I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Resolution No. 215-34 (COR)

Introduced by:

Michael F.Q. San Nicolas
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Therese M. Terlaje
Mary Camacho Torres

Relative to respectfully requesting that the Federal Trade Commission (FTC) conduct a current review of trade practices and market concentration in the wholesale and retail fuel market on Guam, in the context of the FTC mandates relative to the Exxon-Mobil merger of 2000, as enumerated in FTC Decision and Order, Docket No. C-3907.

1 **BE IT RESOLVED BY** ***I MINA'TRENTAI KUÅTTRO NA***
2 ***LIHESLATURAN GUÅHAN:***
3 **WHEREAS,** in the year 2000, Exxon Corporation and Mobil Corporation
4 consummated a merger subject to mandates enumerated by the Federal Trade
5 Commission in its Decision and Order, Docket No. C-3907 (Exhibit A); and

1 **WHEREAS,** following that merger, the retail price of fuel has generally
2 increased and decreased uniformly at an average yearly rate among the three (3) leading
3 fuel companies on Guam, which are IP&E Guam, Mobil Oil Guam, and South Pacific
4 Petroleum Corporation (Exhibit B); and
5 **WHEREAS,** in the United States Northeastern and Mid-Atlantic jurisdictions,
6 fuel price action relative to the source does not reflect as large a margin disparity as fuel
7 price action on Guam, with Guam fuel retailers publicly stating that Guam prices are
8 incomparable to U.S. jurisdictions due to Guam fuel being sourced from Singapore
9 refineries (Exhibit C); and
10 **WHEREAS,** Singapore fuel prices and Guam fuel prices, both relative to the
11 price of Singapore oil, show growing price disparities that are inconsistent with the
12 claims of Guam fuel retailers that Singapore prices are the cause for such large price
13 differentials compared to other jurisdictions, with the dollar difference between
14 Singapore oil and Guam fuel increasing over time, from One Dollar and Seven Cents
15 ($1.07) in January 2000 to Two Dollars and Twenty-eight Cents ($2.28) in January
16 2016, as compared to the dollar difference between oil and fuel in other jurisdictions
17 where the Federal Trade Commission mandated Exxon Corporation and Mobil
18 Corporation to divest assets (U.S. Northeast and Mid-Atlantic) (Exhibit D); and
19 **WHEREAS,** the Federal Trade Commission is a federal agency with the power
20 to prosecute inquiries and investigate alleged unfair methods of competition and other
21 antitrust violations, and utilizes the Herfindahl-Hirschman Index (HHI), which is
22 calculated by squaring the market share of each firm competing in the market and then
23 summing the resulting numbers, to measure market concentration with a general
24 consideration that markets in which the HHI is between one thousand five hundred
25 (1,500) and two thousand five hundred (2,500) points to be moderately concentrated,

1 and markets in which the HHI is in excess of two thousand five hundred (2,500) points
2 to be highly concentrated (Exhibit E, pages 18-19); and
3 **WHEREAS,** in the year 1999, Exxon Corporation and Mobil Corporation
4 announced their plans for a merger between their two (2) companies with the Federal
5 Trade Commission determining that the Exxon-Mobil merger would raise the HHI in
6 the Guam fuel market to seven thousand four hundred (7,400) points, creating a highly
7 concentrated market on Guam, stating specifically that "the market is subject to
8 coordination" (Exhibit F, pages 12-13); and
9 **WHEREAS,** as part of the finalization of the Exxon-Mobil merger, the Federal
10 Trade Commission ordered Exxon Corporation and Mobil Corporation to divest retail
11 and terminal assets in the Northeast and Mid-Atlantic United States and Guam, for the
12 purpose of ensuring market competition; and
13 **WHEREAS,** the Federal Trade Commission ordered that Exxon Corporation
14 divest their Northeast Marketing assets and that Mobil Corporation divest the Mobil
15 Boston Terminal to a single acquirer within nine (9) months from the date of the
16 execution of the merger (Exhibit A, pages 21-25; 32-33); and
17 **WHEREAS,** the Federal Trade Commission ordered that Exxon Corporation
18 divest their Mid-Atlantic Marketing assets and that Mobil Corporation divest the Mobil
19 Manassas Terminal to a single acquirer within nine (9) months from the date of the
20 execution of the merger (Exhibit A, pages 25-29; 33); and
21 **WHEREAS,** the Federal Trade Commission ordered that Exxon Corporation
22 divest their Guam assets to a single acquirer within nine (9) months from the date of the
23 execution of the merger (Exhibit A, pages 20-21), with Exxon Guam assets defined as
24 the Exxon Guam Terminal and all retail assets on Guam that are owned or leased by
25 Exxon Corporation (Exhibit A, page 5); and

1 **WHEREAS,** the Federal Trade Commission ordered the divestiture of Exxon
2 Guam assets for the purpose of ensuring the continued use of the Exxon Guam assets
3 in the same business in which they were engaged prior to the Exxon-Mobil merger and
4 to remedy the lessening of competition in the importation, terminaling, and wholesale
5 and retail sale of fuel on Guam resulting from the proposed merger (Exhibit A, pages
6 20-21), with South Pacific Petroleum Corporation acquiring the divested Exxon Guam
7 assets (Exhibit G); and
8 **WHEREAS,** in the context of the Federal Trade Commission's Decision and
9 Order, Docket No. C-3907, concerning the Exxon-Mobil merger of 2000, the
10 subsequent pricing pattern of the three (3) leading retail fuel companies on Guam post-
11 merger may be indicative of noncompliance with the Federal Trade Commission's
12 Decision and Order, *supra*, particularly when compared to price action in the Northeast
13 and Mid-Atlantic jurisdictions that were also subject to Federal Trade Commission
14 orders; and
15 **WHEREAS,** a current review of the Guam fuel market by the Federal Trade
16 Commission can confirm whether the divestitures mandated by the Commission relative
17 to the merger of Exxon Corporation and Mobil Corporation achieved the intent of the
18 Commission's Order to "remedy the lessening of competition in the importation,
19 terminaling, and wholesale and retail sale of gasoline on Guam resulting from the
20 proposed merger" (Exhibit A, page 21); and
21 **WHEREAS,** a current review of the Guam fuel market by the Federal Trade
22 Commission could result in an improved competitive fuel market for the people of
23 Guam, including more competitive fuel pricing, if it is determined that current practices
24 relative to pricing as affected by post-merger terminal and marketing activities are
25 inconsistent with the outcomes intended by the Federal Trade Commission mandates;

1 now therefore, be it

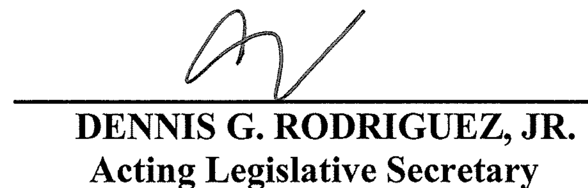
2 **RESOLVED,** that *I Mina'Trentai Kuåttro Na Liheslaturan Guåhan* does hereby,
3 on behalf of the people of Guam, respectfully request that the Federal Trade
4 Commission (FTC) conduct a review of current trade practices and market
5 concentration in the wholesale and retail fuel market on Guam, in the context of the
6 FTC mandates imposed on the Exxon-Mobil merger of 2000, particularly the trade
7 practices of all market participants post-merger relative to the Commission's definition
8 of a competitive marketplace as measured by the HHI and other relevant standards to
9 measure market competition as determined by the FTC Decision and Order, Docket No.
10 C-3907; and be it further

11 **RESOLVED,** that the Speaker certify, and the Legislative Secretary attest to, the
12 adoption hereof, and that copies of the same be thereafter transmitted to the Honorable
13 Maureen K. Ohlhausen, Acting Chairperson of the Federal Trade Commission; to the
14 Honorable Terrell McSweeny, Commissioner of the Federal Trade Commission; to all
15 Commissioners of the Federal Trade Commission; to Mr. Thomas B. Pahl, Acting
16 Director of the Federal Trade Commission Bureau of Consumer Protection; to Mr. D.
17 Bruce Hoffman, Acting Director of the Federal Trade Commission Bureau of
18 Competition; to the Honorable John Thune, U.S. Senator and Chairman of the U.S.
19 Senate Committee on Commerce, Science, and Transportation; to the Honorable Bill
20 Nelson, U.S. Senator and Ranking Member of the U.S. Senate Committee on
21 Commerce, Science, and Transportation; to the Honorable Jerry Moran, U.S. Senator
22 and Chairman of the U.S. Senate Commerce Subcommittee on Consumer Protection,
23 Product Safety, Insurance and Data Security; to the Honorable Richard Blumenthal,
24 U.S. Senator and Ranking Member of the U.S. Senate Commerce Subcommittee on
25 Consumer Protection, Product Safety, Insurance and Data Security; to the Honorable

Greg Walden, U.S. Representative and Chairman of the House Committee on Energy and Commerce; to the Honorable Joe Barton, U.S. Representative and Vice Chairman of the House Committee on Energy and Commerce; to the Honorable Frank Pallone, U.S. Representative and Ranking Member of the House Committee on Energy and Commerce; to the Honorable Bob Latta, U.S. Representative and Chairman of the House Subcommittee on Digital Commerce and Consumer Protection; to the Honorable Jan Schakowsky, U.S. Representative and Ranking Member of the House Subcommittee on Digital Commerce and Consumer Protection; to the Honorable Elizabeth Warren, U.S. Senator; to the Honorable Elizabeth Barrett-Anderson, Attorney General of Guam; to Mr. Fred Nishihira, Deputy Attorney General of Guam, Consumer Protection Division; to the Honorable Shawn N. Anderson, Acting United States Attorney, District of Guam; to the Honorable Madeleine Z. Bordallo, Guam Delegate to the United States Congress; and to the Honorable Edward J.B. Calvo, *I Maga'låhen Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN* ON THE 29TH DAY OF SEPTEMBER 2017.

BENJAMIN J.F. CRUZ
Speaker



DENNIS G. RODRIGUEZ, JR.
Acting Legislative Secretary

EXHIBIT A

Federal Trade Commission Decision and Order

(Exxon-Mobil Merger, FTC Matter: 9910077, Docket No. C-3907)

991 0077

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Robert Pitofsky, Chairman Sheila F. Anthony Mozelle W. Thompson Orson Swindle Thomas B. Leary

In the Matter of **Exxon Corporation,** a corporation, and **Mobil Corporation,** a corporation.	**Docket No. C-3907** **DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of the proposed merger involving Respondents, Exxon Corporation and Mobil Corporation, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days for the receipt and

consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Rule 2.34 of its Rules (16 C.F.R. § 2.34), now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Exxon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039.

2. Respondent Mobil Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3225 Gallows Road, Fairfax, Virginia 22037.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Exxon" means Exxon Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Exxon, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Mobil" means Mobil Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Mobil, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Exxon Mobil" means Exxon Mobil Corporation, or any other entity resulting from the merger involving Exxon and Mobil, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Exxon Mobil, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Respondents" means Exxon and Mobil, individually and collectively, and the successor corporation.

E. "ANS" means the North Slope of Alaska.

F. "Base Oil" means paraffinic-based lubricant stock of all types, grades, viscosities, and qualities suitable for blending into finished oils (*e.g.*, passenger car motor oil, heavy duty diesel oil, hydraulic fluids, or gear oils), but does not mean naphthenic or synthetic oils.

G. "Branded Distributors" means Exxon Branded Sellers or Mobil Branded Sellers that purchase Branded Fuels at a terminal and transport such Branded Fuels to Retail Sites for resale.

H. "Branded Fuels" means motor gasoline or diesel fuel sold at a Retail Site under a brand name owned by Respondents.

I. "Branded Products" means any product other than Branded Fuels that is sold at a Retail Site under a brand name owned by Respondents.

J. "Business Format Franchise" shall have the meaning of "franchise" set forth in 16 C.F.R. § 436.2, excluding franchises granted by Respondents to sell Branded Fuels.

K. "California-North MSAs" means the following primary metropolitan statistical areas in California as defined by the Census Bureau as of September 30, 1999: Oakland, San Francisco, San Jose, and Santa Rosa.

L. "Colonial" means Colonial Pipeline Company.

M. "Commission" means the Federal Trade Commission.

N. "Designated Base Oil Refineries" means Mobil's refinery located at Beaumont, Texas; Exxon's refinery located at Baytown, Texas; and Exxon's refinery located at Baton Rouge, Louisiana.

O. "Effective Date of Divestiture" means the date on which the applicable divestiture is consummated.

P. "Existing Lessee Agreements" means all agreements between Respondents and Exxon Lessee Dealers or Mobil Lessee Dealers relating to such Person's right or obligation to sell or resell Branded Fuels using Exxon's brand name or Mobil's brand name at a Retail Site, including, but not limited to, each Branded Fuels dealer lease agreement and dealer sales agreement. "Existing Lessee Agreements" does not include Business Format Franchises.

Q. "Existing Supply Agreements" means all agreements between Respondents and Exxon Branded Sellers or Mobil Branded Sellers relating to such Person's right or obligation to

sell or resell Branded Fuels using Exxon's brand name or Mobil's brand name at a Retail Site, including, but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, and jobber outlet incentive program contract. "Existing Supply Agreements" does not include Business Format Franchises.

R. "Exxon Benicia Refinery Assets" means Exxon's refinery located at Benicia, California and all of Exxon's interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Exxon in the operation of the refinery; at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements under which Exxon receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery. "Exxon Benicia Refinery Assets" also includes all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Benicia refinery. "Exxon Benicia Refinery Assets" also includes, but is not limited to, all of Exxon's interest in the 20" crude pipeline between the Equilon pigging station and the refinery, the 6" pipeline between Bullshead Point and the refinery, the dock on the Carquinez Strait associated with the refinery, all pipelines running between the dock and the refinery, the refined products terminal adjacent to the refinery, and the coke silo leased from Benicia Industries and used by the refinery. "Exxon Benicia Refinery Assets" does not include Exxon's proprietary trade names and trademarks. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

S. "Exxon Branded Seller" means any Person (other than Exxon or Mobil) that has, by virtue of contract or agreement with Exxon in effect at the time Respondents execute the Agreement Containing Consent Orders, the right to sell gasoline using Exxon's brand name at Retail Sites, or to resell gasoline to any such person. "Exxon Branded Seller" includes distributors, jobbers, contract dealers, and open dealers, but does not include Lessee Dealers.

T. "Exxon California-North Marketing Assets" means all Retail Assets in California-North MSAs that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

U. "Exxon California-South Marketing Assets" means all Retail Assets in California other than in California-North MSAs, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

V. "Exxon California Refining and Marketing Assets" means the (1) Exxon Benicia Refinery Assets; (2) Exxon California-North Marketing Assets; and (3) Exxon California-South Marketing Assets.

W. "Exxon Guam Assets" means the Exxon Guam Marketing Assets and the Exxon Guam Terminal.

X. "Exxon Guam Marketing Assets" means all Retail Assets in Guam that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

Y. "Exxon Guam Terminal" means all of Exxon's assets relating to its petroleum storage and distribution terminal in the Territory of Guam, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, licenses, permits and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare parts, and all other property used in Terminaling; the non-exclusive right to use all patents, know-how, and other intellectual property used by Exxon in the operation of the terminal; and the rights of Exxon in any agreement with Shell Guam, Inc., relating to terminaling in Guam; provided, however, that "Exxon Guam Terminal" shall include, at the option of the acquirer, those assets used by Exxon to operate its LPG business. "Exxon Guam Terminal" does not include Exxon's proprietary trade names and trademarks or, except as provided above, patents, know-how, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

Z. "Exxon Jet Turbine Oil Business" means all of Exxon's rights, titles, and interests in the following businesses and assets, tangible and intangible, used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils, regardless of where the businesses or assets are located worldwide:

1. a sole and exclusive worldwide perpetual royalty-free license to practice in the Field of Jet Turbine Oils the patents set out in Appendix B (Confidential) and the supplemental patents selected pursuant to subparagraph XII.B.13., whether such patents have been issued or applied for, without reservation to Respondents of any rights to practice such patents in the Field of Jet Turbine Oils, and including the right to enforce such license in the Field of Jet Turbine Oils and the right to transfer such license exclusively or nonexclusively to others through sublicense or any other means;

2. a grant by Respondents to the acquirer (including the acquirer's subsidiaries and affiliates, and any purchaser of acquirer's jet turbine oil business) of immunity from suit in the Field of Jet Turbine Oils under all other patents held, or applied for, by Exxon as of the date of the Merger, or for which the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) has filed an application between the date of the Merger and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business;

3. a royalty-free sublicense of all rights in the Field of Jet Turbine Oils under any patent license held by Exxon as of the date of the Merger, including the right to transfer such sublicense exclusively or nonexclusively to others through any means, and without reservation to Respondents of any such rights in the Field of Jet Turbine Oils;

4. the sole and exclusive right to all Jet Turbine Oil Formulations, including all records containing Jet Turbine Oil Formulations;

5. the following rights:

   a. the sole and exclusive right to

      (1) all product names;

      (2) all trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons, used at any time since January 1, 1995, on cans or other packaging of Jet Turbine Oil by Exxon or by the Held Separate Exxon Jet Turbine Oil Business; and

      (3) all other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons

         (a) used exclusively in the Field of Jet Turbine Oils by Exxon or by the Held Separate Exxon Jet Turbine Oil Business, and

         (b) not used by Respondents outside the Field of Jet Turbine Oils prior to November 30, 1999; and

b. the right to exclude (for a period of five (5) years from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) any entity, including Respondents, from using in the marketing, customer support, or sale of Jet Turbine Oils any other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons used both inside and outside the Field of Jet Turbine Oils by Exxon or the Held Separate Exxon Jet Turbine Oil Business, but not including the right to use such other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons;

6. a sole and exclusive worldwide perpetual royalty-free license in the Field of Jet Turbine Oils, without reservation to Respondents of any rights in the Field of Jet Turbine Oils, to all trade secrets, know-how, inventions, software, and other intellectual property, regardless of whether used exclusively in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils (except as provided by subparagraphs I.Z.5.b. and XII.B.9.), provided, however, that such license

   a. shall not include (i) patents and patented inventions, (ii) software used in Exxon's general corporate processes, such as accounting software, messaging software, and word processing software, and (iii) accounting and auditing processes, and

   b. shall include, but not be exclusive with respect to, Exxon's general business processes and practices, including, without limitation, operations and controls integrity management systems, general scientific analytical techniques, and health, safety and environmental processes;

7. military, customer, and original equipment manufacturer approvals for products (to the extent transferable);

8. contracts for supply and distribution (to the extent transferable);

9. procurement information for products and services used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils;

10. the research and test equipment described in Appendix C;

11. warehousing services at competitive third-party rates until the acquirer is able to make other arrangements; and

12. Exxon's manufacturing facility located in Bayway, New Jersey and all physical assets located at that facility.

AA. "Exxon Jet Turbine Oil Employees" means the following Exxon employees:

1. all sales, research, and manufacturing personnel employed in the Exxon Jet Turbine Oil Business at any time since January 1, 1999;

2. all personnel employed at any time during the Hold Separate Period in that portion of the Held Separate Business defined in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets; and

3. Karen Brown, Walt Goldeski, Mike Verrault, Martha Arduin, Pat Wysocki, Lee Chen, John Bryant, Joycelyn Failla, John McKechnie, Dave Duckert, Sue Scheuerman, Rich Skillman, Cyril Hutley, Klaus Rudolph, Bernard Pafford, and Paul Berlowitz.

BB. "Exxon Maine to Virginia Assets" means all Retail Assets in the District of Columbia and the States of Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

CC. "Exxon Mid-Atlantic Marketing Assets" means all Retail Assets in the District of Columbia, and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

DD. "Exxon Northeast Marketing Assets" means all Retail Assets in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

EE. "Exxon Texas Marketing Assets" means all Retail Assets in the Texas MSAs that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

FF. "Field of Jet Turbine Oils" means the research, development, manufacture, quality assurance, marketing, customer support, and sale of Jet Turbine Oils, including, but not limited to, the research, development, manufacture, and quality assurance of ingredients for use in Jet Turbine Oils (but not including the research, development, manufacture, and quality assurance of such ingredients for use in products other than Jet Turbine Oils).

GG. "Jet Turbine Oil Formulations" means (a) product formulae for Jet Turbine Oils, and (b) other proprietary technical information relating exclusively to the manufacture or development of, or research into, Jet Turbine Oils.

HH. "Jet Turbine Oils" means any lubricants that contain polyol esters and additives and that are used in jet turbine engines, regardless of the application in which the jet turbine

engines are employed, which applications include, without limitation, commercial aviation, private aviation, military aviation, marine applications, and stationary applications.

II. "Key Exxon Jet Turbine Oil Employees" means Pat Godici, Dan Murphy, Jai Bansal, Kim Fyfe, David Hertsgaard, and Nick Cleary.

JJ. "Key Mobil Jet Turbine Oil Employees" means researchers, research technicians, sales representatives, and manufacturing facility managers employed in the Mobil Jet Turbine Oil Business between January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business.

KK. "Lessee Dealer" means a dealer who operates a Retail Site leased from Respondents under a lease in effect at the time Respondents execute the Agreement Containing Consent Orders.

LL. "MBD" means thousands of barrels per day.

MM. "Merger" means the proposed merger involving Exxon and Mobil.

NN. "Mobil Beaumont Refinery Assets" means Mobil's refinery located at Beaumont, Texas, and all of Mobil's interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the refinery; at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements under which Mobil receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery. "Mobil Beaumont Refinery Assets" also includes all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Beaumont refinery. "Mobil Beaumont Refinery Assets" also includes, but is not limited to, all of Mobil's interest in the product pipeline from the refinery to Hebert, Texas, and pumping stations, tankage and other facilities at Hebert Station, including those used to feed Colonial's pump and line to Colonial's Hebert Station. "Mobil Beaumont Refinery Assets" does not include Mobil's storage facility at Hull, Texas; provided, however, that Respondents shall provide acquirer with the right to use the facility and access the facility via Mobil's pipelines between the refinery complex and Hull for amounts of petroleum products consistent with the refinery's historical patterns of usage, on terms subject to the approval of the Commission. "Mobil Beaumont Refinery Assets" does not include Mobil's proprietary trade names and trademarks. "Mobil Beaumont Refinery

Assets" also does not include Mobil's petrochemical facilities in the vicinity of the Beaumont refinery. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

OO. "Mobil Boston Terminal" means all of Mobil's assets relating to its petroleum storage and distribution terminal in Boston, Massachusetts, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, licenses, permits and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare parts, and all other property used in Terminaling; and the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the terminal. "Mobil Boston Terminal" does not include Mobil's proprietary trade names and trademarks or, except as provided above, patents, know-how, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

PP. "Mobil Branded Seller" means any Person (other than Exxon or Mobil) that has, by virtue of contract or agreement with Mobil in effect at the time Respondents execute the Agreement Containing Consent Orders, the right to sell gasoline using Mobil's brand name at Retail Sites or to resell gasoline to any such person. "Mobil Branded Seller" includes distributors, jobbers, contract dealers, and open dealers, but excludes Lessee Dealers.

QQ. "Mobil California Marketing Assets" means all Retail Assets in California that are owned by Mobil or leased by Mobil from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

RR. "Mobil California Refining and Marketing Assets" means the (1) Mobil Torrance Refinery Assets and (2) Mobil California Marketing Assets.

SS. "Mobil Jet Turbine Oil Business" means all of Mobil's rights, titles, and interests in the following businesses and assets, tangible and intangible, used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils, regardless of where the businesses or assets are located worldwide:

1. a sole and exclusive worldwide perpetual royalty-free license to practice in the Field of Jet Turbine Oils all patents, whether issued or applied for, held by Respondents as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business,

    a. not including patents held by Exxon prior to the Merger, and not including patents for which the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) has filed an application after the date of the Merger and prior to the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business,

    b. including the right to transfer such license exclusively or nonexclusively to others through sublicense or any other means,

    c. including the right to enforce those rights in the Field of Jet Turbine Oils and

    d. without reservation to Respondents of any right to those patents in the Field of Jet Turbine Oils;

2. a royalty-free sublicense of all rights in the Field of Jet Turbine Oils under any patent license held by Exxon Mobil as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, (a) not including licenses held by Exxon prior to the Merger, and not including licenses acquired by the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) after the date of the Merger and prior to the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, (b) including the right to transfer such sublicense exclusively or nonexclusively to others through any means, and (c) without reservation to Respondents of any such rights in the Field of Jet Turbine Oils;

3. the sole and exclusive right to all Jet Turbine Oil Formulations, including all records containing Jet Turbine Oil Formulations;

4. the sole and exclusive right to all trademarks, service marks, product names, and copyrights (except as provided by subparagraph XII.C.9.);

5. a sole and exclusive worldwide perpetual royalty-free license in the Field of Jet Turbine Oils, without reservation to Respondents of any rights in the Field of Jet Turbine Oils, to all trade secrets, know-how, inventions, software, and other intellectual property, regardless of whether used exclusively in the research, development, manufacture,

quality assurance, marketing, customer support, or sale of Jet Turbine Oils (except as provided by subparagraph XII.C.9.), provided, however, that such license

a. shall not include (i) patents and patented inventions, (ii) software used in Mobil's general corporate processes, such as accounting software, messaging software, and word processing software, and (iii) accounting and auditing processes, and

b. shall include, but not be exclusive with respect to, Mobil's general business processes and practices, including, without limitation, operations and controls integrity management systems, general scientific analytical techniques, and health, safety and environmental processes;

6. military, customer, and original equipment manufacturer approvals for products (to the extent transferable);

7. contracts for supply and distribution (to the extent transferable);

8. procurement information for products and services used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils;

9. manufacturing, research, and test equipment ;

10. warehousing services at competitive third-party rates until the acquirer is able to make other arrangements; and

11. all of Mobil's facilities for the manufacture of Jet Turbine Oils and for the manufacture of ingredients (including esters and additives) used in manufacturing Jet Turbine Oils.

TT. "Mobil Manassas Terminal" means all of Mobil's assets relating to its petroleum storage and distribution terminal in Manassas, Virginia, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, permits, licenses, and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare parts, and all other property used in Terminaling; and the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the terminal. "Mobil Manassas Terminal"does not include Mobil's proprietary trade names and trademarks or, except as provided above, patents, know-how, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain

comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

UU. "Mobil Mid-Atlantic Marketing Assets" means all Retail Assets in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia that are owned by Mobil or leased by Mobil from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

VV. "Mobil Northeast Marketing Assets" means all Retail Assets in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York that are owned by Mobil or leased by Mobil from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

WW. "Mobil Texas Marketing Assets" means all Retail Assets owned by Mobil or leased by Mobil in the State of Texas as of the date Respondents execute the Agreement Containing Consent Orders ("Mobil Texas Marketing Assets" does not include any interest of Respondents in Retail Assets owned by TETCO or Petro Stopping Centers Holdings, L.P.)

XX. "Mobil Torrance Refinery Assets" means Mobil's refinery located at Torrance, California, and all of Mobil's interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the refinery; at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements under which Mobil receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery. "Mobil Torrance Refinery Assets" also includes all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property, relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Torrance refinery. "Mobil Torrance Refinery Assets" also includes, but is not limited to, all of Mobil's interest in the SJV crude pipeline system between Lost Hills, California, and the refinery (M-70); the Southwest Terminal in Los Angeles Harbor (including the dock, tanks, and other facilities located at the terminal); all crude (M-146) and products pipelines running between the Southwest Terminal dock and the refinery; and the products pipeline between the refinery and Kinder Morgan's Watson Terminal; the Mobil Pacific Pipe Line Company products pipeline between the GATX terminal and the refinery; the jet fuel pipeline between the refinery and Los Angeles International Airport; and Mobil Pacific Pipeline's interest in the THUMS Wilmington Crude

Gathering System between the Wilmington Field and the refinery (M-131, M-132, M-142); and the Torrance crude system (M-134, M-135). "Mobil Torrance Refinery Assets" does not include Mobil's proprietary trade names and trademarks. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

YY. "Mobil-Valero Paulsboro Agreement" means the Purchase and Sales Agreement for Lubricant Base Oils between Valero and Mobil Oil Corporation dated September 16, 1998, as amended.

ZZ. "Mobil's Norfolk Wharf" means Mobil's wharf and the loading/discharge facilities located at Mobil's Norfolk, Virginia, petroleum products terminal.

AAA. "Mobil's TETCO Interest" means all of Mobil's ownership and/or partnership interest in TETCO as of the date Respondents execute the Agreement Containing Consent Orders.

BBB. "Mobil's TETCO Partners/Members" means TETCO, Inc., TETCO Stores-I, LLC, and Tetco-Nevada, Inc.

CCC. "Paulsboro Refinery" means Valero's refinery located at Paulsboro, New Jersey.

DDD. "Person" means any individual, partnership, association, company or corporation.

EEE. "Plantation" means Plantation Pipe Line Company.

FFF. "Pre-Existing Base Oil Supply Contracts" means contracts for the supply of Base Oil by Exxon or Mobil that were entered into before January 1, 1999.

GGG. "Retail Assets" means, for each Retail Site, all fee and leasehold interests of Respondents in the Retail Site, and all of Respondents' interest in all assets, tangible or intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses, consents, contracts, and agreements used in the operation of the Retail Site, and the non-exclusive right to use all patents, know-how, and other intellectual property used by Respondents in the operation of the Retail Sites. "Retail Assets" also includes all fee and leasehold interests of Respondents in real property that, as of October 1, 1999, was intended for use by Respondents as a Retail Site and all permits, licenses, consents, contracts, and agreements intended for use or used with

respect to that real property. "Retail Assets" also includes all of Respondents' interest in all assets relating to all ancillary businesses (including, but not limited to, automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site, including all permits, licenses, consents, contracts, and agreements used in the operation of the ancillary businesses, and the non-exclusive right to use all know-how, patents, and other intellectual property used in the operation of the ancillary businesses. "Retail Assets" also includes, at the acquirer's option, all tank trucks and all contracts with all other Persons for supplying Branded Fuels to the Retail Sites. "Retail Assets" does not include Respondents' proprietary trademarks, trade names, logos, trade dress, identification signs, additized product inventory, petroleum franchise agreements, Business Format Franchise agreements, petroleum product supply agreements, credit card agreements, satellite-based or centralized credit card processing equipment not incorporated in gasoline dispensers, or system-wide software and databases, or, except as provided above, know-how, patents, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (other than patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the Retail Site to perform the same function at the same or less cost. With respect to Turnpike Retail Assets, Respondents shall make good faith, diligent efforts, including, but not limited to, offering to compensate and compensating any pecuniary loss under applicable law to the States, to assign or otherwise convey their rights to the acquirer or to terminate Respondents' rights, but Respondents' failure to assign or terminate such rights due to a State's refusal to accede to such an assignment or termination, Respondents having made such good faith, diligent efforts, shall not constitute non-compliance with this Order. Turnpike Retail Assets that Respondents fail to assign or terminate shall be included among the Retail Sites from which the percentages in Paragraph XV are calculated.

