

Complaint

IN THE MATTER OF

**BP AMOCO P.L.C. AND
ATLANTIC RICHFIELD COMPANY**

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

*Docket C-3938; File No. 9910192
Complaint, April 13, 2000 -- Decision, August 25, 2000*

This consent order addresses the \$26 billion acquisition by BP Amoco p.l.c. of Atlantic Richfield Company. The complaint alleges that the merger will lessen competition in each of the markets for (1) the production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; (3) the production, sale, and delivery of all crude oil used on the West Coast; (4) the purchase of exploration rights on the Alaskan North Slope; (5) the sale of crude oil transportation on TAPS; (6) the development for commercial sale of natural gas on the Alaskan North Slope; and (7) the supply of crude oil pipeline transportation to, and crude oil storage in, Cushing, Oklahoma. The consent order requires the divestiture of Atlantic Richfield Company's assets and interests related to and primarily used with or in connection with their Alaska businesses and the assets related to its Cushing, Oklahoma crude oil business to Phillips Petroleum Company.

Participants

For the Commission: *Joseph Brownman, Arthur J. Nolan, William R. Vigdor, Barbara K. Shapiro, Steven W. Sockwell, Jr., Jeff Dahnke, Frank Lipson, Patricia Galvan, Mark Menna, Jonathan S. Kanter, Stephen W. Riddell, Renee Henning, Marc Jarsulic, Paul Frangie, Nathan Muyskens, Eric Rohlck, Dana Stall, Carrie Atiyeh, Scott Hansen, Angela Thaler, Jocelyn Yeh, Lorenzo Cellini, Steven Collier, Karen Harris, Valicia Spriggs, Richard Liebeskind, Phillip L. Broyles, Daniel P. Ducore, and BE.*

For the Respondents: *Bob Osgood, Sullivan & Cromwell, Frank Cicero Jr., Kirkland & Ellis, Mike Sohn, Arnold & Porter, and Illene Knable Gotts, Wachtel, Lipton, Rosen & Katz.*

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Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that BP Amoco p.l.c. ("BP Amoco@) and Atlantic Richfield Company (AARCO@) have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and that the terms of such agreement, were they to be implemented, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. ' 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. Respondent BP Amoco p.l.c.

1. Respondent BP Amoco is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at Brittanica House, 1 Finsbury Circus, London EC2M 7BA, England. BP Amoco=s principal offices in the United States are located at 200 East Randolph Drive, Chicago, Illinois 60601
2. Respondent BP Amoco is, and at all times relevant herein has been, engaged in the exploration, development, and production of crude oil on the Alaska North Slope, and the sale of that crude oil to refinery customers located in the states of Alaska, Hawaii, California, and Washington, and elsewhere.
3. Respondent BP Amoco had total sales, of all products, of over \$91 billion in 1999. Respondent BP Amoco=s United States sales of all products totaled over \$38 billion in 1999.

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4. Respondent BP Amoco is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. ' 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.

II. Respondent ARCO

5. Respondent ARCO 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 333 S. Hope Street, Los Angeles, California 90071.
6. Respondent ARCO is, and at all times relevant herein has been, engaged in the exploration, development, and production of crude oil on the Alaska North Slope, and the sale or delivery of that crude oil to refinery customers, or its own refineries, located in the states of Alaska, Hawaii, California, and Washington.
7. Respondent ARCO had total sales, of all products, of more than \$12 billion in 1999.
8. Respondent ARCO is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. ' 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.

III. The Merger

9. On or about March 31, 1999, Respondents BP Amoco and ARCO executed an agreement to merge their two companies. The value of the merger, when it was announced, was approximately \$26 billion.

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IV. Trade and Commerce

A. Alaska North Slope Crude Oil:

10. The Alaska North Slope is a major oil-producing region of the United States. Alaska North Slope crude oil (ANS crude oil) is used to supply refineries in Alaska, Hawaii, the West Coast of the United States, and Asia. Approximately 90% of all ANS crude oil is refined on the United States West Coast, and approximately 45% of all crude oil refined on the United States West Coast is ANS crude oil.
11. Oil companies that produce ANS crude oil engage in bidding competition for oil and gas leases on lands principally owned by the State of Alaska or the United States government. Successful bidders acquire rights to engage in exploration and development activities on those lands. Exploration and development, if successful, are followed by production.
12. BP Amoco and ARCO are the two most significant competitors in bidding for exploration leases for oil and gas on the Alaska North Slope. The State of Alaska and the United States government have no alternatives for the development of the oil and gas resources under the lands that they own.
13. BP Amoco and ARCO are the two most significant explorers, developers, and producers of ANS crude oil. They are also the only two companies that actually operate the Alaska North Slope oil fields.

B. TAPS Pipeline:

14. Except for the small amount of ANS crude oil that is used by refineries in Alaska, ANS crude oil is transported from the North Slope via the Trans-Alaska Pipeline System (ATAPS),

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an 800-mile long pipeline, to the warm water port of Valdez on Alaska=s Prince William Sound. The only way that ANS crude oil can be transported from the Alaska North Slope to Valdez is through TAPS.

15. Seven companies jointly own the TAPS pipeline. BP Amoco and ARCO are the two largest owners. BP has about a 50% interest and ARCO has about a 22% interest. Each owner of TAPS has an exclusive right to sell space on its ownership-share of TAPS capacity and to set its own tariff, to which it can apply discounts, for carriage on that capacity. After the merger, BP Amoco would control a 72% interest in TAPS.
16. All ANS crude oil is commingled in TAPS, and all ANS crude oil produced from any field, by any producer, is undifferentiated at Valdez.

C. Sale and Delivery of ANS Crude Oil:

17. The major oil companies that produce ANS crude oil own or have long term charters over specialized marine tankers. These specialized tankers are the only form of marine transportation permitted by law to transport ANS crude oil from Valdez to the United States West Coast.
18. The ANS crude oil sold or delivered by ARCO is identical to the ANS sold or delivered by BP Amoco.
19. Unlike the sale of most crude oil elsewhere in the world, ANS crude oil is sold and shipped by the larger oil producing companies on the Alaska North Slope to refineries on a delivered price basis. West Coast refineries do not have the option of hiring a tanker to carry ANS crude oil purchased in Valdez. Nor do these refineries have the option to deliver it to another refinery.
20. The small North Slope producers -- with no tanker fleets of their own -- sell their oil either to a producer with a tanker fleet or to the small refineries located in Alaska.

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21. Refineries use crude oil as the principal input in making gasoline, diesel fuel, kerosene jet fuel, asphalt, coke, and other refined petroleum products. There are no substitutes for crude oil as an input into petroleum refineries for the manufacture of petroleum-based fuels.
22. Crude oils that come from different places have different gravity, sulfur, aromatics, metals and other characteristics.
23. Each refinery is uniquely designed to handle a particular crude oil slate. For a refinery, changing the crude oil slate changes both the overall product yield and the output of particular products. For this reason, there are often no substitutes at competitive prices for individual types of crude oil, including ANS crude oil, for individual refineries.
24. Refineries cannot substitute from among different crude oils readily, and do not do so without evaluating, assisted by complex computer linear programs, the economics of crude oil substitution. BP Amoco knows this, and with the aid of computer models designed to replicate those of its refinery customers, attempts to price its ANS crude oil up to -- but not above -- the point at which a refinery customer is likely to switch to an alternative crude oil. Each refinery customer has a different substitution point, or Atrigger point@ at which it will switch from ANS crude oil to an alternative crude oil.
25. BP Amoco limits supplies of ANS crude oil delivered to the United States West Coast. BP Amoco accomplishes this by exporting ANS crude oil to Asia, often at lower prices, net of its transportation costs, than it could obtain by selling the ANS crude oil on the West Coast. BP Amoco makes these sales in order artificially to short the United States West Coast market. The ANS crude oil supply deficit created by BP Amoco causes the price of ANS crude oil to rise on the West Coast.

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26. ARCO exercises some constraint on BP Amoco=s ability to exercise market power. In the recent past, ARCO has been a more significant constraint on BP Amoco, and, with new production about to commence, as well as a new, increased, ability to substitute other crude oils for ANS crude oil at its Los Angeles refinery, ARCO will be able to constrain BP Amoco=s pricing more substantially in the future.
27. Through future exploration and production activities, ARCO is the firm most likely to constrain BP Amoco=s ability to exercise market power.

D.Alaska North Slope Natural Gas:

28. The Alaska North Slope contains an estimated 35 trillion cubic feet of natural gas reserves. Together, BP Amoco and ARCO own more than half of these reserves. Although small quantities of ANS natural gas are now sold to North Slope contractors and gas utilities, most of the gas remains stranded on the North Slope.
29. Large scale sales of North Slope natural gas have not been feasible due to high costs in transporting the gas from the Alaska North Slope to markets in the rest of Alaska, the lower 48 states, or Asia. BP Amoco and ARCO have expended huge sums of money over the years in efforts to find ways to bring the North Slope natural gas to market. These efforts include using liquefied natural gas (ALNG@) and gas-to-liquids (AGTL@) technologies, and the transportation requirements associated with them. These efforts and expenditures have continued at least through the time of the announcement of the proposed merger.
30. BP Amoco and ARCO are the two most important potential future developers, producers, and sellers of North Slope natural gas.

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E. *West Texas Intermediate Crude Oil:*

31. BP Amoco and ARCO provide pipeline transportation and oil storage services into, and in, a crude oil marketing hub located in Cushing, Oklahoma. The Cushing area serves as a major crude oil marketing hub in the United States. The crude oils coming out of Cushing are transported by a network of pipelines to refineries located in the central parts of the United States.
32. There are no substitutes for pipelines for the transport of crude oil to Cushing, and no substitutes for storage facilities in Cushing for the storage of crude oil pending delivery. Pipeline and storage facilities located in other regions cannot serve the crude oil trading activities in Cushing.
33. A substantial portion of the crude oil traded in Cushing consists of West Texas Intermediate (AWTI@) crude oil, which arrives from pipelines originating in Texas, and imported crude oil, which is offloaded from tankers on the Gulf Coast and transported to Cushing by pipeline. Prices for WTI crude oil traded in Cushing serve as a benchmark for the worldwide pricing of many crude oils.
34. Cushing also serves as a delivery point, for light sweet crude oil futures trading on the New York Mercantile Exchange (NYMEX@). When NYMEX contracts expire, traders typically meet their obligations to deliver light sweet crude oil by tendering WTI crude oil. NYMEX contracts for crude oil futures typically designate Cushing as the delivery point.
35. Efficient functioning of the pipeline and oil storage facilities into and in Cushing is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. The restriction of pipeline or storage capacity can affect the deliverable supply of crude

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oil in Cushing, and consequently affect both WTI crude oil cash prices and NYMEX futures prices.

36. A firm that controlled substantial storage in Cushing, and pipeline capacity into Cushing, would be able to manipulate NYMEX futures trading markets and thereby enhance its own futures positions at the expense of producers, refiners, and traders. Because the price of WTI crude oil is used as a benchmark for the price of other crude oil, the ability to manipulate the delivered price of WTI crude oil will have ripple effects throughout the oil industry.

**COUNT ONE: LOSS OF COMPETITION IN
PRODUCTION AND SALE OF ANS CRUDE OIL**

37. Paragraphs 1 - 36 are incorporated by reference as if fully set forth herein.

A. Relevant Product Markets

38. The relevant product markets in which it is appropriate to assess the effects of the proposed merger include:
- (a) the production, sale, and delivery of ANS crude oil;
 - (b) the production, sale, and delivery of crude oil used by targeted West Coast refiners; and
 - (b) the production, sale, and delivery of all crude oil used by refiners on the West Coast.

B. Relevant Geographic Markets

39. The relevant geographic market in which it is appropriate to assess the effects of the proposed merger are:
- (a) the United States West Coast;

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- (b) smaller areas within the United States West Coast, including Los Angeles, San Francisco, and Seattle; and
- (c) targeted refineries on the United States West Coast.

C. Concentration

40. The relevant markets are highly concentrated and the proposed merger, if consummated, will substantially increase that concentration.

D. Conditions of Entry

41. Entry into the relevant markets would not be timely, likely, or sufficient to prevent anticompetitive effects.

E. Effects

42. The merger will eliminate existing and potential competition between BP Amoco and ARCO, and will enhance, increase, and facilitate the continued exercise by BP Amoco of its market power, in the sale of ANS crude oil, among other ways, by:

- (a) reducing the amount of ANS crude oil reserves found and developed;
- (b) reducing the amount of ANS crude oil produced;
- (c) reducing the amount of crude oil shipped to the United States West Coast; and
- (d) raising barriers to entry;

each of which will increase the likelihood that the price of ANS crude oil will increase, or will not decrease as much as it otherwise would have, but for the merger.

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**COUNT TWO: LOSS OF COMPETITION IN BIDDING FOR
RIGHTS TO EXPLORE ON THE ALASKA NORTH SLOPE**

43. Paragraphs 1 - 42 are incorporated by reference as if fully set forth herein.

A. The Relevant Product Market

44. The purchase of exploration rights is a relevant product market and line of commerce within which to assess the likely effects of the proposed merger.

B. The Relevant Geographic Market

45. The Alaska North Slope is the geographic market within which to assess the likely effects of the proposed merger.

C. Concentration

46. After the merger, BP Amoco would become the leading bidder and, alone, would control a dominant share of exploration and development assets. The proposed merger would substantially increase market concentration in an already highly concentrated market for bidding on exploration rights for new North Slope fields.

D. Conditions of Entry

47. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects.

E. Effects

48. The effect of the proposed merger, if consummated, will be substantially to lessen competition in bidding for leases on state and federal properties on the Alaska North Slope. The proposed merger will also raise already formidable barriers to

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entry.

**COUNT THREE: LOSS OF COMPETITION IN
PIPELINE TRANSPORTATION OF ANS CRUDE OIL**

49. Paragraphs 1 - 48 are incorporated by reference as if fully set forth herein.

A. The Relevant Product Market

50. The pipeline transportation of ANS crude oil is a relevant product market and line of commerce within which to assess the likely effects of the proposed merger.

B. The Relevant Geographic Market

51. The Alaska North Slope is the geographic market within which to assess the likely effects of the proposed merger.

C. Concentration

52. The relevant market is highly concentrated and the proposed merger would substantially increase market concentration. After the merger, BP Amoco would become the largest owner of TAPS pipeline capacity and would control a dominant share of that market.

D. Conditions of Entry

53. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects.

E. Effects

54. The effect of the proposed merger, if consummated, will be substantially to lessen actual and potential competition, either unilaterally or through coordinated interaction, with the likelihood that the price of transporting ANS crude oil through TAPS will increase.

