion of big changes at the agency. James F. Rill, who was head of the Antitrust Division of the Justice Department during the George H.W. Bush years, said in an interview with *FTC:WATCH*: "We hear a lot about new FTCs, but I don't think there has been any radical change to the basic enforcement approach from Janet Steiger [who was FTC chair from 1989-1995] through...to Jon Leibowitz...The basic message it seems to me in antitrust is one of continuity."

Even as these internal changes at the top of the FTC are in the offing, changes that could also have an impact on the FTC are coming to Capitol Hill. The Senate Commerce Committee, which has oversight jurisdiction of the FTC, will see a shift with the elevation of Sen. Jim DeMint, R-S.C., a hard-charging conservative, to be either chairman or ranking member, depending upon whether the GOP regains control of the Senate. DeMint will replace Sen. Kay Bailey Hutchison, R-Tex., who worked across the

aisle well with chairman Jay Rockefeller, D-W.Va. Currently, GOP prospects to retake the Senate are about 35-40 percent, according to the respected, nonpartisan Cook Report, which closely tracks congressional races.

Also, at the Judiciary Committee, low-key Sen. Herb Kohl, D-Wis., is retiring as chairman of the Antitrust, Competition and Consumer Rights Subcommittee. His likely replacement is not clear as of press-time, as subcommittee membership can shift from one Congress to the next. Though Sen. Chuck Schumer, D-N.Y., is currently next in line in seniority, he already chairs the Immigration, Refugees and Border Security Subcommittee and no member of Judiciary may chair two of its subcommittees.

Several other Democrats on the antitrust subcommittee are in a similar position, but a source tells *FTC:WATCH* that Klobuchar, of Minnesota, is the most likely to take the reins of the subcommittee and relinquish her chairmanship of the Administrative Oversight and the Courts subcommittee. Klobuchar has been a visible and active participant in Senate deliberations on antitrust matters, particularly those that involve health care, and has had an active behind-the-scenes interest as well.

Two other possibilities are Sen. Al Franken, D-Minn., who is chair of the Privacy, Technology and the Law Subcommittee and the most junior Democratic member of the Antitrust Subcommittee, Sen. Richard Blumenthal, D-Ct., who was elected in 2010. Blumenthal is another strong candidate because he previously served as Connecticut attorney general.

On the GOP side, Sen. Mike Lee, R-Utah, who like Blumenthal was elected in 2010, is the ranking member and would become chairman if his party were to regain control. Lee, who won his seat with the backing of the Tea Party after toppling three-term Sen. Robert Bennett in a primary, has worked with Kohl on a number of issues. Most recently, he even supported Bill Baer to be head of the Justice Department's Antitrust Division—a vote that put him at odds with a majority of his Republican colleagues on the committee.

In the House, the Energy and Commerce Committee has oversight jurisdiction over the FTC, and no change is expected at the top of its ranks. Rep. Fred Upton, R-Mich., is likely to continue to serve as chairman and Rep. Henry Waxman, D-Cal., as ranking member. If Democrats were to regain control, their positions would be reversed, but the Cook Political Report makes it pretty close to a slam dunk that Republicans will retain control of the House.

Among all the other changes that are contemplated, a couple of sources also told *FTC:WATCH* that David Vladeck will be leaving as director of the FTC's Bureau of Consumer Protection to return to his teaching post at Georgetown University Law Center next year.

A long-timer observer of the agency said that the impact of Vladeck's departure—and a decision on his replacement—cannot be overstated. "Who is going to be next bureau chief will have an enormous impact on the agency: how aggressive they are going to be; how they will use their consent orders; will they continue to use their enforcement powers," the source said

It is a hard job to fill because of the combination of litigation and political skills that are necessary to do it well. The director picks the cases, sets the agenda and must sell those choices to the commissioners, who are not always in agreement.

After Vladeck leaves, the office is likely to be filled on an acting basis until a new chairman is confirmed who will then choose the new director. An FTC spokesman declined to comment on Vladeck's plans.

--Kirk Victor

Baer wins approval from Judiciary panel, despite mysterious concerns

Even as the Senate Judiciary Committee, finally, on September 20, voted on William Baer's nomination to head the Justice Department's antitrust division, the 12-5 favorable tally came so late in the congressional session that he must wait until after the election before he gets a vote on the Senate floor—if then. And his nomination, which was submitted in February, ran into some unexplained, last-minute turbulence.

Some Republicans, led by committee ranking member Chuck Grassley of Iowa, raised concerns about mysterious issues that emerged in Baer's background investigation. Five GOP senators opposed the nomination. Three others did not join that opposition. Sen. Lindsey Graham, R-S.C., and Sen. Mike Lee, R-Utah, the ranking minority member on the Antitrust Subcommittee, supported Baer, while Sen. Jeff Sessions, R-Ala., abstained. Every Democrat on the committee backed Baer's nomination.

Before the vote was tallied, the committee went into executive session for about 15 minutes during which Grassley apparently aired his concerns about Baer. When *FTC:WATCH* contacted Grassley's office, a spokeswoman, in an email, confirmed only that, "Senator Grassley and others were concerned about issues brought forward in Mr. Baer's background investigation." She added: "I can't elaborate further as background investigations are confidential to protect the nominee."

Baer did not respond to phone and email messages asking about Grassley's concerns. He forwarded the request to Gina Talamona, a Justice Department spokeswoman, who also declined to comment. A spokeswoman for Sen. Patrick Leahy, D-Vt., the Judiciary Committee chairman, also declined to comment, saying that she did not know the nature of the concerns.

Every nominee submits detailed background information and Baer was no exception. He submitted thousands of pages of documents—including details about his career and, presumably about his personal life. For example, background checks usually include questions about every place a nominee has lived. After that information is submitted, a government investigator may contact old neighbors, colleagues and others with whom a nominee may have had contact, even going back many years.

Baer, who leads the antitrust practice at Arnold & Porter and served two tours at the Federal Trade Commission, including one stint as the competition bureau chief, has broad backing

from the antitrust bar. In fact, prominent GOP lawyers attended the confirmation hearing in July to support his nomination, including James Rill, former Justice antitrust chief under President George H.W. Bush, and Timothy Muris, former Federal Trade Commission chairman under President George W. Bush. Current FTC chairman Jon Leibowitz also was at the hearing.

If the Senate confirms him, Baer will replace Joseph Wayland, the acting assistant attorney general for antitrust. Baer's mainstream views suggest that his tenure as chief of the division would likely be one of continuity.