HHH. "Retail Site" means a business establishment from which gasoline is sold to the general public.

III. "TAPS" means the Trans Alaska Pipeline System as described in the Trans Alaska Pipeline System Agreement, as amended, entered into on August 27, 1970.

JJJ. "Terminaling" means the services performed by a facility that provides temporary storage of gasoline received from a pipeline or marine vessel, and the redelivery of gasoline from storage tanks into tank trucks or transport trailers.

KKK. "TETCO" means TETCO Stores LP and/or TETCO Stores-I LLC.

LLL. "Texas MSAs" means the Austin, Bryan/College Station, and San Antonio MSAs, and the Dallas and Houston PMSAs, as defined by the Census Bureau as of September 30, 1999.

MMM. "Turnpike Locations" means the nine (9) Mobil stations located on the Garden State Parkway in New Jersey and the one (1) Mobil station on I-95 in Delaware at which Mobil leases Retail Assets from a State or turnpike authority enabled by a State.

NNN. "Turnpike Retail Assets" means Retail Assets at Turnpike Locations.

OOO. "Valero" means Valero Energy Corporation.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Exxon California Refining and Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, assign to the acquirer of the Exxon California Refining and Marketing Assets (1) all Existing Lessee Agreements with respect to the Exxon California-South Marketing Assets in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, subject to any applicable right of first refusal under California law exercisable by Exxon's Lessee Dealers that operate Retail Sites being divested, and (2) all Existing Supply Agreements between Exxon and Exxon Branded Sellers in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets with respect to Retail Sites in California other than the California-North MSAs.

C. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, enter into an agreement with the acquirer of the Exxon California Refining and Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, pursuant to which the acquirer of the Exxon California Refining and Marketing Assets will receive, for a period of ten (10) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets: (1) the exclusive right to sell Branded Fuels under

the Exxon brand in California other than in the California-North MSAs, except as permitted by subparagraphs II.J. and II.K., and (2) the exclusive right to use Exxon's brand name in connection with the sale of Branded Fuels under the Exxon brand in California other than in the California-North MSAs, including the exclusive rights to use Exxon's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Exxon credit cards in connection with such sales of Exxon Branded Fuels. Such agreement shall provide for the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase and may provide for payments covering Respondents' costs in connection with the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase. The agreement shall not provide for any payment by the acquirer to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets and escalating each year until the end of the ten (10) year term, by the acquirer to Respondents for the use of Exxon's identification signs, trademarks, and other trade indicia. Acquirer's payments for credit card services, additive and the use of Exxon's brand, but not including such other brand support as acquirer may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the acquirer agree, subject to approval of the Commission. At the end of the ninth year after the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement.

D. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, at the acquirer's option, also enter into an agreement with the acquirer of the Exxon California Refining and Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, that requires Respondents to supply the acquirer ANS crude oil in ratable quantities of up to 100 MBD for up to ten (10) years.

E. Respondents shall offer the acquirer of the Exxon California Refining and Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with

the Benicia refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.

F. Respondents shall divest the Exxon California Refining and Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs II.A., II.B., II.C., II.D., and II.E. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements. The Exxon California-North Marketing Assets shall be divested only to a person that commits to offer each of Exxon's Lessee Dealers that operate a Retail Site being divested a non-discriminatory franchise within the meaning of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801, *et seq.*

G. No later than the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall cancel all Existing Lessee Agreements and Existing Supply Agreements between Exxon and Exxon Lessee Dealers and Exxon Branded Sellers with respect to Retail Sites in the California-North MSAs in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets.

H. Notwithstanding subparagraphs II.A. and II.F, the divestiture of the Exxon California-South Marketing Assets shall be subject to any applicable right of first refusal under California law exercisable by Exxon's Lessee Dealers that operate assets being divested. Respondents shall not attempt in any way to persuade or encourage Exxon Lessee Dealers to exercise such right. Respondents shall not, for a period of seven (7) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, sell Branded Fuels to any Lessee Dealer that exercises such right.

I. Upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall allow the acquirer of the Exxon California Refining and Marketing Assets the non-exclusive right to sell other Exxon Branded Products (e.g., motor oil) at the acquirer's Exxon branded Retail Sites in California. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall allow an Exxon Branded Seller

or Exxon Lessee Dealer that was Exxon's franchisee with respect to a Business Format Franchise as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format Franchisee, subject to any applicable approvals required of the Business Format Franchisor.

J. Respondents shall not (1) sell or attempt to sell, for twelve (12) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Branded Fuels under the Exxon brand for sale or resale at Retail Sites in California; provided, however, that Respondents may sell to the acquirer of the Exxon California Refining and Marketing Assets quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the acquirer for purposes of adding Exxon's proprietary additive and making the gasoline salable by acquirer as Exxon Branded Fuels; or (2) sell or attempt to sell, for seven (7) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Branded Fuels under the Mobil brand to any Exxon Branded Seller or Exxon Lessee Dealer for resale at any Retail Site in California that sold Exxon Branded Fuels as of the date Respondents execute the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Exxon brand with respect to Retail Sites that were not Exxon branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

K. Notwithstanding the provisions of subparagraphs II.C. and II.J., in the event that the acquirer of the Exxon California Refining and Marketing Assets ceases using the Exxon brand in California pursuant to the agreement conveying the right to use the brand described in subparagraph II.C., Respondents shall have the right to use the brand in California beginning two (2) years after the acquirer of the Exxon California Refining and Marketing Assets ceases to use the brand in California, but in no event prior to five (5) years after the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets.

L. Until the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Exxon California Refining and Marketing Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Exxon

California Refining and Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph II.B. occur, Respondents shall not attempt in any way to encourage any Exxon Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement with respect to a Retail Site in California, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Exxon Branded Sellers with respect to Retail Sites in California other than in the California-North MSAs and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Exxon Branded Distributors in California other than in the California-North MSAs the program set forth in Appendix A.

M. The purpose of the divestiture of the Exxon California Refining and Marketing Assets and the assignment of the Existing Supply Agreements between Exxon and Exxon Branded Sellers in California, and of the other provisions of this Paragraph, is to ensure the continued use of the assets comprising Exxon's California refining and marketing businesses as viable, on-going businesses, in the same businesses in which they were engaged at the time of the announcement of the Merger, including the refining and marketing of CARB gasoline and other petroleum products, by a firm that has a sufficient ability and an equivalent incentive to invest and compete in the assets and businesses as Exxon had before the Merger, and to remedy the lessening of competition in the refining and marketing of CARB gasoline and other petroleum products resulting from the proposed Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Exxon Guam Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall offer the acquirer of the Exxon Guam Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon Guam Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply

with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.

C. Respondents shall divest the Exxon Guam Assets and enter into the agreement as required by subparagraphs III.A. and III.B., only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

D. No later than the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall cancel all Existing Lessee Agreements and Existing Supply Agreements between Exxon and Exxon Lessee Dealers and Exxon Branded Sellers with respect to Retail Sites in Guam. Respondents shall not sell Branded Fuels to such Lessee Dealers or Branded Sellers for a period of seven (7) years from the Effective Date of Divestiture of the Exxon Guam Assets. For a period of ten (10) years from the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall be prohibited from using the Exxon brand for the sale of Branded Fuels at Retail Sites in Guam.

E. Until the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Exxon Guam Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including but not limited to renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Exxon Guam Assets.

F. The purpose of the divestiture of the Exxon Guam Assets is to ensure the continued use of the Exxon Guam Assets in the same businesses in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the importation, terminaling, and wholesale and retail sale of gasoline in Guam resulting from the proposed Merger, as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Exxon Northeast Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall, upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, assign to the acquirer of the Exxon Northeast Marketing Assets (1) all Existing Lessee Agreements with respect to the Exxon Northeast Marketing Assets in effect as of the Effective Date of Divestiture of Exxon Northeast Marketing Assets and (2) all Existing Supply Agreements between Exxon and Exxon Branded Sellers in effect as of the Effective Date of Divestiture of Exxon Northeast Marketing Assets with respect to Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

C. Respondents shall enter into an agreement with the acquirer of the Exxon Northeast Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission and which shall be effective upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, pursuant to which the acquirer of the Exxon Northeast Marketing Assets will receive, for a period of ten (10) years from the Effective Date of Divestiture of the Exxon Northeast Marketing Assets: (1) the exclusive right to sell Branded Fuels under the Exxon brand in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, except as permitted by subparagraphs IV.G. and IV.H., and (2) the exclusive right to use Exxon's brand name in connection with the sale of Branded Fuels under the Exxon brand in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, including the exclusive rights to use Exxon's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Exxon credit cards, in connection with such sales of Exxon Branded Fuels. Such agreement shall provide for the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase and may provide for payments covering Respondents' costs for provision of credit card services, additive, and such brand support as the acquirer may choose to purchase. The agreement shall not provide for any payment by the acquirer to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the Effective Date of Divestiture of the Exxon Northeast Marketing Assets and escalating each year until the end of the ten (10) year term, by the acquirer to Respondents for the use of Exxon's identification signs, trademarks, and other trade indicia. Acquirer's payments for credit card services, additive and the use of Exxon's brand, but not including such other brand support as acquirer may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may

provide for an annual minimum payment to which Respondents and the acquirer agree, subject to approval of the Commission. At the end of the ninth year after the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement.

D. Respondents shall offer the acquirer of the Exxon Northeast Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.

E. Respondents shall divest the Exxon Northeast Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs IV.A., IV.B., IV.C., and IV.D. to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

F. Upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall allow the acquirer of the Exxon Northeast Marketing Assets the non-exclusive right to sell other Exxon Branded Products (e.g., motor oil) at the acquirer's Exxon branded Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall allow an Exxon Branded Seller or Exxon Lessee Dealer that was Exxon's franchisee with respect to a Business Format Franchise as of the Effective Date of Divestiture of the Exxon Northeast Marketing Assets to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format Franchisee, subject to any applicable approvals required of the Business Format Franchisor.

G. Respondents shall not, except as requested by the acquirer of the Exxon Northeast Marketing Assets, (1) sell or attempt to sell, for twelve (12) years from the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Branded Fuels under the Exxon brand for sale or resale at Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine; provided, however, that Respondents may sell to the acquirer of the Exxon Northeast Marketing Assets quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the acquirer for purposes of adding Exxon's proprietary additive and making the gasoline salable by acquirer as Exxon Branded Fuels; or (2) sell or attempt to sell, for seven (7) years from the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Branded Fuels under the Mobil brand to any Exxon Branded Seller or Exxon Lessee Dealer for resale at any Retail Site in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine that sold Exxon Branded Fuels as of the date Respondents executed the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Exxon brand with respect to Retail Sites that were not Exxon branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

H. Notwithstanding the provisions of subparagraphs IV.C. and IV.G., in the event that the acquirer of the Exxon Northeast Marketing Assets ceases to use the Exxon brand in any of the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine, pursuant to the agreement conveying the right to use the brand described in subparagraph IV.C., Respondents shall have the right to use the brand in such state beginning two (2) years after the acquirer of the Exxon Northeast Marketing Assets ceases to use the brand in such state, but in no event prior to five (5) years after the Effective Date of Divestiture of the Exxon Northeast Marketing Assets.

I. Until the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Exxon Northeast Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph IV.B. occur, Respondents shall not attempt in any way to encourage any Exxon Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement

with respect to a Retail Site in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Exxon Branded Sellers with respect to Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Exxon Branded Distributors in States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine the program set forth in Appendix A.

J. The purpose of the divestiture of the Exxon Northeast Marketing Assets, the assignment of the Existing Supply Agreements, and of the other provisions of this paragraph is to ensure the continued use of the assets comprising Exxon's marketing business in these states as a viable, on-going business, in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the wholesale and retail sale of gasoline in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine, resulting from the proposed Merger, as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that

A. Respondents shall divest the Mobil Mid-Atlantic Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall, upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, assign to the acquirer of the Mobil Mid-Atlantic Marketing Assets (1) all Existing Lessee Agreements with respect to the Mobil Mid-Atlantic Marketing Assets in effect as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets and (2) all Existing Supply Agreements between Mobil and Mobil Branded Sellers in effect as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets with respect to Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia.

C. Respondents shall enter into an agreement with the acquirer of the Mobil Mid-Atlantic Marketing Assets, the terms of which and subsequent amendments to

which shall be subject to the prior approval of the Commission, which shall be effective upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, pursuant to which the acquirer of the Mobil Mid-Atlantic Marketing Assets will receive, for a period of ten (10) years from the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets: (1) the exclusive right (except with respect to Retail Sites at Turnpike Locations to the extent that Respondents have failed to assign or terminate their rights in connection therewith) to sell Branded Fuels under the Mobil brand in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, except as permitted by subparagraphs V.G. and V.H., and (2) the exclusive right (except with respect to Turnpike Locations to the extent that Respondents have failed to assign or terminate their rights in connection therewith) to use Mobil's brand name in connection with the sale of Branded Fuels under the Mobil brand in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, including the exclusive rights to use Mobil's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Mobil credit cards in connection with such sales of Mobil Branded Fuels. Such agreement shall provide for the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase and may provide for payments covering Respondents' costs for provision of credit card services, additive, and such brand support as the acquirer may choose to purchase. The agreement shall not provide for any payment by the acquirer to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets and escalating each year until the end of the ten (10) year term, by the acquirer to Respondents for the use of Mobil's identification signs, trademarks, and other trade indicia. Acquirer's payments for credit card services, additive and the use of Mobil's brand, but not including such other brand support as acquirer may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the acquirer agree, subject to approval of the Commission. At the end of the ninth year after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement.

D. Respondents shall offer the acquirer of the Mobil Mid-Atlantic Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.

E. Respondents shall divest the Mobil Mid-Atlantic Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs V.A., V.B., V.C., and V.D. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

F. Upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall allow the acquirer of the Mobil Mid-Atlantic Marketing Assets the non-exclusive right to sell other Mobil Branded Products (e.g., motor oil) at the acquirer's Mobil branded Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall allow a Mobil Branded Seller or Mobil Lessee Dealer that was Mobil's franchisee with respect to a Business Format Franchise as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format Franchisee, subject to any applicable approvals required of the Business Format Franchisor.

G. Respondents shall not, except as requested by the acquirer of the Mobil Mid-Atlantic Marketing Assets (and except at Retail Sites at Turnpike Locations to the extent that Respondents have failed to assign or terminate their rights in connection therewith), (1) sell or attempt to sell, for twelve (12) years from the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Branded Fuels under the Mobil brand for sale or resale at Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia; provided, however, that Respondents may sell to the acquirer of the Mobil Mid-Atlantic Marketing Assets quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the acquirer for purposes of adding Mobil's proprietary additive and making the gasoline salable by acquirer as Mobil Branded Fuels, or (2) sell or attempt to sell, for seven (7) years from the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Branded Fuels under the Exxon brand to any Mobil Branded Seller or

Mobil Lessee Dealer for resale at any Retail Site in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia that sold Mobil Branded Fuels as of the date Respondents executed the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Mobil brand with respect to Retail Sites that were not Mobil branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

H. Notwithstanding the provisions of subparagraph V.C. and V.G., in the event that the acquirer of the Mobil Mid-Atlantic Marketing Assets ceases to use the Mobil brand in the District of Columbia or in any of the States of New Jersey, Pennsylvania, Delaware, Maryland, or Virginia pursuant to the agreement conveying the right to use the brand described in V.C., Respondents shall have the right to use the brand in such District or State beginning two (2) years after the acquirer of the Mobil Mid-Atlantic Marketing Assets ceases to use the brand in such District or State, but in no event prior to five (5) years after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets.

I. Until the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph V.B. occur, Respondents shall not attempt in any way to encourage any Mobil Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement with respect to a Retail Site in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Mobil Branded Sellers with respect to Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Mobil Branded Distributors in District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia the program set forth in Appendix A.

J. The purpose of the divestiture of the Mobil Mid-Atlantic Marketing Assets, the assignment of the Existing Supply Agreements, and of the other provisions of this Paragraph is to ensure the continued use of the assets comprising Mobil's marketing business in these states as a viable, on-going business, in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the wholesale and retail sale of gasoline in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia resulting from the proposed Merger, as alleged in the Commission's Complaint.

VI.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Mobil Texas Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall divest the Mobil Texas Marketing Assets only to:

(1) 7-Eleven, Inc., formerly known as Southland Corporation, or
(2) an acquirer that receives the prior approval of the Commission,

and, as to either acquirer, only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

C. Respondents shall divest Mobil's TETCO Interest to an acquirer absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

D. Respondents shall divest Mobil's TETCO Interest only to:

(1) Mobil's TETCO Partners/Members or
(2) an acquirer that receives the prior approval of the Commission,

and, as to either acquirer, only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the

acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

E. Respondents shall, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, assign to a single person in each of the Texas MSAs (each of whom shall be a "Mobil Texas Assignee") that receives the prior approval of the Commission, all Existing Supply Agreements between Mobil and Mobil Branded Sellers in effect as of the date of the assignment with respect to Retail Sites in the applicable Texas MSA.

F. Respondents shall enter into agreements with each Mobil Texas Assignee, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the effective date of the assignments pursuant to subparagraph VI.E., pursuant to which each Mobil Texas Assignee will receive, for a period of ten (10) years from the effective date of the assignment to the Mobil Texas Assignee(s), in the pertinent Texas MSA or MSAs: (1) the exclusive right to sell Branded Fuels under the Mobil brand, except as permitted by subparagraphs VI.I. and VI.J., and (2) the exclusive right to use Mobil's brand name, including the exclusive right to use Mobil's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Mobil credit cards in connection with such sales of Branded Fuels under the Mobil brand. Such agreement shall provide for provision of credit card services, additive, and such brand support as the assignee may choose to purchase and may provide for payments covering Respondents' costs for the provision of credit card services, additive, and such brand support as the assignee may choose to purchase. The agreement shall not provide for any payment by the assignee to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the effective date of the assignment to the Mobil Texas Assignee(s) and escalating each year until the end of the ten (10) year term, by the assignee to Respondents for the use of Mobil's identification signs, trademarks, and other trade indicia. Assignee's payments for credit card services, additive and the use of Mobil's brand, but not including such other brand support as the assignee may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the assignee agree, subject to approval of the Commission. At the end of the ninth year after the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall offer to meet with the assignee to discuss a renewal of the agreement.

G. Upon the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall allow the assignee the non-exclusive right to sell other Mobil Branded Products (e.g., motor oil) at the acquirer's Mobil branded Retail Sites in the pertinent Mobil Texas MSA (or MSAs). The assignee's access to all such

other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall allow a Mobil Branded Seller or Mobil Lessee Dealer that was Mobil's franchisee with respect to a Business Format Franchise as of the effective date of the assignment to the Mobil Texas Assignee(s) to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format Franchisee, subject to any applicable approvals required of the Business Format Franchisor.

H. Respondents shall offer each Mobil Texas Assignee an indemnity, subject to the prior approval of the Commission and to be effective upon the effective date of the pertinent assignment, which indemnity shall allocate among Respondents and the assignee, on such terms as the Respondents and the assignee agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are assigned to the assignee pursuant to subparagraph VI.E.

I. Respondents shall not, except as requested by the Mobil Texas Assignee(s) in a Texas MSA, (1) sell or attempt to sell, for twelve (12) years from the effective date of the assignment to the Mobil Texas Assignee(s) in that MSA, Branded Fuels under the Mobil brand for sale or resale at Retail Sites in the Texas MSAs; provided, however, that Respondents may sell to each Mobil Texas Assignee quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the assignee for purposes of adding Mobil's proprietary additive and making the gasoline salable by assignee as Mobil Branded Fuels, or (2) sell or attempt to sell, for seven (7) years from the effective date of the assignment to the Mobil Texas Assignee(s), Branded Fuels under the Exxon brand to any Mobil Branded Seller or Lessee Dealer for resale at Retail Sites in the Texas MSAs that sold Mobil Branded Fuels as of the date Respondents executed the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Mobil brand with respect to Retail Sites in a Texas MSA that were not Mobil branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

J. Notwithstanding the provisions of subparagraph VI.F. and VI.I., in the event that the Mobil Texas Assignee(s) ceases to use the Mobil brand in any of the Texas MSAs pursuant to the agreement conveying the right to use the brand described in subparagraph VI.F, Respondents shall have the right to use the brand in that MSA beginning two (2) years after the Mobil Texas Assignee(s) ceases to use the brand

in that MSA, but in no event prior to five (5) years after the effective date of the assignment.

K. Until the Effective Date of Divestitures of the Mobil Texas Marketing Assets and Mobil's TETCO Interest, Respondents shall take such actions as are necessary to maintain the viability and marketability of the respective assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the respective assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Mobil Texas Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph VI.E. occur, Respondents shall not attempt in any way to encourage any Mobil Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement with respect to a Retail Site in the Texas MSAs, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Mobil Branded Sellers with respect to Retail Sites in the Texas MSAs and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Mobil Branded Distributors in the Texas MSAs the program set forth in Appendix A.

L. The purpose of the divestiture of the Mobil Texas Marketing Assets, Mobil's TETCO Interest, the assignment of the Existing Supply Agreements, and of the other provisions of this Paragraph is to ensure the continued use of the assets comprising Mobil's marketing business in the Texas MSAs as viable, on-going businesses, in the same businesses in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the wholesale and retail sale of gasoline in the Texas MSAs resulting from the proposed Merger, as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Mobil Boston Terminal, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall divest the Mobil Boston Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior

approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

C. Until the Effective Date of Divestiture of the Mobil Boston Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

D. The purpose of this Paragraph is to ensure the continuation of the Mobil Boston Terminal as an ongoing, viable enterprise engaged in the Terminaling of gasoline and other petroleum products, and to remedy the lessening of competition resulting from the Merger in Terminaling markets as alleged in the Commission's complaint.

VIII.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Mobil Manassas Terminal, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.

B. Respondents shall divest the Mobil Manassas Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission;

C. Until the Effective Date of Divestiture of the Mobil Manassas Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

D. The purpose of this Paragraph is to ensure the continuation of the Mobil Manassas Terminal as an ongoing, viable enterprise engaged in the Terminaling of gasoline and other petroleum products, and to remedy the lessening of competition resulting from the Merger in Terminaling markets as alleged in the Commission's complaint

IX.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, either all of Mobil's interest in Colonial or all of Exxon's interest in Plantation.

B. Respondents shall divest the Colonial or Plantation interest identified in subparagraph A. above only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture of either Mobil's interest in Colonial or Exxon's interest in Plantation, Respondents shall not serve on Colonial's board of directors or any committee thereof, attend meetings of Colonial's board of directors or any committee thereof, vote any of Mobil's stock in Colonial (provided, however, that Respondents shall vote its stock in Colonial to create unanimity only when unanimous action by all owners of Colonial is required and Respondents' vote is necessary to create unanimity), or receive any information from Colonial not made available to all shippers or to the public at large, except that a representative of Respondents may observe meetings of the Colonial Board of Directors and may receive and use nonpublic information of Colonial solely for the purpose of effectuating the divestiture of Mobil's interest in Colonial pursuant to this Order. Said representative of Respondents shall be identified to the Commission, shall not divulge any nonpublic Colonial information to Respondents (other than employees of Respondents whose sole responsibility is to effectuate the divestiture, and agents of Respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

D. The purpose of the divestiture of either the Colonial or Plantation pipeline interest is to prevent an overlap of ownership in both of these pipeline systems and to remedy the lessening of competition resulting from the proposed Merger as alleged in the Commission's Complaint.

X.

IT IS FURTHER ORDERED that

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, all of Mobil's interest in TAPS; provided, however, that divestiture of (1) Mobil's interest in the Prince William Sound Oil Spill Response Corporation and (2) Mobil's interest in the terminal tankage governed

by Section 3.2 of the Trans Alaska Pipeline System Agreement in excess of a 3% interest in such tankage, shall be at the acquirer's option.

B. Respondents shall divest Mobil's interest in TAPS only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

C. Until the Effective Date of Divestiture of Mobil's interest in TAPS, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

D. The purpose of the divestiture of Mobil's interest in TAPS is to prevent the combination of Mobil's and Exxon's interest in TAPS and to remedy the lessening of competition resulting from the proposed Merger as alleged in the Commission's Complaint.

E. For a period of ten (10) years from the Effective Date of Divestiture of Mobil's interest in TAPS, Respondents shall not (1) reacquire Mobil's interest in TAPS or (2) enter into any joint venture (except one in which the owners of at least 75% of TAPS participate) in which all or substantially all of Mobil's interest in TAPS is managed, operated or controlled by such joint venture without providing the Commission with advance notification. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least sixty (60) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until twenty (20) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the

Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI.

IT IS FURTHER ORDERED that, within ten (10) days from the date this Order becomes final, Exxon will surrender its contractual right to reacquire the Retail Sites in Arizona that Exxon sold to Tosco Corporation pursuant to the "Agreement of Purchase and Sale (Arizona Assets Sale)" dated November 10, 1994 between Exxon Corporation and Tosco Corporation, as amended.

XII.

IT IS FURTHER ORDERED that:

A. Within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, Respondents shall divest the Exxon Jet Turbine Oil Business to a single acquirer, as set forth in subparagraph XII.B., absolutely and in good faith and at no minimum price. Respondents shall divest the Exxon Jet Turbine Oil Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. Respondents shall carry out the divestiture of the Exxon Jet Turbine Oil Business on the following terms:

1. Respondents shall assign to the acquirer all contracts for the supply of Jet Turbine Oils by Exxon, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable approvals, permits or contracts with customers for the purchase of Jet Turbine Oils, Respondents shall use best efforts to assist in the transfer to the acquirer of such contracts. Best efforts shall include a written reasoned recommendation, the provision to the acquirer of all information and records available to Exxon relating to such customers, the provision to the acquirer of available customer contact data and information on the customer decision maker(s) and, if the acquirer so requests in accordance with reasonable commercial practice, the organization of joint visits with the acquirer to such customers.

2. For a two (2) year period from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business and subject to terms and conditions to be

mutually agreed upon between the acquirer and Respondents, Respondents shall not solicit for the purpose of selling Jet Turbine Oils any commercial aviation customers to which Exxon has sold any Jet Turbine Oils between January 1, 1999, and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business. Respondents may approach such customers for the purpose of selling products other than Jet Turbine Oils. To the extent that Mobil sold Jet Turbine Oils to any customers of the Exxon Jet Turbine Oil Business after January 1, 1999, and before October 1, 1999, nothing herein shall be construed to prevent Respondents from continuing to sell Mobil Jet Turbine Oils to such customers.

3. Respondents shall assign to the acquirer all of Exxon's contracts for the purchase of esters and additives used by Exxon in manufacturing Jet Turbine Oils, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable contracts for the purchase of esters and additives used by Exxon in manufacturing Jet Turbine Oils, Respondents shall use their best efforts to assist in the transfer to the acquirer of such contracts.

4. At the time Respondents apply to the Commission for approval of the divestiture, Respondents shall provide the Commission with copies of the approval by the leaseholder of Exxon's manufacturing facility located in Bayway, New Jersey to the divestiture of that facility. With respect to permits, licenses or other rights granted by governmental authorities (other than patents), Respondents shall provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights.

5. Respondents shall take reasonable steps from the date Respondents execute the Agreement Containing Consent Orders, including appropriate incentive schemes (such as payment of all current and accrued benefits, e.g., bonuses and pensions, etc., to which the employees are entitled), to cause the Exxon Jet Turbine Oil Employees to accept offers of employment from the acquirer. For a period of at least two (2) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not hire or solicit Exxon Jet Turbine Oil Employees who accept such offers unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Exxon Jet Turbine Oil Employees to stay with Respondents, and shall not assign Exxon Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least two (2) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business.

6. Respondents shall require that, as a condition of continued employment with Respondents after the divestiture of the Exxon Jet Turbine Oil Business, any of Respondents' employees with knowledge of Jet Turbine Oil Formulations, trade secrets, know-how, and other intellectual property conveyed to the acquirer pursuant to this Paragraph XII enter into agreements with the acquirer not to disclose to Respondents or to any third party any such intellectual property, except that such agreements may permit such employees to disclose to Respondents intellectual property other than Jet Turbine Oil Formulations for uses outside the Field of Jet Turbine Oils. To permit the acquirer to protect the confidentiality of intellectual property conveyed to it, Respondents shall assign to the acquirer (to the extent assignable) such rights under contracts between Exxon and its former employees as require such employees to preserve the confidentiality of such intellectual property. To the extent that such agreements with Exxon's former employees are not assignable, Respondents shall enforce such confidentiality provisions at the request and expense, and with the assistance of, the acquirer. Respondents shall not accept, nor seek to obtain, from any current or former employee of Exxon,

    a. for any use, Jet Turbine Oil Formulations, or

    b. for use within the Field of Jet Turbine Oils, other intellectual property conveyed to the acquirer pursuant to this Paragraph XII,

   except (x) with the consent of the acquirer, or (y) as required to comply with this Order or prosecute, defend, or enforce patents, patent applications and claims relating to the Exxon Jet Turbine Oil Business where (i) those who receive such information enter into confidentiality agreements with the acquirer not to disclose or use, other than for the purposes listed in provision (y), any intellectual property conveyed to the acquirer, and (ii) Respondents use their best efforts to obtain a protective order to protect the confidentiality of such intellectual property during any adjudication.

