“The Cost of Filling Up: Did the FTC Approve Too Many Energy Mergers?”

Remarks of

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before

The Fuel and Energy Committee
Section of Antitrust Law
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[1] These remarks constitute only the views of the authors and do not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The speakers gratefully acknowledge the valuable assistance of Louis Silvia, Christopher T. Taylor, and Jeffrey H. Fischer in the preparation of these remarks.

Good morning, and thank you for inviting us. We're very pleased to have this opportunity to participate in a discussion of merger policy and energy prices – subjects of great interest to the consuming public. As is almost always the case with presentations by Federal Trade Commission staffers, our remarks today convey only our own views and do not necessarily represent the views of the Commission or of any individual Commissioner.

The Fuel and Energy Committee has selected a topic for this morning's program that we expect will generate a discussion as lively as the debate over energy merger policy that has lately engaged the United States Congress, various agencies of the federal government, a number of state attorneys general, academic commentators, editorial writers, and many others. As sure as we are that today's exchange will be spirited, however, we are equally confident that the answer to the question posed by the Committee – "Did the FTC Approve Too Many Energy Mergers?" – is "No." Nonetheless, we continue to study energy markets intensively through ongoing investigations, gasoline price monitoring, economic research projects, and our competition advocacy activities. We remain highly receptive and responsive to solid evidence, from whatever quarter, indicating either past or anticipated violations of the antitrust laws.

We'll detour from the substance of the program just briefly to address a semantic issue raised by the title of today's program. There seems to be a widespread perception in lay – and even in some legal – circles that the Federal Trade Commission "approves" the mergers and acquisitions that it doesn't challenge. We wish to dispel that impression. A decision by the Commission not to challenge a merger or acquisition at a particular juncture does not mean that the agency has "approved" the deal. Nor does a consent settlement resolving antitrust concerns over certain aspects of an acquisition necessarily mean that the Commission has put some type of imprimatur on the remainder of the transaction. All that the FTC does in each case is decide whether the facts unearthed regarding the merger give rise to a solid legal and economic basis for initiating a law enforcement proceeding to challenge the deal. If the facts to support a case are weak, or the legal theories are unpromising, or the transaction on balance appears likely to benefit competition and consumers, then the agency will in all probability forgo a challenge to the deal. But no one should equate such a decision with "approval."[1]

The Commission has conducted a vigorous program of merger enforcement in the energy industry that has led to the blocking or abandonment of certain transactions, a significant number of major deal restructurings mandated by FTC consent orders, and some decisions not to challenge proposed mergers. No doubt many of you are familiar with the Bureau of Economics report on oil industry mergers, antitrust enforcement, and related subjects that the Commission

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[1] Interpreting an agency decision not to challenge a transaction at the pre-consummation stage as "approval" may create a sense of false comfort. Recent developments in FTC administrative litigation show that the Commission decides on occasion to challenge a merger years after consummation, once evidence has accumulated supplying a reason to believe that the deal was anticompetitive.

released last August.[2] That report, which built upon prior learning set forth in reports issued in 1982 and 1989, studied in great detail the merger and acquisition activity in the petroleum industry over two decades and devoted individual chapters to structural changes in discrete levels of the industry – crude oil production and reserves, bulk transport of crude oil, refining, bulk transport of refined products, and the terminaling and marketing of refined products. The report included in its scope the petroleum mergers of the last half-dozen years whose so-called "approval" by the FTC has fomented a great deal of discussion and debate (as well as the title of this morning's program).

The BE Report described in detail the very substantial divestitures, restructurings, and other remedies prescribed in such cases as *Shell/Texaco*,[3] *British Petroleum/Amoco*,[4] *BP Amoco/ARCO*,[5] *Exxon/Mobil*,[6] *Chevron/Texaco*,[7] *Valero/Ultramar Diamond Shamrock*,[8] *Conoco/Phillips*,[9] and others in recent years that have been carefully designed to prevent the creation or growth of market power. Any assertion that the Commission has exercised less than maximum vigilance in the petroleum sector is belied by studies that show exactly the opposite – that FTC merger enforcement has been more likely in the oil industry than in virtually any other industry.[10] Although relief has been achieved primarily through the issuance of consent orders in

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[2] Bureau of Economics, Federal Trade Commission, The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement (Aug. 2004), *available at* http://www.ftc.gov/os/2004/08/040813mergersinpetrolberpt.pdf ("BE Report").

