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BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

COMMISSION AUTHORIZED

May 5, 1992

The Honorable David Knowles
Assemblyman, District 7
California Legislature
State Capitol
Sacramento, California 95814

Dear Assemblyman Knowles:

The staff of the Bureau of Competition of the Federal Trade Commission[1] is pleased to submit this letter in response to your request for comments on the potential competitive effects of Assembly Bill No. 2371 (the "Bill"), pending before the California Legislature. This Bill would threaten refiners that operate retail gasoline stations with liability if they set prices for their sales to branded wholesalers ("jobbers") and dealers higher than specified margins below the refiners' own retail prices. We believe this legislation is likely to be anticompetitive, and that its likely result may be that California consumers and visitors could pay higher prices for gasoline.

I. Interest and experience of the staff of the Federal Trade Commission.

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[2] Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. In particular, the Commission and its staff have had considerable experience

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[1] These comments are the views of the staff of the Bureau of Competition of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

[2] Federal Trade Commission Act, 15 U.S.C. §45 _et seq_.

assessing the competitive impact of regulations and business practices in the petroleum industry.[3]

II. Description of the Bill

The Bill deals with refiners' prices for sales for resale, that is, sales to wholesale jobbers and independent franchised retail outlets. The Bill would authorize a purchaser for resale to sue its refiner supplier if the price it paid was higher than the refiner's "adjusted retail price," which is determined by reference to the "consumer retail price" at the refiner's "direct operated outlet in the same geographic area."[4] In general, the "adjusted retail price" would be calculated by subtracting from the "consumer retail price" an amount representing the refiner's retail operating expenses.[5] If the sale complained of were to a branded wholesaler, an additional amount would be subtracted representing the refiner's average wholesale operating expenses.[6] If the sale were to an unbranded wholesaler, though, this additional wholesale expense factor apparently would not be considered.

Under the Bill, the plaintiff would not be required to show injury to competition, and the defendant could not avoid

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[3] The staff of the Commission has gained extensive experience with energy competition issues by conducting studies, investigations, and law enforcement actions. FTC staff comments and testimony to legislative bodies have identified the costs of proposed gasoline retailing divorcement, "below-cost selling," and other petroleum marketing legislation for Alabama, Arkansas, Colorado, Georgia, Hawaii, Kansas, Louisiana, Massachusetts, Montana, Nevada, North Carolina, South Carolina, Tennessee, Utah, Virginia, Washington, and the United States Senate and House of Representatives. The Commission and its staff have also gained considerable experience with gasoline refining and marketing issues affecting consumers from premerger antitrust reviews pursuant to Sections 7 and 7A of the Clayton Act, 15 U.S.C. §§18, 18a.

[4] Assembly Bill 2371, proposed Ch. 8.5 of Title 4 of the California Business and Professions Code §21301. All citations are to the proposed sections of this new Chapter 8.5.

[5] These amounts would be adjusted for costs of consumer credit and for differences in freight, taxes, and fees. §21304(a), (e).

[6] §21304(a).

liability by showing that there was no injury to competition.[7] Liability could be established *prima facie* by showing that the refiner made sales at prices that departed from specified percentage margins. For a sale to a branded retail dealer, the specified price is no higher than 94 percent of the refiner's consumer retail price, and for sale to a branded wholesaler, no higher than 90 percent.[8] The Bill provides only one way for a refiner to rebut the *prima facie* case, which is by demonstrating, by a "preponderance of evidence," that its actual retail (or wholesale) operating expenses were less than six percent (or ten percent) of its own consumer retail price.[9] The expenses to be considered are not well defined.[10] Anyone who purchased at a price that violated the Bill would be presumed to be injured[11] and could sue for injunctive relief and the greater of treble damages or $5000 per violation, plus attorneys' fees.[12] The Bill does not permit a refiner to defend against liability by showing that its prices were set to meet competition.

III. Analysis of the competitive effects of the Bill

Overview. The Bill rests on findings that the major petroleum refineries are using their company-operated outlets to impose financial hardship on "independent marketers." The Bill's provisions demonstrate special concern about the situation of branded wholesale and branded retail customers, rather than unbranded distributors, and the Bill finds that additional

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[7] §21302(f).

[8] §21303(a). A prima facie case could also be made out by showing that the price exceeded the consumer retail price less "the most recently available average retail operating expenses," and, for wholesale sales, average wholesale operating expenses for the state. These average expenses are not defined, but presumably could be industry-wide average figures.

