

**STATEMENT OF THE FEDERAL TRADE COMMISSION  
CONCERNING THE BUREAU OF ECONOMICS STAFF REPORT ON  
“THE PETROLEUM INDUSTRY: MERGERS, STRUCTURAL CHANGE, AND  
ANTITRUST ENFORCEMENT”**

Today, the Commission has released the Bureau of Economics report on “The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement.” This report is part of the Commission’s longstanding effort to provide information to policymakers and the public about ongoing developments in the petroleum industry. As even a casual reading will confirm, this report is the fruit of a major scholarly enterprise – an inquiry into the structural changes that have occurred in the petroleum industry over the last twenty years. While this report does not directly address the current concerns about high gasoline prices,<sup>1</sup> it will inform any discussion of whether and how the petroleum industry’s structure affects the price of gasoline. As has been publicly noted before, the Commission continues work on a separate report that will more directly analyze the many factors that impact the level and volatility of gasoline prices.

In his statement, Commissioner Thompson notes that he has voted to authorize release of the report, which he believes will provide “useful information for policymakers and the public in assessing merger policy for the petroleum industry.”<sup>2</sup>

Commissioner Thompson, however, takes particular exception to certain language in the report. He objects to the statement that “[t]he 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” and to the use of the term “over-inclusive” in describing remedies in previous petroleum merger settlements.

The data in the report demonstrate unequivocally that the Commission has challenged (and obtained relief regarding) petroleum industry mergers at lower concentration levels than in other merger cases.<sup>3</sup> The data also demonstrate unequivocally that petroleum merger cases

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<sup>1</sup> For a discussion of various factors that influence gasoline prices and of many FTC initiatives to protect competition in gasoline markets, see Prepared Statement of the Federal Trade Commission Before the Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, United States House of Representatives, *Market Forces, Anticompetitive Activity and Gasoline Prices – FTC Initiatives to Protect Competitive Markets* (July 15, 2004), a copy of which is appended to this statement. See also Federal Trade Commission Conference, *Factors That Affect Prices of Refined Petroleum Products* (August 2, 2001, and May 8-9, 2002) (transcripts and materials submitted available at <http://www.ftc.gov/bc/gasconf/index.htm>).

<sup>2</sup> Statement of Commissioner Mozelle W. Thompson Concerning the Staff Report “The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement,” at 1.

<sup>3</sup> See Federal Trade Commission, *Horizontal Merger Investigation Data, Fiscal Years 1996-2003* (Feb. 2, 2004), and Table 2-6 of the present report.

“may involve a large number of relevant markets,”<sup>4</sup> and it is thus reasonable to conclude that a full investigation could take an “extraordinary amount of time”<sup>5</sup> both for Commission staff and for the parties. An additional complicating factor in petroleum mergers is the need to assure that we implement a remedy that allows the acquirer of divested assets to operate them so as to remain competitive with other firms operating in the market.<sup>6</sup>

In contrast to Commissioner Thompson’s claim, our vote to approve the report’s release does not indicate any criticism of those settlements. Rather, we believe the report states publicly how the Commission addresses the many complexities involved in the review of large petroleum industry mergers, without getting bogged down in “trench warfare” that is unlikely to serve the public’s interest.<sup>7</sup> In petroleum mergers involving large numbers of markets, considerations of practicality and expedition suggest that it would be unwise to haggle over every single market. The report, however, cites the Commission’s policies of ensuring “that any plausible competitive concerns are remedied” and of resolving any uncertainties in favor of “over-inclusive” rather than “under-inclusive” relief. Contrary to Commissioner Thompson’s claim, the report does not suggest that any particular settlement has in fact been over-inclusive or that the “Commission has forced petroleum companies into inappropriate settlements.”

While Commissioner Thompson asserts that the petroleum industry is different and characterized by market conditions resulting in particular concerns,<sup>8</sup> his voting record belies those assertions. In those few oil mergers that the Commission investigated that were of smaller size – and that therefore did not present the special concerns outlined in the staff report – the Commission did not seek enforcement at the low levels of concentration challenged in the larger petroleum mergers. In numerous markets in smaller oil transactions, the Commission did not seek relief when the post-merger HHI was in excess of 1,400 and below 2,000 (and the delta was in excess of 100). In smaller petroleum transactions, Commissioner Thompson did not object to

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<sup>4</sup> See Report at 21 (for the 8 most recent petroleum mergers challenged, the total number of relevant markets in which competitive effects were alleged exceeded 200).

<sup>5</sup> See Report at 27.

<sup>6</sup> See Report at 28 & n. 34. As the Report indicates, “over-inclusive” merely means the inclusion, in a divestiture package, of assets in markets where anticompetitive effects are not likely, but where concerns about the viability of the divested assets require their inclusion. Thus, this does not mean a particular remedy is excessive.

<sup>7</sup> Many of these merger investigations involved state antitrust enforcement officials as well.

<sup>8</sup> Commissioner Thompson's point that the Commission alleged coordinated effects in oil merger cases is unremarkable. Indeed, coordinated effects is the *only* possible theory to support challenging mergers at such low levels of concentration.

closing the investigation of the markets with lower HHIs. Thus, in these smaller transactions, Commission enforcement was more similar to enforcement in other industries.

At the risk of repeating the obvious, we emphasize that we have authorized the release of a staff report – which says what it says and no more – and we respectfully dispute any interpretations of the report or of our actions that are neither stated nor reasonably implied.