[3] *Shell Oil Co., et al.*, 125 F.T.C. 769 (1998).

[4] *The British Petroleum Company p.l.c., et al.*, 127 F.T.C. 515 (1999).

[5] *BP Amoco p.l.c., et al.*, FTC Docket No. C-3938 (consent order issued Aug. 25, 2000), *available at* http://www.ftc.gov/os/2000/08/bparco.do.pdf.

[6] *Exxon Corp., et al.*, FTC Docket No. C-3907 (consent order issued Jan. 26, 2001), *available at* http://www.ftc.gov/os/2001/01/exxondo.pdf.

[7] *Chevron Corp., et al.*, FTC Docket No. C-4023 (consent order issued Jan. 2, 2002), *available at* http://www.ftc.gov/os/2002/01/chevronorder.pdf.

[8] *Valero Energy Corp., et al.*, FTC Docket No. C-4031 (consent order issued Feb. 19, 2002), *available at* http://www.ftc.gov/os/2002/02/valerodo.pdf.

[9] *Conoco Inc., et al.*, FTC Docket No. C-4058 (consent order issued Feb. 7, 2003), *available at* http://www.ftc.gov/os/2003/02/conocophillipsdo.htm.

[10] *See, e.g.*, Bureau of Economics, Federal Trade Commission, Transparency at the Federal Trade Commission: The Horizontal Merger Review Process, 1996-2003, at 27 (Feb. 2005), *available at* http://www.ftc.gov/os/2005/02/0502economicissues.pdf; *see also* The

lieu of litigation, the FTC has been willing to go to court to protect competition. For example, in the BP/ARCO matter in 2000, the Commission investigated the overlap in the production of Alaska North Slope crude oil and concluded that the merged firm, if unchecked, could exercise market power over certain West Coast refiners.[11] Even though crude oil generally competes in a world market, the Commission's analysis suggested that ANS producers often competed in a narrower market. The Commission filed an action in federal court for injunctive relief, after which the defendants decided to settle the case, with the resulting $7.5 billion divestiture of all of ARCO's Alaskan production assets.

We believe that the relief prescribed in each case (or the decision not to seek relief) has corresponded closely to the competitive harm (or absence of same) projected to arise from the transaction. Generally, divestitures have been made to an entity that at the time did not compete in the market of competitive concern, leaving the premerger market structure unchanged (although occasionally divestitures have been to firms already holding small shares in the relevant markets). Whether you look back to the early 1980s (when the FTC's petroleum merger program got underway) or focus instead on the series of big mergers that occurred in the latter half of the 1990s (as some critics of the FTC have done), it is clear that the Commission's overall energy merger program has helped significantly to maintain low or moderate levels of concentration at the various vertical stages of the industry.

Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement, *supra* n.2, at 13 ("The FTC has taken a strict approach in reviewing petroleum-related mergers and has obtained relief in markets at lower concentration levels than it has in other industries."), 27 ("A comparison of Table 2-6 [of the report] with the information that the FTC has published about its merger enforcement in other industries shows that, in mergers involving petroleum markets, the Commission has obtained relief at lower levels of concentration."); Prepared Statement of the Federal Trade Commission, *Market Forces, Anticompetitive Activity, and Gasoline Prices: FTC Initiatives to Protect Competitive Markets*, before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, United States House of Representatives (July 15, 2004), at 4-5 ("These data [concerning FTC horizontal merger enforcement from 1996 to 2003] show that the Commission has brought more merger cases at lower levels of concentration in the petroleum industry than in other industries. Unlike in other industries, the Commission has obtained merger relief in moderately concentrated petroleum markets."), *available at* http://www.ftc.gov/os/2004/07/040715gaspricetestimony.pdf; Federal Trade Commission Horizontal Merger Investigation Data, Fiscal Years 1996-2003 (Feb. 2, 2004; revised, Aug. 31, 2004), *available at* http://www.ftc.gov/os/2004/08/040831horizmergersdata96-03.pdf; FTC Horizontal Merger Investigations Post Merger HHI and Change in HHI (Delta) for Oil Markets, FY 1996 through FY 2003 (May 27, 2004), *available at* http://www.ftc.gov/opa/2004/05/040527petrolactionsHHIdeltachart.pdf.

