

IN THE MATTER OF
CHEVRON CORPORATION
and
GULF CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-3147. Complaint, Oct. 24, 1984—Decision, Oct. 24, 1984

This consent order requires Chevron Corporation (formerly the Standard Oil Company of California) to divest within six months to a Commission-approved buyer(s) all of the Gulf Corporation assets listed in Schedule A, as well as any additional assets and businesses that the company wishes to include as part of the assets to be divested, or which the Commission determines is necessary to ensure that the divested properties remain ongoing, viable business enterprises. Chevron is also required to provide petroleum product exchanges or crude oil supply arrangements to prospective acquirers, if necessary to maintain the properties as ongoing viable enterprises engaged in the same businesses in which they are presently employed; and to maintain all of Gulf's oil and gas assets as a separate, viable business in accordance with the terms of the attached Agreement To Hold Separate, until required divestiture has been completed. The companies are additionally prohibited from acquiring, without prior Commission approval, any interest in certain types of business enterprises located in specified geographic areas for a period of ten years.

Appearances

For the Commission: *Robert B. Greenbaum, Robert W. Doyle, Jr., Daniel P. Ducore, James M. Giffin and Joan L. Heim.*

For the respondents: *Charles B. Renfrew*, in-house counsel, San Francisco, Cal. for respondent Chevron Corp. and *Samuel W. Murphy, Jr.*, in-house counsel, Pittsburgh, Pa. for respondent Gulf Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Chevron Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, has acquired the stock or assets of respondent Gulf Corporation, in violation 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 that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and

Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. Definitions

1. For purposes of this complaint, the following definitions shall apply:

a. *Chevron* means Chevron Corporation, its predecessors, including Standard Oil Company of California, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Chevron is a participant. The words *subsidiary*, *affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

b. *Gulf* means Gulf Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Gulf is a participant. The words *subsidiary*, *affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

c. *The acquisition* means the transaction described, in whole or in part, in paragraph 14 of this Complaint.

d. *Gasoline* means motor gasoline as defined in connection with Department of Energy Form EIA-810, Monthly Refinery Report, product codes 132 and 133.

e. *Kerosene jet fuel* means kerosene-type jet aircraft fuel, as defined in connection with Form EIA-810, Monthly Refinery Report, product code 213.

f. *Fuel oil* means the products commonly known as number two fuel oil (home heating, diesel), as defined in connection with Department of Energy Form EIA-810, Monthly Refinery Report, product code 411.

g. *Terminal* means a facility used for receipt, storage, and distribution of gasoline, fuel oil, or kerosene jet fuel, and which receives product directly via pipeline, navigable waterway or from an adjacent refinery.

h. *Refined light products* means gasoline, fuel oil, kerosene jet fuel, and aviation gasoline.

i. *PADD* means Petroleum Administration for Defense District.

II. Respondents

A. *Chevron*

2. Respondent Chevron is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 225 Bush Street, San Francisco, California.

3. Respondent Chevron is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

4. In 1982, respondent Chevron had revenues of about \$34 billion and assets of about \$23 billion.

5. In 1982, respondent Chevron ranked seventh in the United States in crude oil production, seventh in domestic crude oil reserves, first in refining capacity, and seventh in gasoline sales.

6. Respondent Chevron has refineries located at Pascagoula, Mississippi; Perth Amboy, New Jersey; Baltimore, Maryland; El Paso, Texas; Salt Lake City, Utah; Richmond, California; El Segundo, California; Kenai, Alaska; Bakersfield, California; Honolulu, Hawaii; Willbridge, Oregon; and Seattle, Washington, with a combined refining capacity of 1381 thousand barrels per day.

7. At all times relevant herein, respondent Chevron has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. *Gulf*

8. Respondent Gulf is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at Pittsburgh, Pennsylvania.

9. Respondent Gulf is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

10. In 1982, respondent Gulf had revenues of about \$28 billion and assets of about \$20 billion.

11. In 1982, respondent Gulf ranked eighth nationally in crude oil production, tenth in United States crude oil reserves, seventh in Unit-

ed States refining capacity, and sixth in United States motor gasoline sales.

12. Respondent Gulf has refineries located at Port Arthur, Texas; Alliance, Louisiana; Philadelphia, Pennsylvania; and Cincinnati, Ohio, with a combined refining capacity of about 829 thousand barrels per day.

