COMMISSION APPROVED

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TESTIMONY OF THE STAFF OF THE

FEDERAL TRADE COMMISSION

before the

SUBCOMMITTEE ON GENERAL OVERSIGHT AND THE ECONOMY

of the

UNITED STATES HOUSE OF REPRESENTATIVES

on

HOUSE RESOLUTION 3824

THE "MOTOR FUEL SALES COMPETITION

IMPROVEMENTS ACT OF 1985"

April 17, 1986

Chairman Mavroules and Members of the SubCommittee: thank you for this opportunity to present the views of the Federal Trade Commission's staff on the effects on competition and consumers of proposed House Resolution 3824, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission has previously approved comments by its staff opposing such legislation. The Commission also has opposed similar legislation introduced in the Senate Judiciary Committee, S. 1140 (a copy of a Commission letter to Senator Thurmond dated July 9, 1985, is attached). This statement will summarize the Commission's previous concerns with legislation of this type.

Summary of Opposition to H.R. 3824

The bill's stated purpose is to "amend the Clayton Act to preserve and promote wholesale and retail competition in the retail gasoline market, and for other purposes." The Commission endorses these goals, but opposes the specific provisions of H.R. 3824. There is no credible evidence that the anticompetitive practices the bill purports to correct exist. Present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur. Moreover, legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. **There is no credible evidence of anticompetitive conduct by refiners and producers to support H.R. 3824.**

If the purpose of H.R. 3824 is to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers, the bill is unnecessary. There is simply no credible evidence that such practices are either occurring or could successfully be used to harm gasoline dealers. In fact, a DOE examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Claims that refiners "subsidize" their own outlets to harm their franchisee dealers are unsubstantiated.

The studies also indicate that refiners have no logical motive to wage war on their franchised dealers. Rather, refiners and their franchised outlets are linked by mutual interest, because lessee-dealers are the predominant distribution system for direct gasoline sales by major, integrated refiners. Only a small percentage of the gasoline stations in the United States are operated by major, integrated refiners.

Moreover, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded, franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates it would be irrational for an individual refiner to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. **Monopolistic and predatory behavior is subject to prosecution under existing federal laws.**

Even if predatory or monopolistic behavior by refiners were found to exist, passage of H.R. 3824 is unnecessary. H.R. 3824's prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act and Section 5 of the FTC Act.

Section 3A of the bill, prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting limitations by refiners and producers on conversion of existing storage tanks for alternative gasoline supplies, also is unnecessary. There is no evidence of widespread anticompetitive abuses associated with minimum volume requirements and restrictions on usage of refiner-owned storage tanks in current franchise contracts.

3. **Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.**

Finally, H.R. 3824 should not be used to redress perceived contractual imbalances between refiners or producers and their lessee-dealers; Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows that it was the intent of the Congress to balance the franchise relationship in a more equitable manner. H.R. 3824 should not be allowed to alter this balance without a full study of its effects.

Passage of H.R. 3824 in fact may be injurious to franchisees, because its requirements would appear to lessen the value of a franchised dealer network to an integrated refiner. Therefore, although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations, passage of H.R. 3824 might encourage abandonment of franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of H.R. 3824 would not be enacted.

The antitrust laws deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in H.R. 3824 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has already enacted legislation similar to that now being proposed by H.R. 3824. One study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement law," has estimated that Maryland consumers are now paying millions of dollars more per year than they would have been paying if the divorcement law had not been enacted.

Conclusions

Drawing upon an ongoing examination of energy competition issues, the Commission concludes that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorcement of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, H.R. 3824 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as H.R. 3824 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, H.R. 3824 should not be enacted.

Thank you for your attention, Mr. Chairman. I would be pleased to answer any questions you or other members of the Committee may have.

FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

OFFICE OF
THE CHAIRMAN

July 9, 1985

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of May 20, 1985, requesting Federal Trade Commission views on S. 1140, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission's staff has previously opposed such legislation.[1] The Commission is opposed to the enactment of S. 1140 because this bill is anticompetitive and would be harmful to consumers.

Description of S. 1140

The bill's stated purpose is "[t]o amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public." Section 2(a) of the bill would make it unlawful for any petroleum producer or refiner, "directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 percent of the monthly retail sales of motor fuel from such producer or refiner or to prohibit the use or conversion of storage tanks and dispensers as provided in subsection (c)."