[9] §21303(b). If the prima facie case were made with average expense data, the refiner could also rebut by showing its actual expenses were less than those averages.

[10] "Wholesale operating expenses" are defined simply to include direct and indirect expenses and the cost of wholesale credit, but the definition is limited to sales to branded dealers. §21304(p). There is no similar definition for retail operating expenses.

[11] §21302(a).

[12] §21302(c), (d).

remedies are necessary to end their hardship and "restore an equitable marketing relationship" between refiners and their customers.[13] Under existing California law, sale of motor fuels at discriminatory prices is illegal where "the effect is to lessen competition or to injure, destroy, or prevent competition."[14] By contrast, the Bill would make refiners liable for charging prices that violate its provisions regardless of whether there is any injury to competition,[15] and would not permit refiners to avoid liability by showing that their prices were set to meet the equally low prices of a competitor.[16] This Section explains why the Bill's proposed new remedies, which would inhibit normal competition and disregard actual competitive effects, are likely to discourage price discounts and be harmful to consumers.

A. Claims of predation or monopolization through refiners' sales "below cost" at company-operated retail stations are unfounded.

The Bill's premise, that wholesalers and retailers are suffering "financial hardship" and a "high rate of attrition" because of "onerous and regrettable marketing conditions imposed upon them,"[17] resembles arguments made by proponents of similar legislation that would impose restraints on vertically integrated petroleum refiners and marketers in other jurisdictions. These arguments maintain that new laws are necessary to protect customers purchasing for resale from unfair practices by their suppliers. According to this view, vertically integrated refiners can and do set retail prices at their company-owned and operated outlets either below the wholesale prices charged to jobbers and dealers, or at levels so low that the jobbers and dealers cannot compete with them. The alleged intent and effect of such pricing is to drive jobbers and dealers out of business in order to replace them with company-owned stations. It is similarly charged that major gasoline marketers often have subsidized "below cost" pricing at one location by high prices at another location, and that such practices harm competitors and consumers.

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[13] §21300(d).

[14] Legislative Counsel's Digest of A.B. 2371; California Business and Professions Code, §§21200-21203.

[15] §21302(f).

[16] §21302(f).

[17] §21300(b).

Such claims do not appear to be well founded. The history of pricing practices and levels in the industry does not disclose widespread competitive problems, and the pattern of change in distribution methods is not consistent with claims of monopolization. Major oil companies have historically been "integrated by contract," relying heavily on franchised dealer networks to sell their refined products. We review below recent pricing behavior in the industry and the numerous studies of competition in gasoline marketing in the United States since 1981 that have concluded that gasoline dealers have not been and are not likely to become targets of anticompetitive practices by their suppliers.

B. Claims that major refiners set prices at different distribution levels in order to "squeeze" branded customers and to drive them from the market are also unfounded.

Claims that major refiners intentionally set prices at different distribution levels to "squeeze" disfavored customers are often advanced in support of legislation like the proposed Bill. It is alleged that refiners have discriminated among competing wholesale customers and even that refiners have charged less for direct-delivery sales to some retail dealers than they charged for wholesale sales at their terminals. These allegations were particulary intense after Iraq's August 1990 invasion of Kuwait, which created uncertainty about future petroleum supplies and was followed by rapid swings in petroleum prices. Occasional price shifts or changes in "spreads" between prices charged at different levels of distribution do occur, but they are readily explained as the result of normal competitive behavior in response to changes in world petroleum markets. Understanding these allegations requires first an understanding of how gasoline is distributed.

Major refiners sell gasoline at wholesale to three classes of customers. At the terminal "rack," refiners sell to jobbers, either branded or unbranded. Branded jobbers own, or resell to, branded retail stations, while unbranded jobbers own, or resell to, unbranded retail stations. Refiners may also sell through direct delivery to branded lessee-dealers (who may also buy from branded jobbers).[18] In the vast majority of cases, a refiner does not sell to branded and unbranded jobbers in the same

[18] The major branded gasoline refiners make relatively few sales through company-owned and operated retail stations. Smaller refiners are more likely to sell predominantly through company-owned and operated retail stations. See Section D, below.

geographic area, or to jobbers who compete in the same geographic area as its direct-buying branded lessee-dealers.

