



# Antitrust Economics at the FTC

Michael R. Baye  
Director of the Bureau of Economics, FTC  
&  
Kelley School of Business, Indiana University

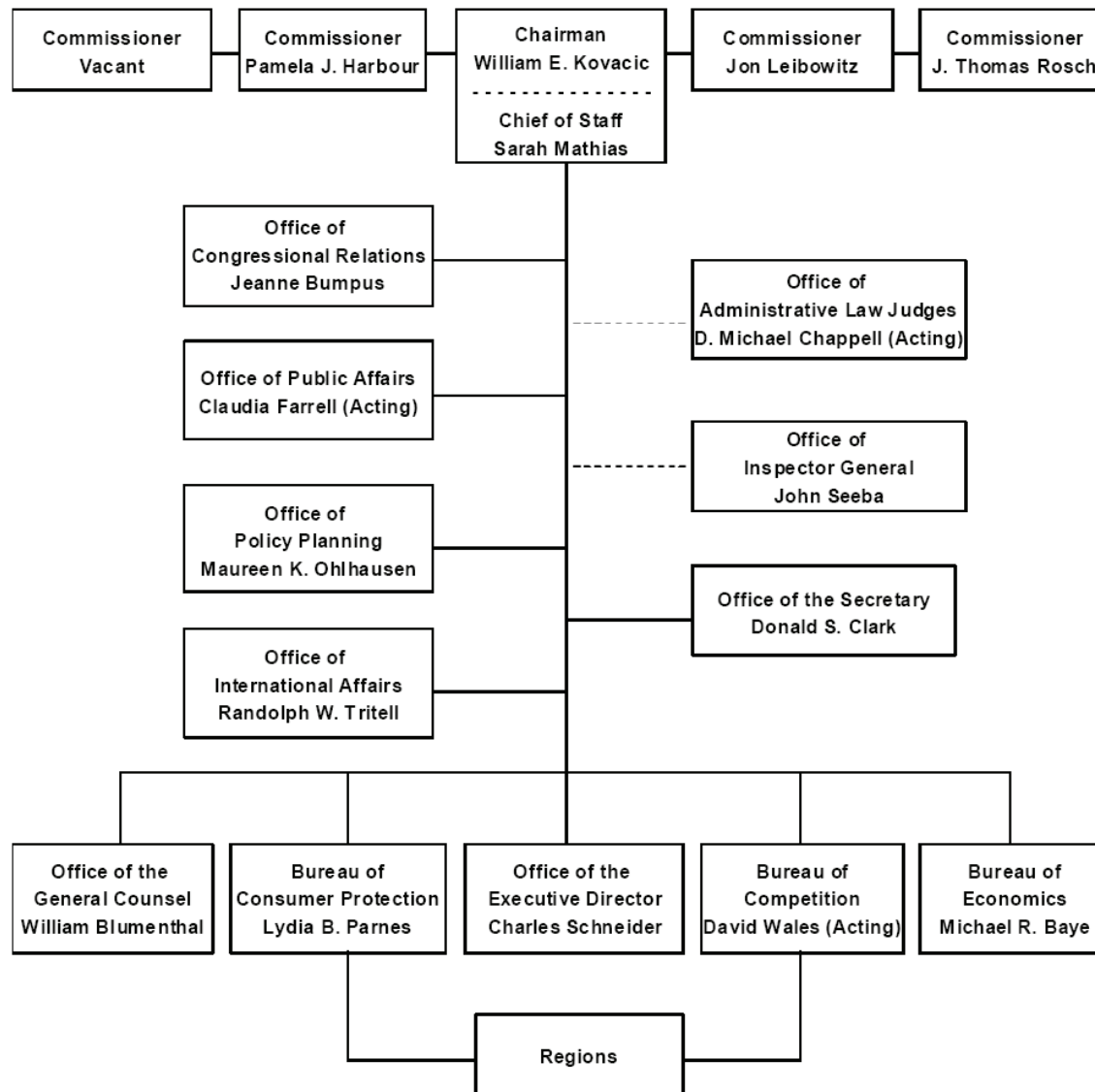
These are my views and do not necessarily represent those of the Federal Trade Commission or any of the individual Commissioners