Despite Grassley's concern about the mysterious issue, it is significant that Lee, a first-term senator and the only Republican to participate in Baer's confirmation hearing in July, bucked the top Republican on the committee and backed the nominee. During the hearing, Lee quizzed Baer about a range of issues and seemed quite pleased with their colloquies about antitrust law and philosophy.

At one point, Lee, whose father served in the Justice Department as an assistant attorney general and as solicitor general, asked Baer about whether "overzealous enforcement" could cause harm in markets. Baer said it could, and elaborated that, "While I think there is a risk from being too cautious about taking action where you see a problem—there's [also] a risk from being overly aggressive."

Such responses clearly scored points with the conservative Utah senator, who won his seat in 2010 with the backing of tea party activists. "I am pleased to hear that—there are some limits—there are some risks associated with overzealous enforcement," Lee responded.

If Republicans retake control of the Senate, Lee would likely head the subcommittee. His independence is apparent and is reflected in his decision to launch what appeared to be a long-shot campaign two years ago by taking on three-term Sen. Bill Bennett, who had backed the Troubled Asset Relief Program and who had worked across party lines on health care legislation. Those positions cost Bennett the base of the party and even though he was supported by the GOP establishment, including senior Utah GOP Senator Orrin Hatch and Mitt Romney, Lee whipped him in the primary and went on to win his seat.

The youthful Lee, 41, would likely be a sharp contrast to current subcommittee chairman, Herb Kohl, D-Wis., a reticent, press-shy four-term senator who is not seeking re-election. The 77-year-old Kohl has been an anomaly on Capitol Hill as he has tried to work on a bipartisan basis. He occasionally spoke out against proposed major mergers, including the recent AT&T-T-Mobile deal that was eventually withdrawn.

Towards the end of Baer's confirmation hearing in July, Lee provided some insight into his concerns when he asked about the impact of politics on antitrust enforcement. "Law enforcement loses credibility if it becomes seen as a political tool," Baer responded. Antitrust enforcement, he added, is

best when it is “non-partisan” and focuses on economic rigor and consumer interests.

Lee responded, “That’s great.”

Now Baer must await the election returns. If President Obama wins re-election, it is possible that his nomination could be approved during the lame duck session. However, Grassley could force a delay until the new Senate convenes next year.

–Kirk Victor

Dogfight looming over pet medications

Veterinarians are growling over an FTC workshop that will discuss whether pet-owners should have more choice over where they can get their pet prescriptions filled.

The FTC has arranged an all day series of panel discussions on October 2 in an effort to seek consensus on a pending piece of legislation, the proposed Fairness to Pet Owners Act. Almost as soon as the workshop was announced in July, hundreds of passionate letters from vets starting pouring into the agency. So many more are expected that the agency extended the public comment period to November 1.

At the event on October 2, lobbyists, economists, lawyers and academics will weigh consumer choice vs. pet safety for the 62 percent of American households where pets reside.

Experts will air views with high stakes for vets and pet owners. Americans spent nearly \$7 billion in 2011 for prescription and over-the-counter pet medications, most of it from veterinarians.

The agenda features many heavy-hitters in the industry, including Douglas Aspros, president of the American Veterinary Medical Association (AVMA); Paul Pion, president of the Veterinarian Information Network; Clinton Veranian, vice president and general counsel of Novartis Health; Brad Dayton, Senior Director of Pharmacy for Ahold USA, a supermarket operator; and Elaine Blythe, Associate Professor, St. Matthews School of Veterinary Medicine, among others.

Supporters of HR 1406 tout consumer choice. Pet owners with written prescriptions in hand can buy medications anywhere at competitive prices, with the human pet-owner able to shop for the best deal. This bill would allow prescriptions to be provided to pet owners.

But veterinarians instead foresee dire consequences from ill-advised prescription substitutions; tainted drugs from dubious cut-rate sources; and cash strapped veterinary clinics shutting their doors.

The bill therefore faces stiff opposition from AVMA, the veterinarians’ lobby, but the strain on the budgets of American families has given the measure bipartisan support.

“At a time when family budgets are tight, every opportunity to save matters,” Congressman Jim Matheson (D-Utah) told *FTC:WATCH*. “My bill simply gives pet owners the same right to

shop around for the best prices on medications they give their pets as they have to compare prices on their contact lenses.”

Giving more weight to pet owners than party affiliation, four Republicans and one more Democrat signed on as co-sponsors. The measure remains alive, though stalled until after the November election.

Matheson and his co-sponsors modeled the bill on the Fairness to Contact Lens Consumers Act. Implemented in 2003, it required eye examiners to provide patients with copies of prescriptions immediately after a lens fitting and to verify prescriptions to any third party designated by a consumer, including online sellers. Eye examiners launched a battle to retain control over prescriptions.

“The sky didn’t fall in when the market opened for contact lenses, so I don’t expect it to fall over pet meds,” Andrew Binovi, Federal Legislative Manager of ASPCA Government Relations, told *FTC:WATCH*.

Representing 2.5 million supporters, the ASPCA has thrown its weight behind HR 1406 to ease financial burdens on pet ownership. Among other arguments, its friend-of-the-legislation letter cites evidence compiled by the American Humane Association’s Animal Welfare Institute that former dog owners named veterinary costs as the number one reason for not owning a dog. One in four former cat owners were cat-less for the same reason. “The expense of veterinary and general care is a significant inhibitor of future pet ownership,” the Society concluded.

Proponents of the Act brandish a 2009 survey conducted by LHK Partners, a market research firm. It compared 18 different pet medications at 1,728 veterinary clinics versus average online prices for identical medications. These vets charged more across the board, especially for antibiotics and pain relievers. The median vet’s mark up was 106%, nearly twice the median markup online vendors collect. When vets prescribed amoxicillin, an antibiotic also prescribed for humans, on average they charged 10 times the wholesale price. Online retailers charged two times the wholesale price. Vets also doubled the price of a brand name canine heart medicine, about twice what reputable websites charge.

Although vets account for nearly all comment letters, a handful of consumers testified to added costs the vets impose. “I own a St. Bernard, age 3, 160 lbs,” wrote pet owner Lee Carrier in Texas who buys medication online. “Monthly heartworm and flea prevention cost me \$40 a month. If I bought the same from my vet it would cost \$58 a month.”

Debating price alone distorts the issue, insist more than 300 veterinarians in their comment letters to the FTC. Mixing sincere passion for animal care with talking points from the AVMA, they warn that trouble and tragedy lurk in this legislation.

