Prepared Statement of the Federal Trade Commission

Midwest Gasoline Prices

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Committee on the Judiciary
United States House of Representatives

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I. Introduction

Mr. Chairman and members of the Committee, I am Richard G. Parker, Director of the Federal Trade Commission's Bureau of Competition. I am pleased to appear before you today to present the Commission's testimony concerning the important topic of high gasoline prices in certain Midwest markets. Competition in the energy sector-particularly in the petroleum industry-is vital to the health of the economy of the United States. Antitrust enforcement has an important role to play in ensuring that the industry is, and remains, competitive.

Consumers in some Midwest markets, such as Chicago and Milwaukee, have experienced considerable price increases in gasoline since early spring, and prices have continued to spike up in the past month. The national average retail price of reformulated gasoline ("RFG") increased from $1.29 to $1.67 per gallon from November, 1999 to J to Jo51.67 p(

spectrum of sectors in the American economy, including the energy industry and its various components. The Commission's Bureau of Competition shares responsibility for antitrust enforcement with the Antitrust Division of the Department of Justice. The Commission also shares its expertise in both competition and consumer protection matters by providing advice to the States and to other federal regulatory agencies.[(8)]

Consumer welfare is the goal of antitrust enforcement across all industries. Its importance is particularly clear in the energy industry, where even small price increases can strain the budgets of many consumers, particularly those with low and fixed incomes, and of small business, and, as a result, can have a direct and lasting impact on the entire economy. In fiscal years 1999 and 2000 to date, the Bureau of Competition spent almost one-third of its total enforcement budget on investigations in energy industries.

Today, we provide an overview of our investigation into whether illegal conduct has led to gasoline price increases in Chicago D-14(ci)-6(es)-5(.) n the price increases was the introduction of EPA Phase II regulations for summer-blend reformulated gasoline that went into effect on May 1, 2000 at the wholesale level in both Chicago and Milwaukee. The new, more-stringent regulations require that winter-blend gas be drained from storage tanks before the summer-blend supply could be added. These regulations may have led to abnormally low inventories. According to some reports, summer-blend Phase II RFG is proving more difficult to refine than anticipated, causing refinery yields to be less than expected. The ethanol-based RFG used in Chicago and Milwaukee is reportedly proving to be the most difficult of all to make. Further, St. Louis has now entered the RFG program for the first time, thus adding additional demand to an already tight Midwest RFG supply situation.[(11)] Moreover, the recent appeals court decision upholding Unocal's patent for some formulations of RFG may have caused some refineries to change RFG blends in an effort to avoid infringement, leading to production delays and decreased refinery throughput.[(12)] As with the OPEC factor, RFG-related issues seem unlikely, however, to provide a complete explanation for recent Midwestern gas price increases, given that in the Midwest as a whole, conventional gasoline prices have risen more dramatically than RFG prices since the end of May.[(13)]

Another possible factor underlying the price increases could be the break in the Explorer pipeline last March. This pipeline moves refined petroleum products from the Gulf of Mexico through St. Louis to Chicago and other parts of the Midwest.[(14)] Explorer is still not operating at full capacity.[(15)]

These supply and demand factors could explain the Midwest price increases in whole or in part. However, these price spikes are particularly large. None of these factors precludes the possibility that collusion may have occurred at some point that further contributed to higher gas prices for consumers. If non-collusive marketplace events do not explain the price spikes, that may provide circumstantial evidence that illegal activity has taken place. In addition, we may find more direct evidence. As we undertake this inquiry, we do not know what we will find.

III. The FTC's Investigation

The Commission protects competition by enforcing the antitrust laws. We do not regulate or attempt to determine the reasonableness of energy prices. Instead, we investigate whether or not specific anticompetitive and unlawful conduct has occurred that interferes with the operation of the free market. Thus, our investigation will not determine whether prices are too high or too low, but only whether there is reason to believe that the antitrust laws have been broken.

For analytical purposes, it is best to think of the Commission's antitrust enforcement authority as divided into merger and nonmerger sectors. Enforcing the law against anticompetitive mergers prevents the accumulation of unlawful market power, that is, the ability profitably to raise prices above competitive levels. The matter we are discussing today involves enforcing the nonmerger provisions of the antitrust laws. There are two principal types of nonmerger conduct that may have unlawful anticompetitive effects: (1) the illegal acquisition or maintenance of monopoly power, which typically consists of a

intensive analysis. We cannot say at this time when the investigation will be concluded.

We assure you that our investigation will be thorough, objective and as expeditious as possible. The FTC has an excellent staff of lawyers and economists with considerable experience in the oil industry who are working on this investigation, and we will pursue this matter vigorously.

1. **This written statement represents the views of the Federal Trade Commission. My oral presentation and response to questions are my own, and do not necessarily represent the views of the Commission or any individual Commissioner.**

2. Energy Information Administration, Office of Oil and Gas Daily Price Report (June 12, 2000). In comparing average RFG prices at different times and at different places, it should be noted that RFG requirements may differ between summer and winter and also between localities.

3. EPA Data, RFG-CG Price Information, based on Oil Price Information Service data (June 14, 2000, June 23, 2000).

4. Id.

5. SeeR. Kemper & K. Mellen, "As Pressure Builds, Price of Gas Falls," Chicago Tribune (June 23, 2000).

6. EPA Data, RFG-CG Price Information (June 14, 2000).

Watch (June 21, 2000) at 2.

14. Environment News Service, "Gasoline Spill Threatens Dallas Water Supply" (March 13, 2000).

15. EPA/DOE briefing of results of field interviews to FTC staff, 6/14/2000 and to Midwest/Northeast Congressional Caucus, 6/16/2000.

16. 15 U.S.C. § 41 et seqThe Commission does not have criminal enforcement authority. The Antitrust Division of the Department of Justice has exclusive responsibility for criminal enforcement of the antitrust laws, pursuant to authority granted under the Sherman Act. 15 U.S.C. § 1 et seqIf we uncover evidence of criminal activity, however, such as hard-core price fixing, we can forward the matter to the Antitrust Division.

17. Subpoenas and CIDs are two methods of requiring the submission of certain information needed for an investigation. The Commission has authority to issue both. There are certain administrative and procedural advantages to each type of compulsory authority. Subpoenas are generally preferable for document discovery or in-person testimony, while CIDs may be superior for obtaining interrogatory responses or in(o)-12(bh9(t)-5(de,]TJ ETe,]TJ(s)-3)12(pe)lce oa/TT0)-10()12(t)6(e)4(s)10(t)-5(i)-5(m)25(o)-12(e)lce o