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FTC Nominee Wright Faces Tough Questioning from Senate Commerce Committee

Jeffrey May (Wolters Kluwer) · Thursday, December 6th, 2012

George Mason University Law Professor Joshua D. Wright faced tough questions from members of the Senate Commerce, Science, and Transportation Committee on Tuesday afternoon as the committee considered his nomination to serve on the FTC.

A vote on the nomination is expected as early as next week. If confirmed, Wright would replace Commissioner J. Thomas Rosch—a fellow Republican—whose term expired in September. Rosch has publicly stated that he will remain at the Commission until his replacement is confirmed and sworn in.

Wright, an economist, has written extensively on antitrust law and economics and is a regular contributor to the Truth on the Market blog. Some of those writings have raised concerns among committee members that Wright might not be right for the FTC.

"I profoundly respect the Federal Trade Commission as an institution, its role in protecting consumers, and its mission in ensuring the effective operation of markets," Wright said in his prepared testimony. "The Commission has earned its reputation as the world's premiere competition and consumer protection agency."

However, Senator Barbara Boxer (California) said that some of Wright's writings gave her pause. She questioned why Wright would want to be a member of a Commission that he recently described as having "a history and pattern of appointments evidencing a systematic failure to meet expectations."

Wright explained that he was not talking about the entire mission of the FTC. His criticism stemmed from the Commission's enforcement record under its FTC Act, Sec. 5 unfair methods of competition authority, as opposed to its consumer protection authority. Wright said that he believed greatly in the FTC's fundamental mission of protecting consumers.

Senator Frank Lautenberg (New Jersey) also wondered how Wright's apparent anti-regulatory stance squared with serving as a regulator. "How do you protect the safety of consumers without rules?" the senator asked.

"I do believe in rules and regulation," said Wright, in response to the questioning. He added that regulations can harness markets to work for consumers but can also operate to the detriment of consumers.

Commerce committee members also sought assurances from Wright that he would recuse himself from FTC proceedings involving companies for which the nominee had authored reports. Wright stated that he would recuse himself from law enforcement matters pertaining to Google and other appropriate cases where potential conflicts called for recusal for a period of two years.

Noting that the FTC can "sometimes move at a glacial pace," Senator Maria Cantwell (Washington) pressed on the adequacy of the two-year period of recusal.

Wright said that he would check with ethics officials at the FTC about his obligations and would recuse himself if appropriate, but the pledge did not seem to satisfy Cantwell.

Wright also said that, if confirmed, he would look into oil market manipulation. Senators Boxer and Cantwell both believe that the FTC should do more to determine whether market manipulation or false reporting by oil refineries contributed to near-record gas prices in Western states this year. Cantwell wants the agency to take a more aggressive role in policing potential oil market manipulation.

Boxer said that she was not happy with the Commission because it "has never so much as scolded" the oil companies.

Wright also pledged support for the FTC's efforts to develop a "Do Not Track" mechanism for protecting consumer privacy on the Internet. He said that he supported the Commission's view in favor of Do Not Track and the FTC privacy report's inclusion of notice and choice obligations.

A webcast of the hearing is available on the Senate Commerce Committee's website.

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