

## [Ramirez Leaves An FTC Ready To Lead Privacy Enforcement](#)

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Law360, New York (January 13, 2017, 9:37 PM EST) -- With her resignation Friday, [Federal Trade Commission Chairwoman Edith Ramirez](#) leaves an agency that has become a capable and powerful privacy and data security regulator, having pushed the commission to not only undertake more cutting-edge enforcement actions but also build up its technological capabilities to better address these issues.

Ramirez, a Democrat who has served at the agency since April 2010 and took over as chair in March 2014, will [officially leave the commission](#) on Feb. 10, on the heels of Republican President-elect Donald Trump being sworn into office on Jan. 20. Her departure will leave the agency with only two commissioners: Republican Maureen Ohlhausen and Democrat Terrell McSweeney.

Under her leadership, the agency brought nearly 400 consumer protection law enforcement actions that spanned a range of topics, including false and misleading digital and native advertising, consumer fraud, data security and surreptitious online tracking. The chair has also shown a propensity for education and technology efforts, having established the Office of Technology Research and Investigation and launching initiatives such as Start with Security to provide businesses with more insight into how to secure their information systems.

"Chairwoman Ramirez has guided the FTC to focus on key issues of concern to both consumers and businesses," former FTC Commissioner Julie Brill, who left the commission last April and now serves as co-director of [Hogan Lovells'](#) global privacy and cybersecurity practice, told Law360 Friday. "Chairwoman Ramirez's thoughtful leadership will be missed by staff as well as constituents outside the agency."

When Ramirez took over the chair position from fellow Democrat Jon Leibowitz nearly four years ago, the agency was already widely considered the nation's leading privacy and data security enforcement authority. The direction in which Ramirez has taken the FTC since then has only built on and strengthened that position, attorneys say.

"Even as other agencies in Washington have gotten into the privacy space, there is still this kind of a consistency from the FTC and recognition that the agency is the right place for much of the privacy and data security actions to take place," said Phyllis Marcus, a [Hunton & Williams LLP](#) counsel and former chief of staff for the FTC's Advertising Practices Division.

Despite its relatively small size, the agency has had an outsized impact on privacy and consumer protection in both the U.S. and abroad, especially when it comes to helping to shape international pacts such as the recently-enacted U.S.-European Union Privacy

Shield data transfer agreement and taking enforcement actions against some of the industry's biggest players. During Ramirez's tenure, the FTC penned settlements with extramarital affair website Ashley Madison over a headline-grabbing data breach that exposed roughly 36 million users' data and digital advertising company Turn over claims it unlawfully tracked millions of [Verizon Wireless](#) customers.

The agency also reached a \$10 billion deal with [Volkswagen AG's U.S. unit](#) to compensate consumers deceived by the automaker's "clean diesel" advertising campaign in the wake of the company's emissions-cheating scandal and inked a \$200 million settlement with [Herbalife Ltd.](#) for allegedly deceiving consumers into believing they could make huge sums of money by becoming a distributor.

"[Ramirez] will leave behind a legacy of active and aggressive enforcement initiatives, particularly in the privacy and data security areas," [Manatt Phelps & Phillips LLP](#) partner and former FTC staff attorney Marc Roth said, noting that during her tenure, more privacy and data security cases were brought than under any other chair.

But what may prove to have an even more lasting impact is the enforcement action that the regulator didn't settle.

The most prominent examples came in data security litigation against [Wyndham Worldwide Corp.](#) and LabMD Inc., the first two companies that elected to push back on rather than immediately settle allegations that they had run afoul of the unfairness prong of Section 5 of the FTC Act by failing to institute reasonable security practices to protect consumer data.

In both cases — which attorneys noted Ramirez may have been more willing to press in court given her more than two decades of experience working as a litigator at intellectual property powerhouse Quinn Emanuel Urquhart & Sullivan LLP before joining the commission — the companies argued that the agency didn't have the power to categorize a failure to institute reasonable data security practices as "unfair" and had failed to give businesses reasonable notice of how it planned to wield its authority. The Third Circuit in the Wyndham case upheld the commission's authority to regulate corporate data security practices in 2015, while Ramirez and her fellow commissioners shot down LabMD's challenge in a July decision that is currently on appeal to the Eleventh Circuit.