The different distribution methods involve different costs and risks and thus different pricing structures. For example, a refiner's wholesale price for branded gasoline delivered directly to a retail station (the "dealer tankwagon" or "DTW" price) is on average higher than the "rack" price it charges a jobber. The jobber purchasing at the rack then provides transportation to retail stations, either its own or its customers', and may also have its own storage facilities. The rack price for sale to branded jobbers is typically higher than the price to unbranded jobbers. The average spread between the DTW price and the branded jobber rack price may be 7-8 cents (per gallon), and between the DTW price and the unbranded jobber rack price, 9-10 cents.[19]

Both spreads vary widely and change continually. How some of these spreads changed in the last two years is shown on Attachment A to this letter. The difference between DTW prices and branded jobber prices (on average) has often exceeded 10 cents, and even reached 20 cents in late 1990. For a short time in the summer of 1990 the branded jobbers' "advantage" was actually negative, that is, the average dealer tankwagon price was lower than the average branded jobber price. Similarly, the difference between branded jobber prices and unbranded jobber prices has occasionally reached 5 cents, but during that same period in the summer of 1990 the unbranded jobbers' usual "advantage" also turned negative. Such changes, leading to occasions when price levels for unbranded jobbers were higher than for branded jobbers, or jobber price levels were higher than DTW price levels, have led to allegations that prices have been set to squeeze disfavored customers.

But these spreads change because different kinds of sales respond differently to changing market conditions, as indicated by swings in the "spot market" prices for bulk gasoline. For reasons explained below, jobber prices generally tend to adjust rapidly to changes in spot market prices, while DTW prices tend to adjust more slowly. Thus, when spot prices rise rapidly and unexpectedly, as they did after the Iraqi invasion of Kuwait in August 1990, jobber prices should increase more quickly than DTW prices and might even briefly exceed them. These "inversions" tend to be temporary, however, and the relationships between DTW

[19] These spreads are based on the prices reported by Oil Weekly from March, 1989 through July, 1991.

prices and branded and unbranded jobber prices quickly return to their normal pattern.[20]

Jobber prices tend to change rapidly because a refiner that responded too slowly would risk disruptions in its bulk distribution network. Jobbers, especially unbranded jobbers, who may purchase from several suppliers and serve many retail outlets, could shift their purchases to low-priced suppliers. Because many jobbers have storage facilities, they might purchase and store larger volumes in anticipation of price increases. Unless its rack prices respond quickly to expectations about price movements, a refiner's terminal might be drained and its distribution system disrupted, making it difficult for the refiner to supply its own outlets or to meet the contract commitments it may have with some customers, such as lessee dealers.

DTW prices would tend to change more slowly because branded lessee retail dealers are in a different situation from jobbers. Their ability to shift purchases based on speculations about future price movements is limited because their storage capability is relatively limited. Moreover, refiners that sell directly to retail dealers can monitor purchases and detect speculative purchasing. Finally, refiners have an ongoing relationship with their lessee and franchisee dealers, which may involve both contractual supply commitments and an implicit agreement that the refiner will share some of the risk when prices change unexpectedly. The refiner bears a portion of this risk by moderating dealer tankwagon price increases (decreases) when spot prices are increasing (decreasing).[21]

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[20] Moreover, although these inversions may appear between average price levels, they rarely appear in the prices of a single refiner supplier, because a refiner that charged such inverted prices to competing customers would run the risk of violating existing law, such as the federal Robinson-Patman Act, 15 U.S.C.§13.

[21] The refiner's continuing relationship with branded customers would also imply that prices to branded jobbers should be less volatile than those to unbranded jobbers, and thus may help explain the occasional, temporary "inversions" of these price levels. However, substantial differences between branded wholesale prices and unbranded wholesale prices could not be sustained even in the short term because wholesalers with storage capabilities can increase (or decrease) their purchases of unbranded product when its price is unusually low (or high) relative to branded product. By contrast, substantial differences between DTW and wholesale prices could persist for a longer, but still limited, period.

These relationships between prices in different distribution chains and the recent changes in those relative prices are what would be expected in a normally functioning competitive market. Because the competitive explanation is so straightforward, there is little reason to suspect that these price movements are evidence of some anticompetitive purpose or effect. Rather, the Bill's encouragement of mininum margins between wholesale and retail prices would likely interfere with natural market processess and, as a result, may lead to shortages at the rack, higher prices to consumers, or both.