7. Respondents shall provide Key Exxon Jet Turbine Oil Employees with the following financial incentives to continue in their employment positions pending divestiture and to accept employment with the acquirer at the time of the divestiture or at any time within two (2) years thereafter:

    a. Vesting of all pension benefits current and accrued as of the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business;

b. A bonus equal to thirty (30) percent of the employee's annual salary (including any other bonuses) as of the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business for any individual who agrees to employment with the acquirer, payable upon the beginning of employment by the acquirer. For Pat Godici, the bonus shall be one hundred (100) percent of his annual salary.

With respect to Key Exxon Jet Turbine Oil Employees, compliance with such incentives shall constitute the "reasonable steps" required by subparagraph XII.B.5. For a period of at least three (3) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not hire or solicit Key Exxon Jet Turbine Oil Employees who accept offers of employment from the acquirer unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Key Exxon Jet Turbine Oil Employees to stay with Respondents, and shall not assign Key Exxon Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least three (3) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business. If Pat Godici continues to be employed by Respondents after the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall, at the acquirer's option, assign him as a consultant to the acquirer for up to full-time for two years, with the acquirer paying (a) a prorated share of his salary and employee benefits and (b) reasonable travel expenses (including meals and lodging).

8. Respondents shall place no restrictions on the use by the acquirer of any of the business or assets of the Exxon Jet Turbine Oil Business, other than the field of use restrictions set forth in this Paragraph XII and in the definition of "Exxon Jet Turbine Oil Business."

9. Notwithstanding any other provisions of this Paragraph XII and notwithstanding subparagraph I.Z.5., Respondents shall not be required to convey to the acquirer any rights to the Excluded Jet Turbine Oil Assets or to the mark and slogan "Fly with the Tiger", except that Respondents shall allow the acquirer to identify itself (for a period of one (1) year from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) as the acquirer of the "Exxon" or "Esso" Jet Turbine Oil Business. For a period of two (2) years after the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not use the Excluded Jet Turbine Oil Assets in the marketing, customer support, or sale of Jet Turbine Oils, except that Respondents may use the word "Exxon" as part of the "Exxon Mobil" (or "ExxonMobil") name or mark. For a period of five (5) years after the Effective Date of Divestiture of the Exxon Jet Turbine Oil

Business, Respondents shall not use the mark and slogan "Fly with the Tiger" in the marketing, customer support, or sale of Jet Turbine Oils. Respondents shall not be required to allow the acquirer to use the names "ETO" and "Exxon Turbo Oil," except that Respondents shall allow the acquirer to use the term "turbo oil" and shall allow the acquirer to identify its products (for a period of one (1) year from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) as formerly known as "ETO" or "Exxon Turbo Oil." Respondents shall not use the names "ETO" and "Exxon Turbo Oil" in the Field of Jet Turbine Oils. However, Respondents shall be allowed to use the phrase "turbo oil" in the Field of Jet Turbine Oils if that phrase is not preceded immediately by the word "Exxon". In particular, Respondents shall be allowed to use the phrase "turbo oil" in the Field of Jet Turbine Oils if that phrase is immediately preceded by the words "Exxon Mobil" or "ExxonMobil". Respondents shall agree with the acquirer to comply with the requirements of this subparagraph XII.B.9. For purposes of this subparagraph XII.B.9., "Excluded Jet Turbine Oil Assets" means the following names, marks, copyrights, slogans, symbols, designs, or icons: Exxon; Esso; Humble; Live Running Tiger; Crossed X (Interlocking X Device); Oil Drop Character Design; Happy Motoring; Whimsical Tiger; Run with the Tiger; and Rely on the Tiger.

10. Respondents shall convey to the acquirer all copies of records containing Jet Turbine Oil Formulations of the Exxon Jet Turbine Oil Business. Respondents shall provide the acquirer with all records containing any other intellectual property to be conveyed to the acquirer to the extent that such records are located at the facilities used by the Exxon Jet Turbine Oil Business in Bayway (New Jersey), Florham Park (New Jersey), Sarnia (Ontario), and Houston (Texas), or were moved from such locations after November 1, 1999. Respondents may redact from the records conveyed to the acquirer information that pertains neither to the Exxon Jet Turbine Oil Business nor the Field of Jet Turbine Oils. Respondents may retain copies of the records conveyed to the acquirer if they pertain to businesses other than the Exxon Jet Turbine Oil Business, provided that Respondents redact therefrom all information pertaining solely to the Exxon Jet Turbine Oil Business. Provided further, however, that counsel for Respondents may retain unredacted copies of all records provided to the acquirer in order to comply with this Order and prosecute, defend, and enforce patents, patent applications, and claims relating to the Exxon Jet Turbine Oil Business if (i) those who view such unredacted records enter into confidentiality agreements with the acquirer not to disclose or use other than for such purposes any intellectual property conveyed to the acquirer, and (ii)

Respondents use their best efforts to obtain a protective order to protect the confidentiality of such intellectual property during any adjudication.

11. Following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not manufacture or sell any Jet Turbine Oils that have the same formulation or product name as any Jet Turbine Oils manufactured or sold by the Exxon Jet Turbine Oil Business at any time prior to the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business.

12. With respect to Exxon's contracts for the distribution of Jet Turbine Oils, Respondents shall, at the acquirer's option, use their best efforts to assist the acquirer in securing contractual rights with distributors of Exxon Jet Turbine Oils comparable to the rights in Exxon's distributor contracts used by Exxon to distribute Jet Turbine Oils.

13. Within one (1) year of the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall supplement Appendix B (Confidential), subject to the prior approval of the Commission, with any and all additional patents selected by the acquirer, provided that:

    a. each such patent was (i) issued to, or applied for by, Exxon as of the date of the Merger, or (ii) was the subject of a patent application filed by the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) between the date of the Merger and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, and

    b. with respect to each such patent, prior to the Merger and within the Field of Jet Turbine Oils, Exxon (i) practiced an invention claimed in the patent, or (ii) engaged in research on, or development of, an invention (or an application of an invention) claimed in the patent.

14. For one (1) year following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall promptly upon the acquirer's request offer to the acquirer technical assistance in transferring and gaining approvals and certifications.

C. If the trustee divests the Mobil Jet Turbine Oil Business pursuant to subparagraph XV.A. of this Order, the divestiture of the Mobil Jet Turbine Oil Business shall be carried out on the following terms:

1. Respondents shall assign to the acquirer all contracts for the supply of Jet Turbine Oils by Mobil, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable approvals, permits or contracts with customers for the purchase of Jet Turbine Oils, Respondents shall use best efforts to assist in the transfer to the acquirer of such contracts. Best efforts shall include a written reasoned recommendation, the provision to the acquirer of all information and records available to Mobil relating to such customers, the provision to the acquirer of available customer contact data and information on the customer decision maker(s) and, if the acquirer so requests in accordance with reasonable commercial practice, the organization of joint visits with the acquirer to such customers.

2. For a two (2) year period from the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business and subject to terms and conditions to be mutually agreed upon between the acquirer and Respondents, Respondents shall not solicit for the purpose of selling Jet Turbine Oils any commercial aviation customers to which Mobil has sold any Jet Turbine Oils between January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business. Respondents may approach such customers for the purpose of selling products other than Jet Turbine Oils. To the extent that Exxon sold Jet Turbine Oils to any customers of the Mobil Jet Turbine Oil Business after January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, nothing herein shall be construed to prevent Respondents from continuing to sell Exxon Jet Turbine Oils to such customers.

3. Respondents shall assign to the acquirer all of Mobil's contracts for the purchase of esters and additives used by Mobil in manufacturing Jet Turbine Oils, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable contracts for the purchase of esters and additives used by Mobil in manufacturing Jet Turbine Oils, Respondents shall use their best efforts to assist in the transfer to the acquirer of such contracts.

4. Respondents shall assist the Divestiture Trustee in obtaining all third-party approvals necessary to accomplish the divestiture of the manufacturing facilities of the Mobil Jet Turbine Oil Business.

5. Respondents shall take reasonable steps from the date Respondents execute the Agreement Containing Consent Orders, including appropriate incentive schemes (such as payment of all current and accrued benefits, e.g., bonuses and pensions, etc., to which the employees are entitled) to cause the sales,

research, manufacturing, and supervisory personnel associated with the Mobil Jet Turbine Oil Business to accept offers of employment from the acquirer. For a period of at least two (2) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not hire or solicit Mobil Jet Turbine Oil Employees who accept such offers unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Mobil Jet Turbine Oil Employees to stay with Respondents, and shall not assign Mobil Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least two (2) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business.

6. Respondents shall require that, as a condition of continued employment with Respondents after the divestiture of the Mobil Jet Turbine Oil Business, any of Respondents' employees with knowledge of Jet Turbine Oil Formulations, trade secrets, know-how, and other intellectual property conveyed to the acquirer pursuant to this Paragraph XII enter into agreements with the acquirer not to disclose to Respondents or to any third party any such intellectual property, except that such agreements may permit such employees to disclose to Respondents intellectual property other than Jet Turbine Oil Formulations for uses outside the Field of Jet Turbine Oils. To permit the acquirer to protect the confidentiality of intellectual property conveyed to it, Respondents shall assign to the acquirer (to the extent assignable) such rights under contracts between Mobil and its former employees as require such employees to preserve the confidentiality of such intellectual property. To the extent that such agreements with Mobil's former employees are not assignable, Respondents shall enforce such confidentiality provisions at the request and expense, and with the assistance of, the acquirer. Respondents shall not accept, nor seek to obtain, from any current or former employee of Mobil,

   a. for any use, Jet Turbine Oil Formulations, or

   b. for use within the Field of Jet Turbine Oils, other intellectual property conveyed to the acquirer pursuant to this Paragraph XII,

   except (x) with the consent of the acquirer, or (y) as required to comply with this Order or prosecute, defend, or enforce patents, patent applications and claims relating to the Mobil Jet Turbine Oil Business where (i) those who receive such information enter into confidentiality agreements with the acquirer not to disclose or use, other than for the purposes listed in provision (y), any intellectual property conveyed to the acquirer, and (ii) Respondents use their best efforts to obtain a protective

order to protect the confidentiality of such intellectual property during any adjudication.

7. Respondents shall provide Key Mobil Jet Turbine Oil Employees with the following financial incentives to continue in their employment positions pending divestiture and to accept employment with the acquirer at the time of the divestiture or at any time within two (2) years thereafter:

   a. Vesting of all pension benefits current and accrued as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business;

   b. A bonus equal to thirty (30) percent of the employee's annual salary (including any other bonuses) as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business for any individual who agrees to employment with the acquirer, payable upon the beginning of employment by the acquirer.

   With respect to Key Mobil Jet Turbine Oil Employees, compliance with such incentives shall constitute the "reasonable steps" required by subparagraph XII.C.5. For a period of at least three (3) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not hire or solicit Key Mobil Jet Turbine Oil Employees who accept offers of employment from the acquirer unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Key Mobil Jet Turbine Oil Employees to stay with Respondents, and shall not assign Key Mobil Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least three (3) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business. If any researchers associated with the Mobil Jet Turbine Oil Business continue to be employed by Respondents after the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall, at the acquirer's option, assign each of them as consultants to the acquirer for up to full-time for two years, with the acquirer paying (a) a prorated share of each such employee's salary and employee benefits and (b) reasonable travel expenses (including meals and lodging).

8. Respondents shall place no restrictions on the use by the acquirer of any of the business or assets of the Mobil Jet Turbine Oil Business, other than the field of use restrictions set forth in this Paragraph XII and in the definition of "Mobil Jet Turbine Oil Business."

9. Notwithstanding any other provisions of this Paragraph XII, Respondents shall not be required to allow the acquirer to use the "Mobil" name and/or

trademark (or the Red O, Pegasus Character, Airplane Character, or AVREX trademarks), except that Respondents shall allow the acquirer to identify itself (for a period of one (1) year from the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business) as the acquirer of the Mobil Jet Turbine Oil Business. For a period of two (2) years after the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not use the "Mobil" name and/or trademark (or the Red O, Pegasus Character, Airplane Character, or AVREX trademarks) in connection with the marketing or sale of Jet Turbine Oils, except that Respondents may use the word "Mobil" as part of the "Exxon Mobil" name and/or trademark.

10. Respondents shall convey to the acquirer all copies of records containing Jet Turbine Oil Formulations of the Mobil Jet Turbine Oil Business. Respondents shall provide the acquirer with all records containing any other intellectual property to be conveyed to the acquirer to the extent that such records are located at the facilities used by the Mobil Jet Turbine Oil Business, or were moved from such locations after November 1, 1999. Respondents may redact from the records conveyed to the acquirer information that pertains neither to the Mobil Jet Turbine Oil Business nor the Field of Jet Turbine Oils. Respondents may retain copies of the records conveyed to the acquirer if they pertain to businesses other than the Mobil Jet Turbine Oil Business, provided that Respondents redact therefrom all information pertaining solely to the Mobil Jet Turbine Oil Business. Provided further, however, that counsel for Respondents may retain unredacted copies of all records provided to the acquirer in order to comply with this Order and prosecute, defend, and enforce patents, patent applications, and claims relating to the Mobil Jet Turbine Oil Business if (i) those who view such unredacted records enter into confidentiality agreements with the acquirer not to disclose or use other than for such purposes any intellectual property conveyed to the acquirer, and (ii) Respondents use their best efforts to obtain a protective order to protect the confidentiality of such intellectual property during any adjudication.

11. Following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not manufacture or sell any Jet Turbine Oils that have the same formulation or product name as any Jet Turbine Oils manufactured or sold by the Mobil Jet Turbine Oil Business at any time prior to the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business.

12. With respect to Mobil's contracts for the distribution of Jet Turbine Oils, Respondents shall, at the acquirer's option, use their best efforts to assist

the acquirer in securing contractual rights with distributors of Mobil Jet Turbine Oils comparable to the rights in Mobil's distributor contracts used by Mobil to distribute Jet Turbine Oils.

13. The trustee shall have the power to divest to the acquirer any other assets of Mobil if and to the extent necessary to permit the Mobil Jet Turbine Oil Business to remain viable after divestiture. Such assets may include, but shall not be limited to, intellectual property relating to products (other than, and in addition to, Jet Turbine Oils) produced by the manufacturing facilities of the Mobil Jet Turbine Oil Business.

14. For one (1) year following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall promptly upon the acquirer's request offer to the acquirer technical assistance in transferring and gaining approvals and certifications.

D. The purpose of the divestiture of the Exxon Jet Turbine Oil Business or the Mobil Jet Turbine Oil Business is to ensure that either the Exxon Jet Turbine Oil Business or the Mobil Jet Turbine Oil Business is independent of, and is a viable and vigorous competitor to, the Jet Turbine Oil business retained by Respondents, and to remedy the lessening of competition resulting from the proposed Merger in markets for Jet Turbine Oils as alleged in the Commission's Complaint.

XIII.

IT IS FURTHER ORDERED that for so long as Mobil's Norfolk Wharf is owned by Respondents, Respondents shall not provide the "prior written notice of termination" set forth in Section III of the Wharf Agreement dated October 1, 1992, as amended, between Mobil Oil Corporation and Louis Dreyfus Energy Corporation, predecessor of TransMontaigne, Inc., respecting TransMontaigne, Inc.'s access to Mobil's Norfolk Wharf.

XIV.

IT IS FURTHER ORDERED that:

A. Within six (6) months of the date Respondents execute the Agreement Containing Consent Orders, Respondents shall offer, in good faith, to amend the Mobil-Valero Paulsboro Agreement in compliance with this Paragraph and in the manner set forth in Appendix D (Confidential). Respondents shall offer only such terms as have received the prior approval of the Commission. At the time Respondents submit their proposed terms to the Commission for its approval, they shall also provide a copy to Valero. The amendment subsequently offered to Valero shall consist only of the terms approved by the Commission, and shall not be

conditioned on Valero's acceptance of any other terms. The offer shall be held open for one (1) year after the Commission approves Respondents' proposed terms. If Valero accepts the offer, Respondents shall comply with the Mobil-Valero Paulsboro Agreement as amended, and any failure by Respondents to comply with any provision of the amendments offered to and accepted by Valero shall constitute a failure to comply with this Order; provided, however, that such failure shall not be a basis for the appointment of a trustee pursuant to Paragraph XV or for the alternative remedy set forth in Paragraph XV.

B. Within nine (9) months of the date the Merger is consummated, Respondents shall enter into Base Oil supply contract(s) that receive the prior approval of the Commission with at least one, but not more than three, acquirer(s) that receive the prior approval of the Commission, to supply to acquirer(s) a cumulative total of twelve (12) MBD of Base Oil. Each such contract with each acquirer shall contain the following terms:

1. Respondents will supply Base Oil for a term of ten (10) years.

2. The Base Oil may be supplied from any or all of the Designated Base Oil Refineries, to be determined by mutual agreement between Respondents and each acquirer.

3. The agreement shall require the acquirer (a) to take delivery of the Base Oil to be supplied and shall not provide for any waiver of acquirer's obligation to take delivery; and (b) to provide Respondents with advance notice of the quantities and qualities to be purchased under the contract.

4. Respondents must initially make available to the acquirer Base Oil in proportionate grades, viscosities, qualities, and amounts that correspond to the 1999 production of Mobil's Beaumont, Texas, refinery. Beginning January 1, 2001, and on an annual basis thereafter, Respondents shall be obligated to provide the acquirer the option of purchasing Base Oil in the proportionate grades, viscosities, qualities, and amounts that correspond to Respondents' planned production at all of the Designated Base Oil Refineries.

5. The agreement will specify formula price terms for each grade, viscosity, and other quality of Base Oil to be supplied initially. The formula price terms for each grade, viscosity, and other quality of Base Oil not supplied initially shall reflect adjustments to existing price formulae that are established by mutual agreement, or by binding arbitration if the parties fail to agree. The formula price terms shall be subject to renegotiation no more frequently than every three years, with binding arbitration if the parties fail

to agree on price terms, provided, however, that neither the renegotiated nor arbitrated price terms may be a function of United States or Canadian Base Oil prices. The formula price term of any Base Oil to be supplied shall not be calculated as a function of any United States or Canadian price of Base Oil, but may be calculated as a function of any widely-traded commodity (e.g., any petroleum product traded on the NYMEX).

Respondents shall comply with such Base Oil supply contract(s), and any failure by Respondents to comply with any provision of any such Base Oil contract shall constitute a failure to comply with this Order; provided, however, that such failure shall not be a basis for the appointment of a trustee pursuant to Paragraph XV or for the alternative remedy set forth in Paragraph XV.

C. The purpose of this Paragraph is to provide a supply of Base Oil to independent or integrated compounder blenders of Base Oil into finished products and to remedy the lessening of competition in the refining and marketing of Base Oil resulting from the proposed Merger as alleged in the Commission's Complaint.

XV.

IT IS FURTHER ORDERED that:

A. If Respondents have not, within the time periods required, complied with the requirements to divest, assign, enter into agreements, or make an offer of amendment, as applicable, of Paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XII, or XIV absolutely and in good faith and with the Commission's prior approval and in the manner approved by the Commission, the Commission may appoint a person or persons as trustee or trustees (as used herein "trustee" shall mean "trustee or trustees") to effectuate the divestiture, assign all agreements, and effectuate all other provisions of the applicable paragraph or paragraphs; provided, however, that the trustee may, subject to the approval of the Commission, substitute the following assets for the assets described in the applicable paragraph or paragraphs: (1) in connection with Paragraph II., the Mobil California Refining and Marketing Assets, and the applicable brand name; (2) in connection with Paragraph IV, the Mobil Northeast Marketing Assets, and the applicable brand name (provided, however, that if Respondents fail to divest pursuant to both Paragraphs IV and V, the trustee may substitute the Exxon Maine-Virginia Assets, and the applicable brand name, for the assets to be divested pursuant to Paragraphs IV and V); (3) in connection with Paragraph V, the Exxon Mid-Atlantic Marketing Assets, and the applicable brand name (provided, however, that if Respondents fail to divest pursuant to both Paragraphs IV and V, the trustee may substitute the Exxon Maine-Virginia Assets, and the applicable brand name, for the assets to be divested pursuant to Paragraphs IV and V); (4) in connection with Paragraph VI, the Exxon

Texas Marketing Assets, and the applicable brand name; (5) in connection with Paragraph X, Exxon's Interest in TAPS; (6) in connection with Paragraph XII, Mobil's Jet Turbine Oil Business; and (7) in connection with Paragraph XIV, the Mobil Beaumont Refinery Assets. Provided, however, that with respect to Paragraphs IV and V, the trustee may enter into an agreement with the acquirer, granting the acquirer rights to the Exxon or Mobil brand, as the case may be, on a royalty-free basis for up to twenty years, with the right to renew indefinitely thereafter on an annual basis, at the acquirer's option, on further terms to which the Respondents and the acquirer agree or, in the absence of agreement, on commercially reasonable terms as determined by binding arbitration (instead of the ten-year period as specified in subparagraphs IV.C. and V.C.).

Provided, further, however, that if within the applicable time period Respondents have divested and assigned rights with respect to at least 95% of the Retail Sites as to which divestiture or assignment is required in (a) for Paragraph II, California; (2) for Paragraph IV, the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine; (3) for Paragraph V, the District of Columbia or the States of Virginia, Maryland, Delaware, Pennsylvania, or New Jersey; and (4) for Paragraph VI, the Texas MSAs, as the case may be, and Respondents have been enjoined by any court from divesting or assigning, or have been prevented from divesting or assigning despite attempting in good faith to complete such divestitures or assignments, the remaining 5% of the Retail Sites required to be divested and assigned, Respondents shall have an additional six (6) months to complete the required divestitures and assignments and Respondents' failure to have completed the divestitures and assignments with respect to the remaining Retail Sites shall not constitute non-compliance for purposes of this Order until the expiration of the additional six (6) month period. If Respondents have not divested the remaining assets or assigned the applicable Existing Lessee Agreements or Existing Supply Agreements by the end of the extended period, the Commission may appoint a person or persons to act as trustee (or trustees) pursuant to this paragraph to divest those remaining assets but not the substitute assets described above in this subparagraph.

B. In the event that the Commission or the United States Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph XV.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee or trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested, assign the agreements required to be assigned, and enter into the required agreements, thereby binding Respondents, all on such terms and conditions as are necessary to comply with the requirements of the applicable paragraph, to comply with all applicable laws, and to effectuate the remedial purposes of this Order. Subject to the prior approval of the Commission, the trustee shall have the sole authority to divest the assets described in subparagraphs XV.A.(2) and (3), in smaller packages as the trustee deems necessary to effectuate divestiture of the assets and to effectuate the remedial purposes of this Order, provided, however, that no package of assets shall comprise less than all the Retail Assets, Existing Lessee Agreements, and Existing Supply Agreements in an individual state or District. Provided, however, that with respect to Paragraphs IV and V, the trustee may enter into an agreement with the acquirer, granting the acquirer rights to the Exxon or Mobil brand, as the case may be, on a royalty-free basis for up to twenty years, with the right to renew indefinitely thereafter on an annual basis, at the acquirer's option, on further terms to which the Respondents and the acquirer agree or, in the absence of agreement, on commercially reasonable terms as determined by binding arbitration (instead of the ten-year period as specified in subparagraphs IV.C. and V.C.).

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the

court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph XV.C.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as approved by the Commission, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity for any package of assets, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission, provided further, however, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense

of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph XV.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

XVI.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II., III., IV., V., VI., VII, VIII, IX, X, XI, XII, XIII, XIV, and XV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with these Paragraphs. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nineteen (19) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with each provision of this Order.

XVII.

IT IS FURTHER ORDERED that:

A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

B. Upon consummation of the Merger, Respondents shall cause Exxon Mobil to be bound by the terms of this Order.

XVIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written

request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of each Respondent relating to any matters contained in this Order; and

B. Upon five days' notice to each Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

XIX.

IT IS FURTHER ORDERED that, if Respondents fail to complete any of the divestitures required by this Order within the time period required, the Commission may appoint a trustee pursuant to Paragraph XV of this Order to divest the applicable package of assets as described in Paragraph XV (subject to the extension as set forth in Paragraph XV); provided, however, that if Respondents submit an application for approval to divest a package of assets to an acceptable acquirer no later than 65 days before the date by which the Order requires completion of that required divestiture and the Commission subsequently approves the application for approval to divest that package of assets, but Respondents are unable to complete that required divestiture because the Commission has not acted on Respondents' application before the date by which the order requires that Respondents must divest that package of assets, then the time by which Respondents must divest that package of assets shall be extended for one month from the time the Commission approves the application relating to that package of assets.

XX.

IT IS FURTHER ORDERED that if (1) within the time period required for divestiture or other relief pursuant to Paragraphs II, IV, V, VI, X and XII of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended

(a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

XXI.

IT IS FURTHER ORDERED that this Order will terminate on January 26, 2021.

By the Commission, Commissioner Leary recused.

Donald S. Clark

Secretary

SEAL

ISSUED: January 26, 2001

APPENDIX A

Branded Distributor Retention Program

1. Within thirty (30) days of the date Respondents execute the Agreement Containing Consent Orders, Respondents shall establish a fund (the "Fund") in the amount of $30,000,000.00 to be distributed within thirty (30) days of the later of (a) twelve (12) months after the date on which Respondents execute the Agreement Containing Consent Orders and (b) ninety (90) days after the last Effective Date of Divestiture pursuant to Paragraphs II., IV., V., and VI. of this Order (hereinafter the "Distribution Date") in the manner described in subparagraph 3 to eligible Branded Distributors as to which Existing Supply Agreements are to be assigned pursuant to Paragraphs II., IV., V., and VI. of this Order.

2. Branded Distributors as to which Existing Supply Agreements are to be assigned pursuant to Paragraphs II., IV., V. and VI. of this Order shall be eligible for a distribution from the Fund only if:

   (a.) The assignment of the Branded Distributor's Existing Supply Agreement with Exxon or Mobil, as applicable, becomes effective within the periods required by subparagraphs II.A., IV.A., V.A., or VI.E. of the Order;

   (b.) The Branded Distributor has been a Branded Distributor of Branded Fuels under the Exxon or Mobil brand, as applicable, for Respondents or the acquirer or assignee, as applicable, continuously from the date Respondents execute the Agreement Containing Consent Orders to the Distribution Date; and

   (c.) The aggregate volume of Exxon or Mobil branded gasoline, as applicable, purchased by the Branded Distributor for resale under the Exxon or Mobil brand, as applicable, pursuant to Existing Supply Agreements assigned pursuant to this Order during the twelve (12) calendar months preceding the Distribution Date is at least 95% of the aggregate volume during the twelve (12) calendar months preceding the date Respondents execute the Agreement Containing Consent Orders.

3. Each eligible Branded Distributor shall receive a share of the Fund the numerator of which shall be equal to the Branded Distributor's purchases of gasoline during the twelve (12) calendar months preceding the Distribution Date from Exxon or Mobil, as applicable, and the acquirer or assignee, as applicable, for resale under the Exxon or Mobil brand, as applicable, at Retail Sites subject to divestiture or assignment under this Order, and the denominator of which shall be equal to the volume of gasoline purchased during the twelve (12) calendar months preceding the Distribution Date by all eligible Branded Distributors from Exxon or Mobil, as applicable, and the acquirer and assignee, as applicable, for resale under the Exxon or Mobil brand, as applicable, at Retail Sites subject to divestiture or assignment under this Order.

APPENDIX C

Research and Test Equipment of Exxon Jet Turbine Oil Business

Inclined Panel Deposit Test

Pratt & Whitney Pressure Cylinder Test

U.S. Navy Vapor Phase Coker Test

Rolls Royce Dynamic Coking Test

High Press. Differential Scanning Calorimetry (HPDSC)

Hydrolytic Stability Test

Coker Mister Test

Navy Ball Corrosion Test

Falex Four Ball Extreme Pressure Wear Test

Rolls Royce Volatility and Thermal Stability Tests

Rolls Royce Corrosion Tests

Rolls Royce Confined Heat Stability Test

Mod (DERD) Rolls-Royce Elastomers Compatibility

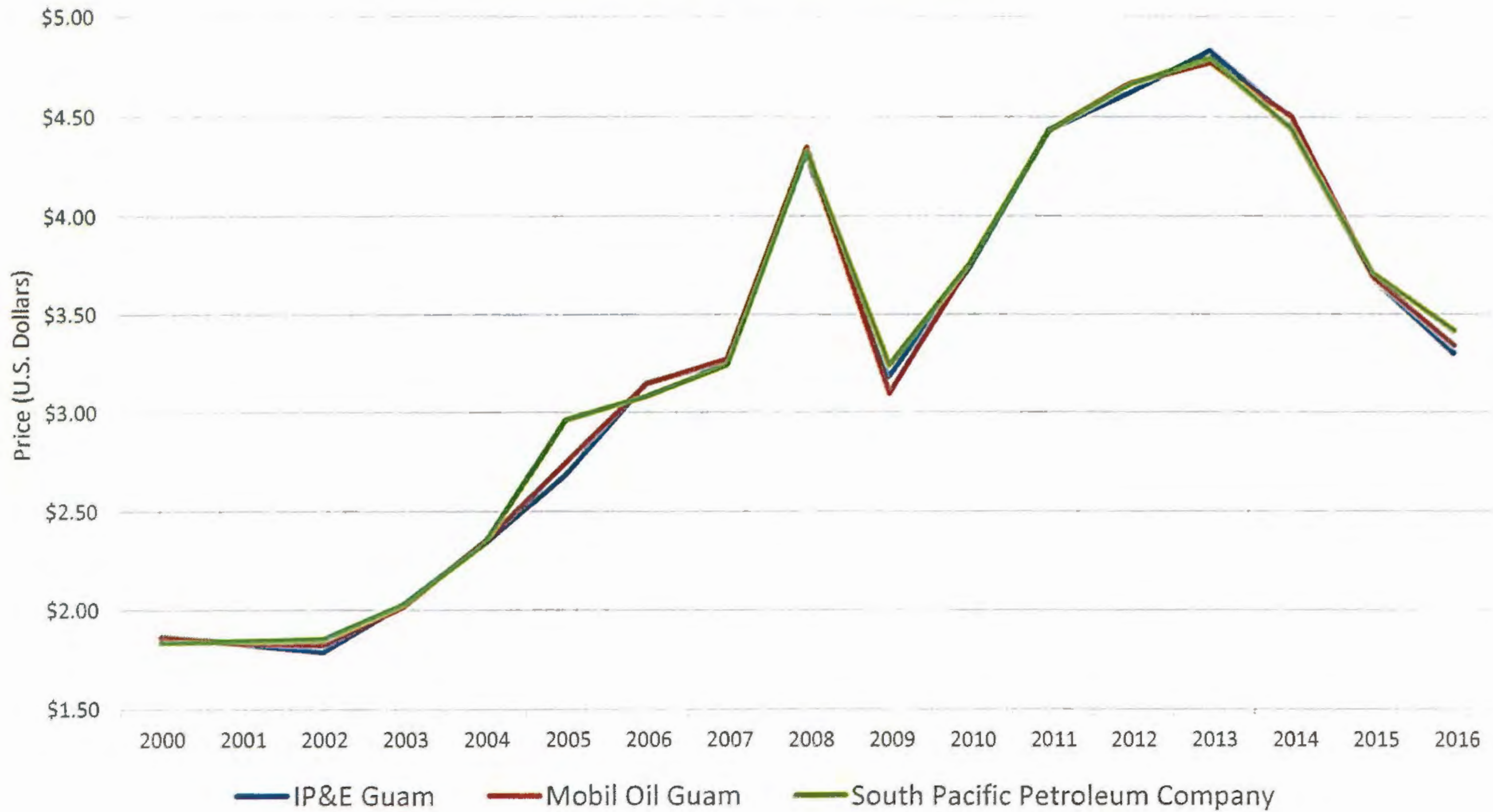
Four Ball Initial Seizure Test

APPENDIX D (Confidential)

[Redacted from Public Record Version]

EXHIBIT B

Guam Fuel Price Chart
(2000-2016)



Guam Yearly Average Fuel Prices (2000-2016)
Source: Pacific Daily News archives
Price (U.S. Dollars)
$5.00
$4.50
$4.00
$3.50
$3.00
$2.50
$2.00
$1.50
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
IP&E Guam
Mobil Oil Guam
South Pacific Petroleum Company

EXHIBIT C

Pacific Daily News articles

April 11, 2001

Higher gas prices looming

By Gaynor Dumat-ol Daleno
Pacific Daily News
gdumat-ol@guampdn.com

A federal forecast has predicted the nation's gasoline prices will likely cost higher than they did last summer. That could add worry to Guam motorists who have been paying, on average, 38 cents more for a gallon of regular gasoline at self-service pumps earlier this year compared to two years ago.