13. At all times relevant herein, respondent Gulf has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. The Acquisition

14. On or about March 7, 1984, Chevron, whose corporate name was Standard Oil Company of California ("Socal") prior to July 1, 1984, commenced a cash tender offer for up to 100 percent of the outstanding shares of Gulf common stock at a price of \$80 per share with the intent of effecting a merger of Socal Acquisition Corporation, a Delaware corporation wholly-owned by Chevron, into Gulf, pursuant to which Gulf would become a wholly-owned subsidiary of Chevron, all as contemplated in that certain merger Agreement entered into among Chevron, its subsidiary, and Gulf, on March 5, 1984. Gulf's Board of Directors approved the tender offer and recommended its acceptance by Gulf shareholders. On April 26, 1984, Chevron began purchasing Gulf shares pursuant to the tender offer. On May 4, the tender offer expired. By such date, Chevron had purchased approximately 82 percent of Gulf's outstanding shares. Subsequently, Chevron contributed the Gulf shares purchased by it to Socal Acquisition Corporation and on June 15 that corporation was merged into Gulf Corporation. In the course of such merger, all outstanding Gulf shares were canceled, with the shares not held by Socal Acquisition Corporation being converted into a right to receive \$80 cash per share. The total value of the transaction is about \$13.2 billion, resulting in the second largest petroleum company and the second largest industrial corporation in the United States in terms of assets.

IV. Trade and Commerce

A. Kerosene Jet Fuel

15. One relevant line of commerce in which to evaluate the effects

of the acquisition is the manufacture and distribution of kerosene jet fuel.

16. One relevant section of the country is PADDs I and III combined (excluding New Mexico and the following counties in the state of Texas: Hansford, Hutchinson, Carson, Armstrong, Briscoe, Floyd, Crosby, Carza, Borden, Howard, Glassock, Reagan, Crockett, Terrell, and all counties west thereof) and the West Indies and Caribbean Islands.

17. The kerosene jet fuel markets described in paragraphs 15 and 16 are concentrated.

18. Conditions of entry into the manufacture of jet fuel in the relevant section of the country are difficult.

19. Chevron and Gulf are direct and substantial competitors in the manufacture and sale of jet fuel in the relevant sections of the country. Chevron makes kerosene jet fuel at its refinery at Pascagoula, Mississippi. Gulf makes kerosene jet fuel at its refineries at Port Arthur, Texas; Alliance, Louisiana; and Philadelphia, Pennsylvania.

B. Transportation of Refined Light Products

20. One relevant line of commerce in which to evaluate the effects of the acquisition is the business of transporting refined light petroleum products from refineries into consuming regions. Within this market, petroleum product pipelines represent another relevant line of commerce.

21. One relevant section of the country is the inland Southeast region composed of portions of Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina and of Virginia.

22. Transportation of refined light petroleum products into the inland Southeast is highly concentrated.

23. Conditions of entry into the business of the transporting refined light products by pipeline into the inland Southeast are difficult.

24. Colonial and Plantation are direct competitors in the business of transporting refined light products by pipeline into the inland Southeast.

25. Gulf owns the largest ownership share of Colonial (16.78 percent).

26. Chevron owns the second largest ownership share of Plantation (27.13 percent).

27. Because Gulf owns a share of Colonial and Chevron owns a share of Plantation, Chevron and Gulf are direct and substantial competitors in the business of transporting refined light product by pipeline into the inland Southeast.

C. Marketing of Gasoline and Middle Distillate

28. Another relevant line of commerce in which to evaluate the effects of the acquisition is the wholesale distribution of gasoline and middle distillate and submarkets thereof.

29. The relevant sections of the country are the areas served by terminal clusters in or near the following cities and areas:

- a. Louisville, Kentucky;
- b. Huntington, West Virginia; Ashland, Kentucky (combined);
- c. Paducah, Kentucky;
- d. Knoxville, Tennessee;
- e. Chattanooga, Tennessee;
- f. Meridian, Mississippi;
- g. Collins, Mississippi;
- h. Mobile, Alabama; Biloxi, Gulfport, Pascagoula, Moss Point, Mississippi; Pensacola, Florida (combined);
- i. Montgomery, Alabama;
- j. Birmingham, Gadsden, Anniston, Tuscaloosa, Alabama (combined);
- k. Atlanta, Georgia;
- l. Athens, Georgia
- m. Macon, Georgia;
- n. Greenville, Spartanburg, South Carolina (combined);
- o. Jacksonville, Gainesville, Florida (combined);
- p. Tampa, St. Petersburg, Bradenton, Sarasota, Ft. Meyers, Lakeland, Winterhaven, Florida (combined);
- q. Miami, Ft. Lauderdale, West Palm Beach, Florida (combined).

