

Our View: The FTC's Dereliction of Duty

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At one time, the Federal Trade Commission (FTC) focused closely on petroleum product prices. Its attention preserved a modicum of competition in the oil industry, particularly among refiners and retailers. That scrutiny ended, however, when President Biden appointed Lina Khan as FTC chair. Khan, a relatively recent Yale graduate (2017), and the FTC cost US consumers an additional \$150 billion compared to what would have been paid had historical relationships held. Historically, the threat of an FTC investigation or action helped keep those relationships in line.

The Republicans have correctly criticized Biden's administration for failing to curb rising gasoline prices. Shareholders in refining firms such as Valero and Marathon Petroleum and retailers such as Casey's General Store and Global Partners are cashing in while the FTC sleeps. Simultaneously, the US Federal Reserve's efforts to keep inflation in check are being compromised, and corporate and individual borrowers are paying slightly higher interest rates due to Khan's negligence.

High crude oil prices are not the problem today. Refining and retail margins are causing the high prices. Other countries are not experiencing this issue. In fact in one nation, France, retailers have committed to sell at cost, working to cooperate with President Macron lest more draconian regulations be imposed.

In theory, one would expect retail fuel prices to be roughly similar when crude oil prices are identical (e.g., \$90 per barrel) if taxes and fees were unchanged. The data, though, paint an entirely different picture. Retail prices in Europe and Japan were essentially the same in 2007 and 2023 before incorporating tax changes. When one includes taxes, one finds that nominal prices declined. In Europe, gasoline prices decreased by \$0.35 per gallon or almost five percent. In the United States and Canada, however, gasoline prices increased by more than \$1 per gallon before taxes and \$0.60 per gallon after including tax changes. In short, US and Canadian customers paid essentially \$1 per gallon more to refiners and marketers than consumers in Europe and Japan.

Diesel has a similar story. European and Japanese customers saw no change in diesel prices between 2007 and 2023 before taxes and almost a \$1 per gallon decrease after incorporating tax changes. US and Canadian customers, on the other hand, saw diesel rise \$1.20 per gallon before taxes (around thirty-five percent) but just \$0.35 after tax changes were included. Thus, US and Canadian diesel customers pay \$1.20 per gallon more.

The blame for the FTC's failure to protect gasoline and diesel consumers lies with Chairperson Khan. As *The Wall Street Journal* noted, she is more concerned with all things digital. Six years ago, as a Yale graduate student, Khan wrote what the *Journal* describes as "a withering legal broadside against Amazon that condemned the retailer for several forms of anticompetitive conduct."¹ This week, Khan continued her vendetta as her agency filed suit against the firm:

¹ Dave Michaels, "Lina Khan Once Went Big Against Amazon. As FTC Chair, She Changed Tack," *The Wall Street Journal*, September 28, 2023 [<https://tinyurl.com/mr22xnzy>].

Now the FTC accuses Amazon of hurting consumers with higher prices, mainly through punishing its marketplace sellers if they offer lower discounts anywhere else. It also says Amazon reaps the fruits of monopoly by requiring sellers to use its fulfillment service.

As noted, Khan and the FTC are concentrating almost entirely on digital. In April 2023, representatives for the Commission testified before a House subcommittee on the FTC's proposed budget for 2024. Among other objectives, their written plan included a long discussion of proposed efforts to safeguard consumer privacy online and strengthen data security.² The words "gasoline" and "petroleum" do not appear in the document.

If Chairperson Khan had done her job, US gasoline prices would be lower. The US Energy Information Administration puts the average national retail gasoline price today at \$3.963 per gallon. That price would be \$0.90 less if the 2007 market conditions prevailed today.

² "Prepared Statement of the Federal Trade Commission Hearing on Fiscal Year 2024 Federal Trade Commission Budget before the Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce," US House of Representatives, Washington, DC, April 18, 2023 [<https://tinyurl.com/5n72fywa>].