“The inability of pets to verbalize when they are having a reaction makes the situation unique and unlike the contact

lens industry," said Beth Davidow, a veterinarian at Animal Critical Care and Emergency Services in Washington state.

"Comparing veterinary pharmaceuticals to the contact lens industry is ludicrous," said vet Matthew Charney at the Companion Animal Medical Center in Indiana, because the number of conditions associated with contact lenses pales next to thousands of conditions that veterinary pharmaceuticals treat.

"Cats and dogs are not little people. Try giving your cat a Tylenol and watch it go into renal failure," wrote Sharon Anderson, a vet in Texas.

Elizabeth Baird, a vet at the University of Florida, alerts lawmakers to the kinds of mistakes to expect from pharmacists with no training in veterinary pharmacology. "Oral penicillin can kill pet rabbits; neither dogs or cats can tolerate non-steroidal anti-inflammatory drugs commonly used in people; dogs require tremendously higher levels of thyroid supplement than humans, the list goes on and on."

Veterinarians typically provide prescriptions on request, as a matter of professional ethics, and in some states it is required by law, said veterinarian Kipp Magnussen, of the Sylan Veterinary Hospital in Modesto, Calif., in an interview with *FTC:WATCH*. He said he feared a federal law would impose costs and needless paperwork on vets and wouldn't measurably help consumers.

"In the past vets probably had bigger markups on prescriptions but moving forward I don't see that," Magnussen said. He added that vets already are making changes to their prices.

"I know that I'm competitive with all the online pharmacies," he told *FTC:WATCH*. "If you look, in general everybody is getting more competitive and is driving down pharmaceutical costs."

As small business operators, many vets fear an ominous motive propelling Fairness to Pet Owners—the power of big-box retailers to push little firms out of existence.

"I see it mostly as big business like Wal-Mart making regulations that throw more cost onto small business to make us less competitive," says Magnussen. "It's a way to take out their competition with pointless regulation."

He can't picture the retailers' endgame, but it is possible to imagine that retailers may like the idea of customers heading from their vets to big retail stores where, while waiting for a prescription to be filled, they'll spend quite a bit more on impulse purchases than they'll save on pet medication.

Other veterinarians are opposed to more regulation for philosophical reasons. "True free market societies let competition work these things out on their own," wrote Mark Brown, a vet in Florida. "We have lost our way from the 1780s."

And others seek indemnity if errors or negligence by pharmacies cause injury. "Veterinarians should not be held liable if the Pharmacy fills the prescription wrong, we should be able to have clients sign a waiver," said vet Deborah Davis in Texas. Many note that pharmaceutical companies manage to escape liability when vets do not fill prescriptions.

Some vets raising objections grounded in practical business considerations. Cory Simms, of the Brentwood Veterinary Hospital in Brentwood, Calif., did some calculations. Written prescriptions would consume 40 minutes a day, Simms reckons. Estimating an average \$140 for a ten-minute client appointment, that's a \$500 loss per day per vet in a practice with five vets. "This is a significant loss of potential income," he wrote.

In his letter from the Willamette Valley Animal Hospital in Oregon, vet John Maddigan warned that unintended consequences will prevail if Fairness to Pet Owners becomes law. Loss of pharmacy revenues will cause many veterinary hospitals to close. Ones that stay open will make up for lost revenue by raising prices. "If the bill passes, veterinarians will insist on a complete physical examination before any script is refilled," Maddigan warned. Instead of scripting inexpensive drugs, veterinarians will insist on much more expensive substitutes requiring injections only vets can administer.

Critics of the Fairness to Pet Owners Act overstate their alarm, says Binova of the ASPCA. "We talked to our vets here. As long as these prescriptions are written clearly and filled at a reputable pharmacy it's no more an issue than for humans," he says. "Pharmacists are professionals. They won't fill prescriptions if they don't know how."

Is there potential for harm by consumers who only consider price? Judgment must prevail, he said.

"Going to a weird website," says Binova, "is not a good strategy." As for losing business to rivals, the ASPCA operates a pet clinic in New York City where vets always furnish written prescriptions. Nevertheless, says Binovi, pet owners still buy most pet meds from the clinic.

Some vets even welcome the Fairness to Pet Owners Act. "HR 1406 would cure many of the problems of distribution of pet pharmaceuticals. Comparison to FCLCA (lens law) and human pharmacy laws would be tutorial," wrote an Iowa vet with 54 years of experience. "It has been troubling to me to watch some pharmaceutical companies and most of my profession fight to keep a monopoly in pet medication distribution. This taints my profession and clearly causes pet owners significantly higher prices for the care of their pets."

Many FTC officials will participate in the October 2 workshop. FTC Attorney Advisor Stephanie Wilkinson will moderate a panel on the Distribution of Pet Medications. Tara Isa Koslov and Christopher Grengs from the FTC Office of Policy Planning will moderate a discussion on the portability of prescription pet medication. Andrew I. Gavil, Director, Office of Policy Planning, will deliver concluding remarks.

—S. L. Mintz

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FTC's approval of Universal-EMI merger gets mixed reviews

The Federal Trade Commission's recent decision to approve, without conditions, Universal Music Group's \$1.9-billion acquisition of EMI Recorded Music has not quelled the fierce debate about the vibrancy of competition in the recorded music business. The FTC's 5-0 vote to end its investigation of the merger was praised by those who see the deal as benefiting consumers and artists and condemned by critics who fear the new conglomerate will stifle competition.

The combination of Universal, the largest recorded music company in the world, and EMI, the fourth largest music company, will reduce the number of major competitors in the industry from four to three. The new combined Universal/EMI will account for about 40 percent of the U.S. market, based on revenue, and will control 51 of the titles in the Billboard Hot 100 list for 2011.

Richard Feinstein, the director of the FTC's Competition Bureau, explained in a statement that the agency's empirical analysis, discussions with industry participants and review of documents led to the conclusion that the Universal-EMI combination would not substantially lessen competition.

"We emphasize...that the decision to close [the investigation] is fact-driven and based largely on the different product portfolios of Universal and EMI," Feinstein wrote on September 21. "It is entirely possible that a transaction between other market participants or on different terms may yield a different conclusion."

Not surprisingly, UMG hailed the decision. Lucien Grainge, its chairman and CEO had argued in congressional testimony in June that "market share in this industry is far less relevant than maybe in any other industry." He contended that "the artist makes the market—you are as good as your market depending on what choices you have made and what artists you have signed and how well you deliver them to the market and how well you created a demand for them."