Regular gasoline at self-service pumps had cost an average of $1.51 a gallon in January 1999, $1.72 in January last year and $1.89 in January 2000, according to the Guam Energy Office's price monitoring.

Whether Guam consumers will see gasoline prices rise further this summer remains to be seen.

The Guam Energy Office only conducts price monitoring and does not issue price forecasts. Officials of the three fuel companies selling gasoline on Guam — Exxon-Mobil, Shell and South Pacific Petroleum — were unavailable or unable to comment as of press time yesterday.

In Washington, D.C., the federal Energy Department has stated that drivers could face a new round of surging prices at the gas pump this summer because of tight supplies through the year's heaviest driving season, according to The Associated Press. Last year, price spikes reached $2 a gallon, AP said.

The nation's average price of gasoline was about $1.54 a gallon the past two weeks, up 0.71 cents from March 23, according to the Lundberg Survey of 8,000 stations nationwide, The Associated Press said.

Guam's average prices of gasoline for March will be available within the week, according to the Guam Energy office. The average on Guam was at $1.89 a gallon in January and February this year, according to the local energy office.

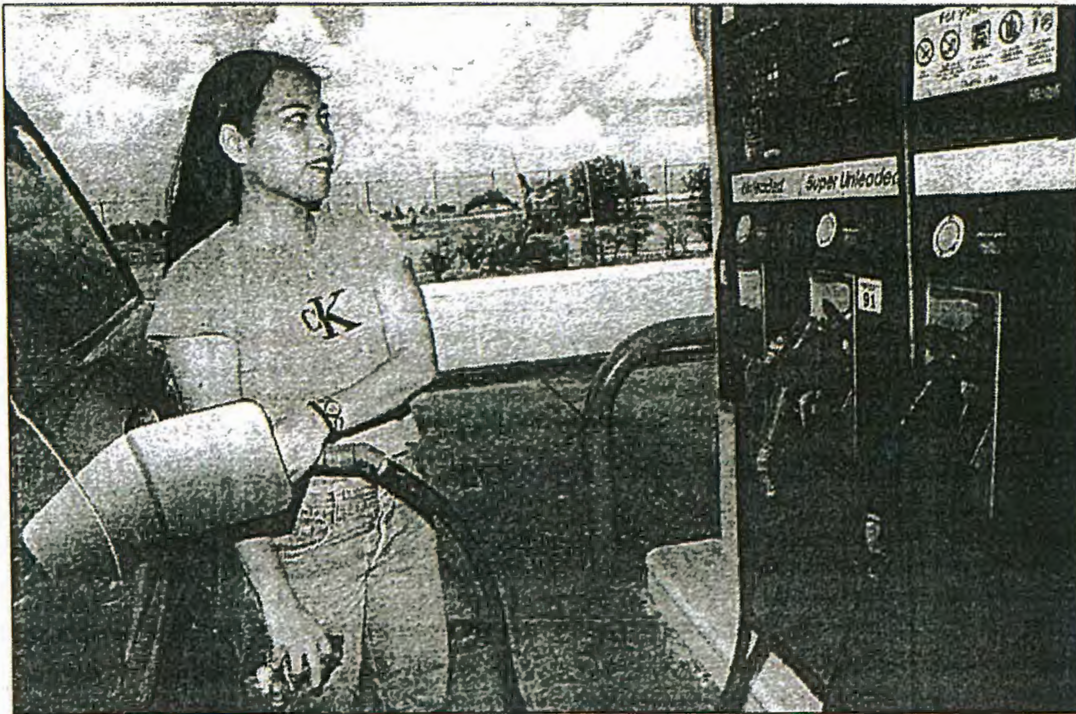
Though Guam fuel companies were unable to comment on why U.S. mainland and Guam gasoline prices differ by about 40 cents a gallon, Shell Guam President Andrew Harford said a few months ago that fuel on Guam and in the Micronesia region is processed in Singapore, where prices can differ from the U.S. mainland's.

Gas price increases over the past two years can add up.

For example, if you drive 1,000 miles every 30 days using a small car that runs 30 miles per gallon, ... line per month, said Peter Barcinas, who teaches consumer economics and agriculture business management courses at the University of Guam.

That driving pattern would cost about $600 a year based on the average price of regular gasoline in January 1999. The same driving pattern using the same small car would cost about $740 a year if the January 2000 gasoline price is used as a gauge. If a larger, gas-guzzling vehicle is used, one year of gasoline spending would add up to about $1,100 at January 2000's pump price for regular, self-service gas.

The cost is even higher if you ...



Masako Watanabe/Pacific Daily News/mwatanabe@guampdn.com

Filling up: Jocelyn Galzote of Dededo pumps gas at the Barrigada Mobil station. Galzote said she's noticed gas prices rising "really quickly," and tries to conserve by not using car air-conditioning too much.

SAVING GAS MONEY

- ▲ Roll down your windows and reduce use of air-conditioning.
- ▲ Vehicle tune-ups will help make cars use less gasoline if they're in good running condition.
- ▲ Avoid abrupt stops and accelerations, which burn more fuel.
- ▲ If buying a new car, look for fuel-efficient cars.

Source: Peter Barcinas and Pacific Daily News files

gasoline, priced at $2.19 on average at Guam pumps in January and Feb...

Jan. 10, 2002

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...or sees

Shell lowers gas price 3¢

By Gaynor Dumat-ol Daleno
Pacific Daily News
gdumat-ol@guampdn.com

A gallon of regular gasoline now costs 19 cents lower compared to a year ago — at some island pump stations.

This time last year, Guam residents were paying $1.89 a gallon for regular gasoline, according to Pacific Daily News files.

By this morning, regular gasoline will have dropped to $1.70 a gallon at Shell Guam service stations.

Shell Guam Inc. announced a 3-cent price decrease that took effect last midnight.

Andrew Harford, president of Shell Guam, said the company has reduced gasoline prices four times since Sept. 11. Each price drop was 3 cents, he said.

The cost of premium gasoline eased 3 cents to $1.80 a gallon at Shell Guam stations, Harford said.

Shell service stations in Saipan also were scheduled to reduce gasoline prices by 3 cents by this morning, he said.

International prices of gasoline have decreased because of a diminished demand stemming from seasonal factors and the global economic slowdown after the terror attacks of Sept. 11, he said.

"International oil prices, as published in Singapore, appear to be stabilizing, but have once again reduced to the point where we are able to give the community some great news," Harford said. Guam's petroleum fuel comes from Singapore.

"The costs of transporting the fuel, storing it, handling it and getting it to the gas pumps are extremely high," Harford said. "It is only by continually working on all the links in the chain that we are able to keep prices as low as they are," he added.

The price of diesel hasn't changed because diesel prices in the international market have gone up, Harford said.

As for the rest of the nation, gasoline prices have fallen more than 28 cents a gallon since Sept. 7, according to The Associated Press in November.

The nation's average retail price of a gallon of gasoline, including all grades and taxes, was $1.28 at the time, according to the wire report, quoting a Lundberg Survey of about 8,000 stations nationwide.

Guam's gasoline wholesalers have said that Guam prices don't follow trends on the U.S. mainland because Guam's gasoline comes from the Singapore market.

Burger icon Dave Thomas dead at 69

Gannett News Service

You can replace ketchup with mustard. Or sweet pickles with dill.

But you can't replace Dave Thomas.

Thomas, 69, died of liver cancer early Tuesday.

Ronald McDonald aside, his was the most familiar face in Hamburger Land. But it was so sweetly soft that it hardly looked like the face of a corporate giant who knew burgers every bit as well as his one-time mentor, Colonel Sanders, knew chicken.

It wasn't ego that pushed Thomas to appear in more than 800 Wendy's commercials. It was necessity. Nothing else sold the fast-food-gobbling public on Wendy's like his mug.

Now, Wendy's suddenly finds itself blessed — and cursed.

Blessed to have been linked with a lovable icon that has a shot at immortality on Madison Avenue. But cursed with the reality that the man whose kind face sold more burgers than any person on earth, is gone.

The Associated Press

'A legend': Dave Thomas, founder of the Wendy's hamburger ... this November 1991 file photo.

Employment declaration could attract new investors

By Gaynor Dumat-ol Daleno
Pacific Daily News
gdumat-ol@guampdn.com

There's a chance Guam may attract additional foreign investors under a suggestion Sen. Vicente Pangelinan announced yesterday.

Pangelinan, D-Barrigada, said he has introduced a resolution that requests the governor to declare Guam a high unemployment area.

By declaring Guam a high unemployment area, the island may qualify for a pilot federal program aimed at attracting foreign investors to areas where jobs are scarce.

Pangelinan said that program reduces the amount of investment required of each foreign investor — from $1 million to $500,000 — to

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Feb 12, 2015

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an-based airline egin service to ir, the Guam air- nced yesterday. ier, T'way plans heduled service d Guam by July Boeing 737-800 onomy seats, the am International announced yes-

Gas prices rise 10 cents

By Gaynor Dumat-ol Daleno
Pacific Daily News
gdumat-ol@guam.gannett.com

Guam's gasoline prices went back up by 10 cents yesterday to $3.679 a gallon for regular grade.

Mobil, Shell and 76 gas stations posted the higher prices yesterday. The three gasoline brands on Guam have traditionally mirrored each other's prices within a few days.

Stateside, the average retail price of regular grade gasoline this week was at $2.19 a gallon, up 12 cents from a week ago, according to the U.S. Energy Information Administration.

Guam gasoline retailers have said gasoline on the island originates mostly from Singapore refineries, so the average U.S. prices aren't comparable.

Oil traded for $46 a barrel, on average this year, but was at $53 a barrel yesterday, according to data from the Organization of Petroleum Exporting Countries.

Guam gasoline prices stayed above $4 a gallon between 2011 and November last year, data from the Guam Energy Office show. During those years, oil traded at prices ranging from $96 a barrel in 2014 to $107 a barrel in 2011, OPEC data show. In the first quarter of 2010, when Guam gasoline prices were close to $3.67 a gallon, oil was trading around $77 a barrel, OPEC data show.

Bank of Guam disputes Fitch rating

By Jerick Sablan
Pacific Daily News
jpsablan@guampdn.com

A local bank is in disagreement with a Fitch Ratings release that came out last week.

In a Feb. 6 press release, Fitch Ratings, a global ratings agency, announced it had downgraded and withdrawn the "BBB-" ratings for BankGuam Holding Company and Bank of Guam. The rating outlook was revised to stable from negative. The downgrades reflect lower capital ratios year over year, continued strong out-of-market loan growth year over year and continued weak earnings, the release stated.

The ratings are being withdrawn for commercial reasons, the release stated.

Bank of Guam responded to the release with a press release stating it terminated its agreement with Fitch Ratings last year.

Over the past 14 years, Bank of Guam has engaged the services of

BankGuam Holding Company and Bank of Guam decided in April to terminate its Rating Service Agreement with Fitch Ratings, to be effective upon the expiration of the agreement on Dec. 31, and provided formal notification of that decision to Fitch, the release stated.

On Dec. 3, Fitch Ratings published a notification in Bloomberg's "Business Wire" of its "plans to withdraw its ratings on BankGuam Holding Company (BGHC) and Bank of Guam on or about Jan. 5, 2015, for business reasons."

Despite the termination of its Rating Service Agreement and its plans to withdraw its ratings, Fitch Ratings issued the Feb. 6 release indicating that the "rating Outlook was revised to Stable from Negative" . . . and that the "ratings are being withdrawn for commercial reasons."

BankGuam Holding Company and Bank of Guam disagree with several aspects of the Fitch release.

Bank of Guam's central disagreement is due to Fitch's statement that, "the large reduction to

4.9 percent during the first nine months of 2014, and over the past five years the bank's capital has increased from $84.4 million in 2010 to $98.4 million at the end of September 2014, with the increase generated internally through its retention of earnings, Bank of Guam said.

The Fitch release noted that, "The downgrades reflect lower capital ratios year over year."

The bank acknowledged that its capital ratios have been trending downward. This is primarily attributed to the substantial increase in its customer deposit base during the first nine months of 2014, the bank said.

That increase led to a significant increase in the bank's cash balances at the Federal Reserve Bank and in its investments in U.S. Government securities, which put downward pressure on capital ratios, the bank said.

"Regardless of this rapid expansion in assets, the Holding Company and the Bank continue to exceed the well-capitalized stan-

The Fitch release neglected to mention that the "strong out-of-market loan growth" is in the Bank's California region, a market in which Bank of Guam has operated a branch for more than 30 years, the bank's release stated.

The Fitch Ratings release stated that, "Fitch believes BGHC's mainland growth could lead to asset quality metrics that are weaker than the company's historically solid levels." The bank finds no basis for this belief, since the asset quality of the California loan portfolio is particularly strong, and it continues to perform exceptionally well, the release stated.

The request of BankGuam Holding Company and Bank of Guam that Fitch Ratings Ltd. reconsider the content of its press release, in light of the facts presented above, was ignored, the release stated.

"For that reason, BGHC and Bank of Guam have provided this information so that our depositors, our stockholders, the regulatory agencies and the financial markets

	Today	Thursday
	Hi Lo W	Hi Lo W
	47 40 pc	50 36 sh
	55 44 r	60 40 pc
	52 44 c	51 45 sh
	48 31 c	36 23 pc
	51 44 r	50 39 pc
	89 76 t	90 76 pc
	78 69 t	81 71 t
	79 65 pc	75 66 sh
	50 43 c	49 44 r
ok	30 22 pc	32 20 sn
on, DC	40 22 pc	31 15 pc

a

Today	Thursday
Hi Lo W	Hi Lo W
88 80 sh	89 74 pc
84 76 sh	84 76 t
87 76 sh	87 76 r
82 75 r	83 75 pc
85 75 c	84 75 pc
88 75 c	88 75 s
86 77 r	87 77 pc

storms, r-rain, sf-snow flurries, sn-snow, i-ice.

Apra Harbor

	Feb. 25		Feb. 26	
First high	12:46 a.m.	2.0 ft.	2:18 a.m.	1.9 ft.
First low	6:21 a.m.	1.0 ft.	7:23 a.m.	1.3 ft.
Second high	12:08 p.m.	2.3 ft.	12:59 p.m.	2.2 ft.
Second low	7:26 p.m.	0.2 ft.	8:33 p.m.	0.1 ft.

Sunrise/set

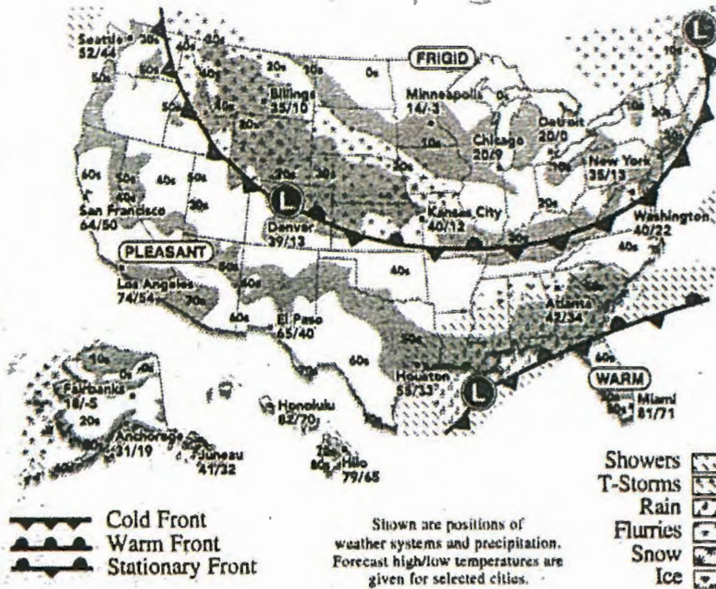
Sunrise today .... 6:40 a.m.
Sunset today .... 6:29 p.m.
Sunrise tomorrow ...... 6:40 a.m.
Sunset tomorrow .... 6:29 p.m.

Rainfall

Yesterday .... 0.02"
Month to date .... 0.09"
Year to date .... 8.65"

Moon phases

First	Full	Last	New
Feb. 26	Mar. 6	Mar. 14	Mar. 20



Cold Front
Warm Front
Stationary Front

Shown are positions of weather systems and precipitation. Forecast high/low temperatures are given for selected cities.

Showers
T-Storms
Rain
Flurries
Snow
Ice

lony and aggravated assault ird-degree felony, with a allegation of possession of a deadly weapon in the ssion of a felony.

nnifer Frances P. Sanchez, is charged with hindering ension or prosecution as a egree felony and obstruct- vernmental functions as a neanor.

olani June Sanchez, 18, was d with hindering apprehen- prosecution as a third-degree and obstructing governmen- ctions as a misdemeanor.

lijah L.J. Tierra, 18, was charged with burglary to a motor vehicle as a second-degree felony, criminal mischief as a third-degree felony and criminal mischief as a misdemeanor.

• Xo Isi John, 40, was charged with two counts of murder as a first-degree felony and one charge of aggravated assault as a second-degree felony.

• Franklin Acfalle Cing, 65, was charged with terrorizing as a third-degree felony, with a special allegation of possession and use of a deadly weapon in the commission of a felony, and reckless conduct as a misdemeanor.

Gas prices go up by 15¢ at all three island retailers

By Jerick Sablan
Pacific Daily News
jpsablan@guampdn.com

The island's gasoline prices have increased again, for the second time in less than two weeks.

All three gas retailers have raised their prices for regular gasoline by 15 cents, to $3.83 from $3.68.

The island's gas prices last were raised 10 cents on Feb. 11, from $3.58 to $3.68.

Stateside, the average retail price of regular grade gasoline this week was at $2.33 a gallon, up 5 cents from a week ago, according to the U.S. Energy Information Administration.

Guam gasoline retailers have said gasoline on the island originates mostly from Singapore refineries, so the average U.S. prices aren't comparable.

Oil traded for $46 a barrel, on average this year, but was at $56.55, a barrel yesterday, according to data from the Organization of Petroleum Exporting Countries.

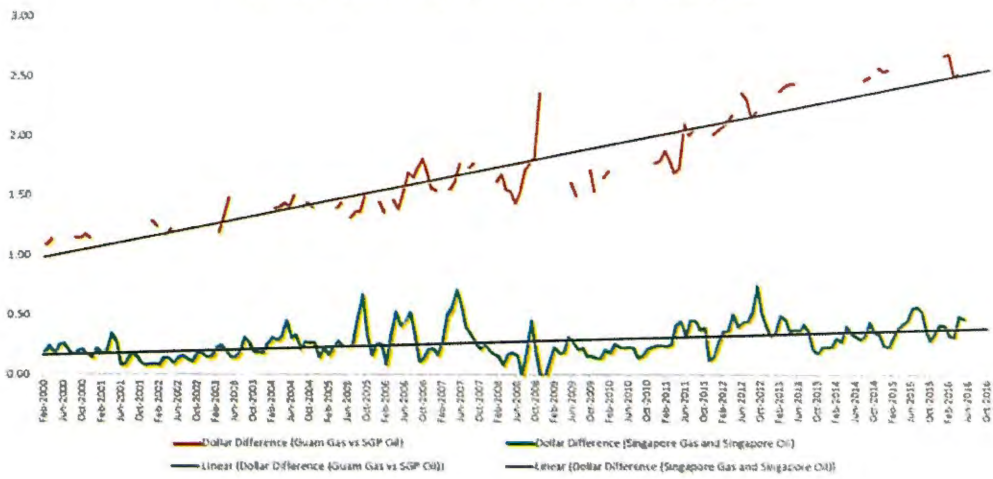
Feb 25, 2015

EXHIBIT D

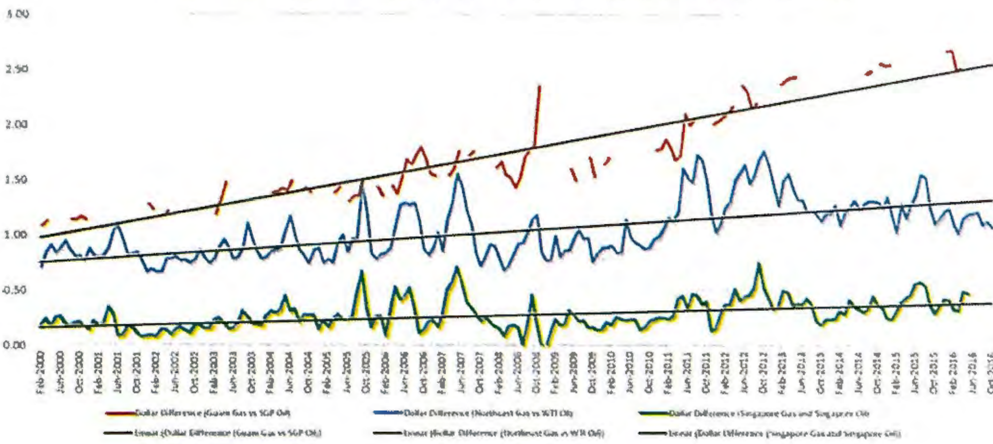
Dollar Difference Charts

(Guam, U.S. Northeast and Mid-Atlantic, Singapore)

Dollar Difference (Guam and Singapore)
Source: Pacific Daily News archives and *IndexMundi*



Dollar Difference (Guam, U.S. Northeast, Singapore)
Source: Pacific Daily News archives, *IndexMundi*, U.S. Energy Information Administration



Dollar Difference (Guam, U.S. Mid-Atlantic, Singapore)
Source: Pacific Daily News archives, *IndexMundi*, U.S. Energy Information Administration

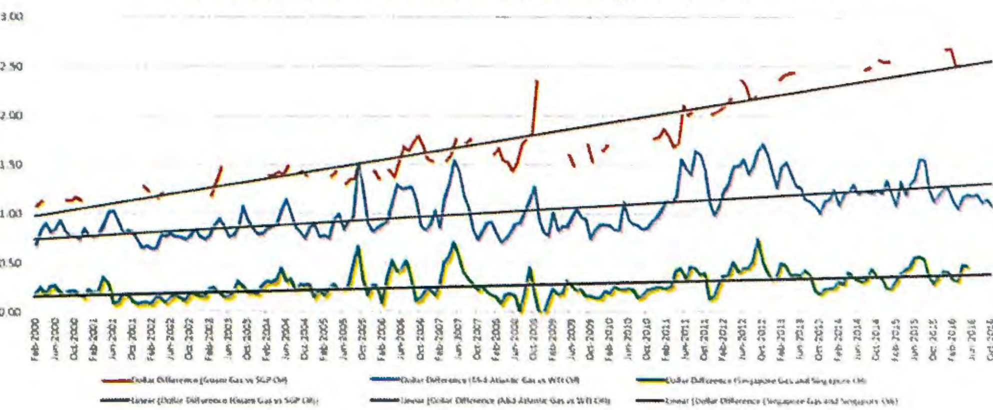


EXHIBIT E

U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines

Horizontal Merger Guidelines

U.S. Department of Justice

and the

Federal Trade Commission

Issued: August 19, 2010

Table of Contents

1. Overview 1

2. Evidence of Adverse Competitive Effects 2
2.1 Types of Evidence 3
2.1.1 Actual Effects Observed in Consummated Mergers 3
2.1.2 Direct Comparisons Based on Experience 3
2.1.3 Market Shares and Concentration in a Relevant Market 3
2.1.4 Substantial Head-to-Head Competition 3
2.1.5 Disruptive Role of a Merging Party 3
2.2 Sources of Evidence 4
2.2.1 Merging Parties 4
2.2.2 Customers 5
2.2.3 Other Industry Participants and Observers 5

3. Targeted Customers and Price Discrimination 6

4. Market Definition 7
4.1 Product Market Definition 8
4.1.1 The Hypothetical Monopolist Test 8
4.1.2 Benchmark Prices and SSNIP Size 10
4.1.3 Implementing the Hypothetical Monopolist Test 11
4.1.4 Product Market Definition with Targeted Customers 12
4.2 Geographic Market Definition 13
4.2.1 Geographic Markets Based on the Locations of Suppliers 13
4.2.2 Geographic Markets Based on the Locations of Customers 14

5. Market Participants, Market Shares, and Market Concentration 15
5.1 Market Participants 15
5.2 Market Shares 16
5.3 Market Concentration 18

6. Unilateral Effects 20
6.1 Pricing of Differentiated Products 20
6.2 Bargaining and Auctions 22
6.3 Capacity and Output for Homogeneous Products 22
6.4 Innovation and Product Variety 23

7. Coordinated Effects 24
7.1 Impact of Merger on Coordinated Interaction 25
7.2 Evidence a Market is Vulnerable to Coordinated Conduct 25

8. Powerful Buyers 27

9. Entry 27
9.1 Timeliness 29
9.2 Likelihood 29
9.3 Sufficiency 29

10. Efficiencies 29

11. Failure and Exiting Assets 32

12. Mergers of Competing Buyers 32

13. Partial Acquisitions 33

1. Overview

These Guidelines outline the principal analytical techniques, practices, and the enforcement policy of the Department of Justice and the Federal Trade Commission (the "Agencies") with respect to mergers and acquisitions involving actual or potential competitors ("horizontal mergers") under the federal antitrust laws.[1] The relevant statutory provisions include Section 7 of the Clayton Act, 15 U.S.C. § 18, Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Most particularly, Section 7 of the Clayton Act prohibits mergers if "in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The Agencies seek to identify and challenge competitively harmful mergers while avoiding unnecessary interference with mergers that are either competitively beneficial or neutral. Most merger analysis is necessarily predictive, requiring an assessment of what will likely happen if a merger proceeds as compared to what will likely happen if it does not. Given this inherent need for prediction, these Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency and that certainty about anticompetitive effect is seldom possible and not required for a merger to be illegal.

These Guidelines describe the principal analytical techniques and the main types of evidence on which the Agencies usually rely to predict whether a horizontal merger may substantially lessen competition. They are not intended to describe how the Agencies analyze cases other than horizontal mergers. These Guidelines are intended to assist the business community and antitrust practitioners by increasing the transparency of the analytical process underlying the Agencies' enforcement decisions. They may also assist the courts in developing an appropriate framework for interpreting and applying the antitrust laws in the horizontal merger context.

These Guidelines should be read with the awareness that merger analysis does not consist of uniform application of a single methodology. Rather, it is a fact-specific process through which the Agencies, guided by their extensive experience, apply a range of analytical tools to the reasonably available and reliable evidence to evaluate competitive concerns in a limited period of time. Where these Guidelines provide examples, they are illustrative and do not exhaust the applications of the relevant principle.[2]

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[1] These Guidelines replace the Horizontal Merger Guidelines issued in 1992, revised in 1997. They reflect the ongoing accumulation of experience at the Agencies. The Commentary on the Horizontal Merger Guidelines issued by the Agencies in 2006 remains a valuable supplement to these Guidelines. These Guidelines may be revised from time to time as necessary to reflect significant changes in enforcement policy, to clarify existing policy, or to reflect new learning. These Guidelines do not cover vertical or other types of non-horizontal acquisitions.

[2] These Guidelines are not intended to describe how the Agencies will conduct the litigation of cases they decide to bring. Although relevant in that context, these Guidelines neither dictate nor exhaust the range of evidence the Agencies may introduce in litigation.

The unifying theme of these Guidelines is that mergers should not be permitted to create, enhance, or entrench market power or to facilitate its exercise. For simplicity of exposition, these Guidelines generally refer to all of these effects as enhancing market power. A merger enhances market power if it is likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives. In evaluating how a merger will likely change a firm's behavior, the Agencies focus primarily on how the merger affects conduct that would be most profitable for the firm.