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**COUNT FOUR: LOSS OF POTENTIAL
COMPETITION IN SALE OF ANS NATURAL GAS**

55. Paragraphs 1 - 54 are incorporated by reference as if fully set forth herein.

A. The Relevant Product Market

56. The development for commercial sale of natural gas is a relevant product market in which it is appropriate to assess the likely effects of the proposed merger.

B. The Relevant Geographic Market

57. The Alaska North Slope is the appropriate geographic market within which to assess the likely effects of the proposed merger.

C. Concentration

58. Three companies have an interest in the resources that are capable of producing natural gas from the Alaska North Slope in commercial quantities. The proposed merger will reduce that number to two.

D. Conditions of Entry

59. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects.

E. Effects

60. The effect of the proposed merger, if consummated, will eliminate substantial potential competition between BP Amoco and ARCO. The elimination of that competition will substantially increase the probability that commercial development of natural gas on the North Slope will be

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delayed, and that the sale of natural gas, when and if the fields are commercially developed, will be at noncompetitive prices.

**COUNT FIVE: LOSS OF COMPETITION IN PIPELINE
AND OIL STORAGE SERVICES IN CUSHING, OKLAHOMA**

61. Paragraphs 1 - 60 are incorporated by reference as if fully set forth herein.

A. The Relevant Product Market

62. Oil pipeline and storage services into and in Cushing are an appropriate relevant product market within which to assess the likely effects of the proposed merger.

B. The Relevant Geographic Market

63. Cushing is an appropriate section of the country and geographic market within which to assess the likely effects of the proposed merger on pipeline and storage services for crude oil trading based in Cushing.

C. Concentration

64. The proposed merger would substantially increase market concentration in an already highly concentrated market. After the proposed merger, BP would control over 40% of the pipeline and storage capacity serving Cushing.

D. Conditions of Entry

65. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects.

E. Effects

66. The proposed merger, if consummated, would substantially lessen competition in pipeline and storage services into and in Cushing by, among other ways:

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- (a) eliminating substantial actual competition between BP Amoco and ARCO;
- (b) creating or enhancing or facilitating the ability of BP Amoco to exercise market power; and
- (c) enabling BP Amoco to manipulate NYMEX trading in light sweet crude oil futures by restricting or otherwise manipulating the deliverable supply of crude oil in Cushing.

V. Violations Charged

67. The agreement entered into between Respondents BP Amoco and ARCO for their merger constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45. Further, the agreement, if consummated, would be a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. ' 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirteenth day of April, 2000, issues its Complaint against Respondents BP Amoco and ARCO.

By the Commission.

Order to Hold Separate and Maintain Assets

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (ACommission@) having initiated an investigation of the proposed acquisition by Respondent BP Amoco p.l.c. (ABP Amoco@), of all of the outstanding shares of Respondent Atlantic Richfield Company (AARCO@) and Respondents having been furnished thereafter with a copy of a draft of Complaint which 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 (AConsent Agreement@), containing the proposed Decision and Order, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets:

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1. Respondent BP Amoco is a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales, with its office and principal place of business located at Britannic House, 1 Finsbury Circus, London EC2M 7BA, England. BP Amoco's operating subsidiary in the United States is located at BP Amoco Corporation, 200 East Randolph Drive, Chicago, Illinois 60601-7125.
2. Respondent ARCO 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 333 S. Hope Street, Los Angeles, California 90071.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Hold Separate and Maintain Assets, the following definitions shall apply:

- A. ABP Amoco@ means BP Amoco p.l.c., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by BP Amoco, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.
- B. AARCO@ means The Atlantic Richfield Company its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries,

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divisions, groups and affiliates controlled by ARCO, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

- C. ARespondents@ means BP Amoco and ARCO, individually and collectively.
- D. ACommission@ means the Federal Trade Commission.
- E. APhillips@ means Phillips Petroleum Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business at Phillips Building, 422 South Keeler Street, Bartlesville, Oklahoma 74004, and any of its subsidiaries, successors and assigns.
- F. AAcquisition@ means the proposed acquisition by BP Amoco of ARCO as described in the March 31, 1999, Agreement and Plan of Merger between BP Amoco and ARCO.
- G. AAlaska Acquirer@ means the single entity and any of its subsidiaries, successors and assigns to whom the ARCO Alaska Assets and ARCO Beluga, Inc. are divested by the trustee as required by the terms of the Consent Agreement and Decision and Order.
- H. AAlaska Asset Maintenance Trustee@ means the trustee appointed pursuant to Paragraph III of this Order.
- I. AAlaska Held Separate Businesses@ means the ARCO Alaska Assets, which includes the Alaska Approval Assets, and all of ARCO's interest in ARCO Beluga, Inc.
- J. AAlaska Hold Separate Trustee@ means the trustee appointed pursuant to Paragraph IV of this Order.
- K. AARCO Cushing Assets@ means:

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1. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Seaway Crude Oil Pipeline Assets, and
 2. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Mid-Continent Crude Oil Logistics and Services Businesses.
- L. AARCO Pipe Line Company@ means ARCO Pipe Line Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business at 15600 JFK Boulevard, Houston, Texas 77032, as it is constituted at the beginning of the Hold Separate Period for the Cushing Held Separate Businesses, and which shall, at a minimum, include the ARCO Cushing Assets.
- M. ACushing Acquirer@ means the entity or entities and any of their subsidiaries, successors and assigns to whom the ARCO Cushing Assets are divested pursuant to Paragraph III of the Consent Agreement and Decision and Order or by the trustee pursuant to Paragraph V of the Consent Agreement and Decision and Order.
- N. ACushing Asset Maintenance Trustee@ means the trustee appointed pursuant to Paragraph V of this Order.
- O. ACushing Held Separate Businesses@ means ARCO Pipe Line Company.
- P. ACushing Hold Separate Trustee@ means the trustee appointed pursuant to Paragraph VI of this Order.
- Q. ADivestiture Trustee@ means the trustee appointed by the Commission pursuant to Paragraph V of the Consent Agreement and the Decision and Order.

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- R. AHold Separate Period@ means the period of time which shall begin: (1) for the Alaska Held Separate Businesses, ten (10) days after Respondents fail to complete the divestiture to Phillips within the time required by Paragraph II.B.1 of the Consent Agreement and the Decision and Order, and (2) for the Cushing Held Separate Businesses, ten (10) days after the consummation of the Acquisition, and shall terminate as provided in Paragraph IX of this Order to Hold Separate and Maintain Assets.
- S. AMaterial Confidential Information@ means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, know-how, or other trade secrets.

PROVIDED, HOWEVER, any term used in this Order to Hold Separate and Maintain Assets that is not otherwise defined in this Paragraph I has the same meaning as defined in the Consent Agreement and the Decision and Order.

II.

IT IS FURTHER ORDERED that, from the date this Order to Hold Separate and Maintain Assets becomes final:

- A. Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the ARCO Alaska Assets, the Alaska Approval Assets and ARCO Beluga, Inc., and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the ARCO Alaska Assets, the Alaska Approval Assets and ARCO Beluga, Inc., except for ordinary wear and tear and as

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would otherwise occur in the ordinary course of business;

- B. Respondents shall use reasonable best efforts to secure the approvals, consents or waivers for the Alaska Approval Assets pursuant to the terms and provisions of the Consent Agreement and the Decision and Order;
- C. Respondents shall complete expeditiously the Transition Services Agreement, as that term is defined in Paragraph II.C. of the Consent Agreement and Decision and Order, pursuant to which ARCO will provide Phillips with transition services related to Phillips' acquisition of the ARCO Alaska Assets, the Alaska Approval Assets, and ARCO Beluga, Inc.;
- D. Respondents shall comply with Paragraph IV of the Consent Agreement and Decision and Order relating to ARCO Alaska Employees and Key ARCO Alaska Employees.
- E. Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the ARCO Cushing Assets and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the ARCO Cushing Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business;

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order to Hold Separate and Maintain Assets the Commission may appoint an Alaska Asset Maintenance Trustee to ensure that Respondents comply with their obligations relating to the ARCO Alaska Assets, Alaska Approval Assets, ARCO Beluga, Inc., and Alaska Asset Approval Consents under the terms of Paragraph II of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.

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- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of the Alaska Asset Maintenance Trustee appointed pursuant to Paragraph III.A.:
1. The Commission shall select the Alaska Asset Maintenance Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written 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. The Alaska Asset Maintenance Trustee shall have the power and authority to monitor Respondents= compliance with the terms of Paragraphs II and III of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.
 3. Within ten (10) days after appointment of the Alaska Asset Maintenance Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Alaska Asset Maintenance Trustee all the rights and powers necessary to permit the Alaska Asset Maintenance Trustee to monitor Respondents= compliance with the terms of this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.
 4. The Alaska Asset Maintenance Trustee shall serve for such time as is necessary to monitor Respondents= compliance with the provisions of Paragraph II of this Order.
 5. The Alaska Asset Maintenance Trustee shall have full and

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complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to the ARCO Alaska Assets, ARCO Beluga, Inc., ARCO and the Alaska Approval Assets, or to any other relevant information, as the Alaska Asset Maintenance Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the ARCO Alaska Assets, ARCO Beluga, Inc., and the Alaska Approval Assets. Respondents shall cooperate with any reasonable request of the Alaska Asset Maintenance Trustee. Respondents shall take no action to interfere with or impede the Alaska Asset Maintenance Trustee's ability to monitor Respondents's compliance with this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.

6. The Alaska Asset Maintenance Trustee shall serve, without bond or other security, at the expense of the Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Alaska Asset Maintenance Trustee shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Alaska Asset Maintenance Trustee's duties and responsibilities.
7. Respondents shall indemnify the Alaska Asset Maintenance Trustee and hold the Alaska Asset Maintenance Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Alaska Asset Maintenance Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection

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with the preparations 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, wilful or wanton acts, or bad faith by the Alaska Asset Maintenance Trustee.

8. If the Commission determines that the Alaska Asset Maintenance Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph III.A. of this Order.
9. The Commission may on its own initiative or at the request of the Alaska Asset Maintenance Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order.
10. The Alaska Asset Maintenance Trustee shall evaluate information submitted to it by Respondents and Phillips with respect to the efforts of Phillips and Respondents to obtain the Alaska Approval Asset Consents. The Alaska Asset Maintenance Trustee shall have the authority to take reasonable measures to expedite the Alaska Approval Asset Consents. The Alaska Asset Maintenance Trustee shall have the authority to take reasonable measures to expedite the divestiture to Phillips of individual assets or groups of assets within the ARCO Alaska Approval Assets consistent with the purposes of this Order, the Consent Agreement and the Decision and Order. Such measures shall be made with the consent of Respondents, which consent shall not be unreasonably withheld, and with written notice to Respondents, the Commission and Phillips. The Alaska Asset Maintenance Trustee shall report in writing to the Commission, concerning compliance by Respondents with the provisions of Paragraph II of this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and

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Order, within twenty (20) days from the date of appointment and every thirty (30) days until the Respondents have complied with the provisions of Paragraph II of this Order. Such report shall include at least the following:

- a. whether Respondents have given the Alaska Asset Maintenance Trustee reports and access to all information and records pursuant to Paragraph III.B.5 of this Order;
- b. what steps Respondents and Phillips have taken to secure the Alaska Approval Asset Consents including, but not limited to, timetables, status reports, what documents have been filed, what documents are required to be filed, plans by Respondents to comply with this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order, and information about problems or concerns of the regulatory bodies, Respondents, Phillips and third parties;
- c. whether, in the Alaska Asset Maintenance Trustee's opinion, Respondents are making a good faith effort to comply expeditiously with this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order and whether and when the Alaska Approval Assets Consents are likely to be obtained;
- d. whether Respondents have maintained the ARCO Alaska Assets and the Alaska Approval Assets as required by Paragraph II of this Order; and
- e. any other information that may assist the Commission in determining whether Respondents are

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complying with the terms of this Order, the Consent Agreement and the Decision and Order.

- C. The Alaska Asset Maintenance Trustee may be the same person appointed as the Alaska Hold Separate Trustee pursuant to Paragraph IV of this Order to Hold Separate and Maintain Assets, as the Divestiture Trustee pursuant to Paragraph V.A. of the Decision and Order in this matter, and as any similar trustee for the ARCO Cushing Assets.

IV.**IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondents shall hold the Alaska Held Separate Businesses as a separate and independent business except to the extent that Respondents must exercise direction and control over the Alaska Held Separate Businesses to assure compliance with this Order to Hold Separate and Maintain Assets, or with the Consent Agreement, and except as otherwise provided in this Order to Hold Separate and Maintain Assets, and shall vest the Alaska Held Separate Businesses with all powers and authorities necessary to conduct business. The purpose of this Paragraph is: (i) to preserve the Alaska Held Separate Businesses as viable, competitive, and ongoing businesses, independent of Respondents, until their complete divestiture is achieved; (ii) to assure that no Material Confidential Information is exchanged between Respondents and the Alaska Held Separate Businesses; and (iii) to prevent interim harm to competition pending divestiture and other relief.
- B. The Commission shall select an Alaska Hold Separate Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld, to satisfy the requirements of Paragraph IV of this Order to Hold Separate and Maintain Assets, and the Consent Agreement and the Decision and Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff

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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.

- C. Respondents shall consent to the following procedures with regard to the Alaska Hold Separate Trustee:
1. The Alaska Hold Separate Trustee shall have the power and authority to monitor Respondents's compliance with the terms of this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.
 2. Within ten (10) days after appointment of the Alaska Hold Separate Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Alaska Hold Separate Trustee all the rights and powers necessary to permit the Alaska Hold Separate Trustee to monitor Respondent's compliance with the terms of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.
 3. The Alaska Hold Separate Trustee shall serve until the termination of the Hold Separate Period.
 4. The Alaska Hold Separate Trustee shall have full and complete access, subject to any legally recognizable privilege of Respondents, to Respondents's personnel, books, records, documents, facilities and technical information relating to the Alaska Held Separate Businesses or to any other relevant information, as the Alaska Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Alaska Held Separate Businesses. Respondents shall

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cooperate with any reasonable request of the Alaska Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Alaska Hold Separate Trustee's ability to monitor Respondents's compliance with this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.

5. The Alaska Hold Separate Trustee shall serve, without bond or other security, at the expense of the Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Alaska Hold Separate Trustee shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Alaska Hold Separate Trustee's duties and responsibilities.
6. Respondents shall indemnify the Alaska Hold Separate Trustee and hold the Alaska Hold Separate Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Alaska Hold Separate Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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, wilful or wanton acts, or bad faith by the Alaska Hold Separate Trustee.
7. If the Commission determines that the Alaska Hold Separate Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph IV of this Order.
8. The Commission may on its own initiative or at the request of the Alaska Hold Separate Trustee issue such

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additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of Paragraph IV of this Order to Hold Separate and Maintain Assets, and of any corresponding terms in the Consent Agreement and the Decision and Order.

