



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Competition  
Bureau of Economics  
Office of Policy Planning

June 17, 2004

The Honorable Gene DeRossett  
Michigan House of Representatives  
District Fifty-Two  
The State Capitol  
Lansing, MI 48913

Re: The Michigan Petroleum Marketing Stabilization Act

Dear Representative DeRossett:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics are pleased to respond to your letter of May 19, 2004, asking us to comment on Michigan H.B. 4757, also known as the "Petroleum Marketing Stabilization Act."<sup>1</sup> Specifically, in your capacity as Chairperson of the Michigan House of Representatives standing committee on Transportation, you asked us the following:

- What is the likely competitive impact of this legislation?
- What impact would this legislation have on consumers if it were signed into law? Would it significantly raise prices?
- Are there existing protections against "predatory pricing" found in the federal antitrust laws, and to that end would this legislation be duplicative in nature?
- Are there any scholarly studies or court decisions in recent years that address the effect of "below-cost" pricing in relation to the creation of monopolies?

The FTC is charged by statute with preventing unfair methods of competition and unfair

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<sup>1</sup>This letter expresses the views of the FTC's Office of Policy Planning, Bureau of Competition, and Bureau of Economics. The letter does not necessarily represent the views of the Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

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<sup>2</sup>Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>3</sup>FTC, Final Report, *Midwestern Gasoline Price Investigation* (Mar. 29, 2001), at <http://www.ftc.gov/os/2001/03/mwgasrpt.htm>.

<sup>4</sup>*FTC Closes Western States Gasoline Investigation*, FTC Press Release (May 7, 2001), at <http://www.ftc.gov/opa/2001/05/westerngas.htm>.

<sup>5</sup>*FTC to Hold Public Conference/Opportunity for Comment on U.S. Gasoline Industry*, FTC Press Release (Jul. 12, 2001), at <http://www.ftc.gov/opa/2001/07/gasconf.htm>.

<sup>6</sup>FTC staff comments, *Study of Unique Gasoline Fuel Blends, Effects on Fuel Supply and Distribution and Potential Improvements*, EPA 420-P-01-004, Public Docket No. A-2001-20 (Jan. 30, 2002), at <http://www.ftc.gov/be/v020004.pdf>.

<sup>7</sup>*See* Letter from Susan Creighton, Director, FTC Bureau of Competition, et al., to Kansas State Senator Les Donovan (Mar. 12, 2004), at <http://www.ftc.gov/be/v040009.pdf>; Letter from Susan Creighton, Director, FTC Bureau of Competition, et al., to Wisconsin State Rep. Shirley Krug (Oct. 15, 2003), at <http://www.ftc.gov/be/v030015.htm>; Letter from Joseph J. Simons, Director, FTC Bureau of Competition, et al., to Eliot Spitzer, Attorney General of New York (July 24, 2003), at <http://www.ftc.gov/be/nymfmpa.pdf>; Letter from Joseph J. Simons, Director, FTC Bureau of Competition, et al., to Roy Cooper, Attorney General of North Carolina (May 19, 2003), at <http://www.ftc.gov/os/2003/05/ncclattorneygeneralcooper.pdf>; *Competition and the Effects of Price Controls in Hawaii's Gasoline Market: Before the*

Commission staff have analyzed bills in Alabama, Kansas, New York, Virginia, and Wisconsin. Many of these bills contain provisions similar to those in Michigan H.B. 4757, particularly provisions that would prohibit sales below cost. Because our analysis of H.B. 4757 parallels our analysis of bills in other states, we are attaching to this letter a copy of our letter to Kansas State Senator Les Donovan regarding a similar below-cost gasoline bill. A summary of our analysis is below:

- If signed into law and followed by retailers, H.B. 4757 would likely discourage

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Subcomm., Ways and Means Comm., South Carolina House of Representatives (May 12, 1989). All of these letters are on file at the FTC.

<sup>8</sup>*Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-224 (1993).

<sup>9</sup>H.B. 4757 § (3)(h)(i)(A)-(B); (3)(h)(ii)(A)-(B).

<sup>10</sup>*Id.* at § (3)(g)(i)-(iii).



Respectfully submitted,

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