

**BEFORE THE FEDERAL TRADE COMMISSION
MARKET MANIPULATION RULEMAKING**

P082900

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Federal Trade Commission’s (“FTC”) Advance Notice of Proposed Rulemaking (“ANPR”), soliciting public comments on the appropriate ways to interpret and enforce the provisions of the 2007 Energy Independence and Security Act (“EISA”) related to preventing market manipulation in the petroleum industry. 73 Fed. Reg. 25614 (May 7, 2008).

ILMA requests that the FTC consider the discussion below about dual distribution within the lubricants industry as one of the “potential practices” that might be included in the formal rule provisions. *See Section IV.I of the ANPR.* In ILMA’s opinion, the situation discussed below fits within the intent of EISA Section 811 and the FTC’s rulemaking authority under the statute.

Introduction of ILMA

ILMA, established in 1948, is a national trade association of 142 manufacturing member companies. The overwhelming majority of these companies are “small businesses” as defined by the Small Business Administration. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs and over 75 percent of the metalworking fluids utilized in the country.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

Potential Practice of Concern

The potential practice of concern to ILMA and its members is the rapid escalation in the prices of base oils sold by refiners to non-refiner blenders/marketers, including independent lubricant manufacturers, at the wholesale level and the slow pace that these same refiners increase the prices of the finished oils sold under their brand names. Such “price squeeze” should be considered by the FTC under EISA Section 811 as a “manipulative or deceptive device or contrivance.” This activity, whether intentional or not, has the real effect of squeezing the margins out of the finished oil sales market and shifting it to the base oil production side of the business. ILMA requests that the FTC include a “price squeeze” practice on its topics list.

The FTC staff has experience with the lubricants sector of the petroleum industry from its review over the past 10 years of several major oil company mergers and acquisitions. As such, a discussion of the structure of the lubricants industry is not necessary in these comments, even though ILMA believes that competition in the wholesale market for base oils has greatly diminished in the past 10 years.

The following are some real examples of the current price squeeze taking place in the lubricants industry:

ExxonMobil is considered the price leader in the wholesale base oils market. On November 29, 2007, it announced a wholesale base oil price increase of 20 cents per gallon, yet ExxonMobil's first finished oil price increase after this November announcement was 154 days later on May 1, 2008. During this 154 day period, Exxon Mobil raised wholesale base oil prices a total of four times by as much as \$.70 per gallon depending on the viscosity and group. Since the May 1, 2008 finished oil price increase, ExxonMobil has raised wholesale base oil prices two additional times for Group II+ stocks and four times for Group I with no additional finished oil price increase announcements.

EXXON MOBIL GROUP II+ BASE OIL/FINISHED OIL PRICE CHANGES

DATE	(A) BASE OIL PRICE	DATE	(B) FINISHED OIL PRICE INC.	DAYS A TO B	CUMMULATIVE BASE OIL CHANGE \$ + OR - FINISHED OIL CHANGE
11/29/07	+.20g				+ \$.20g
3/03/08	+.15g				+.35g
3/19/08	+.15g				+.50g
4/22/08	+.20g				+.70g
		5/1/08	+9% Avg. \$.40g	154 days	+.30g
6/02/08	+.25g				+.55g
6/12/08	+.35		No Future Change Announced	43 and counting	+.90g

In looking at the above chart, ExxonMobil has raised its wholesale base oil prices to its customers/competitors since last November by approximately \$1.30 per gallon, yet it has only raised finished oil prices one time by approximately \$0.40 per gallon. There does not appear to be any rational or reasonable explanation as to why ExxonMobil waited 154 days before its first finished oil price increase, and ILMA is not aware of any further announced price increases in some 43 days.

Another example is Motiva, a base oil refiner and merchant base oil supplier. Motiva is partially owned by Shell Oil Company. Motiva announced a \$0.15 per gallon wholesale base oil price increase on December 7, 2008. Shell did not implement a finished oil increase 68 days later on February 13, 2008.