9. The Alaska Hold Separate Trustee shall report in writing to the Commission concerning compliance by Respondents with the applicable provisions of this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order, within twenty (20) days from the date of appointment and every thirty (30) days until the Respondents have complied with the applicable provisions of this Order, the Consent Agreement and the Decision and Order. Such report shall include at least the following:
 - a. whether Respondents have given the Alaska Hold Separate Trustee reports and access to all information and records pursuant to Paragraph IV.C.4 of this order;
 - b. whether Respondents have complied with the requirements of Paragraph IV of this Order, and of any corresponding terms in the Consent Agreement and the Decision and Order; and
 - c. any other information that may assist the Commission in determining whether Respondents are complying with the applicable terms of this Order, the Consent Agreement and the Decision and Order.
- D. The Alaska Hold Separate Trustee may be the same person appointed as the Alaska Asset Maintenance Trustee pursuant to Paragraph III of this Order to Hold Separate and Maintain Assets, as the Divestiture Trustee pursuant to Paragraph V.A. of the Decision and Order in this matter, and as any similar trustee for the ARCO Cushing assets.

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- E. Respondents shall, subject to any applicable obligations of ARCO Alaska, Inc. under the Alaska MPSA, establish the following with regard to the Alaska Held Separate Businesses:
1. The Alaska Held Separate Businesses shall be staffed with sufficient employees to maintain the viability and competitiveness of the Alaska Held Separate Businesses. Respondents shall, within ten (10) days of the start of the Hold Separate Period, appoint, subject to the approval of the Alaska Hold Separate Trustee, three (3) individuals from among the current employees of Alaska Held Separate Businesses working in the management, exploration and production, transportation, regulatory, marketing, and financial operations of the Alaska Held Separate Businesses to manage and maintain the Alaska Held Separate Businesses (AAAlaska Management Team@). The Alaska Management Team, in its capacity as such, shall report directly and exclusively to the Alaska Hold Separate Trustee, and shall manage the Alaska Held Separate Businesses independently of the management of Respondents. The Alaska Management Team shall not be involved in any way in the other operations of the businesses of Respondents, other than being kept informed on all issues dealing with the Alaska Held Separate Businesses during the Hold Separate Period.
 2. Respondents shall not change the composition of the management of the Alaska Held Separate Businesses except that the Alaska Management Team shall be permitted to remove management employees for cause subject to approval of the Alaska Hold Separate Trustee. Respondents shall not change the composition of the Alaska Management Team except that the Alaska Hold Separate Trustee shall have the power to remove members of the Alaska Management Team for cause and to require Respondents to appoint replacement members to the Alaska Management Team in the same manner as provided in Paragraph IV.E.1 of this Order to Hold Separate and Maintain Assets.

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3. The Alaska Hold Separate Trustee shall have responsibility, through the Alaska Management Team, for managing the Alaska Held Separate Businesses consistent with the terms of this Order to Hold Separate and Maintain Assets; for maintaining the independence of the Alaska Held Separate Businesses consistent with the terms of this Order to Hold Separate and Maintain Assets and the Consent Agreement; and for assuring Respondents= compliance with their obligations pursuant to this Order to Hold Separate and Maintain Assets.
4. Employees of the Alaska Held Separate Businesses shall include: (i) all personnel employed by the Alaska Held Separate Businesses as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons hired from other sources. The Alaska Management Team, with the approval of the Alaska Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Alaska Held Separate Businesses since March 1, 2000. To the extent that employees of any of the Alaska Held Separate Businesses leave the Alaska Held Separate Businesses prior to the divestiture of the Alaska Held Separate Businesses, the Alaska Management Team, with the approval of the Alaska Hold Separate Trustee, may replace the departing employees of the Alaska Held Separate Businesses with persons who have similar experience and expertise.
5. Respondents shall, within ten (10) days of the start of the Hold Separate Period, cause the Alaska Hold Separate Trustee, each member of the Management Team, and each supervisory employee of the Alaska Held Separate Businesses to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Order to Hold Separate and Maintain Assets. These individuals must retain and maintain all Material Confidential Information relating to the Alaska Held

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separate business on a confidential basis and, except as is permitted by this Order to Hold Separate and Maintain Assets, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Alaska Held Separate Businesses. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of the competing products of Respondents.

6. Respondents shall, within ten (10) days of the start of the Hold Separate Period, establish written procedures, to be approved by the Alaska Hold Separate Trustee, covering the management, maintenance, and independence of the Alaska Held Separate Businesses consistent with the provisions of this Order to Hold Separate and Maintain Assets.
7. Respondents shall, within ten (10) days of the start of the Hold Separate Period, circulate to employees of the Alaska Held Separate Businesses a notice of this Order to Hold Separate and Maintain Assets and Consent Agreement, in the form attached as Attachment A.
8. The Alaska Hold Separate Trustee, if one is appointed, and the Alaska Management Team shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondents shall indemnify the Alaska Hold Separate Trustee and the Alaska Management Team, and hold the Alaska Hold Separate Trustee and the Alaska Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Alaska Hold Separate Trustee's or the

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Alaska Management Team'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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Alaska Hold Separate Trustee or the Alaska Management Team.

9. Respondents shall provide the Alaska Held Separate Businesses with sufficient working capital to operate the Alaska Held Separate Businesses at least at current rates of operation, to meet all capital calls with respect to the Alaska Held Separate Businesses and to carry on, at least at their scheduled pace, all capital projects for the Alaska Held Separate Businesses that are ongoing or approved as of March 1, 2000. In addition, Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Alaska Held Separate Businesses authorized prior to the date the Consent Agreement was signed by Respondents. During the Hold Separate Period, Respondents shall make available for use by the Alaska Held Separate Businesses funds sufficient to perform all necessary routine maintenance to, and replacements of, assets of the Alaska Held Separate Businesses. Respondents shall provide the Alaska Held Separate Businesses with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Alaska Held Separate Businesses until the date the divestiture is completed, provided the Alaska Held Separate Businesses may not assume any new long-term debt except as necessary to meet a competitive threat and as approved by the Alaska Hold Separate Trustee.
10. Respondents shall continue to provide the same support services, if any, to the Alaska Held Separate Businesses as are being provided to such assets by Respondents as of the date the Consent Agreement was signed by Respondents. Respondents may charge the Alaska Held Separate

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Businesses the same fees, if any, charged by Respondents for such support services as of the date the Consent Agreement was signed by Respondents. Respondents= personnel providing such support services shall retain and maintain all Material Confidential Information of the Alaska Held Separate Businesses on a confidential basis, and, except as is permitted by this Order to Hold Separate and Maintain Assets, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents= other businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Alaska Held Separate Businesses.

11. Except as provided in this Order to Hold Separate and Maintain Assets, Respondents shall not employ or make offers of employment to employees of the Alaska Held Separate Businesses during the Hold Separate Period. The Alaska Acquirer of the Alaska Held Separate Businesses shall have the option of offering employment to the Alaska Held Separate Businesses employees. After the Hold Separate Period, Respondents may offer employment to the Alaska Held Separate Businesses employees who have not been employed or whose employment has been terminated by the acquirer of the Alaska Held Separate Businesses. Respondents shall not interfere with the employment of employees of the Alaska Held Separate Businesses by the Alaska Acquirer of the Alaska Held Separate Businesses; shall not offer any incentive to said employees to decline employment with the Alaska Acquirer of the Alaska Held Separate Businesses or accept other employment with Respondents; and shall remove any impediments that may deter employees of the Alaska Held Separate Businesses from accepting employment

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with the acquirer of the Alaska Held Separate Businesses including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Alaska Held Separate Businesses that would affect the ability of employees of the Alaska Held Separate Businesses to be employed by the acquirer of the Alaska Held Separate Businesses.

12. Notwithstanding the above, Respondents may offer a bonus or severance to those ARCO Alaska Employees that continue their employment with the Alaska Held Separate Businesses until the date that the Alaska Held Separate Businesses are divested.
13. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Alaska Held Separate Businesses, the Alaska Hold Separate Trustee, the Alaska Management Team, or any of its operations; *provided, however*, that Respondents may exercise only such direction and control over the Alaska Held Separate Businesses as are necessary to assure compliance with this Order to Hold Separate and Maintain Assets, the Consent Agreement, the Decision and Order, or with all applicable laws.
14. Except to the extent provided in subparagraphs IV.E.10, IV.E.13, IV.E.16, IV.E.17, Respondents shall not permit any non-Alaska Held Separate Businesses employees, officers, or directors to be involved in the operations of the Alaska Held Separate Businesses.
15. If the Alaska Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Order to Hold Separate and Maintain Assets, the Commission may appoint a substitute Alaska Hold Separate Trustee in the same manner as provided in Paragraph IV of this Order to Hold Separate and Maintain Assets.

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16. Until the divestiture of the Alaska Held Separate Businesses is accomplished, Respondents shall ensure that Alaska Held Separate Businesses employees continue to be paid their salaries, all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of ARCO during the Hold Separate Period.
17. Except as required by law or applicable regulatory authorities, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, carrying out their obligations under the Transition Services Agreement, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the Consent Agreement, or complying with this Order to Hold Separate and Maintain Assets, the Consent Agreement or the Decision and Order, Respondents shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about the Alaska Held Separate Businesses. Respondents may receive, on a regular basis, aggregate financial information relating to the Alaska Held Separate Businesses, but only insofar as is necessary to allow Respondents to prepare United States or foreign consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.
18. the Alaska Hold Separate Trustee shall report in writing to the Commission concerning the Alaska Hold Separate Trustee=s efforts to accomplish the provisions and purposes of this Order, the Consent Agreement and the Decision and Order. Included within that report shall be the Alaska Hold Separate Trustee's or the Alaska Management Team=s assessment of the extent to which the Alaska Held Separate Businesses are meeting (or exceeding) their projected goals as are reflected in

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operating plans, budgets, projections or any other regularly prepared financial statements.

V.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order to Hold Separate and Maintain Assets, the Commission may appoint a Cushing Asset Maintenance Trustee to ensure that Respondents comply with their obligations relating to the ARCO Cushing Assets under the terms of Paragraph II.E of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of the Cushing Asset Maintenance Trustee appointed pursuant to Paragraph V.A.:
 1. The Commission shall select the Cushing Asset Maintenance Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written 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. The Cushing Asset Maintenance Trustee shall have the power and authority to monitor Respondents' compliance with the terms of Paragraphs II and V of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the

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Decision and Order.

3. Within ten (10) days after appointment of the Cushing Asset Maintenance Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Cushing Asset Maintenance Trustee all the rights and powers necessary to permit the Cushing Asset Maintenance Trustee to monitor Respondents' compliance with the terms of this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.
4. The Cushing Asset Maintenance Trustee shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of Paragraph II.E of this Order.
5. The Cushing Asset Maintenance Trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to the ARCO Cushing Assets or to any other relevant information, as the Cushing Asset Maintenance Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the ARCO Cushing Assets. Respondents shall cooperate with any reasonable request of the Cushing Asset Maintenance Trustee. Respondents shall take no action to interfere with or impede the Cushing Asset Maintenance Trustee's ability to monitor Respondents' compliance with this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.
6. The Cushing Asset Maintenance Trustee shall serve, without bond or other security, at the expense of the Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Cushing Asset Maintenance Trustee shall have the authority to

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employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Cushing Asset Maintenance Trustee=s duties and responsibilities.

7. Respondents shall indemnify the Cushing Asset Maintenance Trustee and hold the Cushing Asset Maintenance Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Cushing Asset Maintenance Trustee=s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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, wilful or wanton acts, or bad faith by the Cushing Asset Maintenance Trustee.
8. If the Commission determines that the Cushing Asset Maintenance Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph V.A. of this Order.
9. The Commission may on its own initiative or at the request of the Cushing Asset Maintenance Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order.
10. The Cushing Asset Maintenance Trustee shall evaluate information submitted to it by Respondents with respect to the efforts of Respondents to complete the divestiture. The Cushing Asset Maintenance Trustee shall report in

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writing to the Commission, concerning compliance by Respondents with the provisions of Paragraph V of this Order to Hold Separate and Maintain Assets, the Consent Agreement and Decision and Order, within twenty (20) days from the date of appointment and every thirty (30) days until the Respondents have complied with the provisions of Paragraph II.E of this Order. Such report shall include at least the following:

- a. whether Respondents have given the Cushing Asset Maintenance Trustee reports and access to all information and records pursuant to Paragraph V.B.5 of this order;
 - b. whether, in the Cushing Asset Maintenance Trustee's opinion, Respondents are making a good faith effort to comply expeditiously with this Order to Hold Separate and Maintain Assets, the Consent Agreement and the Decision and Order;
 - c. whether Respondents have maintained the ARCO Cushing Assets as required by Paragraph II.E of this Order; and
 - d. any other information that may assist the Commission in determining whether Respondents are complying with the terms of this Order, the Consent Agreement and the Decision and Order.
- C. The Cushing Asset Maintenance Trustee may be the same person appointed as the Cushing Hold Separate Trustee pursuant to Paragraph VI of this Order to Hold Separate and Maintain Assets, as the Divestiture Trustee pursuant to Paragraph V.A. of the Decision and Order in this matter, and as any similar trustee for the Alaska Held Separate Businesses.

VI.

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IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondents shall hold the Cushing Held Separate Businesses as a separate and independent business except to the extent that Respondents must exercise direction and control over the Cushing Held Separate Businesses to assure compliance with this Order to Hold Separate and Maintain Assets, or with the Consent Agreement, and except as otherwise provided in this Order to Hold Separate and Maintain Assets, and shall vest the Cushing Held Separate Businesses with all powers and authorities necessary to conduct business. The purpose of this Paragraph is: (i) to preserve the Cushing Held Separate Businesses as viable, competitive, and ongoing businesses, independent of Respondents, until their complete divestiture is achieved; (ii) to assure that no Material Confidential Information is exchanged between Respondents and the Cushing Held Separate Businesses; and (iii) to prevent interim harm to competition pending divestiture and other relief.
- B. The Commission shall select a Cushing Hold Separate Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld, to satisfy the requirements of Paragraph VI of this Order and the Consent Agreement and the Decision and Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written 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.
- C. Respondents shall consent to the following procedures with regard to the Cushing Hold Separate Trustee:
 1. The Cushing Hold Separate Trustee shall have the power and authority to monitor Respondents's compliance with the terms of this Order to Hold Separate and Maintain

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Assets and the Consent Agreement and the Decision and Order.