FEDERAL TRADE COMMISSION

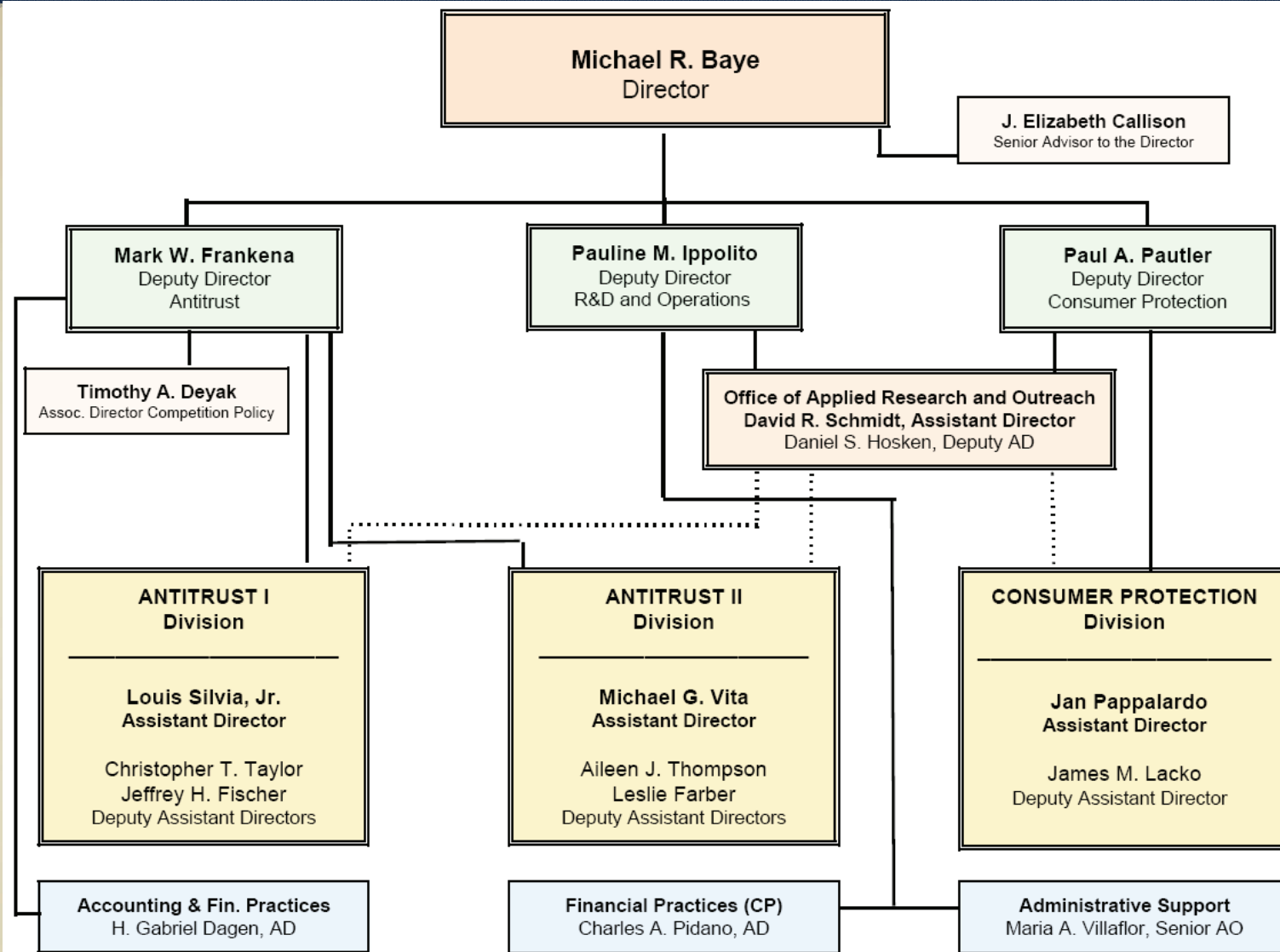
# Competition Mission

- Based on the fundamental premise of the antitrust laws that competition brings the best products and services at the lowest prices, spurs efficiency and innovation, and strengthens the U.S. economy
- Protect competition and consumers, not competitors
- Important roles played by both attorneys and economists