A merger can enhance market power simply by eliminating competition between the merging parties. This effect can arise even if the merger causes no changes in the way other firms behave. Adverse competitive effects arising in this manner are referred to as "unilateral effects." A merger also can enhance market power by increasing the risk of coordinated, accommodating, or interdependent behavior among rivals. Adverse competitive effects arising in this manner are referred to as "coordinated effects." In any given case, either or both types of effects may be present, and the distinction between them may be blurred.

These Guidelines principally describe how the Agencies analyze mergers between rival suppliers that may enhance their market power as sellers. Enhancement of market power by sellers often elevates the prices charged to customers. For simplicity of exposition, these Guidelines generally discuss the analysis in terms of such price effects. Enhanced market power can also be manifested in non-price terms and conditions that adversely affect customers, including reduced product quality, reduced product variety, reduced service, or diminished innovation. Such non-price effects may coexist with price effects, or can arise in their absence. When the Agencies investigate whether a merger may lead to a substantial lessening of non-price competition, they employ an approach analogous to that used to evaluate price competition. Enhanced market power may also make it more likely that the merged entity can profitably and effectively engage in exclusionary conduct. Regardless of how enhanced market power likely would be manifested, the Agencies normally evaluate mergers based on their impact on customers. The Agencies examine effects on either or both of the direct customers and the final consumers. The Agencies presume, absent convincing evidence to the contrary, that adverse effects on direct customers also cause adverse effects on final consumers.

Enhancement of market power by buyers, sometimes called "monopsony power," has adverse effects comparable to enhancement of market power by sellers. The Agencies employ an analogous framework to analyze mergers between rival purchasers that may enhance their market power as buyers. See Section 12.

2. Evidence of Adverse Competitive Effects

The Agencies consider any reasonably available and reliable evidence to address the central question of whether a merger may substantially lessen competition. This section discusses several categories and sources of evidence that the Agencies, in their experience, have found most informative in predicting the likely competitive effects of mergers. The list provided here is not exhaustive. In any given case, reliable evidence may be available in only some categories or from some sources. For each category of evidence, the Agencies consider evidence indicating that the merger may enhance competition as well as evidence indicating that it may lessen competition.

2.1 Types of Evidence

2.1.1 Actual Effects Observed in Consummated Mergers

When evaluating a consummated merger, the ultimate issue is not only whether adverse competitive effects have already resulted from the merger, but also whether such effects are likely to arise in the future. Evidence of observed post-merger price increases or other changes adverse to customers is given substantial weight. The Agencies evaluate whether such changes are anticompetitive effects resulting from the merger, in which case they can be dispositive. However, a consummated merger may be anticompetitive even if such effects have not yet been observed, perhaps because the merged firm may be aware of the possibility of post-merger antitrust review and moderating its conduct. Consequently, the Agencies also consider the same types of evidence they consider when evaluating unconsummated mergers.

2.1.2 Direct Comparisons Based on Experience

The Agencies look for historical events, or "natural experiments," that are informative regarding the competitive effects of the merger. For example, the Agencies may examine the impact of recent mergers, entry, expansion, or exit in the relevant market. Effects of analogous events in similar markets may also be informative.

The Agencies also look for reliable evidence based on variations among similar markets. For example, if the merging firms compete in some locales but not others, comparisons of prices charged in regions where they do and do not compete may be informative regarding post-merger prices. In some cases, however, prices are set on such a broad geographic basis that such comparisons are not informative. The Agencies also may examine how prices in similar markets vary with the number of significant competitors in those markets.

2.1.3 Market Shares and Concentration in a Relevant Market

The Agencies give weight to the merging parties' market shares in a relevant market, the level of concentration, and the change in concentration caused by the merger. See Sections 4 and 5. Mergers that cause a significant increase in concentration and result in highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.

2.1.4 Substantial Head-to-Head Competition

The Agencies consider whether the merging firms have been, or likely will become absent the merger, substantial head-to-head competitors. Such evidence can be especially relevant for evaluating adverse unilateral effects, which result directly from the loss of that competition. See Section 6. This evidence can also inform market definition. See Section 4.

2.1.5 Disruptive Role of a Merging Party

The Agencies consider whether a merger may lessen competition by eliminating a "maverick" firm, i.e., a firm that plays a disruptive role in the market to the benefit of customers. For example, if one of the merging firms has a strong incumbency position and the other merging firm threatens to

disrupt market conditions with a new technology or business model, their merger can involve the loss of actual or potential competition. Likewise, one of the merging firms may have the incentive to take the lead in price cutting or other competitive conduct or to resist increases in industry prices. A firm that may discipline prices based on its ability and incentive to expand production rapidly using available capacity also can be a maverick, as can a firm that has often resisted otherwise prevailing industry norms to cooperate on price setting or other terms of competition.

2.2 Sources of Evidence

The Agencies consider many sources of evidence in their merger analysis. The most common sources of reasonably available and reliable evidence are the merging parties, customers, other industry participants, and industry observers.

2.2.1 Merging Parties

The Agencies typically obtain substantial information from the merging parties. This information can take the form of documents, testimony, or data, and can consist of descriptions of competitively relevant conditions or reflect actual business conduct and decisions. Documents created in the normal course are more probative than documents created as advocacy materials in merger review. Documents describing industry conditions can be informative regarding the operation of the market and how a firm identifies and assesses its rivals, particularly when business decisions are made in reliance on the accuracy of those descriptions. The business decisions taken by the merging firms also can be informative about industry conditions. For example, if a firm sets price well above incremental cost, that normally indicates either that the firm believes its customers are not highly sensitive to price (not in itself of antitrust concern, see Section 4.1.3[3]) or that the firm and its rivals are engaged in coordinated interaction (see Section 7). Incremental cost depends on the relevant increment in output as well as on the time period involved, and in the case of large increments and sustained changes in output it may include some costs that would be fixed for smaller increments of output or shorter time periods.

Explicit or implicit evidence that the merging parties intend to raise prices, reduce output or capacity, reduce product quality or variety, withdraw products or delay their introduction, or curtail research and development efforts after the merger, or explicit or implicit evidence that the ability to engage in such conduct motivated the merger, can be highly informative in evaluating the likely effects of a merger. Likewise, the Agencies look for reliable evidence that the merger is likely to result in efficiencies. The Agencies give careful consideration to the views of individuals whose responsibilities, expertise, and experience relating to the issues in question provide particular indicia of reliability. The financial terms of the transaction may also be informative regarding competitive effects. For example, a purchase price in excess of the acquired firm's stand-alone market value may indicate that the acquiring firm is paying a premium because it expects to be able to reduce competition or to achieve efficiencies.

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[3] High margins commonly arise for products that are significantly differentiated. Products involving substantial fixed costs typically will be developed only if suppliers expect there to be enough differentiation to support margins sufficient to cover those fixed costs. High margins can be consistent with incumbent firms earning competitive returns.

2.2.2 *Customers*

Customers can provide a variety of information to the Agencies, ranging from information about their own purchasing behavior and choices to their views about the effects of the merger itself.

Information from customers about how they would likely respond to a price increase, and the relative attractiveness of different products or suppliers, may be highly relevant, especially when corroborated by other evidence such as historical purchasing patterns and practices. Customers also can provide valuable information about the impact of historical events such as entry by a new supplier.

The conclusions of well-informed and sophisticated customers on the likely impact of the merger itself can also help the Agencies investigate competitive effects, because customers typically feel the consequences of both competitively beneficial and competitively harmful mergers. In evaluating such evidence, the Agencies are mindful that customers may oppose, or favor, a merger for reasons unrelated to the antitrust issues raised by that merger.

When some customers express concerns about the competitive effects of a merger while others view the merger as beneficial or neutral, the Agencies take account of this divergence in using the information provided by customers and consider the likely reasons for such divergence of views. For example, if for regulatory reasons some customers cannot buy imported products, while others can, a merger between domestic suppliers may harm the former customers even if it leaves the more flexible customers unharmed. See Section 3.

When direct customers of the merging firms compete against one another in a downstream market, their interests may not be aligned with the interests of final consumers, especially if the direct customers expect to pass on any anticompetitive price increase. A customer that is protected from adverse competitive effects by a long-term contract, or otherwise relatively immune from the merger's harmful effects, may even welcome an anticompetitive merger that provides that customer with a competitive advantage over its downstream rivals.

> *Example 1:* As a result of the merger, Customer C will experience a price increase for an input used in producing its final product, raising its costs. Customer C's rivals use this input more intensively than Customer C, and the same price increase applied to them will raise their costs more than it raises Customer C's costs. On balance, Customer C may benefit from the merger even though the merger involves a substantial lessening of competition.

2.2.3 *Other Industry Participants and Observers*

Suppliers, indirect customers, distributors, other industry participants, and industry analysts can also provide information helpful to a merger inquiry. The interests of firms selling products complementary to those offered by the merging firms often are well aligned with those of customers, making their informed views valuable.

Information from firms that are rivals to the merging parties can help illuminate how the market operates. The interests of rival firms often diverge from the interests of customers, since customers normally lose, but rival firms gain, if the merged entity raises its prices. For that reason, the Agencies do not routinely rely on the overall views of rival firms regarding the competitive effects of the

merger. However, rival firms may provide relevant facts, and even their overall views may be instructive, especially in cases where the Agencies are concerned that the merged entity may engage in exclusionary conduct.

> *Example 2:* Merging Firms A and B operate in a market in which network effects are significant, implying that any firm's product is significantly more valuable if it commands a large market share or if it is interconnected with others that in aggregate command such a share. Prior to the merger, they and their rivals voluntarily interconnect with one another. The merger would create an entity with a large enough share that a strategy of ending voluntary interconnection would have a dangerous probability of creating monopoly power in this market. The interests of rivals and of consumers would be broadly aligned in preventing such a merger.

3. Targeted Customers and Price Discrimination

When examining possible adverse competitive effects from a merger, the Agencies consider whether those effects vary significantly for different customers purchasing the same or similar products. Such differential impacts are possible when sellers can discriminate, e.g., by profitably raising price to certain targeted customers but not to others. The possibility of price discrimination influences market definition (see Section 4), the measurement of market shares (see Section 5), and the evaluation of competitive effects (see Sections 6 and 7).

When price discrimination is feasible, adverse competitive effects on targeted customers can arise, even if such effects will not arise for other customers. A price increase for targeted customers may be profitable even if a price increase for all customers would not be profitable because too many other customers would substitute away. When discrimination is reasonably likely, the Agencies may evaluate competitive effects separately by type of customer. The Agencies may have access to information unavailable to customers that is relevant to evaluating whether discrimination is reasonably likely.

For priee discrimination to be feasible, two conditions typically must be met: differential pricing and limited arbitrage.

First, the suppliers engaging in price discrimination must be able to price differently to targeted customers than to other customers. This may involve identification of individual customers to which different prices are offered or offering different prices to different types of customers based on observable characteristics.

> *Example 3:* Suppliers can distinguish large buyers from small buyers. Large buyers are more likely than small buyers to self-supply in response to a significant price increase. The merger may lead to price discrimination against small buyers, harming them, even if large buyers are not harmed. Such discrimination can occur even if there is no discrete gap in size between the classes of large and small buyers.

In other cases, suppliers may be unable to distinguish among different types of customers but can offer multiple products that sort customers based on their purchase decisions.

Second, the targeted customers must not be able to defeat the price increase of concern by arbitrage, e.g., by purchasing indirectly from or through other customers. Arbitrage may be difficult if it would void warranties or make service more difficult or costly for customers. Arbitrage is inherently impossible for many services. Arbitrage between customers at different geographic locations may be

impractical due to transportation costs. Arbitrage on a modest scale may be possible but sufficiently costly or limited that it would not deter or defeat a discriminatory pricing strategy.

4. Market Definition

When the Agencies identify a potential competitive concern with a horizontal merger, market definition plays two roles. First, market definition helps specify the line of commerce and section of the country in which the competitive concern arises. In any merger enforcement action, the Agencies will normally identify one or more relevant markets in which the merger may substantially lessen competition. Second, market definition allows the Agencies to identify market participants and measure market shares and market concentration. See Section 5. The measurement of market shares and market concentration is not an end in itself, but is useful to the extent it illuminates the merger's likely competitive effects.

The Agencies' analysis need not start with market definition. Some of the analytical tools used by the Agencies to assess competitive effects do not rely on market definition, although evaluation of competitive alternatives available to customers is always necessary at some point in the analysis.

Evidence of competitive effects can inform market definition, just as market definition can be informative regarding competitive effects. For example, evidence that a reduction in the number of significant rivals offering a group of products causes prices for those products to rise significantly can itself establish that those products form a relevant market. Such evidence also may more directly predict the competitive effects of a merger, reducing the role of inferences from market definition and market shares.

Where analysis suggests alternative and reasonably plausible candidate markets, and where the resulting market shares lead to very different inferences regarding competitive effects, it is particularly valuable to examine more direct forms of evidence concerning those effects.

Market definition focuses solely on demand substitution factors, i.e., on customers' ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service. The responsive actions of suppliers are also important in competitive analysis. They are considered in these Guidelines in the sections addressing the identification of market participants, the measurement of market shares, the analysis of competitive effects, and entry.

Customers often confront a range of possible substitutes for the products of the merging firms. Some substitutes may be closer, and others more distant, either geographically or in terms of product attributes and perceptions. Additionally, customers may assess the proximity of different products differently. When products or suppliers in different geographic areas are substitutes for one another to varying degrees, defining a market to include some substitutes and exclude others is inevitably a simplification that cannot capture the full variation in the extent to which different products compete against each other. The principles of market definition outlined below seek to make this inevitable simplification as useful and informative as is practically possible. Relevant markets need not have precise metes and bounds.

Defining a market broadly to include relatively distant product or geographic substitutes can lead to misleading market shares. This is because the competitive significance of distant substitutes is unlikely to be commensurate with their shares in a broad market. Although excluding more distant substitutes from the market inevitably understates their competitive significance to some degree, doing so often provides a more accurate indicator of the competitive effects of the merger than would the alternative of including them and overstating their competitive significance as proportional to their shares in an expanded market.

> *Example 4:* Firms A and B, sellers of two leading brands of motorcycles, propose to merge. If Brand A motorcycle prices were to rise, some buyers would substitute to Brand B, and some others would substitute to cars. However, motorcycle buyers see Brand B motorcycles as much more similar to Brand A motorcycles than are cars. Far more cars are sold than motorcycles. Evaluating shares in a market that includes cars would greatly underestimate the competitive significance of Brand B motorcycles in constraining Brand A's prices and greatly overestimate the significance of cars.

Market shares of different products in narrowly defined markets are more likely to capture the relative competitive significance of these products, and often more accurately reflect competition between close substitutes. As a result, properly defined antitrust markets often exclude some substitutes to which some customers might turn in the face of a price increase even if such substitutes provide alternatives for those customers. However, a group of products is too narrow to constitute a relevant market if competition from products outside that group is so ample that even the complete elimination of competition within the group would not significantly harm either direct customers or downstream consumers. The hypothetical monopolist test (see Section 4.1.1) is designed to ensure that candidate markets are not overly narrow in this respect.

The Agencies implement these principles of market definition flexibly when evaluating different possible candidate markets. Relevant antitrust markets defined according to the hypothetical monopolist test are not always intuitive and may not align with how industry members use the term "market."

Section 4.1 describes the principles that apply to product market definition, and gives guidance on how the Agencies most often apply those principles. Section 4.2 describes how the same principles apply to geographic market definition. Although discussed separately for simplicity of exposition, the principles described in Sections 4.1 and 4.2 are combined to define a relevant market, which has both a product and a geographic dimension. In particular, the hypothetical monopolist test is applied to a group of products together with a geographic region to determine a relevant market.

4.1 Product Market Definition

When a product sold by one merging firm (Product A) competes against one or more products sold by the other merging firm, the Agencies define a relevant product market around Product A to evaluate the importance of that competition. Such a relevant product market consists of a group of substitute products including Product A. Multiple relevant product markets may thus be identified.

4.1.1 The Hypothetical Monopolist Test

The Agencies employ the hypothetical monopolist test to evaluate whether groups of products in candidate markets are sufficiently broad to constitute relevant antitrust markets. The Agencies use the

hypothetical monopolist test to identify a set of products that are reasonably interchangeable with a product sold by one of the merging firms.

The hypothetical monopolist test requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing absent the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ("hypothetical monopolist") likely would impose at least a small but significant and non-transitory increase in price ("SSNIP") on at least one product in the market, including at least one product sold by one of the merging firms.[4] For the purpose of analyzing this issue, the terms of sale of products outside the candidate market are held constant. The SSNIP is employed solely as a methodological tool for performing the hypothetical monopolist test; it is not a tolerance level for price increases resulting from a merger.

Groups of products may satisfy the hypothetical monopolist test without including the full range of substitutes from which customers choose. The hypothetical monopolist test may identify a group of products as a relevant market even if customers would substitute significantly to products outside that group in response to a price increase.

> *Example 5:* Products A and B are being tested as a candidate market. Each sells for $100, has an incremental cost of $60, and sells 1200 units. For every dollar increase in the price of Product A, for any given price of Product B, Product A loses twenty units of sales to products outside the candidate market and ten units of sales to Product B, and likewise for Product B. Under these conditions, economic analysis shows that a hypothetical profit-maximizing monopolist controlling Products A and B would raise both of their prices by ten percent, to $110. Therefore, Products A and B satisfy the hypothetical monopolist test using a five percent SSNIP, and indeed for any SSNIP size up to ten percent. This is true even though two-thirds of the sales lost by one product when it raises its price are diverted to products outside the relevant market.

When applying the hypothetical monopolist test to define a market around a product offered by one of the merging firms, if the market includes a second product, the Agencies will normally also include a third product if that third product is a closer substitute for the first product than is the second product. The third product is a closer substitute if, in response to a SSNIP on the first product, greater revenues are diverted to the third product than to the second product.

> *Example 6:* In Example 5, suppose that half of the unit sales lost by Product A when it raises its price are diverted to Product C, which also has a price of $100, while one-third are diverted to Product B. Product C is a closer substitute for Product A than is Product B. Thus Product C will normally be included in the relevant market, even though Products A and B together satisfy the hypothetical monopolist test.

The hypothetical monopolist test ensures that markets are not defined too narrowly, but it does not lead to a single relevant market. The Agencies may evaluate a merger in any relevant market

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[4] If the pricing incentives of the firms supplying the products in the candidate market differ substantially from those of the hypothetical monopolist, for reasons other than the latter's control over a larger group of substitutes, the Agencies may instead employ the concept of a hypothetical profit-maximizing cartel comprised of the firms (with all their products) that sell the products in the candidate market. This approach is most likely to be appropriate if the merging firms sell products outside the candidate market that significantly affect their pricing incentives for products in the candidate market. This could occur, for example, if the candidate market is one for durable equipment and the firms selling that equipment derive substantial net revenues from selling spare parts and service for that equipment.

satisfying the test, guided by the overarching principle that the purpose of defining the market and measuring market shares is to illuminate the evaluation of competitive effects. Because the relative competitive significance of more distant substitutes is apt to be overstated by their share of sales, when the Agencies rely on market shares and concentration, they usually do so in the smallest relevant market satisfying the hypothetical monopolist test.

Example 7: In Example 4, including cars in the market will lead to misleadingly small market shares for motorcycle producers. Unless motorcycles fail the hypothetical monopolist test, the Agencies would not include cars in the market in analyzing this motorcycle merger.

4.1.2 Benchmark Prices and SSNIP Size

The Agencies apply the SSNIP starting from prices that would likely prevail absent the merger. If prices are not likely to change absent the merger, these benchmark prices can reasonably be taken to be the prices prevailing prior to the merger.[5] If prices are likely to change absent the merger, e.g., because of innovation or entry, the Agencies may use anticipated future prices as the benchmark for the test. If prices might fall absent the merger due to the breakdown of pre-merger coordination, the Agencies may use those lower prices as the benchmark for the test. In some cases, the techniques employed by the Agencies to implement the hypothetical monopolist test focus on the difference in incentives between pre-merger firms and the hypothetical monopolist and do not require specifying the benchmark prices.

The SSNIP is intended to represent a "small but significant" increase in the prices charged by firms in the candidate market for the value they contribute to the products or services used by customers. This properly directs attention to the effects of price changes commensurate with those that might result from a significant lessening of competition caused by the merger. This methodology is used because normally it is possible to quantify "small but significant" adverse price effects on customers and analyze their likely reactions, not because price effects are more important than non-price effects.

The Agencies most often use a SSNIP of five percent of the price paid by customers for the products or services to which the merging firms contribute value. However, what constitutes a "small but significant" increase in price, commensurate with a significant loss of competition caused by the merger, depends upon the nature of the industry and the merging firms' positions in it, and the Agencies may accordingly use a price increase that is larger or smaller than five percent. Where explicit or implicit prices for the firms' specific contribution to value can be identified with reasonable clarity, the Agencies may base the SSNIP on those prices.

Example 8: In a merger between two oil pipelines, the SSNIP would be based on the price charged for transporting the oil, not on the price of the oil itself. If pipelines buy the oil at one end and sell it at the other, the price charged for transporting the oil is implicit, equal to the difference between the price paid for oil at the input end and the price charged for oil at the output end. The relevant product sold by the pipelines is better described as "pipeline transportation of oil from point A to point B" than as "oil at point B."

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[5] Market definition for the evaluation of non-merger antitrust concerns such as monopolization or facilitating practices will differ in this respect if the effects resulting from the conduct of concern are already occurring at the time of evaluation.

Example 9: In a merger between two firms that install computers purchased from third parties, the SSNIP would be based on their fees, not on the price of installed computers. If these firms purchase the computers and charge their customers one package price, the implicit installation fee is equal to the package charge to customers less the price of the computers.

Example 10: In Example 9, suppose that the prices paid by the merging firms to purchase computers are opaque, but account for at least ninety-five percent of the prices they charge for installed computers, with profits or implicit fees making up five percent of those prices at most. A five percent SSNIP on the total price paid by customers would at least double those fees or profits. Even if that would be unprofitable for a hypothetical monopolist, a significant increase in fees might well be profitable. If the SSNIP is based on the total price paid by customers, a lower percentage will be used.

4.1.3 Implementing the Hypothetical Monopolist Test

The hypothetical monopolist's incentive to raise prices depends both on the extent to which customers would likely substitute away from the products in the candidate market in response to such a price increase and on the profit margins earned on those products. The profit margin on incremental units is the difference between price and incremental cost on those units. The Agencies often estimate incremental costs, for example using merging parties' documents or data the merging parties use to make business decisions. Incremental cost is measured over the change in output that would be caused by the price increase under consideration.

In considering customers' likely responses to higher prices, the Agencies take into account any reasonably available and reliable evidence, including, but not limited to:

- how customers have shifted purchases in the past in response to relative changes in price or other terms and conditions;
- information from buyers, including surveys, concerning how they would respond to price changes;
- the conduct of industry participants, notably:
    - sellers' business decisions or business documents indicating sellers' informed beliefs concerning how customers would substitute among products in response to relative changes in price;
    - industry participants' behavior in tracking and responding to price changes by some or all rivals;
- objective information about product characteristics and the costs and delays of switching products, especially switching from products in the candidate market to products outside the candidate market;
- the percentage of sales lost by one product in the candidate market, when its price alone rises, that is recaptured by other products in the candidate market, with a higher recapture percentage making a price increase more profitable for the hypothetical monopolist;
- evidence from other industry participants, such as sellers of complementary products;

- legal or regulatory requirements; and
- the influence of downstream competition faced by customers in their output markets.

When the necessary data are available, the Agencies also may consider a "critical loss analysis" to assess the extent to which it corroborates inferences drawn from the evidence noted above. Critical loss analysis asks whether imposing at least a SSNIP on one or more products in a candidate market would raise or lower the hypothetical monopolist's profits. While this "breakeven" analysis differs from the profit-maximizing analysis called for by the hypothetical monopolist test in Section 4.1.1, merging parties sometimes present this type of analysis to the Agencies. A price increase raises profits on sales made at the higher price, but this will be offset to the extent customers substitute away from products in the candidate market. Critical loss analysis compares the magnitude of these two offsetting effects resulting from the price increase. The "critical loss" is defined as the number of lost unit sales that would leave profits unchanged. The "predicted loss" is defined as the number of unit sales that the hypothetical monopolist is predicted to lose due to the price increase. The price increase raises the hypothetical monopolist's profits if the predicted loss is less than the critical loss.

The Agencies consider all of the evidence of customer substitution noted above in assessing the predicted loss. The Agencies require that estimates of the predicted loss be consistent with that evidence, including the pre-merger margins of products in the candidate market used to calculate the critical loss. Unless the firms are engaging in coordinated interaction (see Section 7), high pre-merger margins normally indicate that each firm's product individually faces demand that is not highly sensitive to price.[6] Higher pre-merger margins thus indicate a smaller predicted loss as well as a smaller critical loss. The higher the pre-merger margin, the smaller the recapture percentage necessary for the candidate market to satisfy the hypothetical monopolist test.

Even when the evidence necessary to perform the hypothetical monopolist test quantitatively is not available, the conceptual framework of the test provides a useful methodological tool for gathering and analyzing evidence pertinent to customer substitution and to market definition. The Agencies follow the hypothetical monopolist test to the extent possible given the available evidence, bearing in mind that the ultimate goal of market definition is to help determine whether the merger may substantially lessen competition.

4.1.4 Product Market Definition with Targeted Customers

If a hypothetical monopolist could profitably target a subset of customers for price increases, the Agencies may identify relevant markets defined around those targeted customers, to whom a hypothetical monopolist would profitably and separately impose at least a SSNIP. Markets to serve targeted customers are also known as price discrimination markets. In practice, the Agencies identify price discrimination markets only where they believe there is a realistic prospect of an adverse competitive effect on a group of targeted customers.

> *Example 11:* Glass containers have many uses. In response to a price increase for glass containers, some users would substitute substantially to plastic or metal containers, but baby food manufacturers would not. If a

[6] While margins are important for implementing the hypothetical monopolist test, high margins are not in themselves of antitrust concern.

hypothetical monopolist could price separately and limit arbitrage, baby food manufacturers would be vulnerable to a targeted increase in the price of glass containers. The Agencies could define a distinct market for glass containers used to package baby food.

The Agencies also often consider markets for targeted customers when prices are individually negotiated and suppliers have information about customers that would allow a hypothetical monopolist to identify customers that are likely to pay a higher price for the relevant product. If prices are negotiated individually with customers, the hypothetical monopolist test may suggest relevant markets that are as narrow as individual customers (see also Section 6.2 on bargaining and auctions). Nonetheless, the Agencies often define markets for groups of targeted customers, i.e., by type of customer, rather than by individual customer. By so doing, the Agencies are able to rely on aggregated market shares that can be more helpful in predicting the competitive effects of the merger.

4.2 Geographic Market Definition

The arena of competition affected by the merger may be geographically bounded if geography limits some customers' willingness or ability to substitute to some products, or some suppliers' willingness or ability to serve some customers. Both supplier and customer locations can affect this. The Agencies apply the principles of market definition described here and in Section 4.1 to define a relevant market with a geographic dimension as well as a product dimension.

The scope of geographic markets often depends on transportation costs. Other factors such as language, regulation, tariff and non-tariff trade barriers, custom and familiarity, reputation, and service availability may impede long-distance or international transactions. The competitive significance of foreign firms may be assessed at various exchange rates, especially if exchange rates have fluctuated in the recent past.

In the absence of price discrimination based on customer location, the Agencies normally define geographic markets based on the locations of suppliers, as explained in subsection 4.2.1. In other cases, notably if price discrimination based on customer location is feasible as is often the case when delivered pricing is commonly used in the industry, the Agencies may define geographic markets based on the locations of customers, as explained in subsection 4.2.2.

4.2.1 Geographic Markets Based on the Locations of Suppliers

Geographic markets based on the locations of suppliers encompass the region from which sales are made. Geographic markets of this type often apply when customers receive goods or services at suppliers' locations. Competitors in the market are firms with relevant production, sales, or service facilities in that region. Some customers who buy from these firms may be located outside the boundaries of the geographic market.

The hypothetical monopolist test requires that a hypothetical profit-maximizing firm that was the only present or future producer of the relevant product(s) located in the region would impose at least a SSNIP from at least one location, including at least one location of one of the merging firms. In this exercise the terms of sale for all products produced elsewhere are held constant. A single firm may operate in a number of different geographic markets, even for a single product.

Example 12: The merging parties both have manufacturing plants in City X. The relevant product is expensive to transport and suppliers price their products for pickup at their locations. Rival plants are some distance away in City Y. A hypothetical monopolist controlling all plants in City X could profitably impose a SSNIP at these plants. Competition from more distant plants would not defeat the price increase because supplies coming from more distant plants require expensive transportation. The relevant geographic market is defined around the plants in City X.

When the geographic market is defined based on supplier locations, sales made by suppliers located in the geographic market are counted, regardless of the location of the customer making the purchase.

In considering likely reactions of customers to price increases for the relevant product(s) imposed in a candidate geographic market, the Agencies consider any reasonably available and reliable evidence, including:

- how customers have shifted purchases in the past between different geographic locations in response to relative changes in price or other terms and conditions;
- the cost and difficulty of transporting the product (or the cost and difficulty of a customer traveling to a seller's location), in relation to its price;
- whether suppliers need a presence near customers to provide service or support;
- evidence on whether sellers base business decisions on the prospect of customers switching between geographic locations in response to relative changes in price or other competitive variables;
- the costs and delays of switching from suppliers in the candidate geographic market to suppliers outside the candidate geographic market; and
- the influence of downstream competition faced by customers in their output markets.

4.2.2 Geographic Markets Based on the Locations of Customers

When the hypothetical monopolist could discriminate based on customer location, the Agencies may define geographic markets based on the locations of targeted customers.[7] Geographic markets of this type often apply when suppliers deliver their products or services to customers' locations. Geographic markets of this type encompass the region into which sales are made. Competitors in the market are firms that sell to customers in the specified region. Some suppliers that sell into the relevant market may be located outside the boundaries of the geographic market.