[11] *Federal Trade Commission v. BP Amoco p.l.c., et al.* (Complaint of Federal Trade Commission for a Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act), *available at* http://www.ftc.gov/os/2000/02/bpcomplaint.pdf.

By way of illustration, consider recent FTC merger enforcement with regard to bulk supply markets – markets that involve refineries and/or product pipelines, in which concerns about merger-related horizontal overlaps are typically heightened due to very high barriers and impediments to entry. Many of these enforcement activities involved the West Coast. The FTC obtained major divestitures – each involving refineries and related assets – in four major transactions since 1997: *Shell/Texaco*,[12] *Exxon/Mobil*,[13] *Chevron/Texaco*,[14] and *Valero/UDS*,[15] These enforcement actions prevented significant increases in concentration. For example, had the Valero/UDS transaction been consummated as originally proposed, concentration in the refining and bulk supply of CARB 2 gasoline in California – as measured by the Herfindahl-Hirschman Index – would have increased by more than 325 points, to a post-merger level greater than 1750. Had the Chevron/Texaco merger gone forward unchallenged, concentration in the refining and bulk supply of CARB gasoline in California would have increased by about 500 points, to a post-merger level of about 2000. As a result of divestitures mandated by the FTC in these two cases, these two transactions resulted in very little or no change in concentration in the CARB bulk supply market. Similarly, the more recent merger of Conoco and Phillips threatened a more than 300-point increase in concentration in the bulk supply market for light petroleum products in northern Utah, to a post-merger level exceeding 2100, as well as an increase of more than 500 points in the same product market in eastern Colorado, to a post-merger level exceeding 2600. Again, the FTC-mandated divestitures of refineries and related assets in this matter ensured no increase in the concentration of these markets.

Nonetheless, some critics have claimed that the FTC has been too soft on petroleum mergers (by not requiring enough relief, by prescribing relief that was somehow ineffective, or simply by not blocking the transaction entirely).[16] Some who have leveled charges of excessive

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[12] *Supra* n.3.

[13] *Supra* n.6.

[14] *Supra* n.7.

[15] *Supra* n.8.

[16] On the other hand, some industry experts think that the Commission has gone *too far* in seeking relief. For example, Philip Verleger, a noted oil industry economic expert, said in 2002 that FTC merger policy has contributed to higher gasoline prices because FTC-mandated divestitures have prevented merging firms from realizing efficiencies (particularly efficiencies that might flow from combining nearby refineries and optimizing and expanding production across facilities). Verleger estimated that the refinery divestiture in Washington State that the FTC required in connection with the Shell/Texaco joint venture "may have reduced long-run gasoline supply by as much as 1 percent." Prepared Statement of Philip K. Verleger, Jr., before the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate, at 6 (May 2, 2002), *available at* http://govt-aff.senate.gov/050202Verleger.pdf. We'll leave for another day the interesting topic of whether the FTC has challenged *too many*

leniency at the Commission point to instances in which individual petroleum firms took or contemplated unilateral actions that had (or might have had) an impact on market prices. But there is at best a tenuous connection between such anecdotes and any diminution of competition attributable to mergers. For example, much has been made of an episode in the Midwest gasoline crisis during the spring of 2000, in which some critics characterized a particular firm as having manipulated supply shortages in order to drive up gasoline prices. The Commission's investigation of that gasoline price spike concluded that a variety of factors caused the price increase in question. The primary factors were various refinery production problems and pipeline breaks, all of which contributed to low product inventories. The Commission also concluded that firms made errors in forecasting the amount of supply available from other firms and in gauging the ability of other firms to respond to any shortages. The Commission found no evidence of illegal collusion to reduce output or raise price. Firms were found to have acted unilaterally and to have followed individual – and often divergent – profit-maximizing strategies. As their errors in forecasting rivals' output abilities suggest, there was no indication that these firms were coordinating output decisions. Some firms made better choices than others in view of the supply disruption problems that were the primary causes of the price spike.

With regard to the one firm that has drawn attention for its output decisions during the Midwest gasoline crisis, the Commission did find that that firm – which had increased its gasoline production substantially and thus was not short of product like some of its competitors – chose not to sell additional product from its inventory so as to avoid reducing market prices. This evidence, however, did not support a conclusion that oil companies had manipulated shortages. The firm that had decided to increase production of the relevant gasoline grade (reformulated gasoline) unexpectedly faced very strong demand for its product. Like any other profit-maximizing firm, it decided to charge what the market would bear and to release its inventory over time consistent with profit-maximization. This company enjoyed higher profits for a limited period before supply problems affecting its competitors were resolved. This sort of temporary situation is not the kind of sustained market power with which antitrust enforcement should concern itself.