# FTC Organizational Structure



# Bureau of Economics Organizational Structure



# Key Benefits of Our Organizational Structure

- Division of labor/specialization
- Development of human capital
- Cumulative knowledge
- Checks and balances

# Efficiency and Unintended Consequences

- Antitrust and public policy is sometimes used to redistribute rents rather than to foster competition, economic efficiency, or the long-run interests of consumers
- Dividing up an existing pie to protect interests of
  - Particular consumers (urban, rural, rich, poor, etc.)
  - Particular firms (incumbents, large, small, input suppliers, retailers, local firms, etc.)
- Important for these voices to be heard, but also important to know whether there are unintended consequences that shrink the size of the overall pie

# Roles for Economists: The Big Picture

- Serve as the “voice” for economic efficiency, the often silent constituent
  - Voice of economists is sometimes unpopular and seemingly dispassionate, but our message is important for the long-run interests of all market participants
- Identify potential unintended consequences of enforcement actions and policies
- Identify (and help weigh) costs, benefits and tradeoffs

# Why is “Economics” in “Law & Economics”?

- Economic theory is the foundation for evaluating the likely competitive effects of business practices
- Economic theory helps identify:
  - Questions to be answered in the course of an investigation
  - The best places to look for “facts” that answer these questions
  - An organized structure for analyzing the information gathered
- The Agencies and the courts increasingly focus on complete and complex economic analyses analysis
- A great amount of expertise in economics is required to get the analysis right
  - Many seemingly “bad” business practices are actually efficient and, in fact, good for consumers
  - Supporting anticompetitive theories often requires complex analysis



# Economists' Role in an Antitrust Investigation

- Use knowledge of economics and particular markets to identify potentially relevant theories, and the facts needed to test them
- Serve as a complementary input with lawyers conducting the investigation
  - Importance of facts and getting them into evidence
- Analyze economic evidence, and make separate recommendation to Commission based on the economics of the matter
- Litigation support for our attorneys if the case goes to court

# Economic Evidence

- Not confined solely to statistics and econometrics; may be merely a compelling economic story that is consistent with facts in the case
- Institutional details (facts) matter:
  - Different facts consistent with different theories (some anticompetitive and others pro-competitive)
- Other qualitative or quantitative information that tests anticompetitive theories against pro-competitive explanations of the behavior
  - Interviews of market participants
  - Business documents
  - Public and non-public information about the operation of the market