MOTIVA-SHELL BASE OIL/FINISHED OIL PRICE CHANGES

DATE	(A) BASE OIL PRICE	DATE	(B) FINISHED OIL PRICE INC.	DAYS A TO B	CUMMULATIVE BASE OIL CHANGE \$ + OR – FINISHED OIL CHANGE
12/07/07	+\$0.15g				+ \$0.15g
		2/13/08	\$0.44 on some products	48 days	-\$0.29g
3/04/08	+\$0.22g				-\$0.07g
4/04/08	+\$0.20g				+\$0.13g
		5/2/08	+10% Avg. \$0.40g	59 days	-\$0.27g
5/06/08	+\$0.20g				-\$0.07g
5/23/08	+\$0.30g				+\$0.23g
6/12/08	+\$0.35g				+\$0.58g
		8/05/08	+15% Avg. \$1.25g	91 days	

Further, 59 days elapsed between Motiva’s March 4, 2008 wholesale base oil price increase and Shell’s May 2, 2008 finished oil increase. Motiva has raised wholesale base oils prices three more times by approximately \$0.85 per gallon, and Shell recently announced it would be raising its finished oil prices on August 5, 2008 by approximately \$1.25 per gallon on average. This is a lag of 91 days between base oil cost increases by Motiva and Shell finally implementing an increase on the finished oil side.

ConocoPhillips announced a wholesale base oil increase of \$0.20 per gallon on December 7, 2008. Its first finished oil increase of approximately \$0.35 per gallon came 137 days later on May 1, 2008. During this 137-day period, Conoco Phillips implemented two additional wholesale base oil increases totaling approximately \$0.31 per gallon.

CONOCO PHILLIPS BASE OIL/FINISHED OIL PRICE CHANGES

DATE	(A) BASE OIL PRICE	DATE	(B) FINISHED OIL PRICE INC.	DAYS A TO B	CUMMULATIVE BASE OIL CHANGE \$ + OR – FINISHED OIL CHANGE
12/07/07	+\$.20g				+ \$.20g
3/09/08	+\$.11g				+\$.31g
		5/1/08	+5% /+10% Avg. \$.35g	137 days	-\$.04g
5/08/08	+\$.25g				+\$.21g
5/23/08	+\$.35g				+\$.56g
6/09/08	+\$.25g				+\$.81g
		7/01/08	+18% Avg. \$.60g	61 days	

Since the May 1 finished oil increase, ConocoPhillips has increased wholesale base oil prices three additional times by approximately \$0.85 per gallon. The refiner recently announced a finished oil increase to be effective on July 1, 2008. Here, there was a lag of 61 days between the initial base oil and finished oil price increases.

ILMA has chosen to highlight these three base oil refiners because of their importance in the merchant base oil market, their size, and the influence of their pricing decisions on non-refiners.

The wholesale base oil prices increases since last November largely can be explained by the rapid rise in crude oil prices. What is harder to explain is why such price increases have not been passed through in the per-gallon selling price of the refiner’s branded, finished oils. While it is reasonable for there to be some lag time for retail customers to be notified of price changes, a 154-day interval is not reasonable.

It should be pointed out that, over this same time period, lubricant additive prices have increased sharply. While the amount of the increases has varied, refiners and independents alike have experienced these additive price increases, which put further pressure on retail prices and margins. Further, some ILMA members toll blend finished oils for different refiners and pass through their raw material price increases to these refiners.

The only logical conclusion that can be derived from the refiners’ lag time in passing through finished oil prices increases is that these refiners are using market conditions to make a market share grab. The refiners are using profits on base oil sales to absorb losses on sales of finished oils.

Another way to look at the lag time/price squeeze issue is that the refiners announce a finished oil price increase that will not take effect for 45 days or more in order to affect purchase and sale contracts and other supply considerations.

ILMA believes that the FTC should find the practices described above as manipulative and a violation of EISA Section 811. It can police such abuses in the lubricants market by including a specific description of such conduct in its topics list.

ILMA appreciates this opportunity to submit its views on the ANPR. We would be happy to discuss this matter further with FTC staff.

Respectfully submitted,

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Association**

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