30. The wholesale gasoline and fuel oil markets described in paragraphs 28 and 29 are concentrated.

31. Conditions of entry into the wholesale distribution of gasoline and fuel oil are difficult.

32. Respondents Chevron and Gulf are direct and substantial competitors in the wholesale distribution of gasoline and fuel oil in the relevant sections of the country.

D. Transportation of Crude Oil

33. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation of crude oil from producing fields to refineries.

34. One relevant section of the country is the West Texas/New Mexico region, composed of "producing districts 8, 8A and 7C" as defined by the Texas Railroad Commission and "New Mexico-East" as defined by the U.S. Department of Energy.

35. Refinery capacity in the West Texas/New Mexico region is substantially below production in the area, with the result that much production in the area is transported over long distances to refineries on the Gulf Coast and in the midcontinent area.

36. The business of transporting crude oil by pipeline out of West Texas/New Mexico is concentrated.

37. Conditions of entry into the business of the transportation of crude oil by pipeline out of the West Texas/New Mexico region are difficult.

38. Chevron is the sole owner of a 20 inch diameter pipeline that runs from the West Texas/New Mexico producing area to El Paso, Texas and supplies crude oil to the Chevron refinery and the Texaco refinery at El Paso.

39. Gulf is the largest owner of stock in the West Texas Gulf Pipeline Company and therefore controls the West Texas Gulf Pipeline, a 26 inch and 20 inch diameter pipeline that connects the West Texas/New Mexico producing area with both the Gulf Coast and the Mid-Valley Pipeline at Longview, Texas.

40. Respondents Chevron and Gulf are direct and substantial competitors in the business of transporting crude oil by pipeline out of the West Texas/New Mexico region.

V. Effects

41. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant lines of commerce and relevant sections of the country in violation 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, in the following ways, among others:

a. actual competition between respondents Chevron and Gulf in the relevant lines of commerce and relevant sections of the country will be eliminated;

b. actual competition between competitors generally in the relevant lines of commerce and relevant sections of the country will be lessened;

c. concentrations in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion; and

d. coordination between existing competitors in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion.

VI. Violation Charged

42. The proposed acquisition of the stock and assets of Gulf by Chevron, as set forth in paragraph 14 herein, if consummated, 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.

DECISION AND ORDER

The FTC having initiated an investigation of the proposed acquisition of shares of Gulf Corporation ("Gulf") by Standard Oil of California ("Chevron") and Chevron and Gulf ("respondents") having been furnished with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendation of its staff, and having concluded that the consent agreement should be accepted with modifications, including Chevron's July 1, 1984 change in its corporate name to "Chevron Corporation"; and

Respondents having thereafter agreed by letter to these modifications in the consent agreement; and

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Chevron Corporation is a corporation organized, existing and doing business under and by the virtue of the laws of Delaware with its executive office located at 225 Bush Street, San Francisco, California.

Respondent Gulf Corporation, a wholly owned subsidiary of Chevron, is a corporation organized and doing business under and by virtue of the laws of Delaware, with its executive office located at the Gulf Building, Pittsburgh, Pennsylvania.

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

ORDER

I.

As used in this order the following definitions shall apply:

(a) *Acquisition* means Chevron's acquisition of shares of the Common Stock of Gulf.

(b) *Oil and gas assets and businesses* means all Gulf's domestic crude oil and gas, and assets and operations relating to oil and gas exploration, production and transportation, as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States.

(c) *Schedule A Properties* means the assets and businesses listed in Schedule A of this agreement.

(d) *Gulf* means Gulf Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by Gulf and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(e) *Chevron* means Chevron Corporation, its predecessors, including Standard Oil Company of California, subsidiaries, divisions, groups and affiliates controlled by Chevron and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(f) *Wholesale distribution of gasolines and middle distillates* includes but is not limited to terminals, bulk plants, warehouses, and package plants.

(g) *Marketing* includes but is not limited to the properties described in paragraph (f) above, together with tank trucks, service station properties, and product inventories.