Responding to an inquiry from *FTC:WATCH* about the decision, a UMG spokesman, in an email, praised the agency's decision to allow the merger to proceed without conditions and said that clear benefits would flow from the deal. "Our investment in EMI will create more opportunities for new and established artists, expand music output and consumer choice, and support new digital services," he wrote. "With a broad array of EMI artists like Katy Perry, the Beatles, Robbie Williams, Lady Antebellum and Norah Jones, we are well-positioned to grow the company and offer music fans around the world more music and more choice than ever before."

Universal had argued that EMI, which was acquired by Citigroup following a default by its previous owner, is in decline and would get a boost from an infusion of capital and expertise.

But critics fear the Universal-EMI conglomerate will dominate the U.S. market and diminish competition. The FTC's

decision "bodes ill for the foreseeable future of the digital music business," wrote Jodie Griffin in a blog post for Public Knowledge, where she is a staff attorney for the group that supports openness of the Internet. "The FTC has enabled the dominant gatekeeper to further entrench itself between musicians and their fans, now with even less competition to pressure UMG to be fair to either."

Gigi Sohn, president of Public Knowledge, added in an interview with *FTC:WATCH*: "It was not a weakness of the law; it was a weakness of will. They [the FTC] didn't really want to push the envelope." Consequently, she said, the public is left with "one company that already is extremely powerful and that now will be able to decide which digital music services live or die."

"What is the benefit of this deal to consumers and to artists? Zero. Absolutely none—a more consolidated industry means it will be harder for artists to get major label deals, and UMG will have more power to dictate terms of digital music services," Sohn added.

But Berin Szoka, president of TechFreedom, a technology policy think tank, disagrees with the notion that Universal-EMI's size threatens competition. Responding to questions from *FTC:WATCH* in an email, Szoka said that "big isn't necessarily bad—it is a simplistic and outdated view of antitrust that presumes that the problem is concentration."

Szoka also wrote a blog post stressing that "combinations like this one can benefit consumers, especially when the merging firms are struggling to reinvent themselves in the face of technological change. The FTC deserves credit for carefully analyzing this deal."

The FTC's Feinstein, in his two-page statement, detailed the agency's basis for finding that the merger would not adversely affect competition. He noted that while Universal "is very strong in popular new releases," EMI's portfolio is "much more heavily weighted toward older titles." The staff found that there was insufficient evidence of head-to-head competition between the two companies to show the deal would substantially lessen competition.

Feinstein also noted that the FTC staff evaluated the impact of the deal on the development of interactive music streaming services to determine whether the combined firm would have greater "bargaining leverage" that would allow it to obtain "superior financial terms or advantaged positioning for its content." As part of this inquiry, the staff also examined whether consumers of interactive streaming services would have to pay more or would have a more limited choice of music.

The commission found that each interactive streaming service has to carry all of the major companies to be competitive, and that the companies' music is "more complementary than substitutable." Consequently, there is "limited direct competition between Universal and EMI."

Noting that market conditions in this business have changed since previous antitrust enforcement actions, Feinstein said

the evidence showed that “recorded music products are differentiated, with each record label offering a wide portfolio of titles, the success of which, in many instances, is uncertain and not strongly correlated with the success or failure of other titles.”

The FTC also addressed the European Commission’s decision to condition its approval of the merger on the sale of some EMI assets in order to protect independent companies from being overwhelmed by the new merged company. Noting that the FTC had worked closely with European regulators, Feinstein wrote that the differences in markets required different responses. He pointed out that “concentration levels in a number of EU Member States were significantly higher than the combined market share of Universal and EMI in the United States.” European markets also “have a different, larger, and more diverse set of customers, and it appears that the market dynamics relating to digital streaming services differ significantly from those found in the United States.”

Still Feinstein found that the U.S. would benefit from the European ruling. Even though no conditions were necessary in the U.S., he observed that the remedy imposed by European authorities “will reduce concentration in the market in the United States as well.”

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Cracker Barrel investor pays penalty

Every corporate food fight seems to eventually make its way to the FTC. This time the eatery chains in question are Cracker Barrel, the homespun Southern-themed restaurant chain based in Tennessee, and burger joint Steak ‘n Shake.

The Iranian-born owner of Steak ‘n Shake, Sardur Biglari, who is fast gaining a name for himself through his aggressive investment tactics, has been trying to assert dominance over Cracker Barrel, having bought 17.5 percent of its shares outstanding and repeatedly seeking to be named to the company’s board of directors. But the FTC has alleged that in the midst of the venture Biglari went afoul of the law by failing to comply with the Hart-Scott-Rodino Act when he failed to notify the agency of a substantial stock purchase. The HSR Act requires large investors who buy more than \$66 million in shares to file premerger notification forms with federal antitrust agencies.

It is not necessary under the HSR rules for an investor to notify the agency if he or she purchases a large share of stock as a passive investor, but entrepreneurs seeking to take a management role are required to notify the agency. The FTC said Biglari failed to do so, and asked the Justice Department to file suit on the FTC’s behalf against him.

In a complaint brought by the DOJ against Biglari, the government agencies alleged that Biglari began buying

Cracker Barrel shares on the open market starting on May 24, 2011, and made purchases every day through June 13, 2011. On June 14, the Justice Department said, Biglari contacted Cracker Barrel’s top executives and told them “he had ideas to improve shareholder value.” One week later, Biglari allegedly requested that he and an associate of his should be named to Cracker Barrel’s board of directors.

Within months he launched a public relations campaign reaching out to other Cracker Barrel shareholders complaining of the company’s mismanagement of the restaurant chain and putting himself on the ballot for the company’s board of directors. He was not elected, but is again running for election at the next shareholder’s meeting. In April, Cracker Barrel adopted a “shareholder rights” plan that prevents any shareholder from owning more than 20 percent of the company’s stock, to fend off a potential takeover.

Last week, the DOJ and Biglari reached a settlement in the case that called for Biglari to pay a civil penalty of \$850,000. Attorney Bilal Sayyed, of Kirkland & Ellis LLP, did not respond to requests for comment, and efforts to reach Biglari through his attorney were unsuccessful.

But Cracker Barrel executives said that Biglari’s failure to notify authorities of the stock purchase gave them more grounds to believe that Biglari is attempting to take over the company surreptitiously.