2. Within ten (10) days after appointment of the Cushing Hold Separate Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Cushing Hold Separate Trustee all the rights and powers necessary to permit the Cushing Hold Separate Trustee to monitor Respondent=s compliance with the terms of this Order to Hold Separate and Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.
3. The Cushing Hold Separate Trustee shall serve until the termination of the Hold Separate Period.
4. The Cushing Hold Separate Trustee shall have full and complete access, subject to any legally recognizable privilege of Respondents, to Respondents=s personnel, books, records, documents, facilities and technical information relating to the Cushing Held Separate Businesses or to any other relevant information, as the Cushing Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Cushing Held Separate Businesses. Respondents shall cooperate with any reasonable request of the Cushing Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Cushing Hold Separate Trustee=s ability to monitor Respondents=s compliance with this Order to Hold Separate and Maintain Assets and the Consent Agreement and the Decision and Order.
5. The Cushing Hold Separate Trustee shall serve, without bond or other security, at the expense of the Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Cushing Hold Separate Trustee shall have the authority to employ, at the expense

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of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Cushing Hold Separate Trustee=s duties and responsibilities.

6. Respondents shall indemnify the Cushing Hold Separate Trustee and hold the Cushing Hold Separate Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Cushing Hold Separate Trustee=s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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, wilful or wanton acts, or bad faith by the Cushing Hold Separate Trustee.
7. If the Commission determines that the Cushing Hold Separate Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph VI of this Order.
8. The Commission may on its own initiative or at the request of the Cushing Hold Separate Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of Paragraph VI of this Order to Hold Separate and Maintain Assets, and of any corresponding terms of the Consent Agreement and the Decision and Order.
9. The Cushing Hold Separate Trustee shall report in writing to the Commission concerning compliance by Respondents with the applicable provisions of this Order to Hold Separate and Maintain Assets, the Consent

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Agreement and the Decision and Order, within twenty (20) days from the date of appointment and every thirty (30) days until the Respondents have complied with the applicable provisions of this Order, the Consent Agreement and the Decision and Order. Such report shall include at least the following:

- a. whether Respondents have given the Cushing Hold Separate Trustee reports and access to all information and records pursuant to Paragraph VI.C.4 of this order;
 - b. whether Respondents have complied with the requirements of Paragraph VI of this Order; and
 - c. any other information that may assist the Commission in determining whether Respondents are complying with the applicable terms of this Order, the Consent Agreement and the Decision and Order.
- D. The Cushing Hold Separate Trustee may be the same person appointed as the Cushing Asset Maintenance Trustee pursuant to Paragraph V of this Order to Hold Separate and Maintain Assets, as the Divestiture Trustee pursuant to Paragraph V.A. of the Decision and Order in this matter, and as any similar trustee for the Alaska Held Separate Businesses.
- E. Respondents shall establish the following with regard to the Cushing Hold Separate Businesses:
1. The Cushing Held Separate Businesses shall be staffed with sufficient employees to maintain the viability and competitiveness of the Cushing Held Separate Businesses. Respondents shall, within ten (10) days of the start of the Hold Separate Period, appoint, subject to the approval of the Hold Separate Trustee, three (3) individuals from among the current employees of Cushing Held Separate Businesses working in the management, transportation, regulatory, marketing, and financial operations of the Cushing Held Separate Businesses to manage and

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maintain the Cushing Held Separate Businesses (ACushing Management Team@). The Cushing Management Team, in its capacity as such, shall report directly and exclusively to the Cushing Hold Separate Trustee, and shall manage the Cushing Held Separate Businesses independently of the management of Respondents. The Cushing Management Team shall not be involved in any way in the other operations of the businesses of Respondents, other than being kept informed on all issues dealing with the Cushing Held Separate Businesses during the Hold Separate Period.

2. Respondents shall not change the composition of the management of the Cushing Held Separate Businesses except that the Cushing Management Team shall be permitted to remove management employees for cause subject to approval of the Cushing Hold Separate Trustee. Respondents shall not change the composition of the Cushing Management Team except the Cushing Hold Separate Trustee shall have the power to remove members of the Cushing Management Team for cause and to require Respondents to appoint replacement members to the Cushing Management Team in the same manner as provided in subparagraph VI.E.1 of this Order to Hold Separate and Maintain Assets.
3. The Cushing Hold Separate Trustee shall have responsibility, through the Cushing Management Team, for managing the Cushing Held Separate Businesses consistent with the terms of this Order to Hold Separate and Maintain Assets; for maintaining the independence of the Cushing Held Separate Businesses consistent with the terms of this Order to Hold Separate and Maintain Assets and the Consent Agreement; and for assuring Respondents= compliance with their obligations pursuant to this Order to Hold Separate and Maintain Assets.

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4. Employees of the Cushing Held Separate Businesses shall include: (i) all personnel employed by the Cushing Held Separate Businesses as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons hired from other sources. The Cushing Management Team, with the approval of the Cushing Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Cushing Held Separate Businesses since March 1, 2000. To the extent that employees of any of the Cushing Held Separate Businesses leave the Cushing Held Separate Businesses prior to the divestiture of the Cushing Held Separate Businesses, the Cushing Management Team, with the approval of the Cushing Hold Separate Trustee, may replace the departing employees of the Cushing Held Separate Businesses with persons who have similar experience and expertise.
5. Respondents shall, within ten (10) days of the start of the Hold Separate Period, cause the Cushing Hold Separate Trustee, each member of the Management Team, and each supervisory employee of the Cushing Held Separate Businesses to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Order to Hold Separate and Maintain Assets. These individuals must retain and maintain all Material Confidential Information relating to the Cushing Held separate business on a confidential basis and, except as is permitted by this Order to Hold Separate and Maintain Assets, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Cushing Held Separate Businesses. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of the competing products of Respondents.

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6. Respondents shall, within ten (10) days of the start of the Hold Separate Period, establish written procedures to be approved by the Cushing Hold Separate Trustee covering the management, maintenance, and independence of the Cushing Held Separate Businesses consistent with the provisions of this Order to Hold Separate and Maintain Assets.
7. Respondents shall, within ten (10) days of the start of the Hold Separate Period, circulate to employees of the Cushing Held Separate Businesses a notice of this Order to Hold Separate and Maintain Assets and Consent Agreement, in the form attached as Attachment B.
8. The Cushing Hold Separate Trustee, if one is appointed, and the Cushing Management Team shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondents shall indemnify the Cushing Hold Separate Trustee and the Cushing Management Team, and hold the Cushing Hold Separate Trustee and the Cushing Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Cushing Hold Separate Trustee's or the Cushing Management Team'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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Cushing Hold Separate Trustee or the Cushing Management Team.
9. Respondents shall provide the Cushing Held Separate

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Businesses with sufficient working capital to operate the Cushing Held Separate Businesses at least at current rates of operation, to meet all capital calls with respect to the Cushing Held Separate Businesses and to carry on, at least at their scheduled pace, all capital projects for the Cushing Held Separate Businesses that are ongoing or approved as of March 1, 2000. In addition, Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Cushing Held Separate Businesses authorized prior to the date the Consent Agreement was signed by Respondents. During the period this Order to Hold Separate and Maintain Assets is effective, Respondents shall make available for use by the Cushing Held Separate Businesses funds sufficient to perform all necessary routine maintenance to, and replacements of, assets of the Cushing Held Separate Businesses. Respondents shall provide the Cushing Held Separate Businesses with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Cushing Held Separate Businesses until the date the divestiture is completed, provided the Cushing Held Separate Businesses may not assume any new long-term debt except as necessary to meet a competitive threat and as approved by the Cushing Hold Separate Trustee.

10. Respondents shall continue to provide the same support services to the Cushing Held Separate Businesses as are being provided to such assets by Respondents as of the date the Consent Agreement was signed by Respondents. Respondents may charge the Cushing Held Separate Businesses the same fees, if any, charged by Respondents for such support services as of the date the Consent Agreement was signed by Respondents. Respondents= personnel providing such support services shall retain and maintain all Material Confidential Information of the Cushing Held Separate Businesses on a confidential basis, and, except as is permitted by this Order to Hold Separate and Maintain Assets, such persons shall be prohibited from providing, discussing, exchanging, circulating, or

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otherwise furnishing any such information to or with any person whose employment involves any of Respondents' other businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Cushing Held Separate Businesses.

11. Except as provided in this Order to Hold Separate and Maintain Assets, Respondents shall not employ or make offers of employment to employees of the Cushing Held Separate Businesses during the Hold Separate Period. The acquirer of the Cushing Held Separate Businesses shall have the option of offering employment to the Cushing Held Separate Businesses employees. After the Hold Separate Period, Respondents may offer employment to the Cushing Held Separate Businesses employees who have not been employed or whose employment has been terminated by the acquirer of the Cushing Held Separate Businesses. Respondents shall not interfere with the employment of employees of the Cushing Held Separate Businesses by the acquirer of the ARCO Cushing Assets; shall not offer any incentive to said employees to decline employment with the acquirer of the Cushing Held Separate Businesses or accept other employment with Respondents; and shall remove any impediments that may deter employees of the Cushing Held Separate Businesses from accepting employment with the acquirer of the ARCO Cushing Assets including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Cushing Held Separate Businesses that would affect the ability of employees of the Cushing Held Separate Businesses to be employed by the acquirer of the ARCO Cushing Assets.
12. Notwithstanding the above, Respondents may offer a bonus or severance to those Cushing Held Separate Businesses employees who continue their employment

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with the Cushing Held Separate Businesses until the date that the ARCO Cushing Assets are divested.

13. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Cushing Held Separate Businesses, the Cushing Hold Separate Trustee, the Cushing Management Team, or any of its operations; *provided, however*, that Respondents may exercise only such direction and control over the Cushing Held Separate Businesses as are necessary to assure compliance with this Order to Hold Separate and Maintain Assets, the Consent Agreement, the Decision and Order, or with all applicable laws.
14. Except to the extent provided in subparagraphs VI.E.10, VI.E.13, VI.E.16, VI.E.17, Respondents shall not permit any non-Cushing Held Separate Businesses employees, officers, or directors to be involved in the operations of the Cushing Held Separate Businesses.
15. If the Cushing Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Order to Hold Separate and Maintain Assets, the Commission may appoint a substitute Cushing Hold Separate Trustee in the same manner as provided in Paragraph VI of this Order to Hold Separate and Maintain Assets.
16. Until the divestiture of the ARCO Cushing Assets is accomplished, Respondents shall ensure that Cushing Held Separate Businesses employees continue to be paid their salaries, all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of ARCO during the Hold Separate Period.
17. Except as required by law and applicable regulatory authorities, and except to the extent that necessary information is exchanged in the course of consummating

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the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the Consent Agreement, or complying with this Order to Hold Separate and Maintain Assets, the Consent Agreement or the Decision and Order, Respondents shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about the Cushing Held Separate Businesses. Respondents may receive, on a regular basis, aggregate financial information relating to the Cushing Held Separate Businesses, but only insofar as is necessary to allow Respondents to prepare United States or foreign consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

18. The Cushing Hold Separate Trustee shall report in writing to the Commission concerning the Cushing Hold Separate Trustee=s efforts to accomplish the provisions and purposes of this Order, the Consent Agreement and the Decision and Order. Included within that report shall be the Cushing Hold Separate Trustee's or the Cushing Management Team=s assessment of the extent to which the Cushing Held Separate Businesses are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents that may affect compliance obligations arising out of this Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the

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creation or dissolution of subsidiaries or any other change in the corporation.

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VIII.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Hold Separate and Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents 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 Respondents relating to compliance with this Order to Hold Separate and Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order to Hold Separate and Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. ' 2.34; or
- B. (1) For the Alaska Held Separate Businesses, three (3) business days after the divestiture of the ARCO Alaska Assets pursuant to Paragraph II or V of the Consent Agreement and the Decision and Order, and (2) for the ARCO Cushing Assets, three (3) business days after the

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divestiture of the ARCO Cushing Assets pursuant to Paragraph III or Paragraph V of the Consent Agreement and the Decision and Order.

By the Commission.

ATTACHMENT A**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

On April 13, 2000, BP-Amoco p.l.c. (ABP-Amoco@) and the Atlantic Richfield Company (AARCO@), hereinafter referred to collectively as ABP/ARCO,@ entered into an Agreement Containing Consent Orders (AConsent Agreement@) with the Federal Trade Commission (AFTC@) relating to the divestiture of certain assets. That Consent Agreement includes two orders. The Decision and Order requires divestiture of two packages of assets: one in Alaska and the other in Oklahoma and Texas. The Order to Hold Separate and Maintain Assets (Athe Hold Separate Order@) requires those assets to be maintained and/or held separate pending their divestiture under the Decision and Order. In addition, on _____, 2000, BP-Amoco and ARCO entered into a Consent Decree (AConsent Decree@) with the States of California, Oregon and Washington (Athe States@), which also requires the divestiture of the Alaska package of assets. This Consent Decree was approved by the U.S. District Court for the Northern District of California and was entered on _____, 2000. The States= Consent Decree includes provisions that are comparable to the FTC=s Hold Separate Order.

Under the Decision and Order and the States Consent Decree, BP/ARCO are required to divest certain Alaska Assets to Phillips Petroleum Company within thirty days of the date BP-Amoco

Order to Hold Separate and Maintain Assets

acquired ARCO. That divestiture, however, has not occurred, and certain requirements of the second order B the Hold Separate Order B and the comparable provisions of the States= Consent Decree are now in place to hold certain ARCO Alaska assets separate pending divestiture to a buyer who must be approved by the FTC and the States. You are receiving this notice because you are an employee for an entity that is part of the Alaska assets and businesses that are now being held separate. These assets are called the AAlaska Held Separate Businesses@ and are defined in the Hold Separate Order, Decision and Order, and the States= Consent Decree and mean, among other things, ARCO Alaska, Inc, ARCO Transportation Alaska, Inc. (including any interests in Alyeska Pipeline Service Company and Prince William Sound Oil Spill Response Corp.), ARCO Marine, Inc., ARCO Marine Spill Response Company, Union Texas Petroleum Holdings, Inc., (AUTPH@) (excluding all assets of UTPH other than Union Texas Alaska, LLC), Union Texas Alaska, LLC, Kuparuk Pipeline Company (including any interests in Kuparuk Transportation Company and Kuparuk Transportation Capital Corporation), Cook Inlet Pipeline Company, Alpine Pipeline Company and Oliktok Pipeline Company.

The Alaska Held Separate Businesses must be managed and maintained as a separate, ongoing business, independent of all other businesses of BP/ARCO until such assets are divested. All competitive information relating to the Alaska Held Separate Businesses must be retained and maintained by the persons involved in the operation of those assets on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any other person whose employment involves any other business of BP/ARCO. Similarly, persons involved in similar activities for BP/ARCO must not provide, discuss, exchange, circulate, or otherwise furnish any similar information to or with any other person whose employment involves the Alaska Held Separate Businesses.