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1 The Commission's staff has filed comments opposing passage of South Carolina House Bill 2663 (marketing divorcement and below cost selling); North Carolina Senate Bill 73 (below cost selling); and Washington Senate Bill 3418 (marketing divorcement). The FTC's Bureau of Competition Assistant Director Ronald B. Rowe has testified in opposition to U.S. House Resolution 5023 in 1984 (below cost pricing), and in opposition to H.R. 1362 in 1981 (marketing divorcement and below cost selling).

Section 2(b) of the bill would make it unlawful for a producer or refiner to collude with any other producer or refiner to require retail dealers to carry more than 70 percent of the suppliers' fuel or to prevent use of storage tanks to store other suppliers' fuel.

Section 2(c) would require trademarked dealers to notify their customers if they carry and dispense motor fuel at one or more pumps that is not supplied by the refiner or producer whose trademark or trade name is displayed by the dealer.

Section 3 would make it unlawful for any "large integrated refiner to operate any motor fuel service station in the United States," although such refiners are not prohibited under Section 4 of the bill from owning the underlying assets of the service station, as long as the refiner does not participate in any way in operating the station. The prohibition in Section 3 would become effective "one year after the date of the enactment of this Act." [Sec. 6(c)]

Under Section 5 of the bill, a "large, integrated refiner," as used in Sections 3 and 4 of the bill, is defined as a refiner that has thirty percent crude oil self-sufficiency and whose total refining capacity exceeds 175,000 barrels per day.

Section 6 of the bill would authorize a federal district court civil action brought by the Federal Trade Commission to prevent or stop violations of S. 1140, "or any regulation promulgated thereunder," and gives the district courts certain jurisdiction to restrain violations, to require compliance, and to "impose monetary penalties under the same terms and conditions as provided in Section 5(m)(2)(A) of the Federal Trade Commission Act, and to order such additional equitable relief as it deems appropriate." [Sec. 6(a)] Private civil actions by "any other person affected" by a violation of S. 1140 would allow the successful plaintiff to obtain monetary damages and equitable relief in any district "in which the plaintiff resides or is doing business, or in which the defendant resides, or is doing business." [6(b)(1) and (2)]

Finally, S. 1140 would require the Commission to "prescribe regulations for the collection of information" necessary to determine which refiners would and would not be permitted to operate retail gasoline outlets. [Sec. 6(d)(1)]

Summary of Opposition to S. 1140

S. 1140, although facially different from the myriad of other retail divorcement and "below-cost" pricing legislation unsuccessfully urged in the United States Congress and in many state legislatures, is but a new variety of the same species. Although such bills are usually described by their proponents as necessary to protect dealers from the "monopolistic" and "predatory" practices of their suppliers, no credible evidence has been found that gasoline suppliers have engaged in such practices. None of the provisions of S. 1140 would in any way increase competition; the bill's effect rather would be to protect and increase profit margins for branded gasoline dealers as well as other gasoline dealers. Price competition would be thereby debilitated and the result would be higher gasoline and motor fuel prices for consumers in all regions of the country.

The Commission opposes the specific provisions of S. 1140 because: (1) there is no credible evidence that the anticompetitive practices the bill purports to correct exist; (2) present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur; and (3) legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. **There is no credible evidence of anticompetitive conduct by refiners and producers to support S. 1140.**

Proponents of legislation like S. 1140 maintain that its passage is necessary to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers. They argue that it is unfair for refiners to operate retail gasoline outlets in competition with their franchised gasoline dealers. According to this view, the refiners "subsidize" their own retail operations by providing gasoline to their own outlets at internal transfer prices that are both "below cost" and below the wholesale prices charged to independent dealers.