In any event, because these allegations about price inversions at the time of the Persian Gulf war raised questions about violations of the antitrust laws,[22] they have been investigated by the staff of the Commission. That investigation did not find that these price actions showed illegal price discrimination, intentional "squeezing" of customers' margins, or injury to competition.

C. Studies of "subsidization" and "predation" in the petroleum industry have not supported allegations of predation.

The Department of Energy ("DOE") has studied whether vertically integrated refiners were "subsidizing" their retail gasoline operations in a way that might be predatory or anticompetitive.[23] DOE's final report to Congress, published in January, 1981, was based on an extensive study of 1978 pricing data in several Standard Metropolitan Statistical Areas, as well as on internal oil company documents subpoenaed by DOE investigations. The study concluded that there was no evidence of such "subsidization."[24]

In 1984, DOE published an updated study that further substantiated and elaborated on its 1981 findings.[25] The study showed that company-operated stations were not increasing as a

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[22] Robinson-Patman Act, Section 2(a) of the Clayton Act, 15 U.S.C. §13(a).

[23] This study was undertaken following enactment of Title III of the Petroleum Marketing Practices Act in 1978, 15 U.S.C. §2841.

[24] DOE, Final Report: The State of Competition in Gasoline Marketing, p. xi (1981).

[25] DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers (March, 1984) ("1984 DOE Report").

percentage of all retail outlets, except among the smaller refiners. In the 1984 report, DOE concluded that the increased pressures on gasoline retailers since 1981 were not caused by anticompetitive behavior on the part of the major oil companies. Rather, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers were attributable to decreased consumer demand for gasoline and a continuing trend toward the use of more efficient, high-volume retail outlets.[26]

In 1986, the Washington state Attorney General initiated a study of motor fuel pricing in that state to determine whether claims of refiner subsidization were justified. The study focused on whether major oil companies injured competition by charging lessee-dealers higher prices for gasoline than the companies were charging their own company-operated retail stations. The study also sought to examine whether the major oil companies injured competition by establishing a pricing structure between retail and wholesale prices that prevented dealers from covering their costs. Information was gathered on the practices of all eight of the major companies in Washington for a three-year sample period. The study covered regions throughout the state where the companies maintained both retail operations and lessee-dealer operations. The Washington study observed pairs of DTW prices to lessee dealers and retail prices at company-operated stations; the study found that less than one percent of these pairs disclosed any significant instances where the DTW price was above or at the retail price. Rather, the bulk of the price pairs were consistent with the thin margins observed elsewhere in gasoline distribution. The study concluded that the few price pairs at variance were "clearly too infrequent" to show that lessee dealers were being systematically driven from the market because their gasoline purchase costs were the same as or higher than the retail prices of competing refiner-operated stations.[27]

More recently, in 1987, the Arizona legislature created a Joint Legislative Study Committee on Petroleum Pricing and Marketing Practices and Producer Retail Divorcement. In December 1988 the Committee recommended that no new legislation be

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[26] 1984 DOE Report at 125-32.

[27] Final Report to the Washington State Legislature on the Attorney General's Investigation of Retail Gasoline Marketing, p. 14 (August 12, 1987).

enacted, concluding that "[t]he marketplace for petroleum products is very competitive in Arizona."[28]

The DOE studies, based on data from the 1970's and early 1980's, and the state studies, conducted more recently, reveal no instances of predatory behavior by major gasoline refiners.[29] Rather, they show that the fortunes of refiners and their franchised retailers are closely linked and that these firms "form a mutually supporting system backed by company advertising and promotion."[30] Franchised retailers have continued to be by far the predominant form of outlet for the gasoline sales of major, integrated refiners. Indeed, major refiners operate only a small percentage of the gasoline stations in the United States.[31]

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[28] Final Report to the Arizona Joint Legislative Study Committee on Petroleum Pricing and Marketing Practices and Producer Retail Divorcement, p. 35 (December, 1988).

[29] The 1984 DOE Report is based on data that is now a decade old. But information gathered from industry publications, such as the National Petroleum News Factbook (published annually), as well as the results of continuing investigations by the Commission's staff into competition in the petroleum industry give us no reason to believe that the distribution structure has significantly changed since that time.

[30] 1984 DOE Report at ii. We do not mean to suggest that the interests and incentives of refiners and their franchised retailers are linked perfectly in every situation. Although the refiners and their retailers generally share common goals, on occasion their interests and fortunes may not coincide.