Moreover, focusing on instances where individual firms may have some power over price diverts attention from the more typical pattern of generally competitive responses to changes in relative prices. The Midwest gasoline crisis illustrates this point: although the Midwest price increase was severe, it was brief. As soon as prices in the Upper Midwest exceeded those in the Gulf Coast by more than normal levels, refiners took steps to increase supplies into the affected areas. This process took only a few weeks – a period whose duration stemmed in large part from the time it takes to move additional refined product from the Gulf to the Midwest by pipeline or barge. The supply response was so significant that Midwest prices fell sharply (and for a time were even below the level that prevailed in the Gulf before the Midwest spike). By that time any short-run advantage enjoyed by refiners that made correct production choices and had relatively ample supply on hand would have been completely dissipated.

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petroleum mergers.

Other critics, who point to overall industry profits or gross margins that have increased in recent years compared to the latter half of the 1990s, attribute these increases to the recent wave of consolidation in the petroleum industry. Although examining output, prices, and costs of firms post-merger may help us understand the competitive effect of a merger, such analyses must be done with considerable care. Looking at changes in overall company profits can be misleading, as many large petroleum firms have much larger businesses in petroleum exploration and production than they do in the U.S. refining and marketing segments. For instance, although ExxonMobil's 2004 net income was a little over $25 billion, only $2 billion – or 8 percent – came from domestic refining and marketing. Two-thirds of that net income (about $17 billion) came from ExxonMobil's exploration and production business: profits in these lines of business rise and fall with crude oil prices, which are generally outside of ExxonMobil's control.[17]

It is important to recognize that aside from the very exceptional cases like *BP/ARCO*, recent mergers among private oil companies involving crude oil have generally raised no significant antitrust issues because those firms control no significant share of world crude oil production or reserves. This fact is significant in the assessment of changes in gasoline prices because, as the Commission testified last summer, "[c]hanges in crude oil prices account for approximately 85 percent of the variability of gasoline prices. . . . Crude oil prices are determined by supply and demand conditions worldwide, most notably by production levels set by OPEC countries."[18] And on the demand side, the price of crude oil can be profoundly affected by the significant increases in demand expected from the fast-growing economies of China, India, and other rapidly industrializing nations.

Similarly, merely looking at changes in gross margins over time, as some have suggested, may provide a misleading picture of mergers and competitive conditions in the petroleum industry. Unless one properly controls for other factors that have affected margins over the same time frame, there is no basis for suggesting that some or all of these changes resulted from petroleum industry mergers.[19] For example, gross refining margins were quite high in parts of 2003 and 2004. Should we therefore infer that recent petroleum industry mergers allowed firms to raise prices? For at least several reasons, the answer is "No."

In the first place, looking at the refining margin fails to account for other market factors

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[17] ExxonMobil's net income in 2004 breaks down as follows: U.S. refining and marketing, $2 billion; non-U.S. refining and marketing, over $3 billion; U.S. exploration and production, $5 billion; non-U.S. exploration and production, $12 billion; chemicals, over $3 billion. *See* http://www.exxonmobil.com/Corporate/Newsroom/NewsReleases/xom_nr_310105.asp.

[18] *Market Forces, Anticompetitive Activity, and Gasoline Prices*, *supra* n.10, at 25.

[19] No well-trained economist would accept such a superficial analysis, nor would any analyst with such a superficial approach be likely to qualify to serve as an economic expert in any federal antitrust proceeding.

that may have changed over time. We know that demand for gasoline has risen, both in the U.S. and abroad. As refiners reached capacity limits, prices rose – something that would have happened independently of the mergers. Supply disruptions, such as the 2000 Midwest gasoline crisis, also contribute to temporarily higher prices. Second, refiners invested billions of dollars to meet new environmental specifications, including the production of cleaner gasoline. By one estimate, the industry incurred about $98 billion of environmental expenditures between 1993 and 2001.[20] These investments do not show up in the margin calculation, but they are real costs to refiners that must be recouped over time to prevent assets from exiting the market. Third, it can be misleading to look at only a one- or two-year period. For example, in 2002, when demand was low, leading domestic refiners *lost* money[21] – something that one would not know if one focused solely on 2003-04. More generally, margins fluctuate substantially over time; on average, this first decade of the new millennium does not look much different from the broader period back to the 1980s in terms of inflation-adjusted margins.

