Opening Remarks of Chairman Deborah Platt Majoras
FTC Conference on "Energy Markets in the 21st Century:
Competition Policy in Perspective"
Tuesday, April 10, 2007
Washington, D.C.

Good morning. I am delighted to add my welcome to participants, our live audience, and online viewers of this public conference on competition policy in the energy industry. Many FTC staff members – most of all John Seesel, from whom you just heard – have worked creatively to develop a program that addresses a wide spectrum of issues vital to energy markets and consumers. I am grateful to our impressive line-up of speakers and moderators, who have agreed to share their insights on the challenging issues that we want to explore. I also would like to extend my special thanks and welcome to Secretary Samuel Bodman of the United States Department of Energy, who will deliver a keynote address this morning.

We focus together at this conference on a set of complex, multifaceted, and interconnected industries under the umbrella of "energy." We are a nation on the move, and the energy industry is as essential to American consumers' way of life as perhaps any other. Energy issues permeate the decisions we make in virtually all aspects of our lives: where to live, what kind of home to buy or rent, what car to drive, what products to use, how to get to work, where to take a vacation, and how to do our parts to protect the environment. In recent years, consumers have experienced the sting of price increases in gasoline, diesel fuel, home heating oil, and electricity, leading some to conclude that we have a fundamental imbalance between supply and demand for energy products. In the wake of the September 11, 2001, terrorist attacks and major hurricanes such as Katrina and Rita, Americans have become acutely aware of the United States' reliance on the energy resources of other nations – some of them unstable and even war-torn – to sustain our way of life. As Daniel Yergin, Chairman of Cambridge Energy

Research Associates and one of our panelists today, said when he testified before the U.S. House of Representatives Committee on Foreign Affairs last month, energy security "requires us to look, beyond the ups and downs of market cycles, both to the reality of an ever more complex and integrated global energy system and to the relations among the countries that participate in it."[1] Dr. Yergin emphasized, however, that markets *themselves* should be regarded as an important element of energy security, and he cautioned that "governments [would] do well to resist the temptation to respond to short-term political pressure and micromanage markets."[2]

The recognition of the importance of markets to this vital sector of our economy brings us here today. The FTC is, of course, a law enforcement agency, charged with protecting consumers from unfair, deceptive, or anticompetitive acts and practices, and we have devoted significant resources to energy markets. For the past 25 years, the Commission has reviewed all major petroleum mergers, identifying over 20 that it believed would have reduced competition and harmed consumers, challenging them, and obtaining appropriate relief. During the past year, the FTC challenged and obtained effective relief for EPCO's proposed $1.1 billion acquisition of TEPPCO's natural gas liquids storage businesses, and for a proposed $22 billion deal whereby energy transportation, storage, and distribution firm Kinder Morgan, Inc. would be taken private by KMI management and a group of investment firms. Most recently, on March 14, the

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1 Foreign Policy and National Security Implications of Oil Dependence: Hearing Before the H. Comm. on Foreign Affairs (2007) (Prepared Statement of Daniel Yergin, Chairman, Cambridge Energy Research Associates), *available at* http://foreignaffairs.house.gov/110/yer032207.htm.

2 *Id. See also* Note by the U.S. Department of Justice and U.S. Federal Trade Commission, OECD Roundtable on Energy Security and Competition Policy (2007), *available at* http://www.ftc.gov/bc/international/docs/07RoundtableonEnergySecurityandCompPolicy.pdf.

Commission voted to challenge Equitable Resources' proposed acquisition of The Peoples Natural Gas Company, the sole competitors in the distribution of natural gas to nonresidential customers in certain areas of Allegheny County, Pennsylvania. Our recent settlement with Chevron of a case we previously filed to challenge Unocal's conduct saved consumers, we estimate, about $500 million a year.

Given the vital nature of the petroleum sector, we do not wait to receive notice of mergers or complaints about conduct. Since 2002, the Commission's economists have monitored wholesale and retail prices of gasoline to identify potential anticompetitive activities that might require greater investigation. Today, this project tracks retail prices of gasoline and diesel in some 360 cities and wholesale (terminal rack) prices in 20 major urban areas. And when requested by members of Congress and others, we examine retail pricing in other areas as well.

Our mission, though, extends beyond law enforcement. It is our responsibility to stand up for markets and champion competition – the surest path to ensuring consumer welfare. This requires two additional areas for action. First, we engage in competition policy research and development, which ensures that we base our policies on market facts. And second, we advocate for governmental policies, throughout the federal government and state governments, that enhance competition and benefit consumers, rather than raise barriers and benefit special interests. It is unacceptable to, on the one hand, challenge the private sector for violating the antitrust laws, while, on the other hand, say nothing while our own government considers implementing policies that potentially do as much if not more harm to competition.

Last May, we delivered to Congress a report on whether gasoline prices had been manipulated in the years prior, for example, through tightening of refining capacity, and whether gasoline price gouging occurred after Hurricane Katrina.[3] Examining multiple levels of the petroleum industry – including refining and bulk distribution – the Commission investigated various means by which oil companies might have manipulated the supply of gasoline in order to increase prices. We found no evidence that the companies were engaging in such behavior. As for post-Katrina price gouging, we identified 15 instances in which gasoline refiners, wholesalers, or retailers met the definition of "gouging" set forth by Congress in the appropriations statute that mandated this part of the investigation.[4] In all but one such instance, however, local or regional competitive circumstances appeared to explain the price increases imposed by these firms.[5]

That report followed on additional recent efforts that have included a 2005 report on the factors that collectively determine gasoline prices, with a focus on the effects of supply and demand forces in competitive markets;[6] a 2004 petroleum merger report by our Bureau of

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3 Federal Trade Commission, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (2006), *available at* http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf.

