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The Real Culprit Behind Price-Gouging: OPEC

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With the summer driving season now upon us, no one expects a break in the price of gas at the pump. The realities of supply and demand, however, have not stopped some in Congress from seeking a quick fix to the complex problem of high fuel prices.

Recently, in a rare display of bipartisan cooperation, members of Congress pinned the rise of gas prices on "big oil" price-gouging, blaming American oil companies. Yet, a recent investigation by the Federal Trade Commission (FTC) found that claims of price-gouging had less to do with "Big Oil" than they did with "regional or local market trends."[1]

While Congress spends its time chasing this "white whale," state-owned oil companies that make up the Organization of Petroleum Exporting Countries (OPEC), and control 80 percent of the world's oil reserves, continue to gouge the American consumer through a series of monopolistic practices. This week, OPEC is expected to announce that it will maintain its current output level—a decision that will do little to ease oil prices that have reached more than $70 a barrel.[2] If Congress is serious about alleviating the price-gouging that contributes to high gas prices, it ought to begin by allowing the federal government to sue OPEC.

At a time when oil prices are climbing to ever-higher levels, this measure would be a welcome first step towards reestablishing the free market in this strategically important sector. Indeed, this move is long overdue and points the way to a second, more important step: allowing private antitrust suits against OPEC.

The Intolerable Status Quo

Since its inception in 1960, OPEC, which is dominated by Persian Gulf producers, has successfully restricted its member states' petroleum production, artificially distorting the world's oil supply to line its members' pockets. Member states' production quotas are determined at semi-annual meetings of members' petroleum ministers and are at times changed through telephone consultations. Several times, this supply-fixing strategy has devastated the U.S. and global economies:

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- In 1973, OPEC's actions in response to U.S. support for Israel, which was attacked in the Yom Kippur War, resulted in a worldwide economic recession that lasted from 1974 to 1980.
- In 1980, OPEC's failure to increase production in the face of the Iranian revolution resulted in historically high oil prices of $81 per barrel (in 2005 dollars).
- In 1990, OPEC refused to increase production sufficiently to keep prices stable as Saddam Hussein occupied Kuwait.
- Lately, OPEC's resistance to add productive capacity has sent oil prices to $75 a barrel, once again endangering U.S., and worldwide, economic growth.

The cartel's operations ensure that its members' oil and gas economies remain insulated from foreign investment flows. Members of OPEC have not worked to enhance the rule of law and property rights and have imposed severe restrictions to prevent foreign investors from owning upstream production assets, such as oil fields and pipelines. This is a testament to the cartel's *de facto* monopoly over the petroleum market—a strategy that has resulted in higher oil prices for American consumers.

Indeed, the only serious challenge to the organization came in 1978 when a U.S. non-profit labor association, the International Association of Machinists and Aerospace Workers (IAM), sued OPEC under the Sherman Antitrust Act in *IAM v. OPEC*. The U.S. Court of Appeals for the Ninth Circuit rejected the case in 1981. OPEC, the court affirmed, could not be prosecuted under the Sherman Act due to the foreign sovereign immunity protection it claimed for its member states. Prevailing legal doctrines, however, suggest that government-owned companies that engage in purely business activities do not warrant sovereign immunity protection.[3]

High oil prices, which OPEC facilitates, serve to transfer wealth from Western consumers to petroleum producers. This wealth transfer funds terrorism through individual oil wealth and government-controlled "non-profit" foundations. It also permits hundreds of millions of dollars to be spent on radical Islamist education in madrassahs (Islamic religious academies).

Furthermore, the oil-cash glut in the Gulf states and elsewhere empowers resistance to much-needed economic reform in oil-producing countries. Western consumers fund state subsidies for everything from health care to industry to bloated bureaucracy.

Getting Serious About OPEC's Price-Gouging

Growing concerns over energy prices prompted Congress last year to examine the legal hurdles that prevent the United States from defending its economic and national security interests. In the early part of 2005, a group of senators led by Sen. Mike DeWine (R-OH) introduced the "No Oil Producing and Exporting Cartels Act" (S. 555), known as NOPEC, to amend the Sherman Act. This bill would make oil-producing and exporting cartels illegal. The measure remains in the limbo of the Senate Legislative Calendar under General Orders.

On June 21st, DeWine, with the support of Sen. Herb Kohl (D-WI), added an amendment based on NOPEC to the Energy Policy Act of 2005. Like NOPEC, this amendment would have modified sections of the Sherman Act to allow the U.S. Department of Justice (DOJ) or the FTC to bring suits against OPEC for its monopolistic practices. The amendment did not make it into the final energy bill.

In April of 2006, Senator Arlen Specter introduced the "Oil and Gas Antitrust Act of 2006" (S. 2557), another bill that takes aim at the Sherman Act. That bill has also been placed on Senate Legislative Calendar under General Orders.

If Congress is serious about the issue of price-gouging, it must allow federal suits against OPEC. If OPEC is to be reined in, individuals and companies that it has damaged must also be allowed to bring suits against the cartel. As the *IAM v. OPEC* decision made clear, Congress cannot rely on the courts when it comes to amending the Sherman Act.

Conclusion

It is time for OPEC to cease its monopolistic practices. Otherwise, the American people can expect more of the same from this cartel—higher gas prices and shrinking wallets.

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[1] Federal Trade Commission, *FTC Releases Report on its "Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases"*, May 22, 2006, at *http://ftc.gov/opa/2006/05/katrinagasprices.htm* (May 25, 2006).

[2] Natalie Obiko Pearson, "OPEC countries may override Chavez's call," *Associated Press*, May 30, 2006, at *http://news.yahoo.com/s/ap/20060530/ap_on_bi_ge/venezuela_opec_meeting_1;_ylt=ArIst00XlfgeUcUsYEc2dauAsnsA;_ylu=X3oDMTBiMW04NW9mBHNlYwMlJVRPUCUl* (May 30, 2006).

[3] See Foreign Sovereign Immunities Act Section 1605(a)(2).