[31] Lundberg Letter, Vol XI, No. 36, July 6, 1984, at 3, reported that the major refiners operated only about 3.3 percent of all retail stations. The 1984 DOE Report showed a similarly low proportion. A study conducted for the American Petroleum Institute found that the for the fourteen largest integrated refiners, representing approximately 67 percent of the nation's refining capacity, company-operated retail stations accounted for about 10 percent of their gross gasoline sales and 4.5 percent of their outlets. Temple, Barker & Sloan, Gasoline Marketing in the 1980's: Structure, Practices, and Public Policy, pp. 2-3 (1988).

D. Gasoline marketing in California appears to be as diversified and competitive as in the rest of the country.

The national pattern is reflected in the distribution systems of the leading branded refiners in California. The 1984 DOE study indicates that vertically integrated gasoline marketers accounted for 7.3 percent of total sales in California in 1981; this was substantially below the national average, 13.1 percent.[32] None of the leading branded marketers in California for which data are available use company-owned and operated outlets as the predominant form of retailing on a national basis.[33] However, company operated outlets may be a predominant form of retailing for smaller, independent refiners.[34]

The major integrated refiners are not likely to engage in predation against the mainstay of their own retail distribution systems, their franchised retailers. Major refiners in California would have little incentive to charge discriminatory prices that would cause their franchised retailers to move to different suppliers or to go out of business. A refiner that discriminated in ways that injured its franchisees and dealers would probably lose sales, leading to a lower market share, greater excess refining capacity, and higher per unit costs.

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[32] 1984 DOE Report at 82.

[33] National Petroleum News 1991 Factbook 34-51. The firm with the largest number of outlets in California, Unocal, operates only one percent of its branded outlets itself (nationwide); the second largest in California, Chevron, operates seven percent; the third largest, Shell, operates three percent. NPN does not offer data on salary operated outlets for fourth-ranked ARCO or eleventh-ranked Thrifty Oil. The only leading firm in California for which data is available that operates more of its own branded outlets than the national average rate of 13.1 percent is Ultramar (eighth largest in California, with all of its operations in the state), operating 44 percent; BP America (ninth largest in California), operates 13 percent (nationwide), equal to the national average rate. The vast majority (95 percent) of retail outlets in California are operated by firms that operate fewer of their own outlets than the national average rate.

[34] The Bill only applies if a refiner has company-operated outlets in an area. §21301. Thus, because smaller refiners are more likely to use company-operated outlets, the Bill is likely to have a greater impact on smaller refiners than on major ones.

E. Even if predatory behavior or price discrimination were found, it is already subject to prosecution under existing state and federal laws.

Predatory conduct in the petroleum industry is subject to the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. In addition, price discrimination that injures competition is subject to existing California law and to the federal Robinson-Patman Act.[35] These statutes address possible anticompetitive practices in the industry and deter firms from engaging in predatory behavior or illegal price discrimination.

By contrast, even though there appears to be no competition problem in the petroleum industry that is not subject to existing laws, the Bill's prohibitions appear to be broader than those in the Robinson-Patman Act.[36] The Bill's apparent purpose, to protect competitors without regard to effects on competition and consumers, could extend beyond the reach of existing federal law.[37] The Bill would permit a competitor or customer to claim "injury" based on a refiner's sale at an unlawful price,[38]

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[35] California Business and Professions Code, §§21200-21203, adopted in 1975, prohibits price discrimination in the petroleum industry in terms that are taken virtually verbatim from the Robinson-Patman Act, 15 U.S.C. §13 (Section 2 of the Clayton Act). See Texaco, Inc. v. Hasbrouck, _____ U.S. _____, 110 S. Ct. 2535 (1990), a case arising under the Robinson-Patman Act in which franchised gasoline retailers successfully challenged price discrimination by a vertically integrated refiner.

[36] For example, the Bill permits no defense based on meeting competition. By contrast, the Robinson-Patman Act permits a seller to meet the prevailing competitive circumstances in a market, Falls City Indus. v. Vanco Beverage, 460 U.S. 428 (1982).