We are aware of no evidence that such subsidization has occurred or is occurring anywhere in the United States. In fact, an examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Following enactment of

Title III of the Petroleum Marketing Practices Act in 1978, 15 U.S.C. § 2841, the Department of Energy ("DOE") was required to study whether the alleged "subsidization" of retail gasoline operations of major refiners actually existed and, if it did, whether the practice was predatory or anticompetitive. The final report to Congress, published in January 1981,[2] was based on an extensive study of pricing data in several Standard Metropolitan Statistical Areas for 1978, as well as on internal oil company documents subpoenaed by the DOE staff. The study concluded that there was no evidence of such subsidization. In 1984, DOE published a report that further substantiated its 1981 findings.[3]

In its 1984 report, DOE presented the results of an extensive study of gasoline marketing since decontrol. DOE concluded that the increased pressures on gasoline retailers since 1981 were not caused by anticompetitive behavior by oil companies. Rather, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers could be attributed to decreased consumer demand for gasoline and a continuing trend toward the use of more efficient, high-volume retail outlets.[4] Statistics published by DOE and industry publications, such as the Lundberg Letter, indicate that since federal controls were removed in January 1981, the public has been the beneficiary of vigorous price competition.

DOE case studies have revealed no instances of predatory behavior on the part of major gasoline refiners. Instead, the studies indicate that the fortunes of refiners and their franchised outlets are inextricably merged, and that the two groups "form a mutually supporting system backed by company advertising and promotion."[5] Indeed, lessee-dealers have continued to be by far the largest outlet for the direct gasoline

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2 DOE, Final Report: The State of Competition in Gasoline Marketing, January 1981.

3 DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers, January 1984 draft report [hereinafter cited as 1984 DOE Report].

4 Id. at 125-32.

5 Id. at ii.

sales of the major, integrated refiners.[6] In fact, only 3.3 percent of the gasoline stations in the United States are operated by the major, integrated refiners themselves.[7]

In the context of merger analysis, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded, franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates that it would be irrational for an individual major refiner-franchisor to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. **Monopolistic and predatory behavior is subject to prosecution under existing federal laws.**

Even if predatory or monopolistic behavior by refiners were found to exist, it could be reached under the Sherman Act, the Clayton Act, or the Federal Trade Commission Act.

Section 2(b)'s prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act. Conspiracies in restraint of trade also violate Section 5 of the FTC Act.

Section 2(a), prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting refiners and producers from

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6 In 1981, the eight largest refiners, who, in the aggregate, accounted for about half of all gasoline sales, sold approximately eight times more gasoline through lessee-dealers than through refiner-owned retail outlets Id. at 146 (Table A-10).

7 Lundberg Letter, Vol. XI, No. 36, July 6, 1984, at 3.

preventing their dealers from converting existing storage tanks for alternative gasoline supplies, also is unnecessary and unwise. These provisions might be justified if there were evidence of widespread anticompetitive abuses.

As discussed in the last section, however, allegations of oil company anticompetitive practices and behavior are simply not supported by any credible evidence. Certainly, as a group, the major refiners have not been engaged in predation against their branded franchisees, who constitute the mainstay of their distribution network. Nor does it seem reasonable to conclude that individual oil producers and refiners have in any way been attempting to drive their own franchisees out of business by operating company-owned retail outlets.[8]

3. **Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.**

One proponent of the bill contended that Section 2 of S. 1140 is necessary because it "extends throughout the industry the settlement achieved in Bogosian v. Gulf Oil Corp.," 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985).[9] However, the litigation in Bogosian never resolved the issue of whether supplier abuses had actually occurred. The Bogosian settlement preceded any ruling on the merits of the plaintiff's antitrust claims, and the Bogosian judge resisted attempts to enlarge or modify the consent decree in ways that are now being urged by the proponents of this legislation. Indeed, District Judge VanArtsdalen gave the following response to disappointed members of the Bogosian class suggesting that their claims would likely

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8 See supra notes 5 and 6 and accompanying text.

9 Supra note 7 and 8. Plaintiffs in this class action private suit charged that the major oil company defendants conspired by implementing and maintaining a system of gasoline distribution in which the defendants would own and lease gasoline stations to independent operators so as to prevent plaintiffs from buying their gasoline supplies from anyone but their lessors. The restraints were enforced, according to plaintiffs, by illegal tie-ins conditioning the lease of a service station and the use of the refinery brand name and trademark upon a dealer buying all his gasoline from the refiner-lessor.

have been found without merit at trial:

> The "risks" of establishing liability in this case were great. For both the damage and injunctive class, proving liability at trial would have been extremely difficult. The plaintiffs clearly had no direct proof of a conspiracy.

