



Consumer Federation of America



U.S. Public Interest Research Group

July 21, 2004

The Honorable John S. McCain
Chairman
Committee on Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ernest F. Hollings
Ranking Member
Committee on Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman McCain and Ranking Member Hollings:

We are writing to express serious concerns about the nomination of Deborah Majoras to be the Chair of the Federal Trade Commission (FTC). Our organizations are not taking a position on Ms. Majoras's nomination, but we believe that these concerns should be addressed before the Senate considers a nomination of such importance to consumers.

Since being nominated, Ms. Majoras has been questioned about her previous work on behalf of major oil and gas interests – including Chevron-Texaco – and her work on media mergers while at the U.S. Department of Justice (DOJ). Both of these subjects are within the purview of the FTC, are extremely important to consumers and are currently a major focus of the Commission's work. The questions raised relating to Ms. Majoras's previous work involve serious conflict concerns about how she would or would not pursue investigations related to both oil industry and media mergers.

The Oil and Gas Industry

This spring and summer have seen a massive increase in gasoline prices nationwide. While some of that increase is the result of higher crude oil prices, much is due to the deliberate actions of the major domestic oil and gas companies. Throughout the 1990s, mergers turned 34 major oil and gas companies into 13, and 15 refining companies into seven. In the process, about 50 oil refineries have been shuttered. This reduced competition has led to prices rising faster than costs, while profits have soared.

The FTC is responsible for reviewing oil industry mergers. However, the manner in which previous mergers have been reviewed has been flawed. Indeed, the Government Accountability Office (GAO) recently issued a report, *Effects of Mergers and Market Concentration in the U.S. Petroleum Industry*, which was highly critical of the FTC. The GAO report found that oil and gas mergers approved by the FTC increased concentration in the industry, and have increased gasoline prices by as much as seven cents a gallon for consumers. This is a disturbing finding. We believe that the FTC needs to address these concerns before it reviews the next proposed merger. This would necessitate the Commission redefining the way in which it looks at mergers in an industry that has such an enormous effect on consumers' pocketbooks.

Although Ms. Majoras has laudably expressed some urgency about the need to examine FTC's work on these issues, she has not signaled that a significant change in the FTC's approach is necessary, nor has she offered specific recommendations on how to achieve such a change. For example, she has yet to say whether she would modify the FTC's review procedures to address concerns raised by the GAO and others. Instead, she appears to be adopting much of the negative reaction of the current FTC Chair to the GAO report. Chairman Muris has been extremely critical of the legitimate concerns raised by the non-partisan, investigative arm of Congress.

This is of special concern given the fact that while a partner with the law firm Jones Day, Ms. Majoras has represented major oil and gas interests, including Chevron-Texaco.

The FTC's Media Merger and Telecommunications Oversight Authority

If confirmed as FTC Chair, Ms. Majoras would likely be involved in the review of proposed media mergers. However, her work as a deputy assistant attorney general reasonably leads us to question whether she is adequately committed to protecting consumers against the dangers associated with media consolidation. While at DOJ, Ms. Majoras advocated for a proposal to shift media merger review authority from the FTC to the DOJ.

This would be a troubling development. The FTC has developed an expertise in dealing with cable television and other media mergers. Its independence is very important on a subject that goes to the heart of our democracy. As the pace of media consolidation has picked up, there is a greater need for scrutiny of proposed combinations, not less. Further mergers would risk excessive consolidation among the primary outlets from which consumers receive vital news and information.

Yet, despite the fact that Ms. Majoras's firm, Jones Day, has and continues to represent many of these companies – including Time Warner, DirecTV and General Electric – she has not adequately addressed the question of whether she can be counted on to aggressively defend and use the FTC's approval authority to stop mergers that don't adequately protect consumer interests.

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In addition, although not all of us took positions on the Microsoft settlement, based on Ms. Majoras' leadership in DOJ's settlement negotiations in the Microsoft case, we fear that she may not have a sufficient appreciation for the joint role that state and federal officials play in enforcing antitrust and consumer protection laws. An understanding of this dynamic is absolutely essential for the person leading the FTC. The FTC, much more so than DOJ, needs to work with state Attorneys General and other regulators to protect consumers.

Conclusion

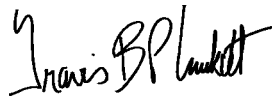
Very few other appointments are as important to the nation's consumers as that of FTC Chair. Very few issues are as important to Americans as are gasoline pricing, media concentration and antitrust policy. While we are not opposing the Majoras' nomination, it is impossible to fairly judge whether she is capable of leading this important consumer protection agency unless our concerns are addressed.

Thank you.

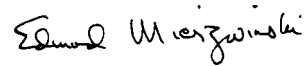
Sincerely,



Gene Kimmelman
Senior Director of Public Policy
Consumers Union



Travis Plunkett
Legislative Director
Consumer Federation
of America



Ed Mierzewski
Consumer Programs Director
U.S. PIRG

cc: Members, Committee on Commerce, Science and Transportation