Finally, and what probably brings us together today, some critics of FTC enforcement refer to the findings of the May 2004 report of the Government Accountability Office ("GAO") on the effects of mergers and concentration in the petroleum industry.[22] GAO's analyses indicated that mergers and increased concentration generally led to higher wholesale gasoline prices in the United States from the mid-1990s through 2000. Surely, some could very plausibly argue, if the GAO Report's findings are correct, there is something amiss with FTC merger enforcement policy in the petroleum industry.

This is a good opportunity to talk about our reaction to the GAO Report and to discuss the implications for antitrust policy of other recent learning about petroleum industry mergers and concentration. As many in this audience may know, in January of this year the FTC's Bureau of Economics hosted a full-day program at which five prominent, expert economists were invited to present their views regarding the GAO Report as well as a March 2004 Bureau of Economics report that focused on the competitive effects of the 1998 Marathon-Ashland joint venture.[23] The GAO and Bureau of Economics reports used different econometric

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[20] BE Report, *supra* n.2, at 69.

[21] *See* Energy Information Administration, Financial Reporting System Public Data, Petroleum Operations Statement of Income, *available at* http://www.eia.doe.gov/emeu/finance/frsdata.html, spreadsheet S5210.xls.

[22] GAO, Energy Markets: Effects of Mergers and Market Concentration in the U.S. Petroleum Industry (GAO-04-96), *available at* http://www.gao.gov/new.items/d0496.pdf ("GAO Report").

[23] Christopher T. Taylor and Daniel S. Hosken, Bureau of Economics, Federal Trade Commission, The Economic Effects of the Marathon-Ashland Joint Venture: The Importance of Industry Supply Shocks and Vertical Market Structure (last revised May 7, 2004), *available at* http://www.ftc.gov/be/workpapers/wp270.pdf.

methodologies to approach the problem of identifying the competitive effects of mergers.[24] The two reports reached somewhat different conclusions about the Marathon-Ashland transaction. The GAO Report concluded that the transaction resulted in a positive and significant wholesale price increase for both conventional and reformulated gasolines. The BE analysis found that a positive, significant increase occurred in wholesale prices for reformulated gasoline about 15 months after the joint venture was consummated, but concluded that a change in fuel formulation requirements in an area not affected by the transaction was responsible for the observed price increase. The BE analysis found no increase in wholesale prices for conventional gasoline, and no increase in the retail prices of conventional or reformulated gasoline, following the transaction.[25]

The expert economists at the January program made a number of important points. First, the panelists were in agreement that it is very difficult to correctly estimate the competitive effects of mergers, and that it is particularly challenging to isolate any such effects from other factors affecting gasoline prices. Among other things, underlying econometric models must be properly specified, control variables must be adequately measured, and various statistical properties of the data must be appropriately addressed.

Second, the experts believed that the methodological approaches followed by GAO and BE each had potential strengths and weaknesses in tackling the problem of isolating merger effects. In addition, the expert panel presented and discussed in detail a new, alternative econometric approach, dubbed the "treatments" approach. Because the treatments approach may be better able than either the GAO or the BE approach to deal with various technical issues in correctly specifying the underlying models and measuring variables, it may provide better insights into identifying merger effects.

Third, there was a consensus among the panelists not only that appropriately estimating long-run price-concentration relationships is highly problematic as a general matter, but also that the GAO Report's estimation of price-concentration relationships in oil potentially suffered from a number of more specific statistical problems. The panel was in general agreement that antitrust merger policy is likely to be better informed by careful studies of the competitive effects of particular mergers than by price-concentration studies.

Fourth, the panelists were struck by the variety of outcomes in the estimated effects of the mergers that were considered. As we have seen, the BE and GAO studies came to different

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[24] The GAO approach relied primarily on specific control variables to account for supply and demand factors affecting gasoline prices, while the BE approach relied primarily on a "difference in difference" approach that used prices in other geographic areas not affected by a merger to account for other factors influencing gasoline prices.