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Any violation of the Decision and Order, Hold Separate Order, or the States= Consent Decree may subject BP/ARCO to civil penalties and other relief as provided by law. If you have questions regarding the confidentiality of information, the Decision and Order, the Hold Separate Order or the States= Consent Decree, you should contact _____ at ____-____-____.

ATTACHMENT B**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

On April 13, 2000, BP-Amoco p.l.c. (ABP-Amoco@) and the Atlantic Richfield Company (AARCO@), hereinafter referred to collectively as ARespondents,@ entered into an Agreement Containing Consent Orders (AConsent Agreement@) with the Federal Trade Commission (AFTC@) relating to the divestiture of certain assets. That Consent Agreement included two orders. The Decision and Order requires divestiture of two packages of assets: one in Alaska and the other in Oklahoma and Texas. The Order to Hold Separate and Maintain Assets (Athe Hold Separate Order@) requires those assets to be maintained and/or held separate pending their divestiture under the Decision and Order.

Under the Decision and Order, Respondents are required to divest certain Oklahoma and Texas assets relating to the crude oil business to an acquirer within 120 days after they sign the Consent Agreement. While that divestiture is pending, the Hold Separate Order is now in place to hold separate the ARCO Pipe Line Company, which encompasses more assets than are required to be divested under the Decision and Order. Any buyer of the Oklahoma and Texas crude oil assets must be approved by the

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FTC. You are receiving this notice because you are an employee of the ARCO Pipe Line Company that is being held separate.

The ARCO Pipe Line Company must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents until the required assets are divested. All competitive information relating to the ARCO Pipe Line Company must be retained and maintained by the persons involved in the operation of those assets on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any other person whose employment involves any other business of the Respondents. Similarly, persons involved in similar activities for the Respondents must not provide, discuss, exchange, circulate, or otherwise furnish any similar information to or with any other person whose employment involves the ARCO Pipe Line Company.

Any violation of the Decision and Order or Hold Separate Order may subject Respondents to civil penalties and other relief as provided by law. If you have questions regarding the confidentiality of information, the Decision and Order, or the Hold Separate Order, you should contact _____ at ____-____-_____.

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The Federal Trade Commission (ACommission@) having initiated an investigation of the acquisition by Respondent BP Amoco p.l.c. of Respondent Atlantic Richfield Company, and Respondents having been furnished thereafter with draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and Section 7 of the Clayton Act, as amended 15 U.S.C. ' 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (AConsent 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 Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having modified this Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby makes the following jurisdictional finding and issues the following Order:

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1. Respondent BP Amoco p.l.c. is a corporation organized, existing and doing business under and by virtue of the laws of England and Wales with its office and principal place of business located at Britannic House, 1 Finsbury Circus, London EC2M 7BA, England. BP Amoco p.l.c.'s principal operating subsidiary in the United States is located at BP Amoco Corporation, 200 East Randolph Drive, Chicago, Illinois 60601-7125.
2. Respondent Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business at 333 S. Hope Street, Los Angeles, California 90071.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents 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. **ABP Amoco@** means BP Amoco p.l.c., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by BP Amoco p.l.c., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. **@ARCO@** means Atlantic Richfield Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries,

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divisions, groups and affiliates controlled by Atlantic Richfield Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. @Respondents@ means BP Amoco and ARCO, individually and collectively.
- D. ACommission@ means Federal Trade Commission.
- E. @Phillips@ means Phillips Petroleum Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business at Phillips Building, 422 South Keeler Street, Bartlesville, Oklahoma 74004.
- F. @Alaska Acquirer@ means the single entity and its subsidiaries, successors and assigns, to whom the ARCO Alaska Assets and ARCO Beluga, Inc., are divested by the trustee as required by the terms of this Order.
- G. ACushing Acquirer@ means the entity or entities and their subsidiaries, successors and assigns, to whom the ARCO Cushing Assets are divested pursuant to Paragraph III of this Order or by the trustee pursuant to Paragraph V of this Order, as applicable.
- H. AAcquisition@ means the proposed acquisition by BP Amoco of ARCO as described in the March 31, 1999, Agreement and Plan of Merger between BP Amoco and ARCO.
- I. @Alaska@ means the State of Alaska and offshore land and outer continental shelf subject to the jurisdiction of the State of Alaska or the United States.
- J. @Alaska Approval Assets@ means the following ARCO Alaska Assets requiring Alaska Approval Asset Consents:

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1. All of the outstanding shares of common stock of ARCO Transportation Alaska, Inc. and any associated local, state and federal rights of way;
2. All of the outstanding shares of common stock of ARCO Marine, Inc. and any associated local, state and federal rights of way;
3. All of the outstanding shares of common stock of Kuparuk Pipeline Company and any associated local, state and federal rights of way;
4. All of the outstanding shares of common stock of Oliktok Pipeline Company and any associated local, state and federal rights of way;
5. All of the outstanding shares of common stock of Alpine Pipeline Company and any associated local, state and federal rights of way;
6. All of ARCO's shares of Cook Inlet Pipeline Company and any associated local, state and federal rights of way;
7. The Certificate of Convenience and Necessity for the Alpine Pipeline Company crude oil pipeline (the AAAlpine Certificate@) from ARCO Alaska, Inc. to Alpine Pipeline Company;
8. All Alaska State oil and gas leases held or controlled by ARCO or any subsidiary of ARCO, as identified in Schedule A, attached;
9. Existing Supply Agreements for the long-term supply of crude oil between BP Amoco and certain refineries, as identified in Schedule B, attached;

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10. all rights, titles and interests of AMI Leasing, Inc. in and to the Construction Contract;
 11. Any other local, state and federal permits not otherwise included in this definition of the Alaska Approval Assets;
 12. The Alpine Rights of Way; and
 13. Any or all of the AMI Conveyed Properties, if necessary, as that term is defined in the Alaska MPSA, and the ARCO Trader bareboat charter assignments.
- K. AAlaska Approval Asset Consents@ means all consents or waivers from private entities, and local, state and federal regulatory bodies, including FERC and the State of Alaska, or other consents or waivers from partners or otherwise, that are necessary to effect the complete transfer of the Alaska Approval Assets or of any other assets that were not listed in the definition of Alaska Approval Assets, but are a part of the ARCO Alaska Assets, to Phillips or the Alaska Acquirer, as applicable.
- L. @Alaska MPSA@ means the March 15, 2000, Master Purchase and Sale Agreement, and amendments thereto, by and among ARCO, CH-Twenty, Inc., BP Amoco and Phillips, as amended, April 6, 2000.
- M. AAlpine Rights of Way@ means the two right-of-way leases by and between the State of Alaska and ARCO for the Alpine crude oil pipeline (ADL-415701) and the Alpine diesel line (ADL-415932) and the right-of-way granted by and between the State of Alaska and ARCO Alaska, Inc. under the Alpine utility pipeline (ADL-415857).
- N. AANS crude oil@ means crude oil produced from the Alaska North Slope.

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O. AARCO Alaska Assets@ means all assets, properties, businesses and goodwill, tangible and intangible, of ARCO, that are, as of March 15, 2000, related to and primarily used with or in connection with the ARCO Alaska Businesses, including without limitation, the following:

1. ARCO=s interest, direct or indirect, in ARCO Alaska, Inc., ARCO Transportation Alaska, Inc. (including any interests in Alyeska Pipeline Service Company and Prince William Sound Oil Spill Response Corp.), ARCO Marine, Inc., ARCO Marine Spill Response Company, Union Texas Petroleum Holdings, Inc., (AUTPH@) (excluding all assets of UTPH other than Union Texas Alaska, LLC), Union Texas Alaska, LLC, Kuparuk Pipeline Company (including any interests in Kuparuk Transportation Company and Kuparuk Transportation Capital Corporation), Cook Inlet Pipeline Company, Alpine Pipeline Company and Oliktok Pipeline Company;
2. all interests of ARCO in the office complex of ARCO Alaska, Inc., located at Lot 1A, Block 81, ORIGINAL TOWNSITE, according to the official plat thereof, filed under Plat Number 82-337, Records of the Anchorage Recording District, Third Judicial District, State of Alaska;
3. all interests of ARCO in the aircraft lease (Amended and Restated Lease Agreement between First Security Bank, National Association, Lessor and ARCO, Lessee, dated as of December 31, 1999) covering one Boeing 737-205 Aircraft and its related Engines, U.S. Registration No. N733AR;
4. ARCO Alaska Intellectual Property;
5. ARCO Patents;

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6. ARCO Seismic Data;
7. all rights, titles and interests of AMI Leasing, Inc. (a wholly owned subsidiary of ARCO) in and to five vessels (named, at the time the Consent Agreement was signed by Respondents, the ARCO Alaska, the ARCO California, the ARCO Texas, the ARCO Spirit and the ARCO Independence), being all of the tankers used by ARCO in the ARCO Alaska Businesses and the bareboat charter of the ARCO Trader;
8. all rights, titles and interests of AMI Leasing, Inc. in and to the Construction Contract, being the only existing agreement of ARCO for new ship construction relating to the ARCO Alaska Businesses;
9. all rights, titles and interests of ARCO and ARCO Alaska, Inc. in and to the Alpine Rights of Way;
10. all rights, titles and interests in and to the Alaska State oil and gas leases held by ARCO relating to the ARCO Alaska Businesses, which are identified on Schedule A, attached;
11. to the extent not included in any of the foregoing sections of this Paragraph, any rights, commitments, contracts or other options held by ARCO to acquire, lease or rent any asset primarily used in or connected with exploring for and developing or producing hydrocarbons in Alaska or transporting hydrocarbons to or from Alaska;
12. to the extent not included in any of the foregoing sections of this Paragraph, all rights, titles and interests in and to contracts, licenses, permits and agreements primarily used in or connected with the ARCO Alaska Businesses, including all rights, titles and interests in and to the contracts entered into in the ordinary course of business in connection with the ARCO Alaska Businesses with customers (together with associated bid and performance bonds), suppliers, service providers, vendors, sales

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representatives, distributors, partners, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

13. all customer lists, vendor lists, catalogs, sales promotion literature and advertising materials that are used in or connected with the ARCO Alaska Businesses;
14. all of the books, ledgers, files, reports, plans and operating records of, or maintained by, or pertaining to, any ARCO Alaska Company in whatever form stored or retained; and
15. all Product Inventory as that term is defined in the Alaska MPSA.

PROVIDED, HOWEVER, that ARCO Beluga, Inc. and ARCO=s proprietary trade names and trademarks are excluded from the definition of ARCO Alaska Assets.

P. AARCO Alaska Businesses@ means the business of:

1. acquiring any right or option (whether or not contingent) to bid for or to explore for, to develop or to produce hydrocarbons in Alaska;
2. exploring for, developing or producing hydrocarbons in Alaska or transporting or shipping hydrocarbons within or from Alaska;
3. providing any product or service, directly or indirectly, with or without compensation, to any person engaged in any of the activities in Paragraphs P.1. and P.2. where such product or service is primarily used in or related to such person=s activities in Alaska; or

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4. supporting ARCO in any of the activities in Paragraphs P.1., P.2., and P.3. as those activities were conducted by ARCO on March 15, 2000.
- Q. AARCO Alaska Company@ means each of ARCO Alaska, Inc., ARCO Transportation Alaska, Inc., ARCO Marine, Inc., ARCO Marine Spill Response Company, Union Texas Petroleum Holdings, Inc., Union Texas Alaska, LLC, Kuparuk Pipeline Company, Alpine Pipeline Company and Oliktok Pipeline Company.
- R. @ARCO Alaska Employees@ means employees employed by or working for the ARCO Alaska Businesses on or since March 15, 2000, including all employees of any ARCO Alaska Company, or ARCO Beluga, Inc. and those employees covered by Schedule 5.6 of the Alaska MPSA.
- S. @ARCO Alaska Intellectual Property@ means intellectual property, inventions, technology, trademarks, trade names, trade secrets, copyrights, know-how, research material, technical information, seismic data, geological data, geophysical data, management information systems, software and software specifications, designs, drawings, plans (whether proposed or tentative, whether adopted, pending or implemented), specifications, processes and quality control data that, as of the date that the Consent Agreement is signed by Respondents, are owned, in whole or in part (but only to the extent of such part), by or have been assigned to any ARCO Alaska Company, including any special analyses, interpretations and other derivatives from proprietary seismic, geological and geophysical data owned by ARCO Alaska, Inc. relating to any hydrocarbons in Alaska or the geology of Alaska.
- PROVIDED, HOWEVER, that ARCO Alaska Intellectual Property shall not include the ARCO Patents or any proprietary trade names or trademarks of ARCO.

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- T. AARCO Beluga, Inc.@ means ARCO Beluga, Inc., a wholly-owned subsidiary of CH-Twenty, Inc., in which ARCO Alaska, Inc. owns approximately 43% of its common stock with the remainder owned by ARCO and seven non-affiliated investors.
- U. AARCO Cushing Assets@ means:
1. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Seaway Crude Oil Pipeline Assets, and
 2. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Mid-Continent Crude Oil Logistics and Services Businesses.
- V. AARCO Geoscience and Reservoir Intellectual Property@ means all technical information, patents, computer programs and code, including all supporting manuals and documentation that, as of the date the Consent Agreement is signed by Respondents, are owned, in whole or in part (but only to the extent of such part), by ARCO, excluding any ARCO Alaska Company, and used in or connected with the ARCO Alaska Businesses and related to (1) modeling and simulation of subsurface hydrocarbon reservoirs, (2) interpreting seismic, geological and geophysical data and reservoir data, (3) optimizing facilities, and (4) drilling and producing hydrocarbons. Such ARCO Geoscience and Reservoir Intellectual Property includes, but is not limited to: (a) geophysical techniques employing elastic impedance seismic inversion technology; (b) reservoir simulation computer models (known as AACRES@); (c) enhanced oil recovery and fluid characterization technology; (d) geomechanical modeling; (e) fluid flow (AARCO90A) relative permeability technology; and (e) analytical reservoir measurement techniques.

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W. AARCO Intellectual Property@ means intellectual property, inventions, technology, trademarks, trade names, trade secrets, patents, copyrights, know-how, research material, technical information, management information systems, software and software specifications, designs, drawings, plans (whether proposed or tentative, whether adopted, pending or implemented), specifications, processes and quality control data that, as of the date the Consent Agreement is signed by Respondents, are owned, in whole or in part (but only to the extent of such part), by ARCO, excluding any ARCO Alaska Company, and either are licensed by ARCO to an ARCO Alaska Company or are otherwise primarily used in, for or connected with the ARCO Alaska Businesses as of the date the Consent Agreement is signed by Respondents, including, without limitation, all information, technology, know-how, research and other intangible assets and expertise used in connection with the ARCO Alaska Businesses related to miscible injection for enhanced oil recovery and technology related to unconsolidated sands.