# A Caveat: Market Participants' Incentives

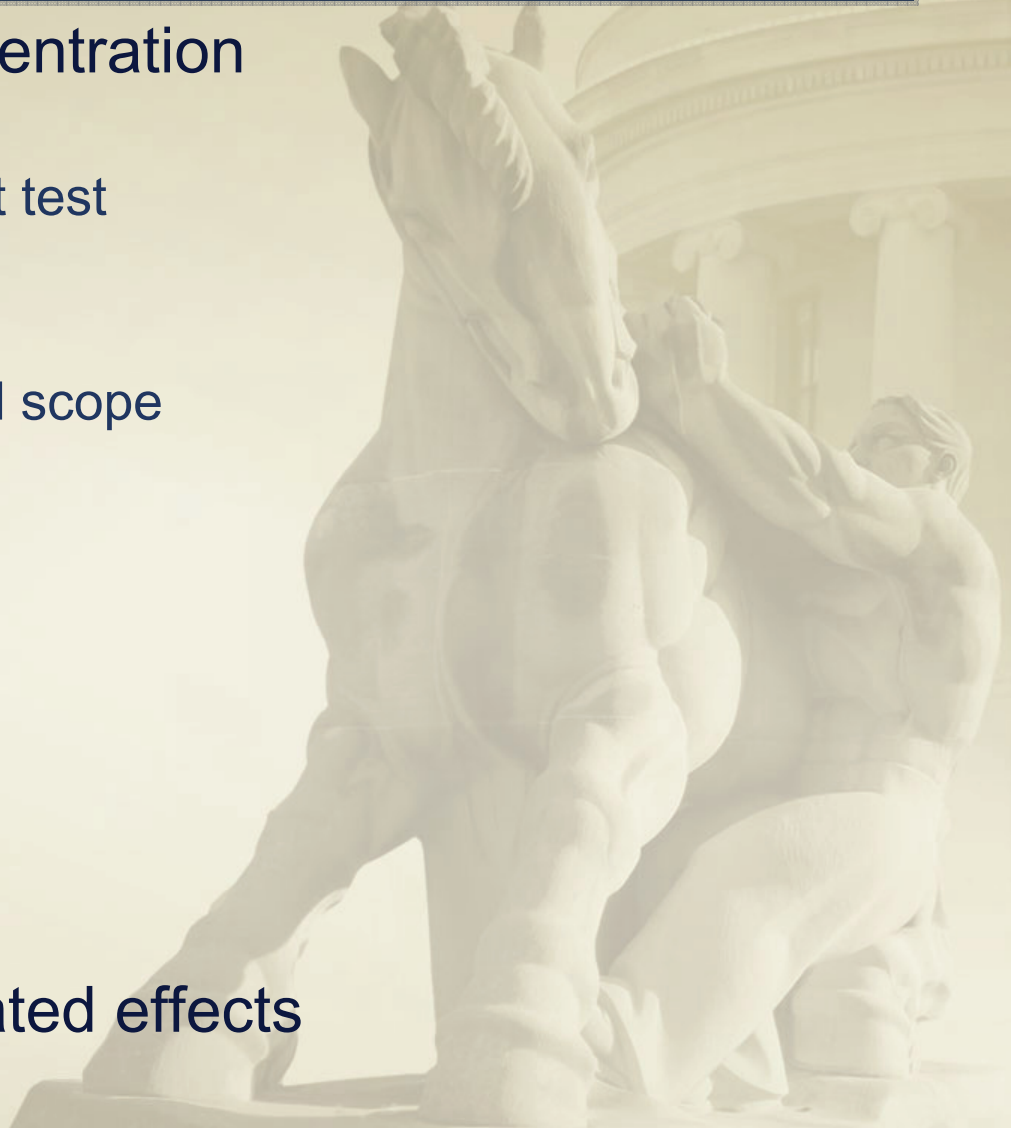
- In evaluating qualitative evidence, important to recognize the incentives of different market participants:
  - Input suppliers
  - Manufacturers/wholesalers
  - Retailers
- Incentives to “cry foul” to protect their own interests at the expense of competition and consumers

# Quantitative Evidence

- One potential piece of a strong case, but not the “holy grail”
- Simple statistics
- Econometric models
  - Direct tests for competitive effects
- Simulations

# Other Economic Issues

- Market power vs. concentration
- Relevant market
  - Hypothetical monopolist test
  - Competitive effects
- Efficiencies
  - Economies of scale and scope
  - Cost complementarities
- Entry
- Demand & costs
  - Elasticities
  - Product differentiation
  - Substitutes
  - Quality
  - Margins
- Collusion and coordinated effects
- And more



# Remarks Specific to Non-Merger Investigations

- Cases involving exclusion, tying, vertical restraints, etc. are economically complex
  - Theoretically, anticompetitive vs. efficiency effects depend on underlying assumptions of different economic models
- Important to fit facts to the right theory
- Distinguish rent-seeking complaints by competitors (or other players in the supply chain) from actual harm to consumers
- Distinguish surplus extraction from the creation or extension of market power (Carlton and Heyer, 2008)
- Appropriate “but for world” often elusive
- Efficiency justifications
- Potential unintended consequences of “remedies” or consents

# Examples Related to P&SP

- Matters involving vertical/distribution issues
- Matters involving monopsony or oligopsony
- Gasoline price monitoring