[25] The GAO Report did not analyze the potential competitive effects of mergers upon retail gasoline prices.

conclusions regarding the estimated competitive effects of the Marathon-Ashland joint venture. And while the GAO Report generally found that mergers were associated with price increases, a more detailed look reveals those findings to be quite mixed. Specifically, the GAO Report provided 28 estimates of the effects of 8 mergers on wholesale prices of branded and unbranded gasoline of three types (conventional, reformulated, and CARB). In 16 of those 28 cases, GAO found a positive and statistically significant price effect, ranging from 0.4 to 6.9 cents per gallon. In 7 cases, the report found a negative and statistically significant price effect that ranged from -0.4 to -1.8 cents per gallon. In the 5 other cases, the GAO Report found no statistically significant effect. There appeared to be a consensus among the panelists at the January program that these results could have given greater comfort if the important factors driving this variation across merger-affected markets had been identified.[26] Unfortunately, the panelists found neither the Bureau of Economics' nor GAO's report to provide much guidance on this important issue. As panelist Scott Thompson summed up the problem:

> I think Ken [Hendricks] was absolutely right in that there seems to be a distressing variety in the measured outcomes even when you take these at face value, and it's difficult to know what to do with those . . . but in the next gasoline merger that comes along, how do we decide if it's plus $0.05 or the minus $0.02 result that they should be projecting for that particular case? I'm not sure we've actually heard much today that lets us answer those questions, and that's due in large part to the non-structural approach that both these papers take.[27]

Not surprisingly, the panelists called for additional research with respect to the possible impacts of mergers upon prices. There needs to be additional scrutiny to test the validity of the assumptions that underlie existing methodologies. We need to better understand the reasons for apparent differences in outcomes using alternative, but credible, methodologies. New approaches may yield more precise answers to the difficult question of the competitive effects of consummated mergers. Of important value to antitrust policy in particular, additional thinking must be done to explain the variability in estimated outcomes – assuming, of course, that the results themselves are valid.

The FTC has examined very carefully every major petroleum merger over the past 20

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[26] Moreover, a Bureau of Economics technical report presented to the panelists in preparation for the January conference showed that if GAO's merger regressions for reformulated and CARB gasoline were re-estimated by means of a methodology similar to that followed by the Bureau in its study of the Marathon-Ashland joint venture, results very different from those reached in the GAO Report would follow, with many of the GAO Report's significant merger effects disappearing. (This technical report did not re-estimate GAO's regressions for conventional gasoline.) FTC Staff Technical Report (Dec. 21, 2004), *available at* http://www.ftc.gov/ftc/workshops/oilmergers/ftcstafftechnicalreport122104.pdf.

[27] January 14, 2005 conference.

years and has maintained a policy of vigorously enforcing the antitrust laws. The remedies that the Commission has prescribed have been carefully crafted to address the competitive issue at hand. By the same token, however, the FTC does not seek relief when none is necessary and does not pursue remedies that are likely to interfere with substantial merger-related efficiencies.

We remain confident that the Commission has not "approved" too many energy transactions. FTC petroleum merger investigations – as well as nonmerger investigations such as the Midwest gasoline matter – typically involve the close scrutiny of many thousands of pages of internal company documents, numerous investigational hearings or interviews with company executives and other market participants, and a painstaking assessment of relevant quantitative data. Investigations of some transactions involve revisiting markets previously studied, which affords the Commission an in-depth historical perspective on how markets are evolving.

The question posed by the title of today's program implies that the proof of the pudding is evident ex post in the FTC's track record – in other words, that despite the Commission's best efforts ex ante, from time to time the agency has been off the mark in dealing with mergers in the petroleum industry. Although the current learning from econometric retrospectives leaves many questions unanswered, the evidence produced in each FTC oil merger investigation amply supported the agency's decision to take (or not to take) law enforcement action – as well as the remedy prescribed in each instance – and those unanswered questions do not sustain a conclusion that enforcement policy should be changed. Of course, we always welcome additional research on the relevant issues, and the FTC itself will continue to conduct research in order to test our theoretical assumptions and to refine the analytical techniques that we employ both in ex ante investigations and in ex post evaluations of energy mergers. But we have no doubt that the Commission will continue its record of aggressively enforcing the law in this industry.

Thank you, and we look forward to the rest of this morning's discussion.