



# Department of Justice

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FOR IMMEDIATE RELEASE  
FRIDAY, JANUARY 6, 1984

AT  
202-633-2016

The Department of Justice announced today it has no present intention to challenge the establishment of an Engine Fuel Promotional Fund by the National LP-Gas Association (NLPGA) of Arlington, Virginia, to promote the use of propane as an automotive fuel through national advertising.

The Department's position was stated in a business review letter dated January 3, 1984, from J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, to Daniel N. Myers, General Counsel for NLPGA.

NLPGA is a trade association of the liquified petroleum gas industry whose members are involved in all phases of the LP-gas industry and are engaged in the production, distribution and retailing of propane gas and the manufacture and distribution of associated equipment and appliances. The NLPGA members expected to participate in the Fund are propane manufacturers of carburetion units (fuel locks, carburetors, and converters), propane tank manufacturers and propane equipment distributors.

Financing of the Fund is to be by voluntary contributions from participating NLPGA members and from consumers. Equipment manufacturers and distributors will contribute a percentage of annual gross sales and propane tank manufacturers will contribute

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a fixed amount per unit sold. In addition, equipment distributors and tank manufacturers will each collect a voluntary contribution from purchasers of carburetion units and propane tanks. A letter will be sent to purchasers advising them of the voluntary nature of the contribution.

Each participating NLPGA member will continue to determine independently the price, terms and conditions of its products. Those members have no agreement, express or implied, to increase the prices of their products by the amounts of the contributions made for or to the Fund.

According to McGrath, jointly-funded advertising may increase sales of propane and propane related equipment. This, he noted in the letter, may have the procompetitive effect of stimulating competition with other forms of engine fuel and related equipment, a result which is unlikely to be achieved by any single manufacturer or distributor due to the expense of national advertising.

The Department carefully considered, said McGrath, whether participating members may individually consider raising their prices to reflect additional advertising costs. However, such revenues collected by the Fund will not represent increased profit to members, but rather will be used for continued product advertising, which may increase the demand for the product, resulting in increased propane production in the automotive market. He cautioned, however, that while individual decisions to raise prices to reflect advertising costs are legal under the

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antitrust laws, an understanding between the NLPGA members to do so would not be legal.

The Department also considered whether the method of collecting contributions could facilitate collusion. McGrath said that due to the large number of participants, the newness of the industry and the extent of anticipated competition from other engine fuels, the risk of collusion appeared slight and was more than outweighed by the potential procompetitive effects.

McGrath concluded that neither the purpose nor the likely effect of the Fund is to restrain trade, but noted that the Department reserves the right to bring an enforcement action in the event the actual operation of the Fund proves to be anticompetitive.

Under the Department's Business Review Procedure, a person or organization may submit a proposed course of action to the Antitrust Division and receive a statement as to whether the Division will challenge the activity under the antitrust laws.

A file containing the business review request and the Department's response will be made available to the public immediately and may be examined in the Legal Procedure Unit, Antitrust Division, Room 7416, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review request will be added to the file.

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U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 27 1984

Daniel N. Myers  
General Counsel  
National LP-Gas Association  
1235 Jefferson Davis Highway, Suite 702  
Arlington, Virginia 22202

Dear Mr. Myers:

By letter dated June 9, 1983, you requested that the Department of Justice state its present enforcement intentions regarding a proposal by the National LP-Gas Association ("NLPGA") to establish the Engine Fuel Promotional Fund ("Fund"). The purpose of the Fund is to promote the use of propane as an automotive fuel through national advertising.

You have represented that the NLPGA is a trade association of the liquified petroleum ("LP") gas industry whose members include state and regional LP-gas associations; producers; transporters; wholesalers and retailers of propane gas. Its members are involved in all phases of the LP-gas industry and are engaged in the production, distribution and retailing of propane gas and the manufacture and distribution of associated equipment and appliances. Those NLPGA members you expect to participate in the Fund include approximately 18 propane manufacturers of carburetion units (fuel locks, carburetors, and converters), 20 propane tank manufacturers, and 88 propane equipment distributors. These are the NLPGA members most likely to benefit directly from the Fund's operation.

Financing for the Fund is to be by voluntary contributions from participating NLPGA members and from consumers. Direct contributions to the Fund will be made by equipment manufacturers and distributors who will contribute 1/10 of 1 percent of their annual gross sales, and propane tank manufacturers who will contribute 25¢ for each unit sold. In addition, equipment distributors and tank manufacturers will each collect a one dollar voluntary contribution from purchasers of carburetion units and propane tanks. These contributions from consumers would be effectuated by adding one



dollar to the cost of each carburetion unit and propane tank sold and designating this charge on the invoice with the label "Engine Power Promotional Fund." A letter explaining that the contribution is voluntary is to accompany each invoice.

You have also represented that each participating NLPGA member will continue to independently determine the price, terms and conditions of its products. Those members contributing to the fund have no agreement, express or implied, to increase the prices of their products by the amounts of their contributions.