PROVIDED, HOWEVER, that ARCO Intellectual Property shall not include ARCO Patents, ARCO Seismic Data, ARCO Geoscience and Reservoir Intellectual Property or any proprietary trade names or trademarks of ARCO.

X. AARCO Patents@ means all patents, patent applications and inventions that, as of the date the Consent Agreement is signed by Respondents, are owned, in whole or in part (but only to the extent of such part), by ARCO and primarily related to ARCO Alaska Businesses or otherwise primarily used by, for or in connection with an ARCO Alaska Company, in each case subject to any licenses to or other agreements with third parties in effect as of the date the Consent Agreement is signed by Respondents.

Y. AARCO Seismic Data@ means all proprietary seismic, geological and geophysical data that, as of the date that the

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Consent Agreement is signed by Respondents, are owned, in whole or in part (but only to the extent of such part), by ARCO relating to any hydrocarbons in Alaska or the geology of Alaska.

Z. AConstruction Contract@ means the new-build, construction contract for the ARCO Endeavour, the ARCO Resolution and the ARCO Discovery to which AMI Leasing, Inc. is a party.

AA. AExisting Supply Agreements@ means those ANS crude oil supply agreements identified in Schedule B, attached.

BB. AFERC@ means Federal Energy Regulatory Commission.

CC. AHydrocarbons@ means crude oil, natural gas, natural gas liquids and condensates.

DD. AKey ARCO Alaska Employees@ means:

1. the following individuals if the Alaska Acquirer acquires pursuant to Paragraph V of this Order:
 - a. all persons employed by or working for ARCO Alaska, Inc.'s Exploration and Land organization (ARCO organization code Z4000000) whose responsibilities include analyzing or interpreting geological data and information relating to Alaska, whether or not those persons are located in Alaska;
 - b. all persons employed by or working for ARCO knowledgeable about and presently working with miscible injectant technology and research used for enhanced oil recovery and unconsolidated sands technology and research, whether or not those persons are located in Alaska; and

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- c. individuals who are (a) either (i) independent contractors, or (ii) employees of the oil and gas contractors that perform services for more than one of the companies on the Alaska North Slope, and (b) whose jobs are functionally equivalent to those individuals defined in this Paragraph I.DD.1.a and b.
2. The individuals listed in Confidential Schedule C, attached, if Phillips acquires pursuant to Paragraph II of this Order.

EE. AMid-Continent Crude Oil Logistics and Services@ means:

1. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Basin Pipeline including, but not limited to, ARCO=s interests in the portion of the undivided joint interest crude oil pipeline owned by Equilon and ARCO Pipeline Company that runs from Jal, New Mexico, to Wichita Falls, Texas and the portion that runs from Wichita Falls, Texas, to Cushing, Oklahoma;
2. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the line transfer business including, but not limited to, the trade documentation service for ARCO=s ARCO Pipeline Company customers at Cushing, Oklahoma, and Midland, Texas, in which ARCO documents the transfer of title/ownership of crude oil between contracting buyers and sellers that take place in the ARCO Pipeline Company facilities, and includes, but is not limited to, the tracking of line transfer activities and the timely communication of >position= during the trading month to ensure balance for customers at the terminals;

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3. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the pumpover business at Cushing, Oklahoma, and Midland, Texas, including, but not limited to, all services related to the crude oil title transfer and physical barrel delivery, and ARCO=s interest in the Cushing terminal and Midland terminal;
4. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the West Texas Trunk System, including but not limited to, receipt and delivery pipeline systems centered around the Midland Terminal;
5. all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the Rancho Pipeline, a 400-mile, 24-inch crude oil, undivided interest pipeline including, but not limited to, ARCO=s approximately 25% interest in the pipeline segment from McCamey, Texas to El Dorado, Texas, ARCO=s approximately 20% interest in the pipeline segment from El Dorado, Texas to Houston, Texas, and ARCO=s approximately 24% interest in the Genoa, Texas Junction and the Texas Terminal Lines; and
6. the following that are related to Paragraphs EE.1. through EE.5.:
 - a. any rights, titles and interests in and to contracts, licenses, permits and agreements, including all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees;

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- b. all research material, technical information, management information systems, software and software specifications, designs, drawings, plans (whether proposed or tentative, whether adopted, pending or implemented), specifications, processes and quality control data related thereto;
- c. any rights, commitments, contracts or other options to acquire, lease or rent any asset;
- d. all owned or leased real property and improvements, buildings, plants, machinery, fixtures, equipment, furniture, tools, assets and other tangible personal property;
- e. all customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;
- f. all rights under warranties and guarantees, express or implied; and
- g. all books, records and files, and all items of prepaid expense.

PROVIDED HOWEVER, Mid-Continent Crude Oil Logistics and Services does not include the Cushing, Oklahoma to East Chicago, Illinois, 700-mile, 24-inch crude oil pipeline.

FF. ASeaway Crude Oil Pipeline Assets@ means all of ARCO=s assets, properties, businesses and goodwill, tangible and intangible, of and interest in, direct or indirect, the 30-inch crude oil pipeline from Freeport, Texas, to Cushing, Oklahoma, and associated crude distribution system, marine terminals and storage facilities (including, but not limited to, the Texas City Terminal, the Freeport Terminal, approximately 45 miles from Texas City, Texas, and the Jones

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Creek Storage facilities); including, but not limited to, the following that are related to this Paragraph FF:

1. any rights, titles and interests in and to contracts, licenses, permits and agreements, including all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees;
2. all research material, technical information, management information systems, software and software specifications, designs, drawings, plans (whether proposed or tentative, whether adopted, pending or implemented), specifications, processes and quality control data related thereto;
3. any rights, commitments, contracts or other options to acquire, lease or rent any asset;
4. all owned or leased real property and improvements, buildings, plants, machinery, fixtures, equipment, furniture, tools, assets and other tangible personal property;
5. all customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;
6. all rights under warranties and guarantees, express or implied; and
7. all books, records and files, and all items of prepaid expense.

GG. A Third Party Intellectual Property@ means intellectual property, inventions, technology, trademarks, trade names, trade secrets, patents, copyrights, know-how, research material, technical information, management information

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systems, software and software specifications, designs, drawings, plans (whether proposed or tentative, whether adopted, pending or implemented), specifications, processes and quality control data that, as of the date the Consent Agreement is signed by Respondents, are owned by a party other than ARCO but are licensed to ARCO, excluding any ARCO Alaska Company, and are primarily used in, for or connected with the ARCO Alaska Businesses (excluding subparagraph 4 of the definition thereof in Paragraph I.P.4.).

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest or cause to be divested, absolutely and in good faith, at no minimum price, the ARCO Alaska Assets and ARCO Beluga, Inc., as ongoing businesses.
- B. 1. The divestiture shall be made no later than thirty (30) days after Respondent BP Amoco consummates the Acquisition, and shall be pursuant to and in accordance with the Alaska MPSA (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order or the Order to Hold Separate and Maintain Assets), the Transition Services Agreement, referred to in Paragraph II.C.1, and the license agreements referred to in Paragraphs II.C.2, II.C.3, and II.C.4 (collectively, the ALicense Agreements@), below. Failure to comply with the Alaska MPSA, Transition Services Agreement, or the License Agreements shall constitute a failure to comply with this Order.
- 2. PROVIDED, HOWEVER, that notwithstanding the foregoing, Respondents shall divest ARCO=s rights, titles and interests in ARCO Transportation Alaska, Inc.,

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Kuparuk Pipeline Company, Cook Inlet Pipeline Company, Alpine Pipeline Company and Oliktok Pipeline Company and their respective subsidiaries, and all of AMI Leasing, Inc.'s rights, titles and interests in and to the Construction Contract to Phillips no later than fifteen (15) business days following the Respondents' receipt of the Alaska Approval Asset Consents with respect to all such rights, titles and interests. PROVIDED FURTHER, HOWEVER, that Respondents shall divest all such rights, titles, and interests within six (6) months of the date on which Respondents signed the Consent Agreement in this matter.

- C. On or before the time of the First Closing of the Alaska MPSA, as that term is defined in the Alaska MPSA, and subject to the prior approval of the Commission, Respondents shall:
1. Enter into a transition services agreement, which is a part of the Alaska MPSA, pursuant to which Respondents will provide Phillips with transition services that Phillips requires in order to conduct the ARCO Alaska Assets and the ARCO Alaska Businesses as currently conducted (the ATransition Services Agreement@). PROVIDED, HOWEVER, Respondents shall use reasonable best efforts to bring to a conclusion expeditiously the Transition Services Agreement.
 2. Enter into a license agreement for the ARCO Intellectual Property pursuant to which Respondents will grant to Phillips a fully paid-up, irrevocable non-exclusive license, for use of the ARCO Intellectual Property in connection with the operation in any manner by Phillips of the ARCO Alaska Businesses (excluding subparagraph 4 of the definition thereof in Paragraph I.P.4.) as existing as of the date the Consent Agreement is signed by Respondents, subject to any restrictions on the transfer or license of any such ARCO Intellectual Property arising under any

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agreement with a third party. Respondents shall cooperate with Phillips and use reasonable best efforts to assist Phillips in obtaining a waiver, consent or license, as applicable, for any such restricted ARCO Intellectual Property (or the benefits equivalent thereto), the expense of any such license or equivalent benefits to be borne by Phillips.

3. Enter into a license agreement for the ARCO Geoscience and Reservoir Intellectual Property pursuant to which Respondents will grant to Phillips a fully paid-up, irrevocable non-exclusive license, for use of the ARCO Geoscience and Reservoir Intellectual Property in connection with the operation in any manner by Phillips of the ARCO Alaska Businesses (excluding subparagraph 4 of the definition thereof in Paragraph I.P.4.) as existing as of the date the Consent Agreement is signed by Respondents, subject to any restrictions on the transfer or license of any such ARCO Geoscience and Reservoir Intellectual Property arising under any agreement with a third party and subject to the rights of any third parties under licenses previously granted by ARCO. Respondents shall cooperate with Phillips and use reasonable best efforts to assist Phillips in obtaining a waiver, consent or license, as applicable, for any such restricted ARCO Geoscience and Reservoir Intellectual Property (or the benefits equivalent thereto), the expense of any such license or equivalent benefits to be borne by Phillips.
 4. Enter into a license agreement pursuant to which Phillips will grant to Respondents a fully paid-up, irrevocable, non-exclusive license for use of the ARCO Patents worldwide. Such license will permit sublicenses to third parties.
- D. Respondents shall cooperate with Phillips and use reasonable best efforts to assist Phillips in obtaining a license for any Third Party Intellectual Property (or the benefits equivalent

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thereto), the expense of any such license or equivalent benefits to be borne by Phillips.

- E. Respondents shall use reasonable best efforts expeditiously to secure the consents or waivers of private entities required for divestiture of the Alaska Approval Assets prior to their divestiture and to secure prompt Alaska Approval Asset Consents.
- F. Respondents shall comply with all of their obligations under the long-term crude oil supply contract between BP Amoco and Paramount Petroleum Corporation (Paramount Contract Number 103505).
- G. Pending divestiture of the ARCO Alaska Assets and ARCO Beluga, Inc. to Phillips or the Alaska Acquirer, Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the ARCO Alaska Assets and ARCO Beluga, Inc., and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of any of the ARCO Alaska Assets and ARCO Beluga, Inc., except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.
- H. The purpose of the divestitures of the ARCO Alaska Assets and ARCO Beluga, Inc. is to ensure the continued use of the ARCO Alaska Assets and ARCO Beluga, Inc. in the same businesses in which they were engaged at the time of the announcement of the proposed Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.
- I. Respondents shall waive and not exercise any preferential right, right of first refusal, back-in right, or any contractual option that would permit Respondents, as a result of the divestiture to Phillips or the Alaska Acquirer, as applicable, to acquire any interest in any ARCO Alaska Asset acquired pursuant to this Order by Phillips or the Alaska Acquirer, as applicable.

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III.

IT IS FURTHER ORDERED that:

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- A. Respondents shall divest the ARCO Cushing Assets to the Cushing Acquirer, absolutely and in good faith and at no minimum price, within 120 days from the date Respondents sign the Consent Agreement. Respondents shall divest the ARCO Cushing Assets only to a Cushing Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.
- B. Pending divestiture of the ARCO Cushing Assets to the Cushing Acquirer, Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the ARCO Cushing Assets and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the ARCO Cushing Assets except for ordinary wear and tear.
- C. The purpose of the divestiture of the ARCO Cushing Assets is to ensure the continued use of the ARCO Cushing Assets in the same businesses in which they were engaged at the time of the announcement of the proposed Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. From the date Respondents sign the Consent Agreement until the divestitures are completed pursuant to the terms of this Order, Respondents shall take, or cause to be taken, reasonable steps, including implementing appropriate incentive plans (such as vesting or crediting of all current and accrued benefits and pensions, to which the employees are entitled) and paying bonuses, to cause the ARCO Alaska Employees to accept offers of employment from Phillips or the Alaska Acquirer, as applicable.

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- B. For a period of two (2) years following the date Respondents sign the Consent Agreement, Respondents shall not solicit for employment any ARCO Alaska Employee employed by Phillips or the Alaska Acquirer, as applicable, unless and until such employee=s employment by Phillips or the Alaska Acquirer, as applicable, has been terminated.
- C. For a period of three (3) years following the date Respondents sign the Consent Agreement, Respondents shall not solicit for employment any Key ARCO Alaska Employees employed by Phillips or the Alaska Acquirer, as applicable, unless and until such employee=s employment by Phillips or the Alaska Acquirer, as applicable, has been terminated.
- D. Respondents shall provide, cause to be provided, or reimburse Phillips or the Alaska Acquirer, as applicable, for providing to Key ARCO Alaska Employees the following financial incentives to continue in their employment positions or to accept employment with Phillips or the Alaska Acquirer, as applicable:
 - 1. Vesting of all pension benefits current and accrued as of the date of transition to employment with Phillips or the Alaska Acquirer after the relevant divestiture pursuant to Paragraph II.A or Paragraph V, as applicable; and
 - 2. Payment of a bonus equal to no less than 35 percent of the base salary (together with the amount of any social security, unemployment and similar taxes imposed upon the employer by applicable law with respect to such bonus) for each Key ARCO Alaska Employee (in addition to any other bonus or incentive payment made to Key ARCO Alaska Employees during the normal course of business). This bonus payment shall be conditional upon the acceptance of a position with Phillips or the Alaska Acquirer and remaining employed with Phillips or the

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Alaska Acquirer for a period of at least twelve (12) months. One-half of the bonus will be paid upon hire by Phillips or the Alaska Acquirer and the remainder will be paid after twelve (12) months of employment with Phillips or the Alaska Acquirer.

