Prepared Statement of the Federal Trade Commission

Midwest Gasoline Prices

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Before The

Committee on Energy and Natural Resources
United States Senate

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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 continued to spike up in June before easing slightly this month. The national average retail price of reformulated gasoline ("RFG") increased from $1.29 to $1.67 per gallon from November, 1999 to June 12, 2000, before declining by a penny to $1.66 on July 3, 2000.[(2)] In Chicago, the average RFG price rose from $1.85 per gallon on May 30 to $2.13 on June 20, before falling to $1.82 on July 10, 2000.[(3)] From May 30 to June 20 in Milwaukee the average RFG price increased from $1.74 to $2.02, but by July 10 had fallen to $1.70.[(4)] During the week of June 19, RFG prices at some Chicago gas stations apparently rose as high as $2.50, although they have since receded.[(5)]

Conventional gasoline prices in the Midwest have also risen substanti08f(ga)2ligafromulatr,(l)-2(l)-,(l)2(n t)aaig industries, the Commission's statutory authority covers a broad 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 world market factors, which would have an impact on all regions of the United States. One factor output or divide markets. Our investigation will focus on whether any industry participants have engaged in collusion because it does not appear, at the outset, that any single oil company has sufficient market power to raise prices unilaterally.

The Commission has initiated a formal investigation into the causes of the recent gas price increases in the Midwest. This will be a civil investigation conducted pursuant to our authority under the Federal Trade Commission Act.[(17)] The investigation is being spearheaded by our Midwest Regional Office, located in Chicago. We are working closely with the Attorneys General of the affected States to coordinate our combined efforts.

The Commission's investigative process in a nonmerger collusive practices case involves a thorough search for evidence that the industry participants are engaging, or have engaged, in collusive behavior prohibited by the antitrust laws. Once a formal investigation is opened, staff typically requests from the Commission the authority to use compulsory process. The Commission has approved the use of compulsory process in this investigation, permitting the issuance of both subpoenas and Civil Investigative Demands, and the taking of depositions under oath.[(18)] Process will be used to take testimony and gather evidence from the various entities that refine, transport and distribute gasoline in the Midwest, as well as suppliers and customers, and other knowledgeable or affected persons. The Commission already has begun issuing subpoenas to the entities involved in the chain of gas supply to the affected region. These entities include refiners, pipeline owners and operators, terminal owners and operators, and blend plant owners and operators. Our staff also has begun conducting interviews with market participants, consumers, corporate users of gasoline, and others with potential knowledge of relevant facts. The objective is to determine who raised prices, and whether there was any illegal contact, communication or signaling among competitors before or during the time of the price increases.

The Commission must show more than parallel behavior among market participants to prove collusion. The fact that all companies raise prices at the same time is not sufficient evidence of collusion. The courts have held that some "plus factor" must be present to demonstrate that an agreement was reached. Behavior that would be unprofitable "but for" collusion may be evidence that such an agreement exists.

Beyond this general description of what the Commission is undertaking, we can make no further comment about the particulars of this on-going, non-public investigation. We must emphasize that an FTC antitrust investigation is not a quick fix. The Commission will provide an interim status report by the end of this month, but it may take significantly longer than that to complete the thorough investigation that this matter deserves and produce a final report. Our objective is to determine whether there has been any illegal conduct, and, if there has, to determine who was responsible and either bring the matter to court or initiate our own administrative proceeding. We need to develop solid documentary and testimonial evidence in order to be able to bring a case. Based on the FTC's extensive experience in conducting these kinds of investigations, we know this can be done only through a careful and fact-intensive analysis. We cannot say at this time when the investigation will be concluded.

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

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