[37] Under the Bill, liability could be based solely on injury to a competitor, and the Bill explicitly does not permit as a defense the absence of any injury to competition. §21302(f). Illegality under the Robinson-Patman Act requires that the effect of the discriminatory price be "substantially to lessen competition or tend to create a monopoly ... or to injure, destroy, or prevent competition with any person" who grants or receives the benefit of price discrimination (or with customers of either of them). 15 U.S.C. §13(a).

[38] Liability under the Bill could be triggered by too small a margin between jobber prices and the refiner's retail price. §21303. That margin could be made smaller either by a higher wholesale price or a lower retail price. Thus, a claim of liability could be based on a refiner's retail price that was, by

without any showing that the pricing practices lessen or injure competition. Because "cutting price in order to increase business often is the very essence of competition," the Bill may "chill the very conduct the antitrust laws are designed to protect."[39]

F. The Bill may lead to higher gasoline prices because it will discourage price competition and facilitate uniform pricing.

The Bill may inhibit vigorous competition and add costs to the distribution of gasoline in California that do not exist in other states, costs that would be borne by California consumers and visitors. The Bill may make firms less inclined to reduce their retail prices in response to changing conditions of demand and supply and may deter short term price discounts designed to attract new customers, because these actions risk allegations that prices to wholesale customers are too high in relation to the corresponding "adjusted retail price."

The Bill may prevent refiners from realizing all the efficiencies of vertical integration that can often reduce transaction and search costs and lower prices to consumers. As a broad generalization, economic theory suggests that vertical integration is likely to harm consumers only when market power exists in at least one stage of production.[40] A vertically integrated refiner may be able to achieve greater efficiency in coordinating its different levels of distribution. In a competitive industry, such as retail gasoline sales, it may be expected that these cost savings would be at least partially passed on to the consumer. However, the Bill may inhibit such firms from using these savings to lower prices to consumers if the savings are difficult to demonstrate as reductions in operating costs justifying narrower margins than the Bill sets for a prima facie violation.

An unintended effect may be to encourage vertically-integrated refiners that distribute gasoline in California to

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the Bill's standards, too low.

[39] Matsushita Elec. Indus. Co. v. Zenith, 475 U.S. 574, 594 (1986).

[40] See, e.g., U. S. Department of Justice, Merger Guidelines, Section 4.21-4.213 (1984). In announcing joint Merger Guidelines earlier this month, the Department of Justice and the Federal Trade Commission stated that these sections of the previous Guidelines, describing policies about vertical relationships, would still be applied.

change otherwise lawful pricing practices. For example, the Bill may limit the availability of certain functional discounts.[41] In enforcing the federal price discrimination law, the Robinson-Patman Act, the Commission is careful to avoid discouraging firms from engaging in lawful price competition and from setting price differences that, rather than injure competition, may operate to destroy cartel pricing.[42] However, such lawful price competition may be discouraged by the threat of liability under the Bill's proposals. Firms may simply decide to set uniform prices across broad geographic regions to avoid violations.[43]

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[41] In Texaco, Inc. v. Hasbrouck, the Supreme Court said that "a functional discount that constitutes a reasonable reimbursement for the purchasers' actual marketing functions will not violate the [Robinson-Patman] Act." 110 S. Ct. at 2550.

[42] See, e.g., F.M. Scherer & D. Ross, Industrial Market Structure and Economic Performance, p. 515 (3d ed. 1990).

[43] To the extent that individual firms would have an incentive to set a single price in a geographic area to avoid violating the law, the bill would resemble "uniform price laws," whose possible effects were discussed in the 1984 DOE Report, at 122:

> In a market where there are no restrictions on pricing, price reductions tend to spread throughout the geographic area providing lower prices for consumers. … If the geographic area within which the price cutting occurs is limited, it is very likely that the refiners will respond in kind. … Thus, a price cut in one area often will lead to price cuts across broad market areas. In this situation, competition has worked effectively and consumers in all areas affected are better off.
>
> In markets where there are uniform price restrictions, it is more likely that the responses will be different. Again, a refiner may decide to lower prices in a geographic area where sales traditionally have been weak. Refiners' responses must now take into account the uniform price law. … [R]efiners must lower prices throughout the area covered by the law. In this situation, the refiners are more than likely to maintain their prices, since they may decide it is less costly to forego some sales in the initial market where price cutting is occurring than lower prices throughout the region. … Competition has been adversely affected and most consumers are no better off, since price reductions have not occurred in areas where they would have without the uniform price law.