II.

It is ordered, That:

(A) Chevron shall divest, absolutely and in good faith, within six months from the date this order becomes final, the Schedule A Properties, as well as any additional oil and gas assets and businesses relating to oil and gas transportation, and petroleum and petrochemical processing, refining, transportation, and marketing that (i) Chevron may at its discretion include as a part of the assets to be divested and are acceptable to the acquirer, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed.

(B) Chevron shall provide prospective acquirers of the Schedule A Properties petroleum product exchanges, crude oil supply arrangements, or equity crude oil arrangements if necessary to ensure divestiture of the Properties as ongoing viable enterprises engaged in the same businesses in which the Properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Schedule A Properties have been divested, and Chevron and Gulf shall comply with all terms of said Agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) Chevron and Gulf shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That, within sixty days after the date of service of this order, and every sixty days thereafter until Chevron has fully complied with the provisions of paragraph II of this order, Chevron shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Chevron shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in paragraph II of this order, includ-

ing the identity of all parties contacted. Chevron also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV.

It is further ordered, That for a period commencing on the date of service of this order and continuing for ten years from and after the date of service of this order, Chevron shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in refining, the wholesale distribution of gasolines or middle distillates, or pipeline transportation, in Tennessee, Kentucky, PAD Districts I or III, or the West Indies, including the Bahamas and the Caribbean Islands; *provided, however,* that, except for the Borco refinery, these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which Chevron is a participant on the date of service of the order.

One year from the date of service of this order and annually thereafter Chevron shall file with the Commission a verified written report of its compliance with this paragraph.

V.

For the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Chevron or Gulf made to its principal office, Chevron and Gulf shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Chevron or Gulf relating to any matters contained in this order; and
2. Upon five days' notice to Chevron or Gulf and without restraint or interference from them, to interview officers or employees of Chevron or Gulf, who may have counsel present, regarding such matters.

VI.

It is further ordered, That Chevron notify the Commission at least thirty days prior to any change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

SCHEDULE A

Assets to be divested as provided above are the following:

1. All of Gulf's marketing assets, including the Gulf brand name and trademark, located in the States of Kentucky, Tennessee, Alabama, Mississippi, Georgia and Florida, and the area of South Carolina served by Gulf's Spartanburg, South Carolina terminal and either the Port Arthur or Alliance refinery, including all associated on-site facilities and dedicated pipelines and terminals. (Chevron may elect to divest either refinery, provided that the divestiture of that particular refinery is approved by the Commission).

2. Gulf's stock interest in Colonial pipeline.

3. a. If Chevron divests the Port Arthur refinery, then along with the paragraph 1 assets of this Schedule, 51 percent of Gulf's interest in (i) the West Texas Gulf Pipeline Company, (ii) the Mesa Pipeline, and (iii) any other pipeline attached to the West Texas Gulf or Mesa pipelines.

b. If Chevron divests the Alliance refinery, then 51 percent of Gulf's interest in the West Texas Gulf Pipeline Company.

ATTACHMENT I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

STANDARD OIL COMPANY OF CALIFORNIA,
a corporation,

and

GULF CORPORATION,
a corporation.

File No. 841-0109

AGREEMENT TO HOLD SEPARATE

Agreement dated as of April 26, 1984 (the "Agreement"), by and between Standard Oil Company of California ("Socal"), a corporation organized and existing under the laws of Delaware, whose executive offices are located at 225 Bush Street, San Francisco, California 94104, Gulf Corporation ("Gulf"), a corporation organized and existing

under the laws of Delaware, whose executive offices are located at the Gulf Building, Pittsburgh, Pennsylvania 15320, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. section 41, et seq. (collectively, the "Parties").