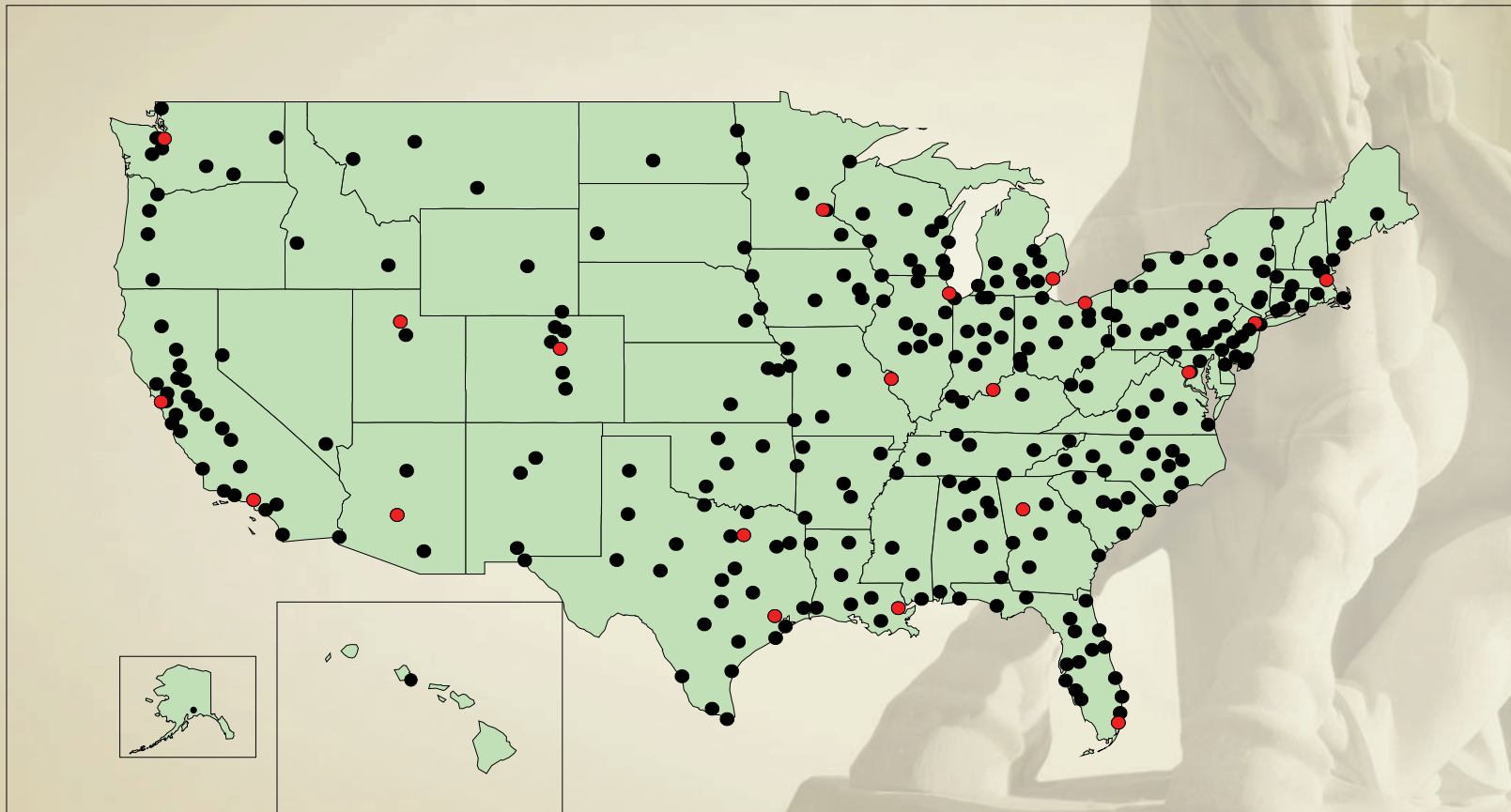
# Gasoline Price Monitoring Project

- Purpose is to identify “unusual” changes in the price of gasoline.
- Econometric model forecasts wholesale and retail gasoline prices around the country based on price spreads and compares forecasted prices to actual prices.



# Gas Monitoring (cont'd.)

- Analyze retail price data in approximately 360 cities nationwide, located in all 50 states, and wholesale prices in 20 key urban areas.

