

## Trump Intends to Nominate Final FTC Commissioner

March 28, 2018

**On Monday, the Trump Administration announced its intent to nominate the fifth and final individual to fill the current vacancies on the Federal Trade Commission (“FTC”): Rebecca Kelly Slaughter, a Democrat. We expect the Senate to hold a hearing for Ms. Slaughter in April, with confirmation on the same schedule as the other four FTC nominees later this Spring.<sup>1</sup> Following confirmation of Ms. Slaughter and the other nominees, the FTC will have a full slate of Commissioners for the first time since August 2015.**

**Ms. Slaughter brings to the agency experience in both consumer protection and antitrust policy issues as well as in navigating the political landscape. Taken together with the other nominees, we believe the new leadership of the FTC will carefully review mergers and other conduct that could have a negative impact on consumers or competition, and will not shy away from bringing cases.**

### Background

Ms. Slaughter—who began her career in private practice after receiving both her law degree and undergraduate degree from Yale—currently serves as Chief Counsel to Senator Schumer. Prior to her current role, she held several other counsel positions working for Senator Schumer, including on the Senate Judiciary Committee.

### Antitrust and Consumer Protection Perspectives

Ms. Slaughter’s portfolio with Senator Schumer includes antitrust, IP, technology, and privacy. She serves as Senator Schumer’s point person on most legal issues, and she has developed a “deep background in telecom and other tech policy matters.”<sup>2</sup> She has also focused on patent assertion entities and has advocated for legislative reform to prevent abuse of the patent system.<sup>3</sup>

We anticipate that Ms. Slaughter will push for aggressive enforcement in merger cases, as well as against single-firm, monopolistic conduct, particularly when IP rights are implicated. We also expect that she will embrace longstanding FTC initiatives such as challenging reverse payment settlements between

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<sup>1</sup> However, we note that Acting Chairman Maureen Ohlhausen (who has been nominated to the Court of Federal Claims) is expected to remain at the FTC until either confirmed for the judgeship or her FTC seat expires in September 2018. For more information on President Trump’s other FTC nominees, Joe Simons, Noah Phillips, Christine Wilson, and Rohit Chopra, please see Davis Polk’s Client Memorandum [Four FTC Nominations Sent to the Senate](#) (Jan. 26, 2018).

<sup>2</sup> Seung Min Kim, [Inside Schumer’s Inner Circle](#), POLITICO (Jan. 3, 2017); see also [Schumer Staff Members](#), LEGISLATIVE ACTION CENTER (listing Rebecca Kelly Slaughter as Legislative Assistant for Telecomm, among other legal responsibilities).

<sup>3</sup> Panel Participant, *ChIPs Women in IP Global Summit: Policy and Patent Reform Panel* (Oct. 1–2, 2014); Panel Participant, *Patent Assertion Entities: Helping or Hurting Innovation?* (July 31, 2013).

pharmaceutical companies. We would caution against assuming that Ms. Slaughter's views will always mirror Senator Schumer's.<sup>4</sup>

Ms. Slaughter's interest in consumer and privacy protections echoes the focus of current Democratic nominee Rohit Chopra. In the Senate, Ms. Slaughter is viewed by many as someone who looks for consensus and has friends on both sides of the aisle. At the FTC, we expect that she likewise will work well not only with Mr. Chopra, but also with the Republican nominees.

## Conclusion

Given Ms. Slaughter's knowledge and experience in areas including privacy and patents, and her many years working in the Senate, we would expect a relatively smooth confirmation process. We believe that the new leadership of the FTC will be likely to closely scrutinize mergers and conduct on both the competition and consumer protection sides of the agency, and may not always align with the more hands-off approach traditionally associated with Republican administrations.

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<sup>4</sup> However, Senator Schumer has not always taken a pro-enforcement approach to the antitrust laws. In 2012, Senator Schumer urged the DOJ to drop its collusion lawsuit against Apple. Sen. Charles E. Schumer, [Memo to DOJ: Drop the Apple E-Books Suit](#), THE WALL STREET JOURNAL (July 17, 2012).