PREMISES

Whereas, Social commenced on March 7, 1984, a tender offer for all of the outstanding shares of Common Stock of Gulf Corporation, a Delaware corporation ("Gulf"), with the intent of effecting a merger of Social Acquisition Corporation, a Delaware corporation wholly owned by Social ("Subsidiary"), into Gulf, pursuant to which Gulf would become a wholly owned subsidiary of Social, all as contemplated and provided for in that certain Merger Agreement entered into among Social, Subsidiary and Gulf on March 5, 1984 (the "Merger Agreement"); and

Whereas, simultaneously with the execution of the Merger Agreement, on March 5, 1984, Social and Gulf also entered into a Stock Option Agreement (the "Stock Option Agreement") pursuant to which Gulf granted Social an option to purchase 30,500,000 authorized but unissued shares of Gulf's Common Stock, constituting approximately 15.6 percent of the shares of Gulf's Common Stock that would be outstanding after such issuance; and

Whereas, the Commission is now investigating the transactions contemplated by the Merger Agreement and the Stock Option Agreement (which transactions are hereinafter referred to as the "Acquisition") to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") the Commission must place it on the public record for a period of at least sixty days and may subsequently withdraw such acceptance pursuant to the provisions of section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante of Gulf's oil and gas assets and businesses during the period prior to the divestiture of the properties described on Schedule A of the Consent Order ("Schedule A Properties") along with such other assets as may be required under paragraph II of the Consent Order, or the Acquisition is not preliminarily enjoined, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in paragraph II of the Consent Order in addition to the Schedule A Properties, and the Commission's rights to seek to restore Gulf as a viable competitor.

Whereas, the purpose of this Agreement and the Consent Order is to preserve Gulf as a viable, integrated petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve Gulf as a viable, integrated petroleum company in the event that divestiture is not achieved; and

Whereas, Social's and Gulf's entering into this Agreement shall in no way be construed as an admission by Social or Gulf that the Acquisition is illegal; and

Whereas, Social and Gulf understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has

not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Socal with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of all Gulf's oil and gas assets and businesses held separate pursuant to this Agreement, as follows:

1. Socal and Gulf agree to execute and be bound by the attached Consent Order.
2. Socal agrees that, until (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of section 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the *Federal Register* of the Consent Order finally accepts such order, until all of the divestitures required by Schedule A of the Consent Order are approved by the Commission, Socal will hold Gulf's oil and gas assets and businesses, as defined in 2(a), separate and apart on the following terms and conditions:
 - a. All Gulf's domestic crude oil and gas assets and operations relating to domestic crude oil and gas exploration and production, and transportation as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States ("oil and gas assets and businesses") shall be operated independently of Socal.
 - b. Socal shall not exercise direction or control over, or influence directly or indirectly, any of Gulf's oil and gas assets and businesses; *provided, however*, that Socal may exercise only such direction and control over Gulf as is necessary to assure compliance with this Agreement.
 - c. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending litigation, or negotiating agreements to dispose of assets, Socal shall not receive or have access to, or the use of, any "material confidential information" relating to Gulf's oil and gas assets and businesses not in the public domain, except as such information would be available to Socal in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information" as used herein means competitively sensitive or proprietary information not independently known to Socal from sources other than Gulf and includes, but is not limited to, customer lists, price lists, marketing methods, geological and geophysical data, patents, technologies, processes or other trade secrets.)
 - d. Socal shall not change the composition of the management of Gulf's oil and gas assets and businesses except that the current Gulf directors serving on the "New Board" (as defined in paragraph f) shall have the power to remove employees for cause; Socal shall maintain the viability and marketability of Gulf's oil and gas assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in the normal course of business or pursuant to paragraph h).
 - e. All material transactions, out of the ordinary course of business and not precluded by paragraph 2(a)-(d), shall be subject to a majority vote of the New Board (as defined in paragraph f).
 - f. Socal may adopt new articles of incorporation and by-laws (provided that they are not inconsistent with other provisions of this Agreement) and may elect a new Board of Directors of Gulf ("New Board") once it is a majority shareholder of Gulf. Socal may elect any number of directors to the Board; *provided, however*, that such Board shall consist of at least six current Gulf directors and no more than two Socal directors, officers, employees, or agents. Except as permitted by this agreement, the directors of

Gulf who are also Socal directors, officers, employees or agents, shall not receive in their capacity as directors of Gulf material confidential information relating to Gulf's oil and gas assets and businesses and shall not disclose any such information they may receive under this agreement to Socal or use it to obtain any advantage for Socal. Said Directors of Gulf who are also Socal directors, officers, employees, or agents, shall enter a confidentiality agreement prohibiting disclosures of confidential information. Such directors shall participate in matters which come before the New Board only for the limited purpose of considering a capital investment or other transactions exceeding \$50,000,000 and carrying out Socal's and Gulf's responsibility to assure that the Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets. Except as permitted by this agreement, such directors shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Socal and Gulf were separate independent entities. Meetings of the board during the term of this Agreement shall be stenographically transcribed and the transcripts retained until two years after the termination of this Agreement.