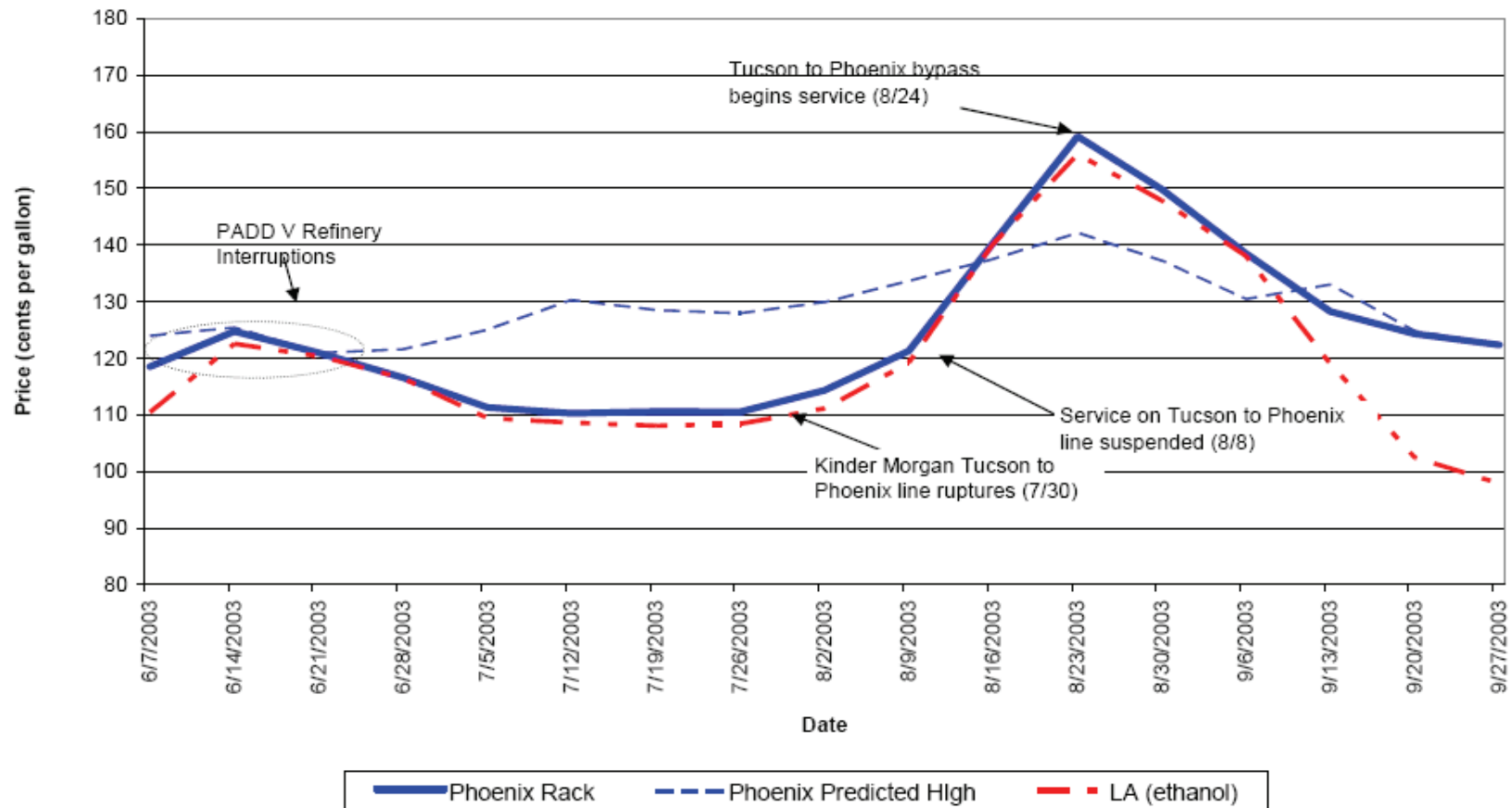


## Gas Monitoring (cont'd.)

- An “anomaly” occurs when a given city’s actual price is out of line with our predictions
- When an anomaly is identified, FTC staff:
  - Examine the oil and gasoline trade press and other sources for potential explanations
  - Discuss the situation with the Energy Information Administration of the Department of Energy
  - Notify the appropriate State Office of Attorney General, explain what we have learned about possible causes, and inquire about the existence of local or regional disturbances that may have contributed to the anomaly

# Gas Monitoring Example

Phoenix Wholesale Rack Prices  
vs. Predicted High & vs. Los Angeles



# FTC Interactions on Competition Issues

- DOJ
- FCC
- FERC
- CFTC
- DOE and others
- Welcome the opportunity to add the P&SP to our list