"What we've seen under Ramirez's leadership is the agency take a broad view of its authority and really look to use it authority vigorously," said Janis Kestenbaum, a partner at [Perkins Coie LLP](#) and former senior legal adviser to Ramirez. "And under her tenure, we saw that position vindicated in 2015 with the Third Circuit's decision in Wyndham, and now we have a question mark of whether they went too far in LabMD."

Besides the push to expand its privacy and data security enforcement authority — which the FTC highlighted as late as last week, when it [lodged another enforcement action](#) over [D-Link Corp.](#)'s allegedly lax connected device security practices the company has vowed to fight — Ramirez has also demonstrated a willingness to take a step back and understand the complex and novel technological issues that underpin these actions, attorneys say.

"The commission continued to bring a host of enforcement actions under Chairwoman Ramirez, some of which pushed against the edges of Section 5, but the signature legacy she leaves to her successor is a more modern and tech-savvy FTC," said Reed Freeman, [WilmerHale](#)'s cybersecurity, privacy and communications practice co-chair and a former FTC staff attorney.

Freeman noted that the FTC took "a quantum leap" during Ramirez's tenure in terms of becoming more tech-savvy by hiring tech experts such as Lorrie Faith Cranor as chief technologist and Justin Brookman as a policy director, and developing new technology-focused offices at the FTC such as the Division of Litigation Technology and Analysis and the Office of Technology Research.

"The commission is now more equipped than ever to understand today's tech marketplace, which helps it evaluate whether more guidance is necessary and whether to initiate investigations involving the use of technology," Freeman said.

The FTC has also been quick to issue reports and hold workshops on myriad topics including data security, big data, cross-device tracking, smart TVs, drones and ransomware, which has helped them to take more measured and informed actions in rapidly emerging and somewhat complex areas, attorneys say.

"The chairwoman is leaving the FTC in great shape and stronger than when she found it due to accomplishments like creating the Office of Technology Research and having an annual PrivacyCon conference that brings together researchers around the globe," Kestenbaum said, noting that these developments are so significant because "the facts on the ground in the privacy and technology arena are changing so quickly, so for any agency to really do it justice and be effective, they have to have a lot of sophistication with complex issues and need the infrastructure to do that."

The departing chairwoman's focus on emerging technology is far from surprising, given the rise of products such as connected cars and drones during her tenure and her vow during her [first speech as head](#) of the agency at the International Association of Privacy Professionals' annual conference in March 2013 that the agency would not only continue to pursue tech companies that mishandle consumer data, but also make privacy in the growing world of connected devices known as the internet of things a priority.

"Chairwoman Ramirez's legacy is one of a focus on new technology and new technological challenges to privacy, which is very important and that she was right to focus on," said Jim Halpert, co-chair of DLA Piper's global data protection, privacy and security practice. "She leaves the FTC in good shape for a successor."

Even with Ramirez's departure, attorneys believe the FTC will continue to have a heavy focus on privacy and consumer protection, although the agency may scale back on how broadly it defines its authority to bring more controversial data security actions that are not tied to obvious consumer harms, especially if someone like Commissioner Ohlhausen — who is widely expected to be appointed chair on at least an interim basis and dissented to the filing of the D-Link action — takes over.

"While it's hard to say what's next without knowing who the new chairman or commissioners will be, in terms of consumer protection issues such as fraud and false advertising claims that have been core to the agency, I don't think we'll see much deviation from what's been done in the past," said Ronald Urbach, chairman of [Davis & Gilbert LLP](#) and co-chairman of the firm's advertising, marketing and promotions practice group. "As for privacy and data security, we'll likely continue to see a fair amount of focus on these issues, but the question is going to be if there is going to be some slowdown in some areas that might be viewed as trying to shape the industry rather than react to it."

But regardless of who fills Ramirez's shoes, attorneys agree that her legacy over the past four years is strong and won't be easy to undo.

"She leaves the agency as a very active and vibrant player in the privacy and data security and broader consumer protection arena," Kestenbaum said.

--Editing by Philip Shea and Katherine Rautenberg..