V.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested or have not caused to be divested, absolutely and in good faith the ARCO Alaska Assets and ARCO Beluga, Inc. to Phillips within the time period required by Paragraph II of this Order or the ARCO Cushing Assets within the time period required by Paragraph III of this Order, respectively, the Commission may appoint a trustee to divest or cause to be divested, respectively, the ARCO Alaska Assets, ARCO Beluga, Inc., or obtain the Alaska Approval Asset Consents and divest the Alaska Approval Assets, or to divest the ARCO Cushing Assets.
- B. In the event that the Commission or the 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 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 V.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

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1. The Commission shall select the trustee, subject to the consent of the 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 receipt of written 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. The trustee may be the same person or entity as any trustee appointed pursuant to the Order to Hold Separate and Maintain Assets.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest or cause to be divested, respectively, the ARCO Alaska Assets, ARCO Beluga, Inc. and to obtain the Alaska Approval Asset Consents and divest the Alaska Approval Assets, or to divest the ARCO Cushing Assets.
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 and obtain the consents required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V. C. 3. to accomplish the divestitures and obtain the consents, 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

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within a reasonable time or that consents can be obtained in a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to the personnel, books, records and facilities related to the ARCO Alaska Assets, ARCO Beluga, Inc., the Alaska Approval Assets, or ARCO Cushing Assets or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the 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, but shall divest expeditiously at no minimum price. The divestitures shall be made only to an acquirer that receives the prior approval of the Commission, and the divestitures and consents shall be accomplished only in a manner that receives the prior approval of the Commission; provided however, if the trustee receives bona fide offers from more than one acquiring entity, 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)

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days of receiving written 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 respondent, 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 ARCO Alaska Assets, ARCO Beluga, Inc. and obtaining the Alaska Approval Asset Consents and divesting the Alaska Approval Assets or divesting the ARCO Cushing Assets, depending on the circumstances.
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.

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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 V.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. In the event that the trustee determines that he or she is unable to divest or cause to be divested the ARCO Alaska Assets, ARCO Beluga, Inc. or to obtain the Alaska Approval Asset Consents and divest the Alaska Approval Assets in a manner consistent with the Commission's purpose as described in Paragraph II or to divest the ARCO Cushing Assets in a manner consistent with the Commission's purpose as described in Paragraph III, the trustee may divest assets similar and corresponding to the ARCO Alaska Assets, ARCO Beluga, Inc. or the ARCO Cushing Assets, of Respondents, respectively, as necessary to achieve the remedial purposes of this Order.
12. The trustee shall have no obligation or authority to operate or maintain the ARCO Alaska Assets, ARCO Beluga, Inc., the Alaska Approval Assets, or the ARCO Cushing Assets.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures and to obtain the necessary consents.

VI.**IT IS FURTHER ORDERED** that:

- A. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not acquire, under the circumstances described below, any asset

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required to be divested pursuant to Paragraph II of this Order without providing advance written notification to the Commission and observing the waiting periods specified in Paragraph VI.B. An acquisition requiring advance written notification shall be one that satisfies any one or more of the following:

1. For oil reserves, when such acquisition, alone or in combination with such prior acquisitions, will result in a net increase in Respondents=
 - (a).oil production by an amount greater than 10,000 barrels per day, or
 - (b).proved reserves in an amount greater than 20 million barrels of oil.
2. For oil or gas exploration, development, or production leases, when such acquisition, alone or in combination with such prior acquisitions,
 - (a).will result in Respondents= acquiring acreage in an amount greater than 15,000 net acres; or
 - (b).will transfer, by exercise of voting right, the power of any person to initiate, promote, or prevent any activity involving such leases.
3. For ARCO Seismic Data,
 - (a).in any amount, when Phillips does not retain ownership; or
 - (b).when such acquisition, alone or in combination with such prior acquisitions, will result in a value greater than \$3 million.

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4. For any combination of ARCO Alaska Intellectual Property and ARCO Patents,
 - (a). in any amount, when Phillips does not retain ownership; or
 - (b). when such acquisition, alone or in combination with such prior acquisitions, will result in a value greater than \$2 million.
- B. Any notification required by Paragraphs VI.A.1., VI.A.2., VI.A.3., or VI.A.4. shall be provided by Respondents in the form of a letter to the Commission (hereinafter referred to as *Athe Notification@*) containing a description of the acquisition, including the value of the acquisition and the type of consideration paid for the acquisition, and also including attachments as necessary (e.g., maps) to fully explain the acquisition. Respondents shall provide the Notification at least thirty (30) days prior to consummating any such acquisition (hereinafter referred to as the *Afirst 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 VI may be requested and, where appropriate, granted by letter from the Bureau of Competition.
- C. Notwithstanding anything in Paragraphs VI.A. and VI.B., notification pursuant to Paragraph VI.A. need not be made for:
 1. Any acquisition, during a one-year period beginning on the date this Order becomes final, if such acquisition is necessary to implement the Prudhoe Bay Unit Alignment Agreement, Exchange Agreement, Alaska North Slope

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Alignment Agreement, or Point Thompson Area Alignment and Exchange Agreement, or

2. Any 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.
- D. All valuations made pursuant to Paragraph VI.A.(i.e., for quantities of oil production and proved reserves, or dollar value of seismic data, intellectual property, or patents) shall be determined as follows:
1. In the case of transactions as to which no prior notification is required, at the time of acquisition; and
 2. In the case of transactions as to which prior notification is required, at the time of filing.

VII.

IT IS FURTHER ORDERED that, within thirty (30) 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 through V 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 Paragraphs II through V of this Order and with the Order to Hold Separate and Maintain Assets. 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 Paragraphs II through V of the Order, including a description of all substantive contacts or negotiations relating to the divestitures and the approvals. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures

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and approvals. The final compliance report required by this Paragraph VII shall include a statement that the divestitures have been accomplished in the manner approved by the Commission and shall include the dates the divestitures were accomplished.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents that may affect compliance obligations arising out of this Order, 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.

IX.

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 and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Order; and
- B. Upon five (5) days= notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 25, 2010.

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By the Commission.

SCHEDULE A
ALASKA STATE OIL AND GAS LEASES

ADL-380049

ADL-380050

ADL-380051

ADL-380052

ADL-380053

ADL-380054

ADL-380055

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ADL-380060

ADL-380062

ADL-380087

ADL-380088

ADL-380089

ADL-380090

ADL-380106

ADL-380107

Decision and Order

**SCHEDULE B
EXISTING SUPPLY AGREEMENTS**

- 1. Alaskan North Slope Crude Oil Sales Agreement by and between U.S. Oil and Refining Co. and BP Oil Supply Company.**
- 2. Alaskan North Slope Crude Oil Sales Agreement by and between Tosco Refining Company and BP Oil Supply Company.**
- 3. Alaskan North Slope Crude Oil Sales Agreement by and between Petro Star Inc. and BP Oil Supply Company. (Petro Star Contract Number 2000-1)**
- 4. Alaskan North Slope Crude Oil Sales Agreement by and between Petro Star Inc. and BP Oil Supply Company. (Petro Star Contract Number 2000-2)**
- 5. Alaskan North Slope Crude Oil Sales Agreement by and between Petro Star Inc. and BP Oil Supply Company. (Petro Star Contract Number 2000-3)**
- 6. Alaskan North Slope Crude Oil Sales Agreement by and between Petro Star Inc. and BP Oil Supply Company. (Petro Star Contract Number 2000-4)**
- 7. Alaskan North Slope Crude Oil Sales Agreement by and between Williams Energy Marketing & Trading Co. and BP Oil Supply Company. (Williams Contract Number ABS-129-0001)**
- 8. Alaskan North Slope Crude Oil Sales Agreement by and between Williams Energy Marketing & Trading Co. and BP Oil Supply Company. (Williams Contract Number ABS-129-0002)**

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9. Alaskan North Slope Crude Oil Sales Agreement by and between Williams Energy Marketing & Trading Co. and BP Oil Supply Company. (Williams Contract Number ABS-129-0003)

10. Alaskan North Slope Crude Oil Sales Agreement by and between Williams Energy Marketing & Trading Co. and BP Oil Supply Company. (Williams Contract Number ABS-129-0004)

11. Alaskan North Slope Crude Oil Sales Agreement by and between Williams Energy Marketing & Trading Co. and BP Oil Supply Company. (Williams Contract Number ABS-129-0005)

12. Alaskan North Slope Crude Oil Sales Agreement by and between Equilon Enterprises LLC and BP Oil Supply Company.

**SCHEDULE C
CONFIDENTIAL LIST: KEY ARCO ALASKA
EMPLOYEES
[REDACTED]**

Commissioners' Statement

**STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONER MOZELLE W. THOMPSON,
CONCURRING IN PART AND DISSENTING IN PART**

The Commission makes final today a consent order that requires BP Amoco plc (ABP@), as a condition of its acquisition of Atlantic Richfield Company (AARCO@), to divest all of ARCO=s crude oil exploration and production assets in Alaska and related pipeline rights, maritime assets, seismic data and technical information. In effect, BP agrees to divest Aall of ARCO@ in Alaska. In addition, the consent order requires BP to divest all ARCO pipeline and storage facilities in and around the crude oil marketing and trading hub at Cushing, Oklahoma (Athe Cushing assets@) to a buyer to be approved by the Commission within 120 days of the date on which BP and ARCO sign the consent order.

The consent order provides that the divested Alaska assets will be acquired by Phillips Petroleum Co. (APhillips@). Phillips is an integrated petroleum company with oil and gas exploration and production interests in several countries and (as of 1999) assets of about \$15 billion and annual revenues of about \$13.9 billion. Prior to the divestitures, Phillips had some Alaska oil and gas exploration and production interests of its own, but these were tiny relative to those of BP and ARCO. Phillips is engaged in refining and gasoline marketing in several of the United States, but not on the West Coast. BP selected Phillips as the buyer of ARCO=s Alaska assets, and the Commission has unanimously approved Phillips as the buyer.

Since BP and ARCO signed the consent order and the Commission accepted it for public comment, ARCO=s Alaska assets have been divested to Phillips and the Cushing assets have been divested, with the Commission=s approval, to Texas Eastern Products Pipeline Company, LLC. (ATEPPCO@). Three transitional agreements between BP and Phillips and between BP

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and TEPPCO, required by the consent order, remain in place, and, pursuant to the consent order, a trustee has been appointed to monitor compliance with those agreements.

In most respects, this consent order achieves all the Commission sought, and all the relief that would likely have been achieved if the Commission prevailed in litigation. But we voted against the Commission's acceptance of the consent order for placement on the public record for comment, and we write separately to express our continuing concern with the majority's decision not to include in the consent order a provision prohibiting BP and Phillips from exporting ANS crude oil at a loss for the purpose of maintaining oil prices on the West Coast of the United States.¹

Before the merger and the divestitures, BP had the largest share -- about 40% -- of all crude oil produced on the Alaska North Slope (ANS); had the largest interest -- about 50% -- in the Trans-Alaska Pipeline System (TAPS) that is used to transport crude oil to port at Valdez, Alaska; and had the largest fleet available for transporting ANS crude oil from Alaska to refineries in the rest of the United States. ARCO was its largest rival in each of these respects, with a share of over 30% of ANS crude production; a 22% stake in TAPS; and the second largest available fleet. BP and ARCO's dominance of the market was even greater when measured in terms of exploration assets and operatorships in Alaska. BP, which did not own any West Coast refineries, sold all of its ANS crude in the merchant market. ARCO, which owned two of the largest refineries on the West Coast, consumed the bulk of its ANS production internally. However, ARCO also sold on the merchant market, thereby, according to the Commission's complaint, serving as the firm most likely to constrain BP's exercise of monopoly power, a

¹ The provision that we would favor is explained, and its terms defined, further below.

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constraint that Alikely would increase@ over time but for the merger.²

Because it provided for Phillips to acquire all of ARCO=s assets in Alaska, the consent order is likely to restore competition on the Alaska North Slope. In the market for the supply of ANS crude oil to targeted refineries on the West Coast, Phillips will be in a different position from ARCO because, unlike ARCO, Phillips is neither a refiner nor a gasoline marketer on the West Coast. This difference should leave Phillips with more crude oil to sell on the open market than ARCO previously had after supplying its own refineries, and, if not undermined by private conduct, may actually improve upon the level of competition in that market. In Cushing, a clean sweep of ARCO=s pipeline and storage assets to TEPPCO should also suffice to restore competition.

Negotiations leading to this settlement were extensive and complicated. Nevertheless, once the outline of a settlement was agreed upon - that is, divestiture of Aall of ARCO@ in Alaska and in and around Cushing - BP, ARCO and Commission staff worked out the details with dispatch.

In one respect, however, the Commission=s action in this matter is disappointing. In its original complaint and in its memorandum supporting the complaint, the Commission alleged that BP systematically and over an extended period of time exported ANS crude at a loss in Asia and to other regions in the United States in order to curtail or tighten supply to refiners on the U.S. West Coast and to maintain crude oil prices in that market.³ The Commission was prepared to substantiate its charge

² See *FTC v. BP Amoco plc*, Civ. No. 00-0416-SI (N.D.Cal. filed Feb. 4, 2000), Compl. & 18.

³ See *FTC v. BP Amoco plc*, Compl. && 18, 23; Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 7, 9-11.

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with a series of documents, cited in its memorandum supporting the complaint but currently under seal in the United States District Court.⁴ The Commission alleged that the pattern of exports reflected BP=s market power, and that such market power would increase as a result of the proposed merger.

When litigation was suspended for settlement negotiations, the issue of exports designed to raise price was addressed. BP and Phillips reportedly stated publicly that they would not export U.S. crude resources out of PADD V (the technical term for the U.S. West Coast market, specifically, the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington).⁵

We believe that the Commission should follow the logic of its own complaint and require BP and Phillips to affirm their public statements in our consent agreement in this matter. That would require the following provision in the order:

ABP and Phillips shall not knowingly and intentionally Sell for Export⁶ ANS crude oil for the purpose of increasing the

⁴ See *id.* at 7, n.13, 9-10 & nn. 16-18. (The public version of the FTC=s Points and Authorities, with the parties= confidential information redacted, is available at <<http://www.ftc.gov/os/bpamoco/index.htm>>. All references in this statement to the memorandum supporting the complaint are to that version.)

⁵ See, e.g., H. Josef Hebert, ACompany ties offer to halt exporting Alaska crude to merger@ (Associated Press, March 24, 2000) (citing a letter from BP to U.S. Representative Don Young of Alaska); Associated Press, ABP Amoco Would End Alaska Exports@ (March 24, 2000); Reuters, ABP Amoco, Phillips to halt Alaskan oil exports@ (March 24, 2000) (citing a letter from BP to U.S. Representative George Miller of California).

