

REPORT OF THE FEDERAL TRADE COMMISSION ON ACTIVITIES IN THE OIL AND NATURAL GAS INDUSTRIES

¹ Committee on Appropriations, United States Senate, Report 111-43, on the Financial Services and General Government Appropriations Bill, 2010, S. 1432, at 85 (July 9, 2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr043.111.pdf. As the Commission noted in previous reports to the Appropriations Committees, because this is a public report, it is drafted to exclude sensitive details of ongoing investigations, which the Commission is prohibited by law from revealing.

² See <http://www.ftc.gov/opa/2011/04/ftccftc-mou.shtm> (press release);
<http://www.ftc.gov/os/2011/04/110412ftccftc-mou.pdf>

The Commission's enforcement activities also included examinations of possibly anticompetitive conduct in the petroleum and natural gas industries. Crude oil and refined petroleum product prices and profit margins increased substantially earlier this year. As recounted in the last semiannual report, last spring the Energy Information Administration ("EIA") reported that U.S. refiners' refining margins had increased more than 90 percent between the beginning of 2011 and early May, while those refiners were using only 81.7 percent of their capacity in early May (a seven percent reduction from the same period in 2010). Those and other developments led the Commission to open an investigation – including the use of compulsory process – to determine whether certain oil producers, refiners, transporters, marketers, physical or financial traders, or others have engaged or are engaging in anticompetitive or manipulative practices or have provided any federal department or agency with false or misleading information related to the wholesale price of crude oil or petroleum products.⁵ The investigation seeks information that may include, but is not limited to, utilization and maintenance decisions, inventory holding decisions, product supply decisions, product margins and profitability, and capital planning.

The FTC also has examined other types of conduct by firms in the oil and natural gas industries, including inquiries related to propane and investigations of possibly anticompetitive or possibly deceptive conduct involving other petroleum products and fuel-saving devices.⁶ Some of this work involved contacts with local law enforcement officials.

Petroleum Market Manipulation Rule

As mentioned in previous reports, the Commission established a process in November 2009 to monitor compliance with the Petroleum Market Manipulation Rule,⁷ which prohibits manipulation in wholesale markets for crude oil, gasoline, or petroleum distillates. Staff in the Bureau of Competition's Office of Policy and Coordination received no communications regarding the Rule from the public since July 1, 2011, but the Commission stands ready to examine closely any complaints or other communications that it receives regarding the Rule, and

approval of the extension.

⁵ See "Information To Be Publicly Disclosed Concerning the Commission Petroleum Industry Practices and Pricing Investigation," File No. 111 0183 (June 20, 2011), available at <http://www.ftc.gov/os/2011/06/110620petroleuminvestigation.pdf>.

⁶ For example, the Commission recently announced that it had "reached a settlement putting a stop to the phony claims of marketers who told consumers their fuel economy device could boost automobile gas mileage by at least 50 percent and 'turn any vehicle into a hybrid.'" See "FTC Stops Marketers from Selling Phony Fuel Economy Devices" (Dec. 20, 2011), available at <http://www.ftc.gov/opa/2011/12/dutchman.shtm>.

⁷ The Commission issued this Rule under the authority of Section 811 of the Energy Independence and Security Act of 2007, 42 U.S.C. § 17301.

to take action as appropriate.⁸

Oil and Gas Price Fraud Working Group

The interagency cooperation typified by the FTC-CFTC MOU assumed a broader form in light of last spring's increase in oil and gasoline prices. As described in our last semiannual report, the Attorney General established the Oil and Gas Price Fraud Working Group, which consists of federal and state law enforcement agencies with oversight of oil and gasoline markets. In a series of meetings, the member agencies discussed their respective expertise in the oil and gas sector and explored ways to share information and complaints received from the public. The Working Group has enhanced the possibilities for cooperative information-sharing among the member agencies, and various agencies' investigations in the petroleum sector – including those by the FTC – may benefit from information gleaned from the Working Group process. As one of the co-chairs of the Working Group, the Commission helps ensure that American consumers are not harmed by unlawful conduct.

Gasoline and Diesel Price Monitoring

During the relevant period, the FTC also continued a decade-old project that has provided valuable information in connection with the agency's efforts to police conduct in the petroleum industry. Begun in 2002, the Gasoline and Diesel Price Monitoring Project involves monitoring by the Bureau of Economics of the wholesale and retail prices of gasoline and diesel fuel in order to help detect possible anticompetitive activities and determine whether a law enforcement order to deter and prevent such activities is warranted. The project involves monitoring the prices of gasoline and diesel fuel in order to help detect possible anticompetitive activities and determine whether a law enforcement order to deter and prevent such activities is warranted.

⁸ The "Guide to Complying with Petroleum Market Manipulation Regulations" that the Commission issued in November 2009 (<http://www.ftc.gov/os/2009/11/091113mmrguide.pdf>) provides addresses – including an email address – to which the public may send complaints of possible Rule violations. Complaints that evidence a serious possibility of a Rule violation are referred to the FTC litigation units that specialize in maintaining competition in energy industries. Complaints that concern activity in futures markets are shared with the CFTC (through the FTC's working relationship with that agency), to ensure that consumers are protected against fraud and deception in whatever form they take. In addition, as described elsewhere in this report, FTC litigators and economists continue to employ additional techniques to monitor prices and other activity in petroleum markets.

⁹ FEDERAL TRADE COMMISSION, BUREAU OF ECONOMICS, G

FTC Personnel Involved in Oil and Gas Activities

During the second half of 2011, personnel from many parts of the Commission continued their involvement in the agency's activities in the oil and natural gas industries. The Commission's Associate General Counsel for Energy engaged in virtually all aspects of the agency's work in these industries. Personnel from the Mergers III division of the Bureau of Competition (which is devoted primarily to petroleum and natural gas issues) and from a number of other Bureau divisions have been involved in addressing oil and natural gas issues as well.¹¹ In addition to the Bureau of Competition, one division of the Commission's Bureau of Economics bore major responsibility for conducting competition analysis of pricing and other competitive issues in the petroleum and natural gas industries. Staff from the Commission's Office of the General Counsel, the Bureau of Consumer Protection, the Office of Congressional Relations, the Commissioners' offices, the FTC's Regional Offices, and other FTC organizations also contributed to oil and natural gas matters during the second half of 2011.

Conclusion

The Commission has maintained its intensive antitrust and consumer protection scrutiny of the energy sector during the second half of 2011. In view of the fundamental importance of oil, natural gas, and other energy resources to the overall vitality of the United States and world economy, we expect that FTC review and oversight of the oil and natural gas industries will remain a centerpiece of our work for years to come.

to set prices or coordinate on price or output levels.”

¹¹ Additional Bureau of Competition offices whose staff participated in oil and gas matters during the second half of 2011 include the Office of the Director, the Division of Compliance, the Mergers II and Mergers IV divisions, the Office of Policy and Coordination, the Division of Technology and Information Management, the Division of Operations, and the Office of Premerger Notification.