IV. Conclusion.

For the reasons stated above, we believe that Assembly Bill 2371 might cause gasoline prices in California to increase. We appreciate the opportunity to comment on this matter. If you have additional questions, please feel free to contact me or Assistant Director Marc G. Schildkraut, whose Division within the Commission's Bureau of Competition has considerable experience in analyzing competition in the petroleum industry. You may write or call Mr. Schildkraut, at:

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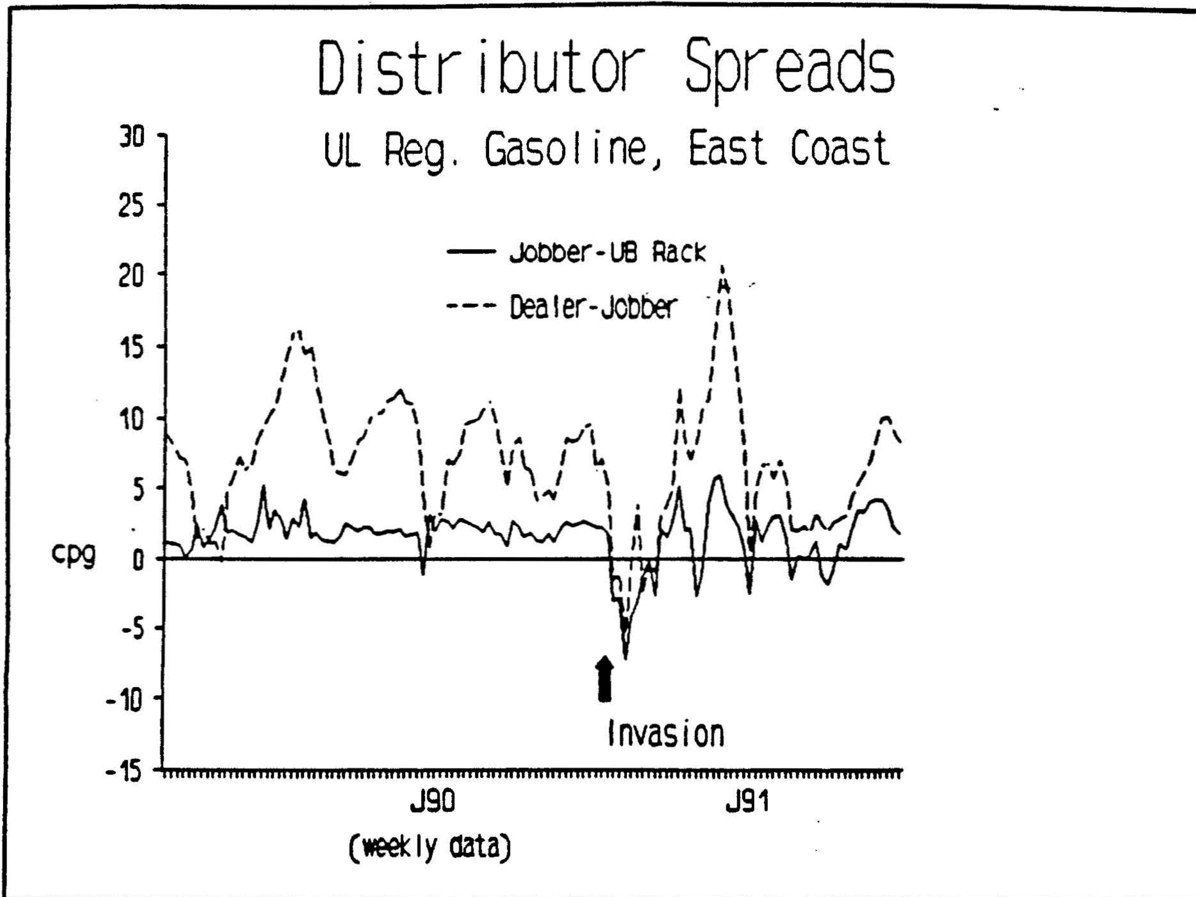
Thank you again for the opportunity to comment on Assembly Bill 2371. I hope you find these comments to be helpful.

Sincerely,

Ronald B. Rowe
Director for Litigation

Attachment A



Source: Oil Weekly, Oil & Gas Journal. Spreads shown here are between DTW and branded jobber prices and between branded jobber and unbranded rack prices for unleaded regular gasoline in the eastern United States from early 1989 through mid 1991.