Based upon your letter and the information you have provided us, neither the purpose nor the likely effect of the Fund is to restrain trade. Through a jointly-funded advertising campaign, NLPGA hopes to increase sales of propane and propane-related equipment by increasing consumer awareness of propane as an alternative engine fuel. This may have the procompetitive effect of stimulating competition with other forms of engine fuel and related equipment. Due to the expense of national advertising, it is unlikely that any one manufacturer or distributor could afford to advertise extensively enough to achieve this result. Moreover, by advertising collectively all participating manufacturers and distributors pay their fair share of such costs, so that no one can benefit or "free-ride" on the advertising efforts of another.

The Department has carefully considered the possibility that participating NLPGA members may individually consider raising their prices to reflect their additional advertising expenditures. An understanding between the manufacturers and distributors to raise the price of their product by the amount of the designated contribution would be illegal under the antitrust laws. However, passing on the costs of advertising expenditures appears to be a necessary consequence of an otherwise valid plan to increase sales of propane and propane-related equipment in the automotive market. The revenues collected by the Fund will not represent increased profit for manufacturers and distributors, but rather will fund product advertising. Such advertising may increase the demand for the product, and result in increased production of propane for use in the automotive market. Individual decisions to raise prices to reflect advertising costs are legal under the antitrust laws.

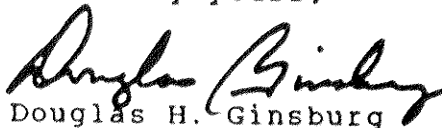
The Fund's method of obtaining contributions from manufacturers and distributors raises an additional antitrust concern. The direct relationship between those contributions and each unit sold suggests the possibility that the Fund could be used to facilitate collusion. If the Fund were used to police an agreement on price or terms and conditions of price.

or to limit output those effects would be unlawful. However, the large number of participants and immaturity of the industry, and the extent of competition from other engine fuels make the risk of collusion slight, and that risk is more than outweighed by the potential procompetitive effects.

In sum, on the basis of the information submitted, the Department has no present intention to initiate an action challenging NLPGA's proposed Fund as a violation of section 1 of the Sherman Act. The Department reserves the right, however, to bring an enforcement action in the event the actual operation of the Fund proves to be anticompetitive in purpose or effect.

This statement of the Department's present enforcement intention is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this response will be made publicly available on the date of this letter. Thirty days from the date of this letter the materials you submitted in support of the business review also will be made publicly available unless you request that all or any part thereof be withheld in accordance with subparagraph 10(c) of the Business Review Procedure.

Sincerely yours,



Douglas H. Ginsburg  
Acting Assistant Attorney General

Enclosure

# NATIONAL LP-GAS ASSOCIATION

1235 JEFFERSON DAVIS HWY., STE. 702



ARLINGTON, VIRGINIA 22202

DANIEL N. MYERS  
VICE PRESIDENT, GOVERNMENT RELATIONS  
& GENERAL COUNSEL

Phone: 703/979-3583

June 9, 1983  
File: 540/665

Assistant Attorney General  
Antitrust Division  
U. S. Justice Department  
Washington, D.C. 20530

Gentlemen:

The National LP-Gas Association (NLPGA) requests your review of the following proposed program and the issuance of a business review letter pursuant to 28 CFR Section 50.6 indicating whether this proposal is acceptable business practice by this trade association under the antitrust laws of the U.S.

NLPGA is the national trade association of the liquefied petroleum gas industry with a membership of about 4100 including 47 affiliated state and regional LP-gas associations representing all 50 states. NLPGA represents all aspects of the LP-gas industry including producers, transporters, wholesalers, and retailers of propane gas, as well as the manufacturers and distributors of associated equipment and appliances. The three elements of our membership directly affected by this plan are propane carburetion equipment manufacturers, propane carburetion equipment distributors, and motor fuel tank manufacturers. There are approximately 18 equipment manufacturers, 88 equipment distributors, and 20 tank manufacturers in the association who we believe might participate in this program. There are more than 88 equipment distributors in NLPGA, but we do not believe they deal in carburetion equipment and thus we do not believe they would participate in this program; however, the program is open to any interested party. We also do not know how many non-members are in the industry, but we believe the number is small.

Propane gas has been used as an automotive fuel for decades. With the dramatic increase in gasoline prices following the Iranian crisis in May 1979, more and more consumers began to look to propane as an alternative motor fuel. It was very attractive not only because of its clean burning properties but also because of its significant price advantages over gasoline. Thus, the propane industry has seen a dramatic increase in sales of both propane and associated equipment for automotive uses since that time. In order to further promote such

Assistant Attorney General

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sales, the Engine Power Section of this association has recommended establishing an Engine Fuel Promotional Fund. The Fund is intended to be supported by members of the LP-gas industry most interested in engine fuel sales and reserved exclusively for advertising and other forms of promotion of propane as an engine fuel. In order to ensure that all segments of the industry who would benefit from engine fuel promotion pay their fair share, the following formula was developed for the creation of this fund:

1. Equipment manufacturers would contribute 1/10 of 1% of their gross sales of the carburetion units (fuel locks, carburetors, and converters, but not individual parts) directly to the Fund.
2. Equipment distributors would collect .50 cents per converter sold and .50 cents per carburetor sold to equal a total of \$1.00 per combined unit and remit these directly to the Fund.
3. Equipment distributors would contribute 1/10 of 1% of their sales of carburetors and converters to the Fund.
4. Tank manufacturers would collect \$1.00 directly by invoice and remit to the Fund (motor fuel tanks only).
5. Tank manufacturers would contribute .25 cents for each unit sold directly to the Fund for promotion.
6. Items #2 and #4 above would be pass-ons to the consumer and only those funds actually collected would be remitted.
7. The formula for contributions or pass through collections would not apply to OEM (original equipment) or export sales of equipment or tanks.