g. The New Board may transfer the properties described in Schedule A of the Consent Order ("Schedule A Properties") into a wholly owned Gulf subsidiary or division.

h. Nothing herein shall prevent the current Gulf Board or the New Board from negotiating or entering into agreements to dispose of Gulf's assets, provided that any such agreements with respect to oil and gas related assets and businesses are conditioned on and not consummated prior to final approval by the Commission.

i. Nothing contained in this Agreement shall be construed to limit the sale of Gulf's nonpetroleum related assets by majority vote of the full current Gulf Board or New Board. Socal shall have the right to borrow all proceeds from any such sale in exchange for an interest bearing note (calculated at the General Motors Acceptance Corporation short term thirty day rate) made payable to Gulf and falling due fourteen days after any denial of final approval of the Consent Order by the Commission.

j. A majority of the New Board may declare a dividend and payment no greater than the amount paid in the same quarter in 1983. Except for such dividend payment, all earnings and profits of Gulf shall be retained separately in Gulf. Socal shall have the right to borrow monies from Gulf upon approval by the majority of the New Board on the same terms and conditions as described in paragraph (i); *provided, however*, Socal shall not borrow funds if the result would be to impair Gulf's ability to operate its oil and gas assets and businesses at its 1983 levels of expenditure on an annualized basis.

k. Should the Federal Trade Commission seek in any proceeding to compel Socal to divest itself of the shares of Gulf Common Stock it shall acquire, or to compel Socal or Gulf to divest themselves of any oil and gas assets that may be held by either company, or to seek any other injunctive or equitable relief, neither Socal nor Gulf shall raise an objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting periods or the fact that the Commission has permitted the Gulf Common Stock to be acquired and a formal merger concluded pursuant to the terms of this Agreement. Socal and Gulf also waive all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Socal or Gulf made to its principal office, Socal and Gulf shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Socal or Gulf, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records

and documents in the possession or under the control of Socal or Gulf relating to compliance with this agreement.

b. Upon five days notice to Socal or Gulf and without restraint or interference from them, to interview officers or employees of Socal or Gulf, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal proceedings to which the Commission is a party, or for the purposes of securing compliance with this Consent Order, or as otherwise required by law.

If, at any time information or documents are furnished by Socal and Gulf and Socal or Gulf identify same as "Confidential," then the Commission shall provide to Socal and Gulf ten days notice or, if ten days is not possible, as many days notice as possible prior to divulging such material in any legal proceeding to which that entity is not a party.

4. This Agreement shall not be binding until approved by the Commission.

/s/John H. Carley
General Counsel
Federal Trade Commission
Washington, D.C. 20580

/s/Charles B. Renfrew
Director and Vice President, Legal
Standard Oil Company of California
225 Bush Street
San Francisco, California 94104

/s/Samuel W. Murphy, Jr.
Senior Vice President and General Counsel
Gulf Corporation

DISSENTING STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK

I find the decision on this consent agreement to be a far closer question than the *Texaco-Getty* consent agreement or the failure of the Commission to pursue an adequate remedy in the *Mobil-Marathon* case, primarily because the staff has negotiated an agreement which gives some hope that the divested Gulf properties will emerge in an economically viable and competitive posture. For this, credit must be given to the skill and determination of key staff members as well as to the healthy expressions of concerns about past Commission actions by those outside the Commission. Yet I find myself compelled to vote against the agreement and in favor of seeking to enjoin the merger for a number of reasons.

First, it has become increasingly obvious that there are major weaknesses in our procedures for addressing the antitrust problems of

huge mergers in a limited period of time and for negotiating massive and complex divestitures. Under the terms of the Hart-Scott-Rodino Act, we have as little as ten days before the Commission must decide whether to challenge a merger after requested information is received from the merging companies. In this case, the largest merger in history, the staff analysis of the consent agreement—the principal document describing the consent agreement and its rationale—was provided to the Commission at about 2:00 P.M. yesterday, Bureau of Economic analyses on key points arrived at 6:00 P.M., and the Bureau Director's memo was furnished at 6:30 P.M. These memos deal with exceedingly complex issues of restructuring Gulf assets and attempting to solve major horizontal overlaps in a series of markets. I do not believe that a responsible evaluation of these issues can be done, including resolving the competing claims of various staff and interested private groups, in the few hours available.