[Bogosian v. Gulf Oil Corp., 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985)] Judge VanArtsdalen also suggested that, without such direct proof, proving antitrust violations "would have been a monumental task for plaintiffs." Id.

The district judge also gave the following response to plaintiffs who complained that the relief on installation of individual fuel tanks and pumps was inadequate:

> As to the contention that the right to install individual tanks and pumps or take other steps to de-brand a station is purely illusory, the agreement at least recognizes the existence of such a right. Only time will tell whether and to what extent this right may be exercised by lessee-dealers. If, in fact, as plaintiffs have contended, supplies of gasoline could be purchased by service station dealers at a substantially reduced price if allowed to be purchased on a free and open market, undoubtedly some will find it economically advantageous to install separate tanks and pumps. [Id.]

In sum, although the proposed requirements of Sections 2(a) and 2(b) of S. 1140 would greatly expand the agreed-to relief in the Bogosian settlement, their enactment, without extensive further analysis would appear to ignore the sense of Judge VanArtsdalen's opinion of the allegations and claims for relief by the Bogosian plaintiffs.

Moreover, to the extent that S. 1140 is intended to redress imbalances between refiners or producers and their lessee-dealers, Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows Congressional concern over alleged abuses of the franchise relationship.[10] Because of perceived unequal bargaining positions between major refiners and their individual dealers, franchise agreements were regarded as adhesion contracts in many instances. For that reason, the PMPA represented Congress' legislative solution to balance the franchise relationship in a more equitable manner. In contrast, S. 1140 would abandon such a balanced approach and skew the balance sharply in favor of gasoline dealers. Such an alteration without a full study of its effects is clearly not warranted and may be injurious rather than helpful to franchisees. This is because the requirements of S. 1140 would appear to lessen the value of a franchised dealer network to an integrated refiner. Although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations,[11] passage of S. 1140 might encourage abandonment of presently favored franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of S. 1140 would not be enacted.

Finally, the enforcement standards developed over the years in federal case law under the Sherman, Clayton, and FTC Acts and their remedial provisions, deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in S. 1140 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers. Prices would also rise as a result of the elimination of competition from refiner-owned stations, which tend to be low-cost, gasoline-only outlets.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has enacted divorcement legislation similar to that now being proposed by S. 1140. Economists in one study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement

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10 See Senate Report No. 95-731, 95th Cong., 2d Sess., 15-19, 29-43 ("Senate Report").

11 See supra note 6 and accompanying text.

law,"[12] have estimated that Maryland consumers are now paying over $15 million dollars more per year than they would have been paying if the divorcement law had not been enacted.[13]

Conclusions

Drawing upon our ongoing examination of energy competition issues, we conclude that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorcement of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, S. 1140 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as S. 1140 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, the Federal Trade Commission urges that S. 1140 not be enacted.

By direction of the Commission.

James C. Miller III
Chairman

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12 1984 DOE Report, supra note 5, at 105.

13 See Barron & Umbeck, A Dubious Bill of Divorcement, Regulation, Jan.-Feb. 1983, at 29. See also Testimony of Pester Corp., Crown Central Petroleum Corp., on Oct. 21, 1981, before the United States Senate's Judiciary Committee, on a nationwide divorcement bill, S. 326; Barron & Umbeck, The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets, 27 J. Law & Econ. 313 (1984).

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

May 20, 1985

FEDERAL TRADE COMMISSION
RECEIVED

MAY 21 1985

OFFICE OF CONGRESSIONAL RELATIONS
WASHINGTON, D.C. 20580

Gentlemen:

The Committee on the Judiciary is herewith transmitting S. 1140 for your study and report thereon in triplicate.

To facilitate the work of the Committee I urgently request that your report be submitted within 20 days. The Committee should be formally advised in writing if any delay beyond that time period is necessary.

Sincerely,

Strom Thurmond

Chairman

Enclosures

Federal Trade Commission
Pennsylvania Avenue at Sixth Street
Washington, D.C. 20580

II

99TH CONGRESS
1ST SESSION

S. 1140

To amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 15), 1985

Mr. METZENBAUM (for himself, Mr. THURMOND, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Fuel Sales Competition Improvement Act of 1985".

