

KIRKLAND ALERT

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Senate Confirms Terrell McSweeney as a Federal Trade Commissioner

On Wednesday, April 9, 2014, the U.S. Senate confirmed Terrell McSweeney as a Commissioner of the Federal Trade Commission (FTC). The Senate vote, 95-to-1, reflects broad bipartisan support for Commissioner McSweeney's nomination. With the addition of Commissioner McSweeney, a Democrat, the FTC will operate with the full complement of five Commissioners.

Commissioner McSweeney's confirmation breaks a two-two partisan split at the FTC.

Commissioner McSweeney joins the FTC from the Antitrust Division of the U.S. Department of Justice, where she was most recently Chief Counsel for Competition Policy and Intergovernmental Relations. Before her time at the Department, Commissioner McSweeney served Vice President Joseph Biden in a variety of policy roles at the White House and in the U.S. Senate. Commissioner McSweeney holds degrees from Harvard University and the Georgetown University Law Center.

Commissioner McSweeney's confirmation breaks a two-two partisan split at the FTC. Although the agency has traditionally operated by consensus, 3-to-2 votes along partisan lines do occur, albeit rarely. One area in which such a vote is possible would involve "pure" Section 5 unfair methods of competition cases. Given the agency's striving for consensus, however, we expect Republican Commissioners Maureen Ohlhausen and Joshua Wright to retain influence, particularly on merger matters. We may also see more activity with the arrival of the fifth Commissioner in the arena of standard-essential patents, and the competition and consumer protection issues that arise from their use and abuse, especially by so-called patent trolls. The Commission is engaged in a Section 6(b) study of those topics, but has also begun consideration of litigation, as has the Department of Justice.

Given her background in public policy, we expect Commissioner McSweeney to take a particularly active role in shaping the Commission's mandate.

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