Second, although the consent agreement represents a major improvement over our approach in *Texaco-Getty*, I am still concerned that the divestitures we have in mind risk the selling off and eventual demise of assets which have up till now been viable. A major advantage of this agreement is that it provides for holding Gulf separate until the divestitures are approved and, more importantly, for providing the Commission authority to order *additional* divestitures, including crude oil, to insure the divested assets are continued as "ongoing, viable enterprises." This provision, as well as the staff analysis, recognize the crucial importance of access to crude oil in maintaining viability for refiners and marketers. It is a principle we could have put to better use in the *Texaco-Getty* and *Mobil-Marathon* matters.

However, this hold separate agreement is not the ordinary hold separate procedure employed to preserve the Commission's opportunity to enjoin a merger entirely after a period of investigation or litigation. This hold separate provision is a lever to encourage Social to divest properties as well as a way of facilitating sale of assets in viable "packages," but it is not a guarantee to the Commission that it can conclude later that the only way the assets can be viable is that the merger itself be rescinded.

The staff candidly admits that "despite the strong guarantees in the consent a refinery-marketing divestiture is not without risks." These risks arise because of the importance of regular access to crude and refined products as well as the powerful incentive Social has to sell off or close down the least desirable properties it acquires from Gulf. In order to insure that the divested properties remain viable, the Commission will have to oversee complex negotiations between Social and potential buyers, to make predictions about what the buyers intend to do with purchased assets, and to determine what additional assets,

particularly crude supply contracts, are necessary for "viability." As far as I know, the Commission has never assumed responsibility for overseeing such a major restructuring of assets, and it remains to be seen how effective and vigorous it will be in carrying out this difficult job over the coming months.

At the very least, we can expect temporary supply contracts of one sort or another to be negotiated as a part of these sales. Are Socal temporary supply agreements sufficient to get a refinery or marketing assets permanently over some survival threshold, or will they be temporary lifelines only? Further, will such supply contracts in reality be agreed to by potential buyers because they are able to get crude oil at a bargain price, not because they actually intend to operate assets for the long term? Moreover, if this complex divestiture plan begins to fall apart some months from now, what are the Commission's options? As I interpret the agreement, we do have a fair amount of discretion in requiring Socal to put additional assets in divestiture package, but we do *not* have the discretion to throw up our hands and say the only solution is preserving an independent Gulf. By accepting this agreement we are committed to a course in which most of Gulf is absorbed by Socal and some of its least desirable assets are parceled out. There will be no turning back from that basic decision.

I realize that there are limits to how certain we can be about the success of divestitures, but I do not believe the law requires us to take any significant risks once a merger has been recognized as a likely violation of the law. All the Commissioners agree that this merger is likely to harm competition and violate the antitrust laws; otherwise there would be no need for a consent agreement. The question is what degree of risk that our remedies are insufficient are we to assume. In answering that question, it is reasonable to ask: what are the social benefits of this merger? It is fairly clear that there are no significant "efficiencies" in any ordinary use of the word. While Socal argues that acquiring Gulf will give Socal access to Gulf's technology, few specifics are offered, and Socal's president conceded that Socal can acquire industry technology in other ways. In a survey of possible acquisitions, Socal could not identify synergies with Gulf's upstream assets. Socal's principal basis for any future cost savings appears to be closing down facilities. Based on this and other evidence, the staff concludes that "this acquisition does not present the efficiencies which might have flowed from several earlier mergers in this industry, notwithstanding Socal's statements that it does." In short, I believe the Commission is accepting substantial risks in relying on a complex, uncertain remedy in a case where a merger clearly appears to be unlawful, and offers few, if any, benefits other than to the private parties.

Other Provisions

I am also troubled by a number of other provisions and omissions in the agreement. For example, the agreement provides an option to Socal to divest one of Gulf's two refineries in the Gulf Coast area. Depending on which refinery Socal chooses, the Herfindahl index would still increase about 100 points in kerojet production (less in the case of a divestiture of Port Arthur, more if Alliance is sold). Second, the staff identified an overlap in the sale of aviation gasoline in the Gulf and East coast regions that would exceed the Justice guidelines in increasing the Herfindahl index, but did not address it in the agreement. Each of these issues alone would not justify rejecting the entire agreement but, taken together with the considerations mentioned above, they strengthen the argument against it.