“Our concerns about Mr. Biglari’s intentions are underscored by the finding that Biglari Holdings violated the Hart-Scott-Rodino Act in connection with its acquisition of Cracker Barrel stock,” said company spokeswoman Julie Davis, in an email to *FTC:WATCH*.

Biglari agreed to the settlement and did not admit wrong-doing.

But heads, he wins; tails, he wins: During May and June of 2011, Cracker Barrel’s share prices were trading at between \$44 and \$53 a share. By introducing a new line of low-cost meals and boosting same-store sales year-over-year, Cracker Barrel’s management team has boosted the company’s profitability. Shares of Cracker Barrel stock are now trading at \$67 a share, and Biglari has more than 400,000 of them.

REFERENCE:

<http://www.justice.gov/opa/pr/2012/September/12-at-1152.html>

MERGER UPDATE

Macdonald Dettwiler, Space Systems

Macdonald Dettwiler & Associates Ltd., a Canadian satellite communications company, has received a second request for information from the Department of Justice in connection with its proposed acquisition of Space Systems/Loral Inc (SS/L). In June, Loral Space & Communications Inc., the parent company of SS/L, signed an agreement with MDA to sell its satellite manufacturing unit to MDA for \$875 million. MDA has reportedly called the deal “a game-changing transaction” that will widen its presence in the U.S. space marketplace.

DigitalGlobe, GeoEye

A second request issued on September 21 by the Department of Justice withholds a green light on the pending \$900 million merger of two companies that furnish earth imagery products and services. Before DigitalGlobe Inc. and GeoEye, Inc. can close a deal aimed at global leadership in earth imagery and geospatial analysis, they'll have to satisfy regulators that the field remains competitive. Merger partners promise that "enhanced financial strength delivers benefits to all stakeholders," including the U.S. government, a big customer. DigitalGlobe has expressed confidence that the transaction will close either in the fourth quarter of 2012 or in the first quarter of 2013.

FTC BRIEFS

Computer spying on customers

The FTC settled a case with seven rent-to-own companies and a software design firm that had spied on unwitting consumers by using computers that the consumers had rented to capture screenshots of confidential and personal information, and even, in some cases, webcam pictures of people in their homes.

The software design firm gathered the data that enabled the rent-to-own stores to track rented computers without the consumers' knowledge, according to the FTC complaint. The settlements bar the companies from further illegal spying, from activating location-tracking software without the consent of computer renters and notice to computer users, and from deceptively collecting and disclosing information about consumers.

"An agreement to rent a computer doesn't give a company license to access consumers' private emails, bank account information, and medical records, or, even worse, webcam photos of people in the privacy of their own homes," said Jon Leibowitz, the FTC chairman. "The FTC orders today will put an end to their cyber spying."

"There is no justification for spying on customers. These tactics are offensive invasions of personal privacy," Illinois Attorney General Lisa Madigan said.

The FTC's complaint named DesignerWare, LLC, a company that licensed software to rent-to-own stores to help them track and recover rented computers. The FTC also reached settlements with seven companies that operate rent-to-own stores and licensed software from DesignerWare, including franchisees of Aaron's, ColorTyme, and Premier Rental Purchase.

According to the FTC, DesignerWare's software contained a "kill switch" the rent-to-own stores could use to disable a computer if it was stolen, or if the renter failed to make timely payments. DesignerWare also had an add-on program known as "Detective Mode" that purportedly helped rent-to-own stores locate rented computers and collect late payments.

DesignerWare's software also collected data that allowed the rent-to-own operators to secretly track the location of rented computers, and thus the computers' users.

When Detective Mode was activated, the software could log key strokes, capture screen shots and take photographs using a computer's webcam, the FTC alleged. It also could activate a computer's webcam to surreptitiously photograph not only the computer user, but also anyone else within view of the camera. It also presented a fake software program registration screen that tricked consumers into providing their personal contact information.

Data gathered by DesignerWare and provided to rent-to-own stores using Detective Mode revealed private and confidential details about computer users, such as user names and passwords for email accounts, social media websites, and financial institutions; Social Security numbers; medical records; private emails to doctors; bank and credit card statements; and webcam pictures of children, partially undressed individuals, and intimate activities at home, according to the FTC.

The agency charged that gathering personal information about renters, and disclosing that information to the rent-to-own businesses was unfair and violated the FTC Act. The agency also alleged that DesignerWare's use of geolocation tracking software without first obtaining permission from the computers' renters and notifying the computers' users was unfair and illegal. It charged that providing the rent-to-own operators the means to break the law was unfair, and that providing the fake registration forms to obtain consumer data was deceptive.

The seven rent-to-own companies were charged with secretly collecting consumers' confidential and personal information and using it to try to collect money from them. Use of the bogus "registration" information was deceptive, the FTC alleged.

The proposed settlements will ban the software company and the rent-to-own stores from using monitoring software like Detective Mode and ban them from using deception to gather information from consumers. The settlements also prohibit the use of geolocation tracking without consumer consent and notice, and bar the use of fake software registration screens to collect personal information from consumers. DesignerWare also will be barred from providing others with the means to commit illegal acts, and the seven rent-to-own stores will be prohibited from using information improperly gathered from consumers in connection with debt collection.

All the proposed settlements contain record keeping requirements to allow the FTC to monitor compliance with the orders for the next 20 years. The office of the Illinois Attorney General worked with the FTC in the investigation and Madigan announced the filing of an action against Watershed Development Corp, one of the rent-to-own companies that used Detective Mode and that is located in Illinois.

The Commission vote to accept the consent agreement packages containing the proposed consent orders for public comment was 4-0-1, with Commissioner J. Thomas Rosch abstaining.

REFERENCE:

<http://www.ftc.gov/os/caselist/1123151/designerware/120925designerwarecmpt.pdf>

<http://www.ftc.gov/opa/2012/09/designerware.shtm>

Credit card retailers put out of business

The FTC has imposed rigid conditions on the future activities of the participants in what was alleged to have been a fraudulent credit card scheme. Besides \$7.5 million in penalties, the settlement bars them from direct or indirect engagement in any activity that resembles telemarketing.

The participants were two companies doing business as Platinum Trust Card and Express Platinum Card, which took in at least \$4.8 million, according to the FTC. In two months alone they rang up 10,000 sales just in the Philadelphia area of purported general-purpose credit cards with \$9,500 limits at a fee of \$19 a month.