The hypothetical monopolist test requires that a hypothetical profit-maximizing firm that was the only present or future seller of the relevant product(s) to customers in the region would impose at least a SSNIP on some customers in that region. A region forms a relevant geographic market if this price increase would not be defeated by substitution away from the relevant product or by arbitrage,

[7] For customers operating in multiple locations, only those customer locations within the targeted zone are included in the market.

e.g., customers in the region travelling outside it to purchase the relevant product. In this exercise, the terms of sale for products sold to all customers outside the region are held constant.

Example 13: Customers require local sales and support. Suppliers have sales and service operations in many geographic areas and can discriminate based on customer location. The geographic market can be defined around the locations of customers.

Example 14: Each merging firm has a single manufacturing plant and delivers the relevant product to customers in City X and in City Y. The relevant product is expensive to transport. The merging firms' plants are by far the closest to City X, but no closer to City Y than are numerous rival plants. This fact pattern suggests that customers in City X may be harmed by the merger even if customers in City Y are not. For that reason, the Agencies consider a relevant geographic market defined around customers in City X. Such a market could be defined even if the region around the merging firms' plants would not be a relevant geographic market defined based on the location of sellers because a hypothetical monopolist controlling all plants in that region would find a SSNIP imposed on all of its customers unprofitable due to the loss of sales to customers in City Y.

When the geographic market is defined based on customer locations, sales made to those customers are counted, regardless of the location of the supplier making those sales.

Example 15: Customers in the United States must use products approved by U.S. regulators. Foreign customers use products not approved by U.S. regulators. The relevant product market consists of products approved by U.S. regulators. The geographic market is defined around U.S. customers. Any sales made to U.S. customers by foreign suppliers are included in the market, and those foreign suppliers are participants in the U.S. market even though located outside it.

5. Market Participants, Market Shares, and Market Concentration

The Agencies normally consider measures of market shares and market concentration as part of their evaluation of competitive effects. The Agencies evaluate market shares and concentration in conjunction with other reasonably available and reliable evidence for the ultimate purpose of determining whether a merger may substantially lessen competition.

Market shares can directly influence firms' competitive incentives. For example, if a price reduction to gain new customers would also apply to a firm's existing customers, a firm with a large market share may be more reluctant to implement a price reduction than one with a small share. Likewise, a firm with a large market share may not feel pressure to reduce price even if a smaller rival does. Market shares also can reflect firms' capabilities. For example, a firm with a large market share may be able to expand output rapidly by a larger absolute amount than can a small firm. Similarly, a large market share tends to indicate low costs, an attractive product, or both.

5.1 Market Participants

All firms that currently earn revenues in the relevant market are considered market participants. Vertically integrated firms are also included to the extent that their inclusion accurately reflects their competitive significance. Firms not currently earning revenues in the relevant market, but that have committed to entering the market in the near future, are also considered market participants.

Firms that are not current producers in a relevant market, but that would very likely provide rapid supply responses with direct competitive impact in the event of a SSNIP, without incurring

significant sunk costs, are also considered market participants. These firms are termed "rapid entrants." Sunk costs are entry or exit costs that cannot be recovered outside the relevant market. Entry that would take place more slowly in response to adverse competitive effects, or that requires firms to incur significant sunk costs, is considered in Section 9.

Firms that produce the relevant product but do not sell it in the relevant geographic market may be rapid entrants. Other things equal, such firms are most likely to be rapid entrants if they are close to the geographic market.

> *Example 16:* Farm A grows tomatoes halfway between Cities X and Y. Currently, it ships its tomatoes to City X because prices there are two percent higher. Previously it has varied the destination of its shipments in response to small price variations. Farm A would likely be a rapid entrant participant in a market for tomatoes in City Y.

> *Example 17:* Firm B has bid multiple times to supply milk to School District S, and actually supplies milk to schools in some adjacent areas. It has never won a bid in School District S, but is well qualified to serve that district and has often nearly won. Firm B would be counted as a rapid entrant in a market for school milk in School District S.

More generally, if the relevant market is defined around targeted customers, firms that produce relevant products but do not sell them to those customers may be rapid entrants if they can easily and rapidly begin selling to the targeted customers.

Firms that clearly possess the necessary assets to supply into the relevant market rapidly may also be rapid entrants. In markets for relatively homogeneous goods where a supplier's ability to compete depends predominantly on its costs and its capacity, and not on other factors such as experience or reputation in the relevant market, a supplier with efficient idle capacity, or readily available "swing" capacity currently used in adjacent markets that can easily and profitably be shifted to serve the relevant market, may be a rapid entrant.[8] However, idle capacity may be inefficient, and capacity used in adjacent markets may not be available, so a firm's possession of idle or swing capacity alone does not make that firm a rapid entrant.

5.2 Market Shares

The Agencies normally calculate market shares for all firms that currently produce products in the relevant market, subject to the availability of data. The Agencies also calculate market shares for other market participants if this can be done to reliably reflect their competitive significance.

Market concentration and market share data are normally based on historical evidence. However, recent or ongoing changes in market conditions may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. The Agencies consider reasonably predictable effects of recent or ongoing changes in market conditions when calculating and interpreting market share data. For example, if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm, the Agencies may conclude that that firm's historical market share

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[8] If this type of supply side substitution is nearly universal among the firms selling one or more of a group of products, the Agencies may use an aggregate description of markets for those products as a matter of convenience.

overstates its future competitive significance. The Agencies may project historical market shares into the foreseeable future when this can be done reliably.

The Agencies measure market shares based on the best available indicator of firms' future competitive significance in the relevant market. This may depend upon the type of competitive effect being considered, and on the availability of data. Typically, annual data are used, but where individual transactions are large and infrequent so annual data may be unrepresentative, the Agencies may measure market shares over a longer period of time.

In most contexts, the Agencies measure each firm's market share based on its actual or projected revenues in the relevant market. Revenues in the relevant market tend to be the best measure of attractiveness to customers, since they reflect the real-world ability of firms to surmount all of the obstacles necessary to offer products on terms and conditions that are attractive to customers. In cases where one unit of a low-priced product can substitute for one unit of a higher-priced product, unit sales may measure competitive significance better than revenues. For example, a new, much less expensive product may have great competitive significance if it substantially erodes the revenues earned by older, higher-priced products, even if it earns relatively few revenues. In cases where customers sign long-term contracts, face switching costs, or tend to re-evaluate their suppliers only occasionally, revenues earned from recently acquired customers may better reflect the competitive significance of suppliers than do total revenues.

In markets for homogeneous products, a firm's competitive significance may derive principally from its ability and incentive to rapidly expand production in the relevant market in response to a price increase or output reduction by others in that market. As a result, a firm's competitive significance may depend upon its level of readily available capacity to serve the relevant market if that capacity is efficient enough to make such expansion profitable. In such markets, capacities or reserves may better reflect the future competitive significance of suppliers than revenues, and the Agencies may calculate market shares using those measures. Market participants that are not current producers may then be assigned positive market shares, but only if a measure of their competitive significance properly comparable to that of current producers is available. When market shares are measured based on firms' readily available capacities, the Agencies do not include capacity that is committed or so profitably employed outside the relevant market, or so high-cost, that it would not likely be used to respond to a SSNIP in the relevant market.

> *Example 18:* The geographic market is defined around customers in the United States. Firm X produces the relevant product outside the United States, and most of its sales are made to customers outside the United States. In most contexts, Firm X's market share will be based on its sales to U.S. customers, not its total sales or total capacity. However, if the relevant product is homogeneous, and if Firm X would significantly expand sales to U.S. customers rapidly and without incurring significant sunk costs in response to a SSNIP, the Agencies may base Firm X's market share on its readily available capacity to serve U.S. customers.

When the Agencies define markets serving targeted customers, these same principles are used to measure market shares, as they apply to those customers. In most contexts, each firm's market share is based on its actual or projected revenues from the targeted customers. However, the Agencies may instead measure market shares based on revenues from a broader group of customers if doing so would more accurately reflect the competitive significance of different suppliers in the relevant market. Revenues earned from a broader group of customers may also be used when better data are thereby available.

5.3 Market Concentration

Market concentration is often one useful indicator of likely competitive effects of a merger. In evaluating market concentration, the Agencies consider both the post-merger level of market concentration and the change in concentration resulting from a merger. Market shares may not fully reflect the competitive significance of firms in the market or the impact of a merger. They are used in conjunction with other evidence of competitive effects. See Sections 6 and 7.

In analyzing mergers between an incumbent and a recent or potential entrant, to the extent the Agencies use the change in concentration to evaluate competitive effects, they will do so using projected market shares. A merger between an incumbent and a potential entrant can raise significant competitive concerns. The lessening of competition resulting from such a merger is more likely to be substantial, the larger is the market share of the incumbent, the greater is the competitive significance of the potential entrant, and the greater is the competitive threat posed by this potential entrant relative to others.

The Agencies give more weight to market concentration when market shares have been stable over time, especially in the face of historical changes in relative prices or costs. If a firm has retained its market share even after its price has increased relative to those of its rivals, that firm already faces limited competitive constraints, making it less likely that its remaining rivals will replace the competition lost if one of that firm's important rivals is eliminated due to a merger. By contrast, even a highly concentrated market can be very competitive if market shares fluctuate substantially over short periods of time in response to changes in competitive offerings. However, if competition by one of the merging firms has significantly contributed to these fluctuations, perhaps because it has acted as a maverick, the Agencies will consider whether the merger will enhance market power by combining that firm with one of its significant rivals.

The Agencies may measure market concentration using the number of significant competitors in the market. This measure is most useful when there is a gap in market share between significant competitors and smaller rivals or when it is difficult to measure revenues in the relevant market. The Agencies also may consider the combined market share of the merging firms as an indicator of the extent to which others in the market may not be able readily to replace competition between the merging firms that is lost through the merger.

The Agencies often calculate the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual firms' market shares,[9] and thus gives proportionately greater weight to the larger market shares. When using the HHI, the Agencies

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[9] For example, a market consisting of four firms with market shares of thirty percent, thirty percent, twenty percent, and twenty percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about firms with small shares is not critical because such firms do not affect the HHI significantly.

consider both the post-merger level of the HHI and the increase in the HHI resulting from the merger. The increase in the HHI is equal to twice the product of the market shares of the merging firms.[10]

Based on their experience, the Agencies generally classify markets into three types:

- Unconcentrated Markets: HHI below 1500
- Moderately Concentrated Markets: HHI between 1500 and 2500
- Highly Concentrated Markets: HHI above 2500

The Agencies employ the following general standards for the relevant markets they have defined:

- *Small Change in Concentration:* Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.
- *Unconcentrated Markets:* Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.
- *Moderately Concentrated Markets:* Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.
- *Highly Concentrated Markets:* Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power. The presumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.

The purpose of these thresholds is not to provide a rigid screen to separate competitively benign mergers from anticompetitive ones, although high levels of concentration do raise concerns. Rather, they provide one way to identify some mergers unlikely to raise competitive concerns and some others for which it is particularly important to examine whether other competitive factors confirm, reinforce, or counteract the potentially harmful effects of increased concentration. The higher the post-merger HHI and the increase in the HHI, the greater are the Agencies' potential competitive concerns and the greater is the likelihood that the Agencies will request additional information to conduct their analysis.

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[10] For example, the merger of firms with shares of five percent and ten percent of the market would increase the HHI by 100 ($5 \times 10 \times 2 = 100$).

6. Unilateral Effects

The elimination of competition between two firms that results from their merger may alone constitute a substantial lessening of competition. Such unilateral effects are most apparent in a merger to monopoly in a relevant market, but are by no means limited to that case. Whether cognizable efficiencies resulting from the merger are likely to reduce or reverse adverse unilateral effects is addressed in Section 10.

Several common types of unilateral effects are discussed in this section. Section 6.1 discusses unilateral price effects in markets with differentiated products. Section 6.2 discusses unilateral effects in markets where sellers negotiate with buyers or prices are determined through auctions. Section 6.3 discusses unilateral effects relating to reductions in output or capacity in markets for relatively homogeneous products. Section 6.4 discusses unilateral effects arising from diminished innovation or reduced product variety. These effects do not exhaust the types of possible unilateral effects; for example, exclusionary unilateral effects also can arise.

A merger may result in different unilateral effects along different dimensions of competition. For example, a merger may increase prices in the short term but not raise longer-term concerns about innovation, either because rivals will provide sufficient innovation competition or because the merger will generate cognizable research and development efficiencies. See Section 10.

6.1 Pricing of Differentiated Products

In differentiated product industries, some products can be very close substitutes and compete strongly with each other, while other products are more distant substitutes and compete less strongly. For example, one high-end product may compete much more directly with another high-end product than with any low-end product.

A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level. Some of the sales lost due to the price rise will merely be diverted to the product of the merger partner and, depending on relative margins, capturing such sales loss through merger may make the price increase profitable even though it would not have been profitable prior to the merger.

The extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects. Unilateral price effects are greater, the more the buyers of products sold by one merging firm consider products sold by the other merging firm to be their next choice. The Agencies consider any reasonably available and reliable information to evaluate the extent of direct competition between the products sold by the merging firms. This includes documentary and testimonial evidence, win/loss reports and evidence from discount approval processes, customer switching patterns, and customer surveys. The types of evidence relied on often overlap substantially with the types of evidence of customer substitution relevant to the hypothetical monopolist test. See Section 4.1.1.

Substantial unilateral price elevation post-merger for a product formerly sold by one of the merging firms normally requires that a significant fraction of the customers purchasing that product view

products formerly sold by the other merging firm as their next-best choice. However, unless pre-merger margins between price and incremental cost are low, that significant fraction need not approach a majority. For this purpose, incremental cost is measured over the change in output that would be caused by the price change considered. A merger may produce significant unilateral effects for a given product even though many more sales are diverted to products sold by non-merging firms than to products previously sold by the merger partner.

> *Example 19:* In Example 5, the merged entity controlling Products A and B would raise prices ten percent, given the product offerings and prices of other firms. In that example, one-third of the sales lost by Product A when its price alone is raised are diverted to Product B. Further analysis is required to account for repositioning, entry, and efficiencies.

In some cases, the Agencies may seek to quantify the extent of direct competition between a product sold by one merging firm and a second product sold by the other merging firm by estimating the diversion ratio from the first product to the second product. The diversion ratio is the fraction of unit sales lost by the first product due to an increase in its price that would be diverted to the second product. Diversion ratios between products sold by one merging firm and products sold by the other merging firm can be very informative for assessing unilateral price effects, with higher diversion ratios indicating a greater likelihood of such effects. Diversion ratios between products sold by merging firms and those sold by non-merging firms have at most secondary predictive value.

Adverse unilateral price effects can arise when the merger gives the merged entity an incentive to raise the price of a product previously sold by one merging firm and thereby divert sales to products previously sold by the other merging firm, boosting the profits on the latter products. Taking as given other prices and product offerings, that boost to profits is equal to the value to the merged firm of the sales diverted to those products. The value of sales diverted to a product is equal to the number of units diverted to that product multiplied by the margin between price and incremental cost on that product. In some cases, where sufficient information is available, the Agencies assess the value of diverted sales, which can serve as an indicator of the upward pricing pressure on the first product resulting from the merger. Diagnosing unilateral price effects based on the value of diverted sales need not rely on market definition or the calculation of market shares and concentration. The Agencies rely much more on the value of diverted sales than on the level of the HHI for diagnosing unilateral price effects in markets with differentiated products. If the value of diverted sales is proportionately small, significant unilateral price effects are unlikely.[11]

Where sufficient data are available, the Agencies may construct economic models designed to quantify the unilateral price effects resulting from the merger. These models often include independent price responses by non-merging firms. They also can incorporate merger-specific efficiencies. These merger simulation methods need not rely on market definition. The Agencies do not treat merger simulation evidence as conclusive in itself, and they place more weight on whether their merger simulations consistently predict substantial price increases than on the precise prediction of any single simulation.

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[11] For this purpose, the value of diverted sales is measured in proportion to the lost revenues attributable to the reduction in unit sales resulting from the price increase. Those lost revenues equal the reduction in the number of units sold of that product multiplied by that product's price.

A merger is unlikely to generate substantial unilateral price increases if non-merging parties offer very close substitutes for the products offered by the merging firms. In some cases, non-merging firms may be able to reposition their products to offer close substitutes for the products offered by the merging firms. Repositioning is a supply-side response that is evaluated much like entry, with consideration given to timeliness, likelihood, and sufficiency. See Section 9. The Agencies consider whether repositioning would be sufficient to deter or counteract what otherwise would be significant anticompetitive unilateral effects from a differentiated products merger.

6.2 Bargaining and Auctions

In many industries, especially those involving intermediate goods and services, buyers and sellers negotiate to determine prices and other terms of trade. In that process, buyers commonly negotiate with more than one seller, and may play sellers off against one another. Some highly structured forms of such competition are known as auctions. Negotiations often combine aspects of an auction with aspects of one-on-one negotiation, although pure auctions are sometimes used in government procurement and elsewhere.

A merger between two competing sellers prevents buyers from playing those sellers off against each other in negotiations. This alone can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it, and less favorable to the buyer, than the merging firms would have offered separately absent the merger. The Agencies analyze unilateral effects of this type using similar approaches to those described in Section 6.1.

Anticompetitive unilateral effects in these settings are likely in proportion to the frequency or probability with which, prior to the merger, one of the merging sellers had been the runner-up when the other won the business. These effects also are likely to be greater, the greater advantage the runner-up merging firm has over other suppliers in meeting customers' needs. These effects also tend to be greater, the more profitable were the pre-merger winning bids. All of these factors are likely to be small if there are many equally placed bidders.

The mechanisms of these anticompetitive unilateral effects, and the indicia of their likelihood, differ somewhat according to the bargaining practices used, the auction format, and the sellers' information about one another's costs and about buyers' preferences. For example, when the merging sellers are likely to know which buyers they are best and second best placed to serve, any anticompetitive unilateral effects are apt to be targeted at those buyers; when sellers are less well informed, such effects are more apt to be spread over a broader class of buyers.

6.3 Capacity and Output for Homogeneous Products

In markets involving relatively undifferentiated products, the Agencies may evaluate whether the merged firm will find it profitable unilaterally to suppress output and elevate the market price. A firm may leave capacity idle, refrain from building or obtaining capacity that would have been obtained absent the merger, or eliminate pre-existing production capabilities. A firm may also divert the use of capacity away from one relevant market and into another so as to raise the price in the former market. The competitive analyses of these alternative modes of output suppression may differ.

A unilateral output suppression strategy is more likely to be profitable when (1) the merged firm's market share is relatively high; (2) the share of the merged firm's output already committed for sale at prices unaffected by the output suppression is relatively low; (3) the margin on the suppressed output is relatively low; (4) the supply responses of rivals are relatively small; and (5) the market elasticity of demand is relatively low.

A merger may provide the merged firm a larger base of sales on which to benefit from the resulting price rise, or it may eliminate a competitor that otherwise could have expanded its output in response to the price rise.

> *Example 20:* Firms A and B both produce an industrial commodity and propose to merge. The demand for this commodity is insensitive to price. Firm A is the market leader. Firm B produces substantial output, but its operating margins are low because it operates high-cost plants. The other suppliers are operating very near capacity. The merged firm has an incentive to reduce output at the high-cost plants, perhaps shutting down some of that capacity, thus driving up the price it receives on the remainder of its output. The merger harms customers, notwithstanding that the merged firm shifts some output from high-cost plants to low-cost plants.

In some cases, a merger between a firm with a substantial share of the sales in the market and a firm with significant excess capacity to serve that market can make an output suppression strategy profitable.[12] This can occur even if the firm with the excess capacity has a relatively small share of sales, if that firm's ability to expand, and thus keep price from rising, has been making an output suppression strategy unprofitable for the firm with the larger market share.

6.4 Innovation and Product Variety

Competition often spurs firms to innovate. The Agencies may consider whether a merger is likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger. That curtailment of innovation could take the form of reduced incentive to continue with an existing product-development effort or reduced incentive to initiate development of new products.

The first of these effects is most likely to occur if at least one of the merging firms is engaging in efforts to introduce new products that would capture substantial revenues from the other merging firm. The second, longer-run effect is most likely to occur if at least one of the merging firms has capabilities that are likely to lead it to develop new products in the future that would capture substantial revenues from the other merging firm. The Agencies therefore also consider whether a merger will diminish innovation competition by combining two of a very small number of firms with the strongest capabilities to successfully innovate in a specific direction.

The Agencies evaluate the extent to which successful innovation by one merging firm is likely to take sales from the other, and the extent to which post-merger incentives for future innovation will be lower than those that would prevail in the absence of the merger. The Agencies also consider whether the merger is likely to enable innovation that would not otherwise take place, by bringing together

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[12] Such a merger also can cause adverse coordinated effects, especially if the acquired firm with excess capacity was disrupting effective coordination.

complementary capabilities that cannot be otherwise combined or for some other merger-specific reason. See Section 10.

The Agencies also consider whether a merger is likely to give the merged firm an incentive to cease offering one of the relevant products sold by the merging parties. Reductions in variety following a merger may or may not be anticompetitive. Mergers can lead to the efficient consolidation of products when variety offers little in value to customers. In other cases, a merger may increase variety by encouraging the merged firm to reposition its products to be more differentiated from one another.

If the merged firm would withdraw a product that a significant number of customers strongly prefer to those products that would remain available, this can constitute a harm to customers over and above any effects on the price or quality of any given product. If there is evidence of such an effect, the Agencies may inquire whether the reduction in variety is largely due to a loss of competitive incentives attributable to the merger. An anticompetitive incentive to eliminate a product as a result of the merger is greater and more likely, the larger is the share of profits from that product coming at the expense of profits from products sold by the merger partner. Where a merger substantially reduces competition by bringing two close substitute products under common ownership, and one of those products is eliminated, the merger will often also lead to a price increase on the remaining product, but that is not a necessary condition for anticompetitive effect.

> *Example 21:* Firm A sells a high-end product at a premium price. Firm B sells a mid-range product at a lower price, serving customers who are more price sensitive. Several other firms have low-end products. Firms A and B together have a large share of the relevant market. Firm A proposes to acquire Firm B and discontinue Firm B's product. Firm A expects to retain most of Firm B's customers. Firm A may not find it profitable to raise the price of its high-end product after the merger, because doing so would reduce its ability to retain Firm B's more price-sensitive customers. The Agencies may conclude that the withdrawal of Firm B's product results from a loss of competition and materially harms customers.

7. Coordinated Effects

A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. Coordinated interaction involves conduct by multiple firms that is profitable for each of them only as a result of the accommodating reactions of the others. These reactions can blunt a firm's incentive to offer customers better deals by undercutting the extent to which such a move would win business away from rivals. They also can enhance a firm's incentive to raise prices, by assuaging the fear that such a move would lose customers to rivals.

Coordinated interaction includes a range of conduct. Coordinated interaction can involve the explicit negotiation of a common understanding of how firms will compete or refrain from competing. Such conduct typically would itself violate the antitrust laws. Coordinated interaction also can involve a similar common understanding that is not explicitly negotiated but would be enforced by the detection and punishment of deviations that would undermine the coordinated interaction. Coordinated interaction alternatively can involve parallel accommodating conduct not pursuant to a prior understanding. Parallel accommodating conduct includes situations in which each rival's response to competitive moves made by others is individually rational, and not motivated by

retaliation or deterrence nor intended to sustain an agreed-upon market outcome, but nevertheless emboldens price increases and weakens competitive incentives to reduce prices or offer customers better terms. Coordinated interaction includes conduct not otherwise condemned by the antitrust laws.

The ability of rival firms to engage in coordinated conduct depends on the strength and predictability of rivals' responses to a price change or other competitive initiative. Under some circumstances, a merger can result in market concentration sufficient to strengthen such responses or enable multiple firms in the market to predict them more confidently, thereby affecting the competitive incentives of multiple firms in the market, not just the merged firm.

7.1 Impact of Merger on Coordinated Interaction

The Agencies examine whether a merger is likely to change the manner in which market participants interact, inducing substantially more coordinated interaction. The Agencies seek to identify how a merger might significantly weaken competitive incentives through an increase in the strength, extent, or likelihood of coordinated conduct. There are, however, numerous forms of coordination, and the risk that a merger will induce adverse coordinated effects may not be susceptible to quantification or detailed proof. Therefore, the Agencies evaluate the risk of coordinated effects using measures of market concentration (see Section 5) in conjunction with an assessment of whether a market is vulnerable to coordinated conduct. See Section 7.2. The analysis in Section 7.2 applies to moderately and highly concentrated markets, as unconcentrated markets are unlikely to be vulnerable to coordinated conduct.

Pursuant to the Clayton Act's incipiency standard, the Agencies may challenge mergers that in their judgment pose a real danger of harm through coordinated effects, even without specific evidence showing precisely how the coordination likely would take place. The Agencies are likely to challenge a merger if the following three conditions are all met: (1) the merger would significantly increase concentration and lead to a moderately or highly concentrated market; (2) that market shows signs of vulnerability to coordinated conduct (see Section 7.2); and (3) the Agencies have a credible basis on which to conclude that the merger may enhance that vulnerability. An acquisition eliminating a maverick firm (see Section 2.1.5) in a market vulnerable to coordinated conduct is likely to cause adverse coordinated effects.

7.2 Evidence a Market is Vulnerable to Coordinated Conduct

The Agencies presume that market conditions are conducive to coordinated interaction if firms representing a substantial share in the relevant market appear to have previously engaged in express collusion affecting the relevant market, unless competitive conditions in the market have since changed significantly. Previous express collusion in another geographic market will have the same weight if the salient characteristics of that other market at the time of the collusion are comparable to those in the relevant market. Failed previous attempts at collusion in the relevant market suggest that successful collusion was difficult pre-merger but not so difficult as to deter attempts, and a merger may tend to make success more likely. Previous collusion or attempted collusion in another product market may also be given substantial weight if the salient characteristics of that other market at the time of the collusion are closely comparable to those in the relevant market.

A market typically is more vulnerable to coordinated conduct if each competitively important firm's significant competitive initiatives can be promptly and confidently observed by that firm's rivals. This is more likely to be the case if the terms offered to customers are relatively transparent. Price transparency can be greater for relatively homogeneous products. Even if terms of dealing are not transparent, transparency regarding the identities of the firms serving particular customers can give rise to coordination, e.g., through customer or territorial allocation. Regular monitoring by suppliers of one another's prices or customers can indicate that the terms offered to customers are relatively transparent.

A market typically is more vulnerable to coordinated conduct if a firm's prospective competitive reward from attracting customers away from its rivals will be significantly diminished by likely responses of those rivals. This is more likely to be the case, the stronger and faster are the responses the firm anticipates from its rivals. The firm is more likely to anticipate strong responses if there are few significant competitors, if products in the relevant market are relatively homogeneous, if customers find it relatively easy to switch between suppliers, or if suppliers use meeting-competition clauses.

A firm is more likely to be deterred from making competitive initiatives by whatever responses occur if sales are small and frequent rather than via occasional large and long-term contracts or if relatively few customers will switch to it before rivals are able to respond. A firm is less likely to be deterred by whatever responses occur if the firm has little stake in the status quo. For example, a firm with a small market share that can quickly and dramatically expand, constrained neither by limits on production nor by customer reluctance to switch providers or to entrust business to a historically small provider, is unlikely to be deterred. Firms are also less likely to be deterred by whatever responses occur if competition in the relevant market is marked by leapfrogging technological innovation, so that responses by competitors leave the gains from successful innovation largely intact.

A market is more apt to be vulnerable to coordinated conduct if the firm initiating a price increase will lose relatively few customers after rivals respond to the increase. Similarly, a market is more apt to be vulnerable to coordinated conduct if a firm that first offers a lower price or improved product to customers will retain relatively few customers thus attracted away from its rivals after those rivals respond.

The Agencies regard coordinated interaction as more likely, the more the participants stand to gain from successful coordination. Coordination generally is more profitable, the lower is the market elasticity of demand.

Coordinated conduct can harm customers even if not all firms in the relevant market engage in the coordination, but significant harm normally is likely only if a substantial part of the market is subject to such conduct. The prospect of harm depends on the collective market power, in the relevant market, of firms whose incentives to compete are substantially weakened by coordinated conduct. This collective market power is greater, the lower is the market elasticity of demand. This collective market power is diminished by the presence of other market participants with small market shares and little stake in the outcome resulting from the coordinated conduct, if these firms can rapidly expand their sales in the relevant market.

Buyer characteristics and the nature of the procurement process can affect coordination. For example, sellers may have the incentive to bid aggressively for a large contract even if they expect strong responses by rivals. This is especially the case for sellers with small market shares, if they can realistically win such large contracts. In some cases, a large buyer may be able to strategically undermine coordinated conduct, at least as it pertains to that buyer's needs, by choosing to put up for bid a few large contracts rather than many smaller ones, and by making its procurement decisions opaque to suppliers.

8. Powerful Buyers

Powerful buyers are often able to negotiate favorable terms with their suppliers. Such terms may reflect the lower costs of serving these buyers, but they also can reflect price discrimination in their favor.

The Agencies consider the possibility that powerful buyers may constrain the ability of the merging parties to raise prices. This can occur, for example, if powerful buyers have the ability and incentive to vertically integrate upstream or sponsor entry, or if the conduct or presence of large buyers undermines coordinated effects. However, the Agencies do not presume that the presence of powerful buyers alone forestalls adverse competitive effects flowing from the merger. Even buyers that can negotiate favorable terms may be harmed by an increase in market power. The Agencies examine the choices available to powerful buyers and how those choices likely would change due to the merger. Normally, a merger that eliminates a supplier whose presence contributed significantly to a buyer's negotiating leverage will harm that buyer.

> *Example 22:* Customer C has been able to negotiate lower pre-merger prices than other customers by threatening to shift its large volume of purchases from one merging firm to the other. No other suppliers are as well placed to meet Customer C's needs for volume and reliability. The merger is likely to harm Customer C. In this situation, the Agencies could identify a price discrimination market consisting of Customer C and similarly placed customers. The merger threatens to end previous price discrimination in their favor.

Furthermore, even if some powerful buyers could protect themselves, the Agencies also consider whether market power can be exercised against other buyers.