Non-Antitrust Issues

However close the antitrust issues are here, and I believe they are closer than in some previous cases on which I disagreed with the majority, we should keep in mind that issues we cannot address under the antitrust laws remain of major, perhaps overriding, importance. This merger is driven by Socal's desire for crude oil. Despite protestations to the contrary by company officials, I find it very difficult to conclude that this merger will not diminish exploration for crude oil. One major company, which has needed additional crude reserves, has now disappeared. A second major competitor, which has had strong incentives to drill, has now won control of 2 billion barrels of crude oil reserves along with a huge debt burden. We may not understand precisely how much this acquisition will reduce exploration but to assume it will affect it little or none at all flies in the face of common sense.

Conclusion

Even though I believe staff has done a commendable job in negotiating this agreement under severe time constraints, in particular, by giving the Commission a greater ability to insure the divestitures achieve their stated purpose, I cannot help but conclude that there are too many unanswered questions and too many risks to endorse this agreement. The law does not require that we go out of our way to restructure acquisitions that violate the antitrust laws, particularly when there is a cloud of uncertainty as to whether our restructuring will or will not work and when the merger, which we are struggling so hard to preserve, offers no significant efficiencies. While the public comment period on this case can be particularly useful, because of the scope and significance of the acquisition and divestitures, I must vote

against the agreement based on what has been presented to the Commission.

STATEMENT OF COMMISSIONER PATRICIA P. BAILEY

The hold separate and consent agreements tentatively accepted by the Commission in this matter to my mind propose solutions to the measurable, or even reasonably foreseeable anticompetitive consequences of this merger. Substantial divestitures have been ordered, and even additional divestiture and contract relief is also available under these agreements, if necessary to facilitate sale of these assets and insure their continuation as competitively viable entities.

Any calculated risk that the relief proposed will not result in the creation of viable new competitive forces in refining and marketing is reduced by a novel requirement that SoCal keep Gulf's domestic petroleum assets as an independent entity until all divestitures acceptable to the Commission have been actually achieved. This means that the Commission maintains substantial legal leverage to insure SoCal's incentive to divest, in accord with the procompetitive intentions implicit in the Commission's order. I believe that this feature of the relief in this matter will ensure that the Commission can continue to act in the best interests of the public during the divestiture phase of this difficult case.

IN THE MATTER OF

AMERICAN MEDICAL INTERNATIONAL, INC., ET AL.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9158. Final Order, July 2, 1984—Modified Order, Nov. 9, 1984

This Modified Order revises the Commission's Final Order issued on July 2, 1984, 104 F.T.C. 1, which requires a Beverly Hills operator of a chain of proprietary hospitals to divest French Hospital, located in San Luis Obispo, California, and provide the Commission, for a period of ten years, with advance notification of its intention to acquire any hospital costing \$1 million or more in the 13-state area specified in the order. As revised, the Modified Order retains the advance notification requirement of the original order, but sets forth in detail the manner in which the firm must prepare and submit the notification to the Commission, and the supplemental information that should be included.

ORDER AND OPINION OF THE COMMISSION GRANTING IN PART AND
DENYING IN PART COMPLAINT COUNSEL'S PETITION FOR
RECONSIDERATION

BY CALVANI, *Commissioner*:

I. Introduction

On July 2, 1984, the Commission issued its Final Order and Opinion in *American Medical International, Inc.* [hereinafter "order"] [104 F.T.C. 1]. The Commission held that respondents' acquisition of French Hospital in San Luis Obispo, California, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 (1976), and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 (1976). The Commission rejected Complaint Counsel's request that respondents be prohibited, for a period of ten years, without prior approval of the Federal Trade Commission, from acquiring general acute care hospitals in areas where they already own or operate such a hospital. In so doing, the Commission stated:

Instead of requiring AMI to obtain prior approval from the Commission for acquiring other hospitals under the conditions set forth by Judge Barnes, we believe that many of Complaint Counsel's more legitimate objections to such acquisitions can be satisfied by requiring AMI simply to notify the Commission of its intention to make an acquisition of the variety contemplated by Judge Barnes' order. This would enable the Commission to investigate an acquisition that appears to involve significant antitrust problems, and take enforcement action against the acquisition before the acquisition has progressed beyond the "point of no return," while at the same time preserve the