The companies told customers that the credit cards were valid everywhere, but instead they only paid for “off-brand, outrageously overpriced products” from online stores operated by defendants, according to the FTC. That was handy for purchasing a case of 3,240 “dolphin shaped craft embellishments” for \$356, a case of 432 shower caps for \$430, or a case of 144 “play flutes” for \$573 — but not much of practical value. Customers with complaints met “an exhausting series of constant busy signals, endless hold times” and similar tactics.

Defendants Blake Rubin, Chase Rubin, Jules Shore and Justin Diaczuk agreed to the penalties and injunctions without admitting or denying the allegations in the FTC complaint and without any admission or finding of liability, according to court documents.

REFERENCE: <http://www.ftc.gov/opa/2012/09/platinumtrust.shtm>;
<http://www.ftc.gov/os/caselist/1123212/120920apogeestip.pdf>

Cigarette smoking report released

The largest cigarette makers spend billions of dollars to lower the net prices paid by smokers when they light up, the FTC reports. In its latest update on cigarette marketing, released September 21, the heftiest expenditures in 2009 and 2010 subsidized cigarette distributors so they could cut the retail price of cigarettes. Nearly \$6.7 billion in subsidies made up around 80 percent of total advertising and promotional budgets.

The FTC has kept tabs on levels of cigarette advertising since 1967. Spending fell two years in a row, from nearly \$10 billion in 2008 to \$8 billion in 2010. A slight bump in low levels of magazine advertising to \$37 million bucked the declines while outside advertising on billboards, in sports arenas and shopping malls slipped below a miniscule \$2 million.

Reporting companies earmarked \$236 million for coupons and \$57 million for direct mail in 2010. They spent no money on endorsements, testimonials and sponsorships or on audio-visual advertising in 2009 or 2010, according to the FTC.

At R.J. Reynolds, the maker of Camel, Pall Mall, Winston and other brands, the absence of magazine advertising has been the chief cause of a shrinking ad budget, a spokesman told *FTC:WATCH*. In the wake of restrictions imposed by a Master Settlement with states over health consequences of smoking, Reynolds spends ad dollars on point of sale promotions, direct advertising to consumers subject to age certification, and face to face interactions in bars and other venues restricted to legal adults.

Smokers in the U.S. collectively inhaled more than five thousand tons of tar and two thousand tons of nicotine in 2010 based on a typical tar and nicotine levels in 280 billion cigarettes sold, the report said.

REFERENCE:

<http://www.ftc.gov/opa/2012/09/tobacco.shtm>

Robocaller shut down

With cooperation from Ohio Attorney General Mike DeWine and the Better Business Bureau of Southland (Ohio), the FTC has moved to shut down a telemarketer that targets consumers in financial distress. Joint efforts secured a court order that has halted a purported debt relief operation.

Instead of promised assistance from callers, strapped homeowners got false hope. Computer-driven robocalls — the controversial topic of an FTC summit slated for November 18 — flouted the National Do-Not-Call Registry with assertions that consumers could reduce unsecured debt by half or more. In numerous instances, the complaint charges Defendants initiated telephone calls to consumers several times per day, continuing for days or weeks.

Robocalling remains a big concern. The FTC has already brought 88 enforcement actions against 250 corporate and 194 individual defendants involving robocalls and Do Not Call violations, resulting in payments of more than \$69 million in civil penalties and equitable monetary relief.

According to allegations in the latest complaint against Jeremy Nelson and four companies he controlled, defendants posed as lawyers. They settled few, if any, debts for customers. Actions did not always end when wary consumers said no. According to the complaint, if consumers declined to enroll a defendant would use confidential information obtained over the phone, ostensibly to confirm loan to value ratios, to start debiting bank accounts.

“Giving people false hope by promising to reduce their debt is bad enough. But stealing their money by debiting their bank accounts without their permission is beyond the pale,” FTC Chairman Jon Leibowitz said in a statement. “Consumers can count on the FTC and state Attorneys General to find the bad actors and stop them from doing further harm.”

The prosecution contends that defendants violated the FTC Act and the Telemarketing Sales Rule. An open prosecution precludes comment on details of the case. A spokesman for the Attorney General confirmed only that Ohio and the federal government routinely cooperate. "We have working relationships with several federal agencies," he said. A guilty verdict could fetch multi-million dollar fines, including \$16,000 per illicit call.

REFERENCE:

<http://www.ftc.gov/opa/2012/09/nelsongamble.shtm>

JUSTICE BRIEFS

AU Optronics fined a near-record \$500 million

AU Optronics, a Taiwan-based liquid crystal display manufacturer, was sentenced to pay a \$500 million fine for its participation in a five-year conspiracy to fix the prices of computer display panels.

The Justice Department had sought a \$1 billion fine, saying the conspiracy "affected every family, school, business, charity and government agency" that bought a computer or LCD monitor during the years of the conspiracy, or from 2001 to December 2006.

The Associated Press covered the sentencing in San Francisco, and reported that Judge Susan Illston said she decided to impose a lower fine than that sought by the Justice Department because the two executives had "relatively little personal motivation," for what they had done but were trying to respond to business pressures caused by overproduction and falling prices.

The \$500 million fine against a single firm matches the \$500 million fine imposed against a vitamin manufacturer in 1999.

The company and two of its executives were found guilty of price-fixing in March by a federal jury in San Francisco. The evidence of guilt was "overwhelming", the judge said, according to the Associated Press.

The conspirators met regularly with executives at other LCD manufacturers to set prices for their products, which were sold to companies including Hewlett Packard, Apple and Dell. The executives met in tea houses, cafes and karaoke bars to share information, according to Justice Department documents.

Former AU Optronics Corp. President Hsuan Bin Chen and former AU Optronics Vice President Hui Hsiung were each sentenced to serve three years in prison and fined \$200,000.

REFERENCE:

http://www.justice.gov/atr/public/press_releases/2012/287189.htm

Divestitures required in parking merger

Even as the Justice Department recently brought a civil antitrust lawsuit to block Standard Parking Corporation's

proposed \$345 million acquisition of Central Parking Corporation, the government also filed a proposed settlement that, if accepted by the court, would resolve its concerns about the deal's anti-competitive effects.

The department is requiring the two parking companies to divest some of their off-street parking facilities as a condition of approving the merger. Without the divestitures, the department alleged that the combined company would have a dominant market share of off-street parking facilities that would jack up prices and reduce service.

"Consumers have benefited from lower parking prices because of competition between Standard and Central in many urban central business districts," Joseph Wayland, the acting chief of the Antitrust Division, said. "These divestitures will ensure that consumers in the affected cities and states receive better services."