> *Example 23:* In Example 22, if Customer C instead obtained the lower pre-merger prices based on a credible threat to supply its own needs, or to sponsor new entry, Customer C might not be harmed. However, even in this case, other customers may still be harmed.

9. Entry

The analysis of competitive effects in Sections 6 and 7 focuses on current participants in the relevant market. That analysis may also include some forms of entry. Firms that would rapidly and easily enter the market in response to a SSNIP are market participants and may be assigned market shares. See Sections 5.1 and 5.2. Firms that have, prior to the merger, committed to entering the market also will normally be treated as market participants. See Section 5.1. This section concerns entry or adjustments to pre-existing entry plans that are induced by the merger.

As part of their full assessment of competitive effects, the Agencies consider entry into the relevant market. The prospect of entry into the relevant market will alleviate concerns about adverse competitive effects only if such entry will deter or counteract any competitive effects of concern so the merger will not substantially harm customers.

The Agencies consider the actual history of entry into the relevant market and give substantial weight to this evidence. Lack of successful and effective entry in the face of non-transitory increases in the margins earned on products in the relevant market tends to suggest that successful entry is slow or difficult. Market values of incumbent firms greatly exceeding the replacement costs of their tangible assets may indicate that these firms have valuable intangible assets, which may be difficult or time consuming for an entrant to replicate.

A merger is not likely to enhance market power if entry into the market is so easy that the merged firm and its remaining rivals in the market, either unilaterally or collectively, could not profitably raise price or otherwise reduce competition compared to the level that would prevail in the absence of the merger. Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract the competitive effects of concern.

The Agencies examine the timeliness, likelihood, and sufficiency of the entry efforts an entrant might practically employ. An entry effort is defined by the actions the firm must undertake to produce and sell in the market. Various elements of the entry effort will be considered. These elements can include: planning, design, and management; permitting, licensing, or other approvals; construction, debugging, and operation of production facilities; and promotion (including necessary introductory discounts), marketing, distribution, and satisfaction of customer testing and qualification requirements. Recent examples of entry, whether successful or unsuccessful, generally provide the starting point for identifying the elements of practical entry efforts. They also can be informative regarding the scale necessary for an entrant to be successful, the presence or absence of entry barriers, the factors that influence the timing of entry, the costs and risk associated with entry, and the sales opportunities realistically available to entrants.

If the assets necessary for an effective and profitable entry effort are widely available, the Agencies will not necessarily attempt to identify which firms might enter. Where an identifiable set of firms appears to have necessary assets that others lack, or to have particularly strong incentives to enter, the Agencies focus their entry analysis on those firms. Firms operating in adjacent or complementary markets, or large customers themselves, may be best placed to enter. However, the Agencies will not presume that a powerful firm in an adjacent market or a large customer will enter the relevant market unless there is reliable evidence supporting that conclusion.

In assessing whether entry will be timely, likely, and sufficient, the Agencies recognize that precise and detailed information may be difficult or impossible to obtain. The Agencies consider reasonably available and reliable evidence bearing on whether entry will satisfy the conditions of timeliness, likelihood, and sufficiency.

9.1 Timeliness

In order to deter the competitive effects of concern, entry must be rapid enough to make unprofitable overall the actions causing those effects and thus leading to entry, even though those actions would be profitable until entry takes effect.

Even if the prospect of entry does not deter the competitive effects of concern, post-merger entry may counteract them. This requires that the impact of entrants in the relevant market be rapid enough that customers are not significantly harmed by the merger, despite any anticompetitive harm that occurs prior to the entry.

The Agencies will not presume that an entrant can have a significant impact on prices before that entrant is ready to provide the relevant product to customers unless there is reliable evidence that anticipated future entry would have such an effect on prices.

9.2 Likelihood

Entry is likely if it would be profitable, accounting for the assets, capabilities, and capital needed and the risks involved, including the need for the entrant to incur costs that would not be recovered if the entrant later exits. Profitability depends upon (a) the output level the entrant is likely to obtain, accounting for the obstacles facing new entrants; (b) the price the entrant would likely obtain in the post-merger market, accounting for the impact of that entry itself on prices; and (c) the cost per unit the entrant would likely incur, which may depend upon the scale at which the entrant would operate.

9.3 Sufficiency

Even where timely and likely, entry may not be sufficient to deter or counteract the competitive effects of concern. For example, in a differentiated product industry, entry may be insufficient because the products offered by entrants are not close enough substitutes to the products offered by the merged firm to render a price increase by the merged firm unprofitable. Entry may also be insufficient due to constraints that limit entrants' competitive effectiveness, such as limitations on the capabilities of the firms best placed to enter or reputational barriers to rapid expansion by new entrants. Entry by a single firm that will replicate at least the scale and strength of one of the merging firms is sufficient. Entry by one or more firms operating at a smaller scale may be sufficient if such firms are not at a significant competitive disadvantage.

10. Efficiencies

Competition usually spurs firms to achieve efficiencies internally. Nevertheless, a primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products. For example, merger-generated efficiencies may enhance competition by permitting two ineffective competitors to form a more effective competitor, e.g., by combining complementary assets. In a unilateral effects context, incremental cost reductions may reduce or reverse any increases in the merged firm's incentive to elevate price. Efficiencies also may lead to new or improved products, even if they do not immediately and directly affect price. In a

coordinated effects context, incremental cost reductions may make coordination less likely or effective by enhancing the incentive of a maverick to lower price or by creating a new maverick firm. Even when efficiencies generated through a merger enhance a firm's ability to compete, however, a merger may have other effects that may lessen competition and make the merger anticompetitive.

The Agencies credit only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. These are termed merger-specific efficiencies.[13] Only alternatives that are practical in the business situation faced by the merging firms are considered in making this determination. The Agencies do not insist upon a less restrictive alternative that is merely theoretical.

Efficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms. Moreover, efficiencies projected reasonably and in good faith by the merging firms may not be realized. Therefore, it is incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm's ability and incentive to compete, and why each would be merger-specific.

Efficiency claims will not be considered if they are vague, speculative, or otherwise cannot be verified by reasonable means. Projections of efficiencies may be viewed with skepticism, particularly when generated outside of the usual business planning process. By contrast, efficiency claims substantiated by analogous past experience are those most likely to be credited.

Cognizable efficiencies are merger-specific efficiencies that have been verified and do not arise from anticompetitive reductions in output or service. Cognizable efficiencies are assessed net of costs produced by the merger or incurred in achieving those efficiencies.

The Agencies will not challenge a merger if cognizable efficiencies are of a character and magnitude such that the merger is not likely to be anticompetitive in any relevant market.[14] To make the requisite determination, the Agencies consider whether cognizable efficiencies likely would be sufficient to reverse the merger's potential to harm customers in the relevant market, e.g., by preventing price

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[13] The Agencies will not deem efficiencies to be merger-specific if they could be attained by practical alternatives that mitigate competitive concerns, such as divestiture or licensing. If a merger affects not whether but only when an efficiency would be achieved, only the timing advantage is a merger-specific efficiency.

[14] The Agencies normally assess competition in each relevant market affected by a merger independently and normally will challenge the merger if it is likely to be anticompetitive in any relevant market. In some cases, however, the Agencies in their prosecutorial discretion will consider efficiencies not strictly in the relevant market, but so inextricably linked with it that a partial divestiture or other remedy could not feasibly eliminate the anticompetitive effect in the relevant market without sacrificing the efficiencies in the other market(s). Inextricably linked efficiencies are most likely to make a difference when they are great and the likely anticompetitive effect in the relevant market(s) is small so the merger is likely to benefit customers overall.

increases in that market.[15] In conducting this analysis, the Agencies will not simply compare the magnitude of the cognizable efficiencies with the magnitude of the likely harm to competition absent the efficiencies. The greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be passed through to customers, for the Agencies to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly substantial, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive. In adhering to this approach, the Agencies are mindful that the antitrust laws give competition, not internal operational efficiency, primacy in protecting customers.

In the Agencies' experience, efficiencies are most likely to make a difference in merger analysis when the likely adverse competitive effects, absent the efficiencies, are not great. Efficiencies almost never justify a merger to monopoly or near-monopoly. Just as adverse competitive effects can arise along multiple dimensions of conduct, such as pricing and new product development, so too can efficiencies operate along multiple dimensions. Similarly, purported efficiency claims based on lower prices can be undermined if they rest on reductions in product quality or variety that customers value.

The Agencies have found that certain types of efficiencies are more likely to be cognizable and substantial than others. For example, efficiencies resulting from shifting production among facilities formerly owned separately, which enable the merging firms to reduce the incremental cost of production, are more likely to be susceptible to verification and are less likely to result from anticompetitive reductions in output. Other efficiencies, such as those relating to research and development, are potentially substantial but are generally less susceptible to verification and may be the result of anticompetitive output reductions. Yet others, such as those relating to procurement, management, or capital cost, are less likely to be merger-specific or substantial, or may not be cognizable for other reasons.

When evaluating the effects of a merger on innovation, the Agencies consider the ability of the merged firm to conduct research or development more effectively. Such efficiencies may spur innovation but not affect short-term pricing. The Agencies also consider the ability of the merged firm to appropriate a greater fraction of the benefits resulting from its innovations. Licensing and intellectual property conditions may be important to this enquiry, as they affect the ability of a firm to appropriate the benefits of its innovation. Research and development cost savings may be substantial and yet not be cognizable efficiencies because they are difficult to verify or result from anticompetitive reductions in innovative activities.

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[15] The Agencies normally give the most weight to the results of this analysis over the short term. The Agencies also may consider the effects of cognizable efficiencies with no short-term, direct effect on prices in the relevant market. Delayed benefits from efficiencies (due to delay in the achievement of, or the realization of customer benefits from, the efficiencies) will be given less weight because they are less proximate and more difficult to predict. Efficiencies relating to costs that are fixed in the short term are unlikely to benefit customers in the short term, but can benefit customers in the longer run, e.g., if they make new product introduction less expensive.

11. Failure and Exiting Assets

Notwithstanding the analysis above, a merger is not likely to enhance market power if imminent failure, as defined below, of one of the merging firms would cause the assets of that firm to exit the relevant market. This is an extreme instance of the more general circumstance in which the competitive significance of one of the merging firms is declining: the projected market share and significance of the exiting firm is zero. If the relevant assets would otherwise exit the market, customers are not worse off after the merger than they would have been had the merger been enjoined.

The Agencies do not normally credit claims that the assets of the failing firm would exit the relevant market unless all of the following circumstances are met: (1) the allegedly failing firm would be unable to meet its financial obligations in the near future; (2) it would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; and (3) it has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger.[16]

Similarly, a merger is unlikely to cause competitive harm if the risks to competition arise from the acquisition of a failing division. The Agencies do not normally credit claims that the assets of a division would exit the relevant market in the near future unless both of the following conditions are met: (1) applying cost allocation rules that reflect true economic costs, the division has a persistently negative cash flow on an operating basis, and such negative cash flow is not economically justified for the firm by benefits such as added sales in complementary markets or enhanced customer goodwill;[17] and (2) the owner of the failing division has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed acquisition.

12. Mergers of Competing Buyers

Mergers of competing buyers can enhance market power on the buying side of the market, just as mergers of competing sellers can enhance market power on the selling side of the market. Buyer market power is sometimes called "monopsony power."

To evaluate whether a merger is likely to enhance market power on the buying side of the market, the Agencies employ essentially the framework described above for evaluating whether a merger is likely to enhance market power on the selling side of the market. In defining relevant markets, the Agencies

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[16] Any offer to purchase the assets of the failing firm for a price above the liquidation value of those assets will be regarded as a reasonable alternative offer. Liquidation value is the highest value the assets could command for use outside the relevant market.

[17] Because the parent firm can allocate costs, revenues, and intra-company transactions among itself and its subsidiaries and divisions, the Agencies require evidence on these two points that is not solely based on management plans that could have been prepared for the purpose of demonstrating negative cash flow or the prospect of exit from the relevant market.

focus on the alternatives available to sellers in the face of a decrease in the price paid by a hypothetical monopsonist.

Market power on the buying side of the market is not a significant concern if suppliers have numerous attractive outlets for their goods or services. However, when that is not the case, the Agencies may conclude that the merger of competing buyers is likely to lessen competition in a manner harmful to sellers.

The Agencies distinguish between effects on sellers arising from a lessening of competition and effects arising in other ways. A merger that does not enhance market power on the buying side of the market can nevertheless lead to a reduction in prices paid by the merged firm, for example, by reducing transactions costs or allowing the merged firm to take advantage of volume-based discounts. Reduction in prices paid by the merging firms not arising from the enhancement of market power can be significant in the evaluation of efficiencies from a merger, as discussed in Section 10.

The Agencies do not view a short-run reduction in the quantity purchased as the only, or best, indicator of whether a merger enhances buyer market power. Nor do the Agencies evaluate the competitive effects of mergers between competing buyers strictly, or even primarily, on the basis of effects in the downstream markets in which the merging firms sell.

> *Example 24:* Merging Firms A and B are the only two buyers in the relevant geographic market for an agricultural product. Their merger will enhance buyer power and depress the price paid to farmers for this product, causing a transfer of wealth from farmers to the merged firm and inefficiently reducing supply. These effects can arise even if the merger will not lead to any increase in the price charged by the merged firm for its output.

13. Partial Acquisitions

In most horizontal mergers, two competitors come under common ownership and control, completely and permanently eliminating competition between them. This elimination of competition is a basic element of merger analysis. However, the statutory provisions referenced in Section 1 also apply to one firm's partial acquisition of a competitor. The Agencies therefore also review acquisitions of minority positions involving competing firms, even if such minority positions do not necessarily or completely eliminate competition between the parties to the transaction.

When the Agencies determine that a partial acquisition results in effective control of the target firm, or involves substantially all of the relevant assets of the target firm, they analyze the transaction much as they do a merger. Partial acquisitions that do not result in effective control may nevertheless present significant competitive concerns and may require a somewhat distinct analysis from that applied to full mergers or to acquisitions involving effective control. The details of the post-acquisition relationship between the parties, and how those details are likely to affect competition, can be important. While the Agencies will consider any way in which a partial acquisition may affect competition, they generally focus on three principal effects.

First, a partial acquisition can lessen competition by giving the acquiring firm the ability to influence the competitive conduct of the target firm. A voting interest in the target firm or specific governance rights, such as the right to appoint members to the board of directors, can permit such influence. Such

influence can lessen competition because the acquiring firm can use its influence to induce the target firm to compete less aggressively or to coordinate its conduct with that of the acquiring firm.

Second, a partial acquisition can lessen competition by reducing the incentive of the acquiring firm to compete. Acquiring a minority position in a rival might significantly blunt the incentive of the acquiring firm to compete aggressively because it shares in the losses thereby inflicted on that rival. This reduction in the incentive of the acquiring firm to compete arises even if cannot influence the conduct of the target firm. As compared with the unilateral competitive effect of a full merger, this effect is likely attenuated by the fact that the ownership is only partial.

Third, a partial acquisition can lessen competition by giving the acquiring firm access to non-public, competitively sensitive information from the target firm. Even absent any ability to influence the conduct of the target firm, access to competitively sensitive information can lead to adverse unilateral or coordinated effects. For example, it can enhance the ability of the two firms to coordinate their behavior, and make other accommodating responses faster and more targeted. The risk of coordinated effects is greater if the transaction also facilitates the flow of competitively sensitive information from the acquiring firm to the target firm.

Partial acquisitions, like mergers, vary greatly in their potential for anticompetitive effects. Accordingly, the specific facts of each case must be examined to assess the likelihood of harm to competition. While partial acquisitions usually do not enable many of the types of efficiencies associated with mergers, the Agencies consider whether a partial acquisition is likely to create cognizable efficiencies.

EXHIBIT F

Federal Trade Commission
Analysis of Proposed Consent
Order to Aid Public Comment
(Exxon-Mobil Merger, FTC Matter: 9910077)

ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has issued a complaint ("Complaint") alleging that the proposed merger of Exxon Corp. ("Exxon") and Mobil Corp. ("Mobil") (collectively "Respondents") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and has entered into an agreement containing consent orders ("Agreement Containing Consent Orders") pursuant to which Respondents agree to have entered and be bound by a proposed consent order ("Proposed Order") and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture ("Order to Hold Separate"). The Proposed Order remedies the likely anticompetitive effects arising from Respondents' merger, as alleged in the Complaint. The Order to Hold Separate preserves competition in the markets for refining and marketing of gasoline, and in other markets, pending divestiture.

II. Description of the Parties and the Transaction

Exxon, which is headquartered in Irving, Texas, is one of the world's largest integrated oil companies. Among its other businesses, Exxon operates petroleum refineries that make various grades of gasoline and lubricant base stock, among other petroleum products, and sells these products to intermediaries, retailers and consumers. Exxon owns four refineries in the United States; those four refineries can process approximately 1.1 million barrels of crude oil and other feedstocks daily.[1] Exxon owns or leases approximately 2,049 gasoline stations nationally and sells gasoline to distributors or dealers that operate another 6,475 retail outlets throughout the United States. During fiscal year 1998, Exxon had worldwide revenues of approximately $115 billion and net income of approximately $6 billion.

Mobil, which is headquartered in Fairfax, Virginia, is another of the world's largest integrated oil companies. Among its other businesses, Mobil operates petroleum refineries in the United States, which make gasoline, lubricant base stock, and other petroleum products, and sells those products throughout the United States. Mobil operates four refineries in the United States, which can process approximately 800 thousand barrels of crude oil and other feedstocks per day. About 7,400 retail outlets sell Mobil-branded gasoline throughout the United States. During fiscal year 1998, Mobil had worldwide revenues of approximately $52 billion and net income of approximately $2 billion.

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[1] A "barrel" is an oil industry measure equal to 42 gallons. "MBD" means thousands of barrels per day.

On or about December 1, 1998, Exxon and Mobil entered into an agreement to merge the two corporations into a corporation to be known as Exxon Mobil Corp. This merger is one of several consolidations in this industry in recent years, including the combination of British Petroleum Co. plc and Amoco Corp. into BP Amoco plc; the pending combination of BP Amoco plc and Atlantic Richfield Co. (which is the subject of pending investigation by the Commission); the combination of the refining and marketing businesses of Shell Oil Co., Texaco Inc., and Star Enterprises; the combination of the refining and marketing businesses of Marathon Oil Co. and Ashland Oil Co., and the acquisition of the refining and marketing businesses of Unocal Corp. by Tosco Corp.

III. The Investigation and the Complaint

The Complaint alleges that consummation of the merger would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) the marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York (collectively "the Northeast"), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the "Mid-Atlantic"), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of "CARB" gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, D.C., metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia, metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.*, the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) ("inland Southeast"); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System ("TAPS"); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest or otherwise surrender control of: (1) all of Mobil's gasoline marketing in the Mid-Atlantic (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California ("Exxon Benicia Refinery"), and all of

Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in TAPS; (8) the terminal and retail operations of Exxon on Guam; (9) a quantity of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business. The terms of the divestitures and other provisions of the Proposed Order are discussed more fully in Section IV below.

The Commission's decision to issue the Complaint and enter into the Agreement Containing Consent Orders was made after an extensive investigation in which the Commission examined competition and the likely effects of the merger in the markets alleged in the Complaint and in several other markets, including the worldwide markets for exploration, development and production of crude oil; markets for crude oil exploration and production in the United States and in parts of the United States; markets for natural gas in the United States; markets for a variety of petrochemical products; and markets for pipeline transportation, terminaling or marketing of gasoline or other fuels in sections of the country other than those alleged in the Complaint. The Commission has not found reason to believe that the merger would result in likely anticompetitive effects in markets other than the markets alleged in the Complaint.

The Commission conducted the investigation leading to the Complaint in coordination with the Attorneys General of the States of Alaska, California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Texas, Vermont, Virginia and Washington. As a result of that joint effort, Respondents have entered into agreements with the States of Alaska, California, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and Washington, and the District of Columbia, settling charges that the merger would violate both state and federal antitrust laws.

The Complaint alleges in 12 counts that the merger would violate the antitrust laws in several different lines of business and sections of the country, each of which is discussed below. The analysis applied in each market generally follows the analysis set forth in the FTC and U.S. Department of Justice *Horizontal Merger Guidelines* (1997) ("*Merger Guidelines*"). The efficiency claims of the Respondents, to the extent they relate to the markets alleged in the Complaint, are small and speculative compared to the magnitude and likelihood of the potential harm, and would not restore the competition lost as a result of the merger even if the efficiencies were achieved.

A. Count I – Marketing of Gasoline in the Northeast and Mid-Atlantic

Exxon and Mobil today are two of the largest marketers of gasoline from Maine to Virginia, and would be the largest marketer of gasoline in this region after the merger, but for the remedy specified in the Proposed Order. The merging companies are direct and significant

competitors in at least 39 metropolitan areas in the Northeast and Mid-Atlantic[2]; in each of these areas, and in each of the States in the Northeast and Mid-Atlantic, the merger would result in a market that is at least moderately concentrated and would significantly increase concentration in that market.[3] Nineteen of these 39 metropolitan areas would be highly concentrated as a result of this merger.[4] On average, the four top firms in each metropolitan area would have 73% of sales; the top four firms in the Northeast and Mid-Atlantic as a whole (Exxon Mobil, Motiva,[5] BP

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[2]Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, Portland, ME; Baltimore, MD; Barnstable-Yarmouth, Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Duchess, Nassau-Suffolk, New York, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazelton, State College, York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News, Richmond-Petersburg, VA; Burlington, VT. These areas are defined, variously, as "Metropolitan Statistical Areas" ("MSAs"), "Primary Metropolitan Statistical Areas" ("PMSAs"), and "New England County Metropolitan Areas" ("NECMAs") by the Census Bureau.

[3]The Commission measures market concentration using the Herfindahl-Hirschman Index ("HHI"), which is calculated as the sum of the squares of the shares of all firms in the market. *Merger Guidelines* § 1.5. Markets with HHIs between 1000 and 1800 are deemed "moderately concentrated," and markets with HHIs exceeding 1800 are deemed "highly concentrated." Where the HHI resulting from a merger exceeds 1000 and the merger increases the HHI by at least 100, the merger "potentially raise[s] significant competitive concerns depending on the factors set forth in Sections 2-5 of the Guidelines." *Merger Guidelines* § 1.51.

[4]Hartford, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Portland, ME; Barnstable-Yarmouth, MA; Bergen-Passaic, Jersey City, Monmouth-Ocean, Trenton, NJ; Albany-Schenectady-Troy, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Johnstown, State College, PA; Burlington, VT. In each of these MSAs, the increase in concentration exceeds 100 HHI points. "Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in Sections 2-5 of the *Guidelines* make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares." *Merger Guidelines* § 1.51.

[5]Motiva LLC is the refining and marketing joint venture between Shell Oil Co., Texaco Inc. and Saudi Aramco, and sells gasoline under the "Shell" and "Texaco" names in the Eastern

(continued...)

Amoco, and Sunoco) would on average have 66% of each of these metropolitan areas.

The Complaint alleges that the marketing of gasoline is a relevant product market, and that metropolitan areas and areas contained within them are relevant geographic markets. The Commission used metropolitan statistical areas ("MSAs") as a reasonable approximation of geographic markets for gasoline marketing in *Shell Oil Co.*, C-3803 (1998), and *British Petroleum Co.*, C-3868 (1999). As described below, the evidence in this investigation suggests that pricing and consumer search patterns may indicate smaller geographic markets than MSAs as defined by the Census Bureau. To that extent, using MSAs or counties to define geographic markets likely understates the relevant levels of concentration.[6]

The Commission has found reason to believe that the merger would significantly reduce competition in the moderately and highly concentrated markets that would result from this merger. A general understanding of the channels of trade in gasoline marketing is necessary to understand the Commission's analysis of the competitive issues and of the Proposed Order. Gasoline is sold to the general public through retail gas stations of four types: (1) *company-operated* stores, where the branded oil company owns the site and operates it using its own employees; (2) *lessee dealer* stores, where the branded company owns the site but leases it to a franchised dealer; (3) *open dealers*, who own their own stations but purchase gasoline at a DTW price from the branded company; and (4) *"jobber"* or *distributor* stores, which are supplied by a distributor.

Branded oil companies set the retail prices of gasoline at the stores they operate, and sometimes set those prices on a station-by-station basis. Lessee dealers and open dealers generally purchase from the branded company at a delivered price ("dealer tank wagon" or "DTW") that the branded supplier likewise might set on a station-by-station basis. In the Northeast and Mid-Atlantic, DTW prices charged by Exxon, Mobil and their major competitors are typically set using "price zones" established by the supplier. Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations or groups of

[5](...continued)
United States. Equilon LLC, a refining and marketing joint venture between Shell and Texaco, sells gasoline under the "Shell" and "Texaco" names in the Western United States.

[6]Exxon and Mobil compete in at least 134 counties in 39 MSAs in the Northeast and Mid-Atlantic; 61 of those counties are highly concentrated with significant increases in concentration; 56 are moderately concentrated with significant increases in concentration; and in only five counties (if defined as geographic markets) would the merger not result in increases in concentration exceeding *Guidelines* thresholds. *See FTC v. PPG Industries, Inc.*, 798 F.2d 1500, 1505 (D.C. Cir. 1986) (use of data in broader market to calculate market concentration is acceptable where market of concern would be more concentrated).

stations. There might be 10 or more price zones established by an individual oil company in a metropolitan area.

Distributors or jobbers typically purchase branded gasoline from the branded company at a terminal (paying a terminal "rack" price), and deliver the gasoline themselves to jobber-supplied stations at prices or transfer prices set by the distributor.[7]

In much of the Northeast and Mid-Atlantic, Exxon, Mobil and their principal competitors (Motiva, BP Amoco, and Sunoco) use delivered pricing and price zones to set DTW prices based on the level of competition in the immediately surrounding area. These DTW prices generally are unrelated to the cost of hauling fuel from the terminal to the retail store. Gasoline is a homogeneous product, and retail prices are observable (wholesale prices and retail sales volumes are also frequently known to firms in the industry). By monitoring the retail prices (and volumes) of their competitors in the immediate area, branded companies can and do adjust their DTW prices in order to take advantage of higher prices in some neighborhoods, without having to raise price throughout a metropolitan area as a whole.

The use of price zones in the manner described above indicates that these competitors set their prices on the basis of their competitors' prices, rather than on the basis of their own costs. This is an earmark of oligopolistic market behavior. Thus, Exxon, Mobil and their principal competitors have some ability to raise their prices profitably, and have a greater ability to do so when they face fewer and less price-competitive firms in highly local markets. The effects of oligopolistic market structures (where firms base their pricing decisions on their rivals' prices, and recognize that their prices affect their sales volume) have been recognized in this industry. *See Petroleum Products Antitrust Litigation*, 906 F.2d 432, 443, 444 (9th Cir. 1990) (examining California gasoline market from 1968 to 1973), *cert. denied sub nom. Chevron Corp. v. Arizona*, 500 U.S. 959 (1991):

> . . . [A]s the number of firms in a market declines, the possibilities for interdependent pricing increase substantially. In determining whether to follow a unilateral price increase by a competitor, a firm in a relatively concentrated market will recognize that, because its pricing and output decisions have an effect on market conditions and will generally be watched by its competitors, there is less likelihood that any shading would go undetected or be ignored. . . . On the other hand, the firm may recognize that the higher price [charged by its competitor] is one that would produce higher profits. It may therefore decide to follow the price increase, knowing that the other firms will likely see

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[7]The Commission has found evidence in its investigations in this industry indicating that some branded companies have experimented with rebates and discounts to jobbers based on the location of particular stations, thereby replicating the effect of price zones in the jobber class of trade.

things the same way . . . .

We recognize that such interdependent pricing may often produce economic consequences that are comparable to those of classic cartels.

Exxon and Mobil are each other's principal competitors in many of these markets, and the elimination of Mobil as an independent competitor is likely to result in higher prices.[8]

Market incumbents also use price zones to target entrants without having to lower price throughout a broader marketing area. With a large and dispersed network of stores, an incumbent can target an entrant by cutting price at a particular store, without cutting prices throughout a metropolitan area. By targeting price-cutting competitors, incumbents can (and have) deterred entrants from making significant investments in gasoline stations (which are specialized, sunk cost facilities) and thus from expanding to a scale at which the entrant could affect price throughout the broader metropolitan area.

While branded distributors historically have moderated the effects of zone pricing through arbitrage, distributors' ability to do so is increasingly limited in the Northeast and Mid-Atlantic by major branded companies' efforts to limit their distribution to direct channels, especially in major metropolitan areas. The merger would reduce interbrand competition through the elimination of one independent supplier; the Commission evaluated the effect of that reduction in interbrand competition in the context of the contemporaneous reduction in intrabrand competition that it found in these markets.

Entry appears unlikely to constrain noncompetitive behavior in the Northeast and Mid-Atlantic. New gas station sites are difficult to obtain in the Northeast and Mid-Atlantic, and the evidence in this investigation suggests that entry through the construction of new stations is unlikely to occur in a manner sufficient to constrain price increases by incumbents. As in *British Petroleum Co.*, C-3868, the Commission has not seen substantial evidence that jobbers or open dealers are likely to switch to new entrants in the event of a small price increase. Therefore, the Commission has found it unlikely that a new entrant might enter a market by converting such stations in a manner that would meaningfully constrain the behavior of incumbents.

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[8]In finding reason to believe that this merger likely would reduce competition, the Commission has not, in the context of this investigation, concluded that these practices of themselves violate the antitrust laws or constitute unfair methods of competition within the meaning of Section 5 of the FTC Act. Rather, evidence of market behavior provides the Commission with reason to believe that these moderately and highly concentrated markets are not fully competitive even prior to the merger, and therefore that the merger likely would reduce competition in these markets whether or not the post-merger market was highly concentrated.

The merger is likely to reduce competition in Northeastern and Mid-Atlantic gasoline markets and could result in a price increase of 1% or more. A 1% price increase on gasoline sold in the Northeast and Mid-Atlantic (and in the Texas and Arizona markets discussed below) would cost consumers approximately $240 million annually. As described below, the Proposed Order seeks to preserve competition by requiring Respondents to divest all branded stations of Exxon or Mobil throughout the Northeast and Mid-Atlantic: (1) all Exxon branded gas stations (company operated, lessee dealer, open dealer and jobber) in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and New York, and (2) all Mobil branded stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia.