4 Section 632 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-108, § 632, 119 Stat. 2290 (Nov. 22, 2005).

5 Some thoughtful reports also have come out of recent efforts by State AGs to examine gasoline prices. *See, e.g.*, Goss, Morse & Thompson, *Report of the Attorney General's Task Force on Motor Fuel Pricing in Nebraska* (Jan. 2006), *available at* http://www.ago.state.ne.us/content/gas_gouging.pdf.

6 Federal Trade Commission, *Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition* (2005), *available at* http://www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf.

Economics;[7] and the Commission's Midwest Gasoline and Western States Gasoline pricing investigations.[8] What is critical is that we then use what we have learned in making appropriate enforcement and policy decisions. After we released the 2006 report, critics dismissed the Commission's basic conclusion – that market forces, rather than illegal conduct, appeared to explain the bulk of pricing in this industry – clinging to the assumption that large oil companies were acting anticompetitively, but without providing countervailing facts. We will always pay careful attention to our critics, but without alternative facts, we cannot change our conclusions. And, of course, if we had found that illegal conduct was responsible for the price increases, that would in some ways make things easier, because we could challenge such conduct and presumably remedy the problem. But to have done that would have meant ignoring the facts before us, thus potentially harming competition to the detriment of consumers. Our duty as responsible enforcers of the law is to conduct thorough investigations and then present the results accurately and dispassionately. The challenge is that we must distinguish between markets corrupted by anticompetitive conduct and markets that are functioning competitively even if they are producing results that we may not particularly like.

In all of this work, our focus must remain steadfastly on the consumer. No consumer wants to pay more for gasoline or power, and it is tough to stick to a budget when energy bills

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

[8] Midwest Gasoline Price Investigation, Final Report of the Federal Trade Commission (Mar. 29, 2001), *available at* http://www.ftc.gov/os/2001/03/mwgasrpt.htm; FTC Press Release, *FTC Closes Western States Gasoline Investigation* (May 7, 2001), *available at* http://www.ftc.gov/opa/2001/05/westerngas.htm.

fluctuate widely. But as the many consumer communications I received in the past year indicate, consumers can handle the truth about energy prices and supply; they just want to know what it is. In the midst of last spring's run-up in gasoline prices, we augmented our Oil and Gas Industry Initiatives Web page with a recurring column that speaks directly to consumers about how key developments in the industry affect what they pay for gasoline. Gasoline Columns have addressed such topics as the "risk premium" that world events can add to crude oil and gasoline prices; the impact of hurricanes on supply and prices; the ways consumers can face different prices because they live in different locations; how refining capacity affects gasoline prices; and more. We have seen a dramatic increase in the number of hits to our Web page following the addition of this consumer-focused information. This Conference, open to the public and accessible via simultaneous Webcast, gives consumers a view as experts examine critical energy policy issues.

As we explore the energy markets of our future, the stakes for consumers are high. As our economy expands, our population grows, and our standard of living rises, our demand for energy inevitably increases. Some experts have estimated that over the next 20 years, U.S. oil consumption will increase by roughly one-third, natural gas consumption by 50%, and electricity demand by 45 %. And, of course, in this we are not alone, as other rapidly expanding economies like China and India have developed correspondingly increasing energy needs. While markets typically work well to respond to demand, we cannot ignore the fact that energy markets are uniquely impacted by geo-political considerations and federal and state government actions, including regulation and taxation.

The program we have designed for the next three days – covering energy history,

government policy, new technologies, consumer protection, global security-of-supply concerns, electricity restructuring, and more – reflects how many crucial and complex energy issues in energy markets our nation faces. Several months ago, when FTC staff were steeped in the planning and development of this conference, we shared a copy of the draft agenda with a few esteemed academics with energy policy expertise, and invited their comments. Each remarked that the agenda appeared timely, but ambitious. One professor who teaches a course in energy markets submitted that the FTC was attempting to cover the equivalent of his entire syllabus in three days. He went on, however, to *add* two agenda items he did not see that
he felt needed emphasis. Indeed, our agenda is broad and ambitious – intentionally so. This increases the possibilities for insights and learning on critical issues, which I hope will enhance our understanding and analysis – including of areas where further study would be fruitful; assist policymakers beyond the FTC; and above all provide information to the American public – as we tackle the policy challenges in energy markets in the Twenty-first Century.

I now have the privilege of introducing this morning's keynote speaker. Samuel W. Bodman was sworn in as our Nation's eleventh Secretary of Energy on February 1, 2005, after unanimous confirmation by the United States Senate. He leads the Department of Energy with a budget in excess of $23 billion and over 100,000 federal and contractor employees.

Previously, Secretary Bodman served as Deputy Secretary of the Treasury, beginning in February 2004. He also served the Bush Administration as the Deputy Secretary of Commerce, beginning in 2001. A financier and executive by trade, with three decades of experience in the private sector, Secretary Bodman skillfully managed the day-to-day operations of both of those

Cabinet departments before coming to the Department of Energy.

By training and experience, Secretary Bodman has brought an important set of credentials to the leadership of the Department of Energy. Solutions to the most formidable energy challenges facing our country and the world require highly skilled and dedicated people to confront problems in the realms of science, technology, and finance – fields in which the Secretary's extensive grounding superbly qualifies him for his current position. I am grateful to him for his service to us all, and that he has agreed to share his views with us this morning.

Secretary Bodman . . . .