Standard and Central are the two largest parking management companies in the country. They are head-to-head competitors in offering off-street parking services, such as garages and lots. The Department alleges that the companies compete on prices, hours of operation, parking options, security and other terms.

Consumers have benefited from this competition that has resulted in lower prices and better services. The proposed merger, the department alleged, threatens to end that competition and would confer market power on Standard which could raise prices or reduce the quality of services for off-street parking services.

The department's complaint alleges that the proposed acquisition would lessen competition in central business districts in the following: Atlanta; Baltimore; Bellevue, Wash.; Boston; Charlotte, N.C.; Chicago; Cleveland; Columbus, Ohio; Dallas; Denver; Fort Myers, Fla.; Fort Worth, Texas; Hoboken, N.J.; Houston; Kansas City, Mo.; Los Angeles; Miami; Milwaukee; Minneapolis; Nashville, Tenn.; New Orleans; New York City (Bronx, Rego Park), N.Y.; Newark, N.J.; Philadelphia; Phoenix; Richmond, Va.; Sacramento, Calif.; and Tampa, Fla.

To remedy the harm, the proposed settlement requires Standard and Central to divest at least 107 parking facilities in those districts. The divestitures can be accomplished if the companies sell their interests in the facilities to an approved buyer, or they can terminate their parking facility agreement or they can allow the agreement to expire. The facilities that must be divested generate annual revenues of about \$85 million.

Standard, a Chicago-based company with operations in 41 states and Washington, D.C., owns about 2,200 parking facilities containing more than 1.2 million parking spaces. In 2011, Standard had total revenues of more than \$729 million. Central is a Nashville-based company in 38 states, Washington D.C. and Puerto Rico. It also has about 2,200 parking facilities with about 1 million parking spaces. It is privately held, with total revenues in 2011 in excess of \$800 million.

REFERENCES:

http://www.justice.gov/atr/public/press_releases/2012/287416.htm

INTERNATIONAL BRIEFS

FTC, DOJ building more bridges to India, China

The Justice Department and the Federal Trade Commission recently signed a Memorandum of Understanding with Indian competition authorities as part of their effort to pursue a number of cross-border agreements to facilitate cooperation and communication and promote open global markets.

The MOU with India, signed on September 27 by Acting Assistant Attorney General Joseph Wayland of the Antitrust Division and FTC Chairman Jon Leibowitz, is seen as another step forward in making antitrust an issue of global concern. Wayland said the MOU will “enhance [our] relationship in the years ahead, as we work together to ensure that markets are open and competitive, by identifying and remedying anticompetitive behavior.”

The signing ceremony in Washington with the Indian officials came just two days after Wayland and Leibowitz held a high-level meeting with top officers from China’s three antitrust agencies. That two-day session, also in Washington, marked the first joint, high-level meeting of the Chinese and U.S. agencies since the FTC and Justice Department signed an antitrust MOU with the agencies on July 27, 2011.

At the meeting with Chinese officers, the agenda included promotion of competition in a global economy and the need for civil and criminal antitrust enforcement. The Chinese officers at the meeting included officials from China’s three antitrust agencies – Ministry of Commerce (MOFCOM) Vice Minister Gao Hucheng, National Development and Reform Commission (NDRC) Vice Chairman Hu Zucui and State Administration for Industry and Commerce (SAIC) Vice Minister Teng Jiakai.

Meanwhile, the MOU with India ensures that both countries’ antitrust agencies will keep each other informed about significant competition policy and enforcement developments in their jurisdictions. It also establishes a framework for technical cooperation.

The MOU recognizes that when the U.S. and Indian competition agencies are investigating related matters, they may find it in their common interest to cooperate in such cases. At the same time, the MOU involves voluntary cooperation and does not change the law in either country. India adopted its modern competition law in 2002, and the law’s main provisions were put into effect between 2009 and 2011.

The MOU, Leibowitz said, “will strengthen the already excellent relations among the U.S. and Indian competition authorities by further facilitating cooperation on policy and enforcement matters.”

The FTC vote authorizing Leibowitz to sign the MOU with India was 5-0.

REFERENCES:

<http://www.ftc.gov/opa/2012/09/indiamou.shtm>
http://www.justice.gov/atr/public/press_releases/2012/287457.htm

<http://www.ftc.gov/opa/2012/09/chinamou.shtm>
<http://www.ftc.gov/opa/2011/07/chinamou.shtm>

New Canadian competition commissioner

Commissioner John Pecman has been installed in place of Canada’s outgoing Commissioner of Competition Melanie Aitken, who resigned the post three years into a five-year term.

Assigned the task of implementing heightened enforcement powers contained in the 2009 Competition Act, Aitken became “a thorn in the side of many and a champion in the eyes of others,” according to the National Post. She is credited with promoting competitive consumer markets, cracking down on misleading representations including fine-print disclaimers, and reinforcing competition in the airlines, telecommunications and credit card industries.

Acting Commissioner Pecman (a title Ms Aitken held initially) has worked at the Competition Bureau as an investigator and manager for more than 28 years, at various times in every enforcement branch. An economist by training, he oversaw the Bureau’s role in retail gasoline cartel investigations in Ontario and Quebec, where multiple charges led to guilty pleas and jail sentences. Under Pecman, the Criminal Matters Branch worked closely with foreign competition authorities in the enforcement of multi-jurisdictional cartel cases, including two prominent price fixing conspiracies.

As the Bureau’s acting head, Pecman will lead its participation in international venues such as the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN).

REFERENCE:

<http://www.nationalpost.com/scripts/With+Melanie+Aitken/7288314/story.html>
<http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/fra/03504.html>

CALENDAR

Oct. 1– Commissioner **Julie Brill** will deliver the keynote address at the Better Business Bureau’s National Advertising Division Annual Conference, at 9 a.m., at the Battery Park Ritz Carlton in New York, NY. For more information, contact C. Lee Peeler, President and CEO National Advertising Review Council, 70 West 36th St., New York, NY 10018. Telephone 212-705-0100, or by email: lpeeler@narc.bbb.org.

Oct. 1—**Mary K. Engle**, associate director for advertising practices at the FTC, will speak on the topic of digital disclosures from 9:45 to 10:55 a.m. and **James Kohn**, the FTC’s director of enforcement, will discuss the FTC’s approach to environmental marketing claims, from 11:10 a.m. to 11:45 a.m. at the Better Business Bureau’s National Advertising Division’s annual conference at the Battery Park Ritz Carlton in New York City. For more information, visit <http://www.cvent.com/events/asrc-cbbb-present-nad-caru-and-ersp-annual-conferences-2012/event-summary-bb157f78795d4b78bce5ebfb4e55af74.aspx>.