B. Count II – Marketing of Gasoline in Metropolitan Areas in Texas

Exxon and Mobil compete in the marketing of gasoline in several metropolitan areas in Texas, and in five of those metropolitan areas (Austin, Bryan/College Station, Dallas, Houston and San Antonio) the merger would result in a moderately or highly concentrated market. The evidence collected in the investigation indicates that market conditions in these Texas markets resemble those found in the Northeast and Mid-Atlantic, particularly in the use of delivered pricing and zone pricing to coordinate prices and deter entry. The Proposed Order therefore requires Respondents to divest and assign Mobil's gasoline marketing business in these areas, as described below.

C. Count III – Marketing of Gasoline in Arizona

Mobil markets motor gasoline in Arizona. Exxon gasoline is marketed in Arizona by Tosco Corporation, which acquired Exxon's Arizona marketing assets and businesses and the right to sell Exxon branded gasoline in 1994. Gasoline marketing in Arizona is moderately concentrated.

Pursuant to the agreement under which Exxon sold its Arizona assets to Tosco, Exxon retains the option of repurchasing the retail gasoline stores sold to Tosco in the event Tosco were to convert the stations from the "Exxon" brand to another brand (including another brand owned by Tosco). The merger creates the risk that competition between the merged company and Tosco (selling Exxon branded gasoline) could be reduced by restricting Tosco's incentive and ability to compete against Mobil by converting the stores to a brand owned by Tosco. The Proposed Order terminates Exxon's option to repurchase these stations.

D. Count IV – Refining and Marketing of CARB Gasoline

Exxon and Mobil both refine motor gasoline for use in California, which requires that motor gasoline used in that State meet particularly stringent pollution specifications mandated by the California Air Resources Board ("CARB," hence "CARB gasoline"). More than 95% of the CARB gasoline sold in California is refined by seven firms (Chevron, Tosco, Equilon, ARCO,

Exxon, Mobil and Ultramar Diamond Shamrock), all of which operate refineries in California. Those seven firms also control more than 90% of retail sales of gasoline in California through gas stations under their brands.

The Complaint alleges that the refining and marketing of CARB gasoline is a product market and line of commerce. Motorists of gasoline-fueled automobiles are unlikely to switch to other fuels in response to a small but significant and nontransitory increase in the price of CARB gasoline, and only CARB gasoline may be sold for use in California. As described below, the refining and marketing of gasoline in California is tightly integrated; refiners that lack marketing in California, and marketers that lack refineries on the West Coast, do not effectively constrain the price and output decisions of incumbent refiner-marketers.

California is a section of the country and geographic market for CARB gasoline refining and marketing because the refiner-marketers in California can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. The next closest refineries, located in the U.S. Virgin Islands and in Texas and Louisiana, do not supply CARB gasoline to California except during supply disruptions at California refineries, and are unlikely to supply CARB gasoline to California in response to a small but significant and nontransitory increase in price because of the price volatility risks associated with opportunistic shipments and the small number of independent retail outlets that might purchase from an out-of-market firm attempting to take advantage of a price increase by incumbent refiner-marketers.

To a much greater extent than in many other parts of the country, the seven refiner-marketers in California own their stations, and operate through company-operated stations, lessee dealers and open dealers, rather than through distributors.[9] The marketing practices described in the Northeast and Mid-Atlantic, *see* Section III.A above, are employed in California and are reinforced by the refiner-marketers' more complete control of the marketing channel. One effect of the close integration between refining and marketing in California is that refiners outside the West Coast cannot easily find outlets for imported cargoes of CARB gasoline, since nearly all the outlets are controlled by incumbent refiner-marketers. Likewise, the extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply. The Commission's investigation indicated that vertical integration and the resulting lack of independent import customers, rather than the cost of imports, is the principal barrier to supply from outside the West Coast.

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[9]Exxon is unique among these firms in operating primarily through jobbers in California. Exxon also differs from its competitors in that a substantial portion of its refinery output is not sold under the Exxon name, but is sold to non-integrated marketers and through other channels.

As measured by refinery capacity, the merger will increase the HHI for CARB gasoline refining capacity on the West Coast by 171 points to 1699, at the high end of the "moderately concentrated" range of the *Merger Guidelines*. The *Guidelines'* "numerical divisions [of HHI ranges] suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive issues." *Id.* § 1.5.

CARB gasoline is a homogeneous product, and (as in the Northeast and Mid-Atlantic) wholesale and retail prices are publicly available and widely reported to the industry. Integrated refiner-marketers carefully monitor the prices charged by their competitors' retail outlets, and therefore readily can identify firms that deviate from a coordinated or collusive price.

Entry by a refiner or marketer is unlikely to be timely, likely, and sufficient to defeat an anticompetitive price increase because new refining capacity requires substantial sunk costs. Retail entry is likewise difficult and costly, particularly at a scale that would support supply from an out-of-market refinery.

The merger could raise the costs of CARB gasoline substantially; a 1% price increase would cost California consumers more than $100 million annually. To remedy the harm, the Proposed Order requires the Respondents to divest Exxon's Benecia refinery, which refines CARB gasoline, and Exxon's marketing in California, as described more fully below. This divestiture will eliminate the refining overlap in the West Coast market otherwise presented by the merger.

E. Count V – Navy Jet Fuel on the West Coast

The U.S. Navy requires a specific formulation of jet fuel that differs from commercial jet fuel and jet fuel used in other military applications. Three refiners, including Exxon and Mobil, have bid to supply the Navy on the West Coast in recent years. The merger will eliminate one of these firms as an independent bidder, raising the likelihood that the incumbents could raise prices by at least a small amount, since other bidders are unlikely to enter the market. The divestiture of Exxon's Benicia refinery, described below, resolves this concern.

F. Count VI – Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline or marine vessel, and then redeliver these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. Terminals provide an important link in the distribution chain for gasoline between refineries and retail service stations. There are no substitutes for petroleum terminals for providing terminaling services.

Count VI of the Complaint identifies two metropolitan areas that are relevant sections of the country (*i.e.*, geographic markets) in which to analyze the effects of the merger on terminaling: metropolitan Boston, Massachusetts and Washington, D.C. Exxon and Mobil both operate terminals that supply both of these metropolitan areas with gasoline and other light petroleum products.

The Complaint charges that the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is highly concentrated, and would become significantly more concentrated as a result of the merger. Entry into the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[10] Paragraphs VII and VIII of the Proposed Order therefore require Respondents to divest Mobil's Boston and Manassas, Virginia, terminals.

G. Count VII – Terminaling of Gasoline in Norfolk, Virginia

The Complaint charges that terminaling of gasoline and other light petroleum products is highly concentrated in the Norfolk, Virginia area. Exxon currently terminals gasoline in Norfolk, although Mobil does not. Mobil does terminal other light petroleum products there, and another terminaling firm, TransMontaigne, on occasion uses Mobil's wharf to receive gasoline shipments. Since TransMontaigne terminals gasoline in competition with Exxon, the merger would create or enhance Mobil's incentive to deny TransMontaigne access to Mobil's dock or increase the cost of such access, thereby limiting TransMontaigne's ability to compete against Exxon in the terminaling of gasoline. The Proposed Order remedies this effect of the merger.

H. Count VIII – Transportation of Refined Light Petroleum Products to the Inland Southeast

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines largely run parallel to each other from Louisiana to Washington, D.C., and directly compete to provide petroleum product transportation services to the inland Southeast. Mobil owns approximately 11 percent of Colonial and has representation on the Colonial Board of Directors. Exxon owns approximately 49 percent of Plantation, is one of Plantation's two shareholders, and has representation on Plantation's Board.

The proposed transaction would put the merged entity in a position to participate in the

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[10]The Commission has found reason to believe that terminal mergers would be anticompetitive on prior occasions. *E.g., British Petroleum Co.*, C-3868; *Shell Oil Co.*; *Texaco Inc.*, 104 F.T.C. 241 (1984); *Chevron Corp.*, 104 F.T.C. 597 (1984).

governance of both pipelines, and to receive confidential competitive information of each pipeline. Through its position as one of Plantation's two shareholders, Respondents could prevent Plantation from taking actions to compete with Colonial. As a result, the merger is likely substantially to lessen competition, including price and service competition, between the two pipelines. The Commission has twice previously recognized that control of overlapping interests in these two pipelines might substantially reduce competition in the market for transportation of light petroleum products to this section of the country. *Shell Oil Co.*, C-3803; *Chevron Corp.*, 104 F.T.C. 597, 601, 603. To prevent competitive harm from the merger, Section IX of the Proposed Order requires Respondents to divest to a third party or parties the Exxon or Mobil pipeline interest.

I. Count IX – Transportation of Alaska North Slope Crude Oil

Exxon and Mobil are two of the seven owners of the Trans Alaska Pipeline System ("TAPS"), which is the only means of transporting crude oil from the Alaska North Slope ("ANS") to port in Valdez, Alaska. ANS crude is shipped primarily (but not exclusively) to refineries in California and Washington State. A relatively small amount of ANS crude is used within Alaska, and some ANS is sold to refineries in Asia. Exxon owns 20% of TAPS, while Mobil owns 3%. The owners of TAPS are entitled to capacity on the pipeline (which they can resell) in proportion to their ownership interests. Some TAPS owners – Mobil, in particular – have discounted their tariffs in an effort to attract additional shippers.

Exxon and Mobil both have available capacity on TAPS, *i.e.*, capacity not needed to carry their own production. Based on available capacity, the merger would increase the HHI by 268, to 5103. The merger would eliminate Mobil, a significant discounter on TAPS, as an independent firm, and reduce Exxon's incentives to discount TAPS tariffs. Entry is unlikely to defeat this price increase, since a second crude oil pipeline is highly unlikely to be built. In the absence of the Proposed Order, the merger could raise costs to purchasers of ANS crude oil by $3.5 million annually. The Proposed Order eliminates this risk by requiring the Respondents to divest Mobil's interest in TAPS.

J. Count X – Terminaling and Marketing of Gasoline and other Light Petroleum Products in Guam

Gasoline and diesel fuel are supplied into Guam, primarily from Singapore, into terminals on Guam owned by Mobil, Exxon and Shell, who are the principal marketers of gasoline on Guam. Terminal capacity is essential to light petroleum products marketing on Guam. Consumers of gasoline have no alternative but to buy gasoline on Guam. Accordingly, the relevant market to analyze the transaction is the importation, terminaling and marketing of gasoline on Guam. Mobil and Exxon are the two largest marketers on Guam. The market is highly concentrated. The merger will raise the HHI by more than 2800 points to 7400, measured by station count; Exxon Mobil would have 36 of Guam's 43 stations, or 84% of stations.

The market is subject to coordination. There are three companies, and the merger would reduce their number to two. The product is homogeneous, and prices are readily observed. New entry is unlikely to defeat an anticompetitive price increase. An entrant would require sufficient terminal capacity and enough retail outlets to be able to buy gasoline at the tanker-load level, or 350,000 barrels. Terminal capacity of this scale is unavailable in Guam. In 1988 a firm attempted to enter Guam relying on publicly available terminaling; it exited within seven years, and sold its four stations to Mobil.

Section III of the Proposed Order restores competition by requiring Respondents to divest Exxon's terminal and retail assets on Guam.

L. Count XI – Paraffinic Base Oil in the United States and Canada

Paraffinic base oil is a refined petroleum product that forms the foundation of most of the world's finished lubricants. Base oil is mixed with chemical additives and forms finished lubricants, such as motor oil and automatic transmission fluid. Most base oil is used to make products that lubricate engines, but base oil can be mixed with additives to create a large variety of finished products like newspaper ink or hydraulic fluid.[11]

Currently Exxon produces 45.9 MBD of paraffinic base oil in North America. Mobil controls 23.8 MBD of base oil production. A combined Exxon-Mobil would control 35 percent of the base oil produced in North America. As the largest base oil producer in the United States and Canada, Exxon already dominates the base oil market. With the addition of Mobil's sizeable capacity, Exxon would have even greater control over base oil pricing.

Exxon is the price leader in base oil in the United States and Canada. Other base oil producers do not expand production to take advantage of Exxon price increases. Imports do not increase when United States prices increase because transportation costs are too great. Entry into the base oil market requires large capital investments and would be unlikely to have any effect within the next two years.

The Proposed Order remedies the likely effects of the likely merger by requiring Respondents to surrender control of a quantity of base oil production equivalent to Mobil's production in the United States.

[11]Other types of base oil, including naphthenic and synthetic base oils, are not substitutes for paraffinic base oil because the users of paraffinic base oil would not switch to other base oils in the event of a small but significant, nontransitory increase in price for paraffinic base oils.

M. Count XII – Jet Turbine Oil

Jet turbine oil (also known as ester-based turbine oil) is used to lubricate the internal parts of jet engines used to power aircraft. Exxon and Mobil dominate the sales of jet turbine oil, with approximately equal shares that, combined, account for 75% of the worldwide market (defined broadly), and approach 90% of worldwide sales to commercial airlines.

Entry into the development, production and sale of jet turbine oil is not likely to occur on a timely basis, in light of the time required to develop a jet turbine oil and to obtain the necessary approvals and qualifications from the appropriate military and civilian organizations. The merger would eliminate the direct competition between Exxon and Mobil, and create a virtual monopoly in sales to commercial airlines. The Proposed Order remedies the effect of the merger by requiring Respondents to divest Exxon's jet turbine oil business.

IV. Resolution of the Competitive Concerns

On November 30, 1999, the Commission provisionally entered into the Agreement Containing Consent Orders with Exxon and Mobil in settlement of a Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Order to Hold Separate.

A. General Terms

Each divestiture or other disposition required by the Proposed Order must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within nine months of executing the Agreement Containing Consent Orders (except that the divestiture of the Benicia Refinery and Exxon marketing in California must be completed within twelve months of executing the Agreement Containing Consent Orders).

Respondents are required to provide the Commission with a report of compliance with the Proposed Order every sixty (60) days until the divestitures are completed, and annually for a period of 20 years.

In the event Respondents fail to complete the required divestitures and other obligations in a timely manner, the Proposed Order authorizes the Commission to appoint a trustee or trustees to negotiate the divestiture of either the divestiture assets or of "crown jewels," alternative asset packages that are broader than the divestiture assets. The crown jewel for the Exxon Northeastern Marketing Assets is Mobil's marketing in the same area; for the Mobil Mid-Atlantic

Marketing Assets, Exxon's marketing in the same area[12]; for the Exxon California Refining and Marketing Assets, the Mobil California Refining and Marketing Assets; for the Mobil Texas Marketing Assets, the Exxon Texas Marketing Assets; for Mobil's interest in TAPS, Exxon's interest in TAPS; for the paraffinic base oil to be sold, Mobil's Beaumont Refinery; and for Exxon's Jet Turbine Oil Business, Mobil's Jet Turbine Oil Business. In each case, the crown jewel is a significantly larger asset package than the divestiture assets.

Respondents have also agreed to the entry of an Order to Hold Separate and Maintain Assets, and the Commission has entered that Order. Under the terms of that Order, until the divestitures of the Benicia Refinery, marketing assets, base oil production and jet turbine oil business have been completed, Respondents must maintain Mobil's Northeastern, Mid-Atlantic and Texas fuels marketing businesses, Mobil's California refining and marketing businesses, and Exxon's ester based turbine oil business as separate, competitively viable businesses, and not combine them with the operations of the merged company. Under the terms of the Proposed Order, Respondents must also maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair the marketability or viability of the assets to be divested. The Proposed Order and the Hold Separate Order specify these obligations in greater detail.

To avoid conflicts between the Proposed Order and the State consent decrees, the Commission has agreed to extend the time for divesting particular assets if all of the following conditions are satisfied: (1) Respondents have fully complied with the Proposed Order; (2) Respondents submit a complete application in support of the divestiture of the assets and businesses to be divested; (3) the Commission has in fact approved a divestiture; but (4) Respondents have certified to the Commission within ten days after the Commission's approval of a divestiture that a State has not approved that divestiture. If these conditions are satisfied, the Commission will not appoint a trustee or impose penalties for an additional sixty days, in order to allow Respondents either to satisfy the State's concerns or to produce an acquirer acceptable to the Commission and the State.[13] If at the end of that additional period, the

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[12]The "crown jewel" divestiture would include the exclusive right to use the Exxon or Mobil name (as the case may be) in the pertinent States for at least 20 years. If Respondents fail to divest both the Exxon Northeast Marketing Assets and the Mobil Mid-Atlantic Marketing Assets, the Commission may direct the trustee to divest all of Exxon's marketing from Maine to Virginia.

[13]The consent decree between Respondents and the States of Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and Virginia provides that a State that objects to a proposed acquirer must petition the court before which the decree is pending to (continued...)

State remains unsatisfied, the Commission may appoint a trustee and seek penalties for noncompliance.

B. Gasoline Marketing in the Northeast and Mid-Atlantic

Sections IV and V of the Proposed Order are intended to preserve competition in gasoline marketing in the Northeast and Mid-Atlantic by requiring Respondents to divest to an acquirer approved by the Commission all retail gasoline stations owned by Exxon (or leased by Exxon from another person) in Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, and New York (Proposed Order ¶ IV.A), and to assign to the acquirer of those stations all dealer leases and franchise agreements and all supply contracts with branded jobbers (¶ IV.B). The Proposed Order defines "Existing Lessee Agreements" and "Existing Supply Agreements" broadly, to include the totality of the relationship between Respondents and the dealers and distributors to be assigned.[14] Respondents will divest and assign similar interests in all Mobil stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia (¶¶ V.A-B). The assignment of dealer leases and franchise agreements is intended not to effect a material change in the rights and obligations of the parties to those leases and franchise agreements. Exxon and Mobil will divest approximately 676 owned or leased stores and assign supply agreements for 1,064 additional stores in the Northeast and Mid-Atlantic.

To effectuate the divestiture of stations and assignment of franchise agreements, Respondents shall enter into an agreement with the acquirer under which Respondents shall allow the acquirer to use the Exxon or Mobil name, as the case may be, for up to 10 years (with the possibility of further use of the name by mutual agreement thereafter) (¶¶ IV.C, V.C). Pursuant to that agreement, the acquirer will have the exclusive right to use the Exxon or Mobil name, as the case may be, in connection with the sale of branded gasoline and diesel fuel in these states, and will have the right to accept Exxon or Mobil credit cards and to sell other Exxon or Mobil branded products (*e.g.*, motor oil) at gas stations in these states. The acquirer will have the right to expand the Exxon or Mobil network in these states, as the case may be, by opening new stores or converting stores to the Exxon or Mobil brand. (¶¶ IV.C, IV.F, V.C, V.F)

It is the Commission's contemplation that the acquirers will seek to transition the existing

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[13](...continued)
rule on the suitability of the proposed acquirer. In the event such a motion is made, Respondents' time to divest under the Proposed Order is tolled until the matter is resolved.

[14]The assigned relationship does not include business format franchises for the sale of ancillary products (*e.g.*, restaurant franchises) other than gasoline and diesel fuel.

Exxon and Mobil networks to their own brands.[15] The Proposed Order requires the respective Exxon and Mobil packages to be divested to a single acquirer (although both packages may be divested to the same acquirer). The divestiture and assignment of large packages of retail gasoline stations should allow the acquirer the ability to efficiently advertise a brand, develop credit card and other marketing programs, persuade distributors to market the acquirer's brand, and otherwise compete in the sale of branded gasoline.

The acquirer will nonetheless be allowed to continue to offer the Exxon or Mobil name, as the case may be, to dealers and jobbers in order to allow the acquirer to preserve the network to the greatest extent feasible and to comply with the requirements of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.* ("PMPA"). Thus, the acquirer will be able to continue to offer Exxon or Mobil branded fuel, as the case may be, to dealers and jobbers that are today selling Exxon or Mobil branded fuel and displaying those brands. Over time, the acquirer in its business judgment may choose to convert the business it acquires to its own brand name, subject to the requirements of law or with the consent of the dealers and jobbers in question.

To effectuate the divestiture and allow the acquirers an opportunity to convert dealers and jobbers to a new brand, the Proposed Order prohibits Respondents from using the pertinent brand in the sale of gasoline for at least five (5) and as much as twelve (12) years from the date of divestiture in the region in question (*i.e.*, Respondents will not be able to sell gasoline under the Exxon name in New York or New England, where they are divesting and assigning Exxon stations, dealers and jobbers). In addition, Respondents will be prohibited from offering to sell branded fuels for resale at divested or assigned sites for a period of seven (7) years. (¶¶ IV.G, V.G)

Respondents' obligations to preserve the assets to be divested and assigned includes the obligation to maintain the relationships with dealers and jobbers pending divestiture or assignment. Respondents have agreed to meet this obligation by, among other things, establishing a fund of $30 million to be paid to distributors who accept assignment of their supply agreements to the acquirer. The terms of that incentive program are set forth in Appendix A to the Proposed Order.

C. <u>Marketing of Gasoline in Texas</u>

To remedy the reduction in competition in the five metropolitan areas in Texas alleged in Count II of the Complaint, Paragraph VI of the Proposed Order requires Respondents to divest and assign Mobil's marketing businesses in those five metropolitan areas. Mobil's marketing

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[15]For that reason, the agreement entered into between Respondents and the acquirer(s) may provide for an increasing fee for the use of the name after five years. The terms of that agreement will be subject to Commission approval.

assets in those metropolitan areas include interests of Mobil in partnerships with TETCO Inc. and Southland Corp. The Proposed Order requires that Respondents divest Mobil's interest in its partnership with TETCO to TETCO or to another acquirer approved by the Commission, in either event only in a manner approved by the Commission. The Proposed Order also requires Respondents to assign their Existing Supply Agreements to Assignees approved by the Commission, on the same terms as discussed with regard to Northeastern and Mid-Atlantic marketing, Part IV.B above. Respondents will divest approximately 10 owned or leased Mobil stores and assign supply agreements for Mobil's distributor-supplied stores in Texas.

D. Marketing of Gasoline in Arizona

To remedy the reduction in competition in the marketing of gasoline in Arizona alleged in Count III of the Complaint, Paragraph XI of the Proposed Order requires Exxon to surrender its right to reacquire stores sold to Tosco.

E. Refining and Marketing of CARB Gasoline for California and Navy Jet Fuel for the West Coast

To remedy the reduction in competition in the refining and marketing of CARB gasoline and navy jet fuel alleged in Counts IV and V of the Complaint, Paragraph II of the Proposed Order requires Respondents to divest Exxon's Benicia refinery and Exxon's owned gas stations in California, and to assign Exxon's lessee contracts and jobber supply contracts in California to an acquirer approved by the Commission. (¶¶ II.A, II.B) The divestiture of Exxon's Benicia refinery, with Exxon's California marketing, will not significantly reduce the amount of gasoline available to non-integrated marketers, since the refinery likely will continue to produce that gasoline and need outlets for its sale. Respondents will divest approximately 85 owned or leased Exxon stores and assign supply agreements for approximately 275 additional stores in California.

As part of its divestiture of the refinery, Respondents shall (at the acquirer's option) enter into a supply contract with the acquirer for a ratable quantity of Alaska North Slope ("ANS") crude oil up to 100 thousand barrels per day (an amount equivalent to the refinery's historic usage). Exxon is one of the three principal producers of ANS crude oil (the other two are BP Amoco and ARCO).

The divestiture and assignment of the Exxon stations is generally under the same terms as described regarding the Northeast and Mid-Atlantic, *see* Section IV.B above, except that in four PMSAs (San Francisco, Oakland, San Jose and Santa Rosa) Respondents will terminate their dealers' contracts and divest the real estate to the acquirer without authorizing the acquirer to use the Exxon name. Because Mobil does not market branded gasoline in these PMSAs, Exxon can effectuate a "market withdrawal" in these MSAs under the PMPA, 15 U.S.C. § 2801 *et seq*.

In considering an application to divest and assign Exxon's California refining and

marketing businesses to an acquirer, the Commission will consider the acquirer's ability and incentive to invest and compete in the businesses in which Exxon was engaged in California. The Commission will consider, *inter alia*, whether the acquirer has the business experience, technical judgment and available capital to continue to invest in the refinery in order to maintain CARB gasoline production even in the event of changing environmental regulation.

F. Count VI – Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Boston and Washington, Paragraphs VII and VIII require Respondents to divest Mobil's East Boston, Massachusetts, and Manassas, Virginia, light petroleum products terminals, thereby eliminating the effect of the merger in these markets.

G. Count VII – Terminaling of Light Petroleum Products in the Norfolk, Virginia Area

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Norfolk, Virginia, Paragraph IX requires Respondents to continue to offer TransMontaigne access to Mobil's wharf on the same terms as have been offered historically, for as long as Respondents own the wharf.

H. Count VIII – Transportation of Light Petroleum Products to the Inland Southeast

To remedy the reduction of competition in transportation of light petroleum products to the inland Southeast, the Proposed Order requires Respondents to divest either Exxon's interest in Plantation or Mobil's interest in Colonial, and, pending divestiture, not to exercise their voting rights in connection with ownership or board representation on Colonial, thereby eliminating the effect of this merger in this market.

I. Count IX – Transportation of Crude Oil from the Alaska North Slope

To remedy the reduction of competition in transportation of crude oil from the Alaska North Slope to Valdez, Alaska, and intermediate points, Paragraph X of the Proposed Order requires Respondents to divest Mobil's interest in TAPS (including Mobil's interest in terminal storage at Valdez and, at the acquirer's option, Mobil's interest in the Prince William Sound Oil Spill Response Corporation), thereby eliminating the effect of this merger in this market.

J. Count X – Importation, Terminaling and Marketing of Light Petroleum Products in Guam

To remedy the reduction in competition in the importation, terminaling and marketing of light petroleum products in Guam, Paragraph III of the Proposed Order requires Respondents to divest Exxon's terminal and marketing in Guam. Essentially all of Exxon's gasoline marketing in Guam consists of approximately 11 company-operated retail gasoline stores, which can be divested without the right to use the "Exxon" brand. The Proposed Order therefore does not provide for the use of the "Exxon" brand in Guam. The Proposed Order does provide that the divestiture of the terminal include Exxon's rights in its joint terminaling arrangements with Shell and, at the acquirer's option, Exxon's liquefied propane gas ("LPG") storage facilities. The divestiture would thereby eliminate the effect of this merger in this market.

K. Count XI – Paraffinic Base Oil

The Proposed Order requires Respondents to relinquish control of an amount of base oil equivalent to the amount controlled by Mobil, in order to remedy the effect of combining Exxon's and Mobil's base oil production. *First,* Respondents must offer to change several terms in Mobil's contract with Valero, in order to relinquish control over Valero's base oil production. The terms Respondents must offer are confidential, and are contained in a confidential appendix to the order.

Second, Respondents must enter into a long-term supply agreement (or agreements) with not more than three firms to supply those firms with an aggregate of 12 MBD of base oil from the merged firm's three refineries in the Gulf Coast area. The purchaser(s) of this base oil would purchase this base oil for ten years, under a price formula agreed to by the parties (and approved by the Commission) that is not tied to a United States base oil price (*e.g.*, the formula might be tied to a benchmark price for crude oil). The purchaser(s) could use the base oil or resell it. Since the price term will be unrelated to any U.S. base oil price, Respondents would not be able to influence the price of this base oil. This sales agreement would put the purchasers(s) in the same position as competing base oil producers.

By changing Mobil's contract with Valero and entering into a Gulf off-take agreement, Mobil's share of the base oil market will effectively be given to Valero and some new entrant(s) in the base oil market or other suitable acquirers. The status quo in the base oil market will be maintained.

If Respondents do not offer the aforementioned terms to Valero within six months and do not enter into base oil supply contracts with suitable entities within nine months, they must divest

Mobil's Beaumont, Texas refinery.[16]

L. Count XII – Jet Turbine Oil

To remedy the effects of the merger in the market for jet turbine oil, the Proposed Order requires Respondents to divest Exxon's jet turbine oil business. The Proposed Order defines Exxon's jet turbine oil business, which must be divested, to include, among other things, an exclusive, perpetual license to use identified Exxon patents in the field of jet turbine oil, other intellectual property, research and testing equipment, and Exxon's jet turbine oil manufacturing facility at Bayway, New Jersey.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. The Commission, pursuant to a change in its Rules of Practice, has also issued its Complaint in this matter, as well as the Order to Hold Separate. Comments received during this sixty day comment period will become part of the public record. After sixty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

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[16]A divestiture of Mobil's Beaumont refinery would give the acquirer six percent of North American base oil production and complete control of a low-cost base oil refinery. The buyer would be free to make any capital investments to expand capacity it chose to make. The Commission does not believe, on the facts of this investigation, that a divestiture of the refinery is strictly necessary to maintain competition in the paraffinic base oil market. The Commission might normally believe that divestiture of a refinery was necessary in order to allow the acquirer to have the ability to expand production and develop new products. However, the current trend toward producing higher grade base oils for use in finished products that need to be replaced less often (*i.e.*, new products that significantly reduce drain intervals), suggests that the demand for base oil is likely to contract, making the need for expansion less significant on the particular facts here.

EXHIBIT G

FTC Letter Approving Divestiture of Exxon Guam Assets to South Pacific Petroleum Corporation (Oct. 4, 2000)

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

October 4, 2000

Charles F. Rule, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: *Exxon Corporation and Mobil Corporation*, File No. 991-0077; FTC Docket No. C-3907

Dear Mr. Rule:

This is in reference to the Application for Approval of Proposed Divestiture of Exxon Guam Assets, dated June 30, 2000, ("Application") filed by Exxon Mobil Corporation ("Exxon Mobil"). Pursuant to the proposed order in File No. 991-0077, Exxon Mobil requests prior Commission approval of its proposal to divest the Exxon Guam Assets to South Pacific Petroleum Corporation.

After consideration of Exxon Mobil's Application and other available information, the Commission has determined to approve the proposed divestiture of the Exxon Guam Assets to South Pacific Petroleum Corporation. In according its approval, the Commission has relied upon the information submitted and the representations made in connection with Exxon Mobil's Application and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Leary recused.

Donald S. Clark

Donald S. Clark
Secretary