



**ROUNDTABLE ON COMPETITION IN ROAD FUEL**

**-- Note by the United States --**

1. This paper responds to the Competition Committee Chair’s letter of April 3, 2013, inviting submissions for the Competition Committee’s upcoming roundtable on competition in road fuel. The U.S. Federal Trade Commission (“Commission” or “FTC”) and the Antitrust Division of the U.S. Department of Justice (“DOJ”) (collectively, “the Agencies”) are pleased to provide our perspective on competition issues in petroleum markets, derived in part from the Agencies’ antitrust enforcement work in the petroleum sector, and to supply references to a number of studies and reports the Agencies have conducted that help explain competitive conditions in several of those markets.

2. Due to the importance of gasoline and other refined petroleum products in consumers’ budgets and the economy as a whole, the prices of these products are of acute interest to the public and to

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contributed to a decline in vertical integration between crude oil production and refining among the major oil companies. A number of major integrated firms have restructured to concentrate on one or more segments of the industry, and a number of unintegrated refiners or retailers have entered.<sup>16</sup>

16. Collectively, mergers have raised competitive concerns at all levels of the petroleum industry, but most FTC enforcement actions have targeted downstream activities – refining, refined products pipelines, terminals, and marketing.<sup>17</sup> The competitive concern generally has centered on how the merger would enable the merged firm to engage in unilateral conduct or inter-firm coordination to raise prices in a market for products that it sells to the next level of the industry ( , refined products sold to wholesalers, or wholesale products sold to retailers). A key element in assessing the potential for adverse competitive effects is to determine the alternatives available to customers, including whether more distant suppliers are viable options.

17. Since 1981, the FTC has challenged 23 proposed petroleum mergers based on concerns that the combination would have resulted in a significant reduction in competition and harmed consumers in one or more downstream petroleum markets.<sup>18</sup> Although some of the mergers were abandoned or blocked as a result of FTC or court action, in most cases the FTC required the merging companies to divest substantial assets in the markets in which competitive harm was likely to occur in order to preserve competition while still allowing realization of the mergers' efficiencies.

## 2.2 *Collusion and Market Monitoring for Early Detection of Pricing Trends*

18. Collusion does occur in petroleum markets. Since 1970, the DOJ has brought 23 criminal cases involving price-fixing conspiracies in local gasoline and diesel fuel markets, in over a dozen states. These cases resulted in convictions of 22 individuals and 55 companies. The Division filed its most recent gasoline price-fixing case in 2008.<sup>19</sup>

19. Much concern about gasoline and diesel pricing focuses on developing a data screen to identify pricing "anomalies" as potential indicators of tacit or overt collusion. In a program unique to petroleum markets, the FTC actively monitors wholesale and retail prices of gasoline and diesel fuel in an effort to keep up with pricing trends in the markets. This project tracks retail gasoline and diesel prices in some 360 cities across the U.S. and wholesale prices in 20 major U.S. urban areas. The FTC's Bureau of Economics

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econometric model to determine whether current retail and wholesale prices each week are anomalous compared to historical data.

20. The Monitoring Project alerts FTC staff to unusual changes in gasoline and diesel prices so that further inquiry can be undertaken expeditiously. It is important to understand that these price changes do not indicate the existence of anticompetitive conduct. Instead, they suggest only that something has changed. Most frequently, they occur because of changes in market forces, such as a temporary supply disruption caused by unplanned refinery outages. When unusual price changes do not appear to result from market-driven causes, staff consults with the Energy Information Administration of the Department of Energy. FTC staff also contacts the offices of the appropriate state Attorneys General to discuss the anomaly and appropriate potential actions, including opening an investigation.

21. The Agencies belong to a multi-agency Oil and Gas Price Fraud Working Group that the Attorney General established pursuant to President Obama's request in the spring of 2011. Members of the Working Group meet in person or communicate through other means to share information about their activities in the energy markets. These interagency communications are helpful to the member agencies as they individually formulate and pursue law enforcement and other programs involving petroleum and other energy products.

### **2.3 *Policing Anticompetitive Conduct in Petroleum Markets***

22. The FTC also investigates potentially anticompetitive exclusionary conduct in petroleum markets. For example, in March 2003, the FTC issued an administrative complaint alleging that Union Oil Company of California (Unocal) illegally subverted the California Air Resources Board's (CARB) regulatory standard-setting procedures relating to low-emissions reformulated gasoline (RFG).<sup>20</sup> The complaint alleged that Unocal misrepresented to both CARB and industry participants that some of its emissions research was non-proprietary and in the public domain, at the same time it was pursuing a patent that would allow it to charge royalties if CARB used its emissions information. The complaint further alleged that Unocal's conduct allowed it to acquire monopoly power over the technology used to produce and supply California "summer-time" RFG, a low-emissions fuel mandated for sale in the state from March through October, potentially costing California consumers five cents per gallon more in gasoline prices. In 2005, the Commission resolved the matter through an order requiring the respondents to stop enforcing the RFG patents that lay at the heart of the litigation and to release all relevant patents to the public. That outcome saved consumers \$500 million a year, according to Commission estimates.<sup>21</sup>

## **3. Competition Advocacy**

23. Advocating for competition is an important part of the Agencies' missions. This advocacy takes

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comments on proposals to eliminate divorcement of retail assets from upstream suppliers;<sup>22</sup> to permit retailers to meet competitive prices by charging prices that are below cost;<sup>23</sup> and to set or regulate retail or wholesale prices for gasoline or diesel fuel.<sup>24</sup> As in other industries, the FTC relies on its competition advocacy efforts to reduce the risk that the federal, state, or local governments will pursue policies in petroleum markets that could impede competition.

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<sup>22</sup> Letter from FTC Staff to Councilmember Mary M. Cheh, Chairperson, Committee on Public Services and Consumer Affairs, Regarding the District of Columbia's Retail Service Station Act's divorcement provision (June 2007), [www.ftc.gov/os/2007/06/V070011divorcement.pdf](http://www.ftc.gov/os/2007/06/V070011divorcement.pdf).

<sup>23</sup> Letter from FTC Staff to the Honorable Raymond J. Lesniak, Senator, New Jersey State Senate,

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