This is a voluntary plan. The equipment manufacturers, equipment distributors and tank manufacturers who individually contribute do so voluntarily using the above as a guideline for their fair share contribution. So too, under Items #2 and #4 of the above plan which are designed to be "pass-ons" to equipment and tank purchasers, the purchaser is under no obligation to pay the amount invoiced for the Fund. In this regard, we have enclosed two suggested consumer letters which would accompany the initial invoices and on which we also request your comment.

We are concerned that the implications of "pass-ons" and "pass throughs" may run afoul of Section 1 of the Sherman Antitrust Act

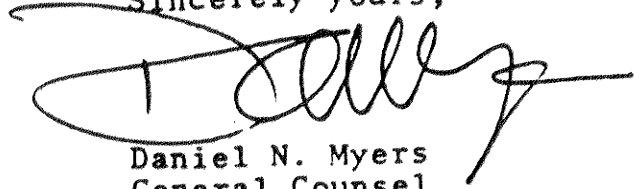
Assistant Attorney General

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and it is for this reason that we are requesting a business review letter pursuant to 28 CFR Section 50.6. Your early attention to this request and, we trust, favorable response would be appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Myers", with a large, sweeping flourish that extends to the right and loops back under the name.

Daniel N. Myers  
General Counsel

DNM:pc

Enclosures

Suggested Customer Letter No. 1

Dear Customer:

XYZ Tank Manufacturer has agreed to be part of the National LP-Gas Association Engine Fuel Promotional Program. To fund this program, the Engine Power Section has recommended soliciting funds from the membership to create a sizable sum to promote propane as a motor fuel.

Since no one manufacturer, distributor, supplier, marketing member or installer can bear this burden, we decided to share the cost by adding a prescribed charge to each tank and specified carburetion component parts. Thus, we will add to each invoice \$1.00 per tank shipped and will so designate this on the invoice by labeling it "Engine Power Promotional Fund," and the appropriate charge at the rate of \$1.00 per tank.

In addition to this, XYZ and all the other tank fabricators that are involved in this program will be contributing an additional 25¢ per motor fuel tank sold. We urge your support of this program by payment of the \$1.00 promotional fee.

This program has widespread support from most of the major marketers and carburetion equipment manufacturers, suppliers, distributors and tank fabricators.

Sincerely,

Suggested Customer Letter No. 2

To: All Motor Fuel Tank Customers

Subject: National LP-Gas Association  
Engine Fuel Promotional Fund

Gentlemen:

The Engine Power Section of the National LP-Gas Association has voted in favor of the development of the subject fund.

The purpose of the fund is to generate substantial amounts of money to be dedicated by NLPGA to promoting the use of propane as a motor fuel through advertising on a national basis.

The costs of developing audio-visual materials, TV and radio advertisements, national trade publication advertisements and widespread newspaper advertisements are much too great to be borne by any one company, but by pooling the resources from all participants in the Engine Power Section, a sufficient base of revenue can be established to support such a program and to perpetuate it.

The Engine Power Section consists of all major Motor Fuel Tank manufacturers, carburetion manufacturers, major producers of propane and equipment distributors.

As a member of the EPS, we have agreed to promote the fund by adding a surcharge to the price of our products. Additionally, we will contribute a percentage of our gross sales receipts to the fund.

We ask your cooperation and assistance by paying the \$1.00 per tank fee which we will pass on to NLPGA for use in developing this promotional fund. We feel it is the least expensive advertising you could ever purchase.

Thank you for your cooperation.

a fixed amount per unit sold. In addition, equipment distributors and tank manufacturers will each collect a voluntary contribution from purchasers of carburetion units and propane tanks. A letter will be sent to purchasers advising them of the voluntary nature of the contribution.

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According to McGrath, jointly-funded advertising may increase sales of propane and propane related equipment. This, he noted in the letter, may have the procompetitive effect of stimulating competition with other forms of engine fuel and related equipment, a result which is unlikely to be achieved by any single manufacturer or distributor due to the expense of national advertising.

The Department carefully considered, said McGrath, whether participating members may individually consider raising their prices to reflect additional advertising costs. However, such revenues collected by the Fund will not represent increased profit to members, but rather will be used for continued product advertising, which may increase the demand for the product, resulting in increased propane production in the automotive market. He cautioned, however, that while individual decisions to raise prices to reflect advertising costs are legal under the

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