Oct. 2—Leslie Fair, senior attorney with the FTC's division of consumer and business education, will talk about enforcement practices at the FTC; she will be joined by **Richard Lawson**, of the Florida office of the attorney general. They will make their presentation from 1:25 p.m. to 2:25 p.m. At 3:40 p.m., the FTC's **Mary K. Engle** will participate in a town hall discussion on advertising practices. These events will occur at the Better Business Bureau's National Advertising Division's annual conference, at the Battery Park Ritz Carlton. For more information, visit <http://www.cvent.com/events/asrc-cbbb-present-nad-caru-and-ersp-annual-conferences-2012/event-summary-bb157f78795d4b78bce5ebfb4e55af74.aspx>.

Oct. 2—Commissioner **Julie Brill** will address the University Of Colorado School Of Law on competition and privacy issues relating to mobile technologies at 4 p.m., at the University of Colorado School of Law in Boulder, Colo. For more information, contact Anna Noschese, Program Director, Silicon Flatirons Center at the University of Colorado School of Law at 303-735-5633, or by email at Anna.Noschese@Colorado.edu.

Oct. 2—FTC Commissioner **Edith Ramirez** will give the keynote address at the annual conference of the children's arm of the advertising industry's self-regulatory program, or CARU. She will speak from 9:30 to 10 a.m., at the Ritz Carlton in Battery Park. For more information, visit <http://www.cvent.com/events/asrc-cbbb-present-nad-caru-and-ersp-annual-conferences-2012/event-summary-bb157f78795d4b78bce5ebfb4e55af74.aspx>.

Oct. 3—FTC Commissioner **J. Thomas Rosch** will give the 2012 Lewis Bernstein Memorial Lecture at St. Johns University, Jamaica, N.Y.

Oct. 4—Commissioner **Julie Brill** will participate in an AdWeek fireside chat discussing data and privacy, among other issues. The event will be held at 3 p.m. in New York City. For more information, contact Ron Urbach at Urbach, Davis & Gilbert, telephone 212-468-4824 or by email rurbach@dglaw.com.

Oct. 10—Commissioner **Julie Brill** will address the Institute for Education Media and Technology Roundtable at an event to be held at 6 p.m. at the Swedish Embassy in Washington DC. For more information, contact Joshua Galper, telephone 202-499-2441 or by email at josh@personal.com.

Oct. 24—Commissioner **Julie Brill** will participate in the 34th International Conference of Data Protection and Privacy Commissioners by addressing the plenary session on international privacy regulation models. She will speak at 10 a.m. at Plena del Este, Uruguay. For more information, contact Silvana Casciotti, Derechos Ciudadanos, by email at silvana.casciotti@agesic.gub.uy

Oct. 25-26—FTC Commissioner **J. Thomas Rosch** will speak at the 14th annual Sedona Antitrust Conference in Del Mar, CA.

Nov. 8—The American Bar Association will host its annual antitrust fall forum at the National Press Club, 539 14th St., NW, Washington, DC, 13th floor. At 10:45 a.m., **Renata B. Hesse**, senior counsel to the DOJ's antitrust division, and FTC Commissioner **J. Thomas Rosch** will speak on the role of judicial bodies and regulatory agencies; at 12:30 p.m., **Lynda K. Marshall**, assistant chief of the foreign commerce department with DOJ's antitrust division, will talk about international enforcement. An overview of antitrust developments at US agencies will include as panelists FTC Commissioner **Maureen K. Ohlhausen**, **Leslie Overton**, deputy assistant attorney general in the Justice Department, **Howard Shelanski**, director of the FTC's bureau of economics and **Scott Hemphill**, chief of the antitrust bureau of the New York state attorney general.

Privacy regulation will be addressed by **David C. Vladeck**, director of the FTC's bureau of consumer protection, at 2:45 p.m. Consumer financial protection investigations will be discussed by **J. Reilly Dolan**, assistant director of the FTC's division of financial practices, **Lucy Morris**, deputy enforcement director at the Consumer Financial Protection Bureau and **Deirdre McEvoy**, chief of the DOJ's New York field office. **Ilene Knable Gotts** of Wachtell Lipton Rosen & Katz is chairing the meeting; vice-chair is **Nikhil Shanbhag**, senior competition counsel at Google Inc. For more information, visit the website, http://www.americanbar.org/calendar/2012/11/2012_antitrust_fallforum.html.

Nov. 12-13—FTC Commissioner **J. Thomas Rosch** will speak at the 2012 Global Forum in Stockholm, Sweden.

Nov. 13—Commissioner **Julie Brill** will deliver a keynote presentation at PMA's 34th Annual Promotion Marketing Law Conference at 9 a.m. at the Sheraton Chicago Hotel & Towers in Chicago, Ill. For more information, contact Edward M. Kabak, Chief Legal Officer, PMA, by telephone at 212-340-0083 or by email at ekabak@pmailink.org.

Nov. 14—Commissioner **Julie Brill** will participate in the National Consumer League's First Consumer Protection Symposium on Capitol Hill from 11:30 to 3 p.m. at the Rayburn House Office Building in Washington, DC. For more information, contact August T. Horvath, Kelley Drye & Warren LLP at 212- 808-7528 or by email at AHorvath@KelleyDrye.com.

Nov. 16—Commissioner **Julie Brill** will deliver the keynote address, "The Second Wave of Global Privacy Protection," at 9 a.m., at a symposium at the Ohio University School of Law in Columbus, Ohio. For more information, contact Peter Swire, professor at the Ohio State University School of Law at 240-994-4142, or by email at peter@peterswire.net.

Nov. 30—Dec. 1—The American Bar Association will host a conference highlighting development in India's Competitive Regime, to be held at the Taj Mahal Hotel in New Delhi, India.

Judge Douglas H. Ginsburg of the US Court of Appeals for the D.C. Circuit will give the opening address. For more information, visit the website, http://www.americanbar.org/calendar/2012/11/antitrust_in_asia.html.

Dec. 5—FTC Commissioner **J. Thomas Rosch** will speak at the Arnall Golden Gregory and International Association of Privacy Professionals' conference on FTC activities, Washington, DC.

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Christopher Amolsch
Publisher

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