WHOLESALE PURCHASE OF GASOLINE

SEC. 2. (a) Notwithstanding any other provision of law and except as provided in this section, it shall be unlawful for any producer or refiner, directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 per centum of the monthly retail sales of motor fuel from such producer or refiner or to prohibit the use or conversion of storage tanks and dispensers as provided in subsection (c).

(b) It shall be a violation of this Act for any producer or refiner to contract, combine, or conspire with any other producer or refiner for the purpose of violating subsection (a).

(c) It shall be unlawful for any dealer, at a motor fuel service station displaying a trademark, trade name, or other identifying symbol or name owned by a refiner or producer, to sell motor fuel which is not provided by or for such producer or refiner without providing reasonable notice at the point of sale that motor fuel dispensed by one or more dispensers is not refined by or for such producer or refiner, except that a dealer may convert one or more existing storage tanks and dispensers or establish new storage tanks and dispensers for sale of motor fuel supplied by other than the owner of the trademark, trade name, or identifying symbol displayed at the station.

OPERATION OF MOTOR FUEL SERVICE STATIONS

SEC. 3. It shall be unlawful for any large integrated refiner to operate any motor fuel service station in the United States.

EXCEPTIONS

SEC. 4. Notwithstanding section 3, it shall not be a violation of this Act for a large integrated refiner to own all or part of the assets of a motor fuel service station so long as such producer does not engage in the business of selling motor fuel at such station through any—

(1) employee;

(2) commissioned agent;

(3) person acting on behalf of the refiner or under the refiner's supervision; or

(4) person operating such station pursuant to a contract with the refiner which provides that the refiner has substantial or effective control over the motor fuel operations of the station.

DEFINITIONS

SEC. 5. For purposes of this Act the term—

(1) "producer" means any person who is engaged, directly or indirectly, in the production of crude oil;

(2) "refiner" means any person engaged, directly or indirectly, in the refining of motor fuel or any producer who contracts with another to refine petroleum products for purposes of sale of motor fuel by the producer;

(3) "large integrated refiner" means any person who for the most recent calendar year for which data are available—

(A) produced, directly or indirectly, more than 30 per centum of the domestic and imported crude oil supplied to its refinery; and

(B) whose total refinery capacity exceeds one hundred and seventy-five thousand barrels per day;

(4) "motor fuel" means gasoline, diesel fuel, alcohol, or any mixture of them sold for use in automobiles and related vehicles;

(5) "motor fuel service station" means any facility at which motor fuel is sold at retail;

(6) "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and receivers in bankruptcy and reorganization, common law trusts, and any organized group, whether or not incorporated;

(7) "United States" means the several States, the District of Columbia, and any territory or possession of the United States.

ENFORCEMENT AND EFFECTIVE DATE

SEC. 6. (a) The Federal Trade Commission may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever the Federal Trade Commission has reason to believe that any person has violated or is violating any provision of this Act, or any regulations promulgated thereunder. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance, to impose monetary penalties under the same terms and conditions as provided in section 5(m)(2)(A) of the Federal Trade Commission Act, and to order such additional equitable relief as it deems appropriate.

(b)(1) If any person fails to comply with the requirements of this section, any other person affected by such failure may maintain a civil action against such person failing to comply with such requirements for damages and appropriate equitable relief, including temporary and permanent injunctive relief. If the plaintiff prevails in any action under this section, the plaintiff shall be entitled to reasonable attorney and expert witness fees to be paid by the defendant, except that in any case in which the court determines that only nominal damages are to be awarded to the plaintiff, the court may, in its discretion, determine not to direct that such fees be paid by the defendant.

(2) An action brought pursuant to this section may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the plaintiff resides or is doing business or in which the defendant resides or is doing business.

(c) Sections 2 and 3 of this Act shall take effect one year after the date of the enactment of this Act.

(d)(1) The Federal Trade Commission shall prescribe regulations for the collection of information necessary for the determinations specified in section 3 and for the manner of complying with the requirements of section 2(c).

(2) Notwithstanding any other provision of this Act, information related to section 3 need not be provided by private persons if reliable and timely information is available from published sources.

(3) Regulations promulgated pursuant to paragraph (1) shall be promulgated, after notice and a reasonable period for comment by the public, no later than one hundred eighty days after the date of enactment of this Act.

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