⁶ ASell for Export@ and ASale for Export@ would be defined terms, referring to the sale, exchange, delivery or transfer of ANS crude oil for refining at a refinery located outside of PADD V, PROVIDED, however, that they would not include any sale, exchange, delivery or transfer of ANS crude oil in return for which ANS crude oil from another person is tendered or delivered to Respondents at a location in PADD V.

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Spot Price⁷ of ANS crude oil in PADD V, PROVIDED, however, that a Sale for Export at a price reasonably anticipated to produce a higher profit than a contemporaneous sale in PADD V shall be presumed not to violate this Order.@

This provision is narrower than the parties' public statements, thereby assuring that it would in no way affect normal, competitive business conduct, such as exporting oil abroad when the price offered abroad (net of transportation and other costs) is higher than on the West Coast. Instead, it would target the systematic export of United States' crude oil to Asia or elsewhere at a loss (relative to the profit that could have been obtained on the same crude oil within PADD V) for the purpose of raising U.S. West Coast prices. B a practice that we consider an extraordinary exercise of market power. If engaged in through coordinated action B and the Commission's memorandum alleges that BP Amop[ped] up >excess= supplies of ANS@ crude from others⁸ -- such conduct would be illegal *per se*. See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 190-91, 216, 218-28 (1940) (holding illegal *per se* agreements to purchase Adistress gasoline@ in order to raise prices or prevent price decreases). Regardless of its legality, exporting at a loss in order to raise West Coast prices plainly threatens competition in a market where this agency has a duty to ensure that competition is fully restored. See, e.g., *Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972); *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961).

Because the Commission was prepared to prove that intentional manipulation of supply on the West Coast occurred in

⁷ ASpot Price@ would be a defined term, referring to the amount paid for a single delivery of crude oil as part of an arms-length transaction as reported by Reuters, Telerate or Platts.

⁸ *FTC v. BP Amoco plc*, Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 10.

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the past, and could occur again in the future, the provision would be appropriate relief for the Commission to require. *See, e.g., FTC v. National Lead Co.*, 352 U.S. 419, 429, 430 (1957) (a remedy is proper if it bears a reasonable relation to the unlawful practices found to exist and decrees often suppress a lawful device when it is used to carry out an unlawful purpose) (citations omitted); *cf. FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) (If the Commission is to obtain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity).

Notwithstanding the substantial evidence of manipulation supporting the allegations in the complaint and memorandum, a majority of the Commission declines to require this provision. In omitting any provision concerning exports, we do not understand our fellow Commissioners to condone the practices that we identified in our complaint. But we see no good reason for the omission.

First, the majority suggests that the divestitures ordered today eliminate the competitive overlap that was the central competitive concern raised by the proposed merger. While we believe that the divestiture to Phillips is effective and appropriate relief, and may even improve competition, we would also address directly the competitive concerns raised by past and potentially future exporting practices aimed at exploiting precisely the market power that the BP-ARCO merger places at issue. The consent made final today permits both a realignment of operatorship interests on the Alaska North Slope and a vertical realignment, whereby BP's crude supply will now be aligned with what were ARCO's downstream assets, and ARCO's successor, Phillips, will likely replace BP as the principal supplier to the merchant (*i.e.*, non-vertically-integrated) market on the West Coast. How those realignments will affect the incentives and opportunities of BP and Phillips to continue BP's past practice of exporting to maintain West Coast prices is uncertain, as are future fluctuations

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in their production and reserves on the Alaska North Slope and their likely effects on those incentives and opportunities.

The majority believes that it is unnecessary to impose any restriction on exports⁹ because ABP likely will need to use most of its ANS crude oil production@ in the ARCO refineries it is acquiring on the West Coast, and because APhillips will have a much smaller share of ANS crude oil production than did BP.@ (We understand Phillips= initial share of ANS crude oil production to be between 30 and 35%.) Even if true today, there is no assurance that in the future either company, in an uncertain and evolving marketplace, will not find itself in a position to engage in the same conduct BP engaged in previously. Any such risk should not be borne by the consumer.

Second, as noted above, precedent establishes that conduct relief ancillary to structural relief may be appropriate in a merger case to address related competitive concerns, even when the conduct restriction may, in doing so, restrain some lawful conduct.¹⁰ Such relief is especially appropriate where, as in this

⁹ The provision that we advocate is not, of course, an export ban. It is, rather, a narrow restriction, targeted at exports that entail an extraordinary exercise of market power.

¹⁰ It is well established that the Commission has a broad remedial discretion that would, where appropriate, permit substantial further relief against conduct that does not independently violate the antitrust laws. *See, e.g., Ford Motor Co.*, 405 U.S. at 575; *E.I. du Pont de Nemours*, 366 U.S. at 344. Courts have approved a variety of remedies against potentially lawful conduct as ancillary to structural relief, including future lawful participation in a market previously entered by means of unlawful merger, *Ford Motor Co.*, 405 U.S. at 575-76, an injunction against further acquisitions, *United States v. Grinnell Corp.*, 384 U.S. 563, 580 (1966), requirements of prior Commission approval for future joint ventures, mergers or acquisitions, *Yamaha Motor Co. v. FTC*, 657 F.2d 971, 984-85 (8th Cir. 1981); *Luria Bros. & Co. v. FTC*, 389 F.2d 847, 865-66 (3d Cir. 1968), and prohibitions of sales between joint venture partners, *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619 (W.D. Ky. 1985).

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case, the merger creates uncertainties in a market already characterized by exercises of market power that may harm consumers and where the relief imposed will increase the likelihood that competition will be fully restored. *See, e.g., Ford Motor Co.*, 405 U.S. at 578 (approving district court relief aimed at Anurtur[ing]@ lost competition over an objection that the forces in the marketplace might suffice to restore it).¹¹

Third, we believe that a narrow export-at-a-loss restriction like the one set forth above would effectively protect, and would in no way inhibit, free and vigorous competition.¹² We recognize that in 1995, Congress repealed an export ban on ANS crude oil, and we have no intention of undermining that repeal. However, as we have noted above, a consent agreement provision that narrowly prohibits exports (1) reasonably anticipated to be at a loss and (2) made Aknowingly and intentionally . . . for the purpose of increasing the Spot Price of ANS crude oil in PADD V@ is far removed from a general export ban, and would leave firms entirely free to engage in normal, competitive export activities both within PADD V and elsewhere. Further, although the

¹¹ The majority emphasizes that Ait is not the Commission=s mandate to use merger enforcement as a vehicle for imposing its own notions of how competition may be >improved.=@ We of course agree that merger enforcement is not an appropriate vehicle for Aimproving@ markets in ways unrelated to the merger. But as the precedents cited in footnote 10, above, exemplify, it is equally fundamental that mergers must be viewed, and the competitive concerns that they raise addressed, in the practical and dynamic context of the markets in which they occur. *See, e.g., Brown Shoe Co. v. United States*, 370 U.S. 294, 321-23 (1962).

¹² The majority expresses concern that our provision would not Aapply equally to all producers@ of ANS crude oil. It is true that our provision would place restrictions on the two parties before us, who will also be the two largest producers of ANS crude oil, that would not apply to smaller competitors. But our narrow restriction would not prevent them from competing vigorously -- only from engaging in a practice that the Commission=s complaint identified as an exercise of market power that distorted competition. Because the mandate of this agency is to protect competition, not the individual interests of particular competitors, we are not concerned about inhibiting BP and Phillips= ability to exercise market power by manipulating West Coast prices.

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provision that we propose would be narrow, we believe that it would be effective. The proviso requiring that sales be reasonably anticipated to be at a loss to be suspect would give both the parties and FTC enforcement staff an objective benchmark, while the intent and purpose requirements B requirements familiar to antitrust law, *see, e.g., Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602 (1985) B would ensure that normal competitive conduct would be unaffected.

Under normal circumstances we favor structural rather than behavioral remedies. That approach underlies the substantial structural relief that the Commission unanimously requires in this case. However, we believe that in addition, the above-described export restriction is appropriate and warranted by the facts and circumstances of this case. Accordingly, we dissent from the majority decision not to include in the consent order a provision restraining in the future the manipulation of ANS crude supply to the West Coast that we believe occurred in the past.

**STATEMENT OF COMMISSIONERS ANTHONY,
SWINDLE, AND LEARY**

Alaska's North Slope is one of the largest sources of crude oil in the world. Crude oil extracted from Alaska's North Slope ("ANS crude oil") is transported through the Trans-Alaska Pipeline System ("TAPS") to the warm water port of Valdez, Alaska. From Valdez, large oil tankers transport ANS crude oil to refineries, most of which are located on the West Coast of the United States. The West Coast refineries process ANS crude oil and other crude oils to produce gasoline that ultimately is sold to consumers located on the West Coast.

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The three main producers of ANS crude oil are British Petroleum/Amoco Oil Co., Inc. ("BP"), Atlantic Richfield Corporation ("ARCO"), and ExxonMobil Corporation ("Exxon"). BP produces about 45% of ANS crude oil, ARCO about 30%, and Exxon about 22%. Each of these producers own interests in TAPS and the oil tanker fleet that are roughly proportionate to its share of ANS crude oil production. Because BP does not own any refineries on the West Coast, it sells most of its ANS crude oil to other West Coast refiners. In contrast, ARCO and Exxon use most of their ANS crude oil in their own West Coast refineries.

BP's proposed merger with ARCO would give the merged firm about a 75% share of exploration, production, and transportation of ANS crude oil. The complaint alleges that the merger is likely substantially to lessen competition in the market for the sale of ANS crude oil to West Coast refineries. The basic theory is that prior to the merger BP was able to exercise market power in sales of ANS crude oil to West Coast refineries, i.e., BP was able to profitably maintain prices above competitive levels for a significant period of time. BP's acquisition of ARCO would increase BP's ability to exercise market power, which could cause West Coast refineries to pay more for ANS crude oil. While the case raises complex market definition and other issues, we have reason to believe that the proposed merger, absent the contemplated relief, is likely substantially to lessen competition as alleged in the complaint.

Traditionally, if a merger raises competitive concerns, the Commission requires the merging parties to divest assets to eliminate the competitive overlap before allowing the merger to be consummated. Consistent with this approach, in this case the Commission has issued an order requiring BP and ARCO to divest all of ARCO's assets in Alaska to Phillips Petroleum Company ("Phillips"). We believe that this divestiture will remedy the antitrust concerns raised by the merger. In fact, as the concurring statement of Chairman Pitofsky and Commissioner Thompson points out, the relief in the order has the potential to "actually improve upon the level of competition" in the West Coast market. As a result of the divestiture, Phillips will have

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about a 30% share of ANS crude oil exploration, production, and transportation, and Phillips will have even more crude oil to sell on the open market than ARCO did. Phillips appears to have the financial resources and experience to be a vigorous competitor in the exploration, production, and transportation of ANS crude oil.

In addition to this structural relief, Chairman Pitofsky and Commissioner Thompson would favor "behavioral" relief that would require the Commission to engage in extensive monitoring of ANS crude oil exports and prices for the next decade. Specifically, they support a provision that would prohibit BP and Phillips, for 10 years, from "knowingly and intentionally" exporting ANS crude oil outside the West Coast of the United States "for the purpose of increasing the Spot Price of ANS crude oil" on the West Coast. The proposed export restriction also would include a presumptive safe harbor if an export sale were made at a "price reasonably anticipated to produce a higher profit than a contemporaneous sale" on the West Coast. We believe that this over-regulatory export restriction would be unnecessary, unenforceable, and otherwise inappropriate.¹

It is unnecessary to impose the proposed export restriction on BP because BP is highly unlikely to engage in exports following the merger. There is some evidence that, prior to the merger, BP occasionally exported ANS crude oil to the Far East in order to increase spot prices for ANS crude oil on the West Coast. It is

¹ It bears noting that in 1995, Congress explicitly repealed the then-existing ban on ANS exports. If Congress were to determine that the ban should be reinstated, it could so act. In addition, the 1995 legislation lifting the export ban granted the President, in consultation with the Secretary of Energy, the power to reimpose the export ban upon a determination by the Secretary of Commerce that "exporting oil . . . has caused sustained oil prices significantly above world market levels" (30 U.S.C. 185(s)(5)). Such a ban would apply equally to all producers, and would not leave some producers under the restrictions of the Commission's order while permitting other producers to export without inhibition.

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important to emphasize that BP's unilateral actions were not illegal under the antitrust laws - and, indeed, the complaint makes no allegation that the exports were illegal.² In any event, however, BP's incentives to export will change as a result of the divestitures that the order requires. Before the merger, BP sold most of its ANS crude oil to other West Coast refiners because it did not own refineries on the West Coast. BP benefitted from higher spot prices because of its status as a merchant marketer, and also because Alaska's royalty scheme for ANS production was tied to ANS spot prices on the West Coast. With the merger, BP will acquire two West Coast oil refineries that were part of ARCO, and BP likely will need to use most of its ANS crude oil production to operate these two refineries. Since BP will be consuming most of its ANS production internally, BP will now benefit from lower royalty payments to the extent that the ANS spot price drops. Therefore, as a result of the new market structure created by the divestitures required by the order, BP is extremely unlikely to resume exporting ANS crude oil to the Far East (or elsewhere) to increase spot prices for ANS crude oil on the West Coast.

Nor is it necessary to impose the export restriction on Phillips. Phillips is purchasing ARCO's assets in Alaska lock-stock-and-barrel, i.e., Phillips is assuming ARCO's position as an explorer, producer, and transporter of ANS crude oil. There is no evidence that ARCO ever engaged in strategic ANS exports for the purpose of increasing West Coast spot prices. Granted, it might appear that Phillips will have a greater incentive than ARCO did to increase spot prices for ANS crude oil, because Phillips, like the pre-merger BP, will sell its ANS crude oil to

² Rather, the exports are cited as evidence that pre-merger BP had existing market power with respect to ANS sales on the West Coast. (Complaint §§ 24-26). Therefore, the Commission alleges, it would be unlawful for BP to acquire its closest competitor in this market, and thereby enhance its market power. Of course, if two or more producers appeared to engage in such exports through coordinated or other illegal action, the Commission could initiate an investigation of such unlawful conduct and take appropriate enforcement measures.

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West Coast refineries on the merchant market (whereas ARCO consumed most of its production in its own West Coast refineries). However, Phillips will have a smaller share of ANS crude oil production than did BP - approximately 30% for Phillips versus 45% for BP - which makes it quite unlikely that Phillips could successfully engage in exports to increase spot prices for ANS crude oil on the West Coast.

Not only is the export restriction unnecessary, it also would be extremely difficult to enforce because it would require proof of BP's or Phillips's knowledge and intent. We cannot rely on the companies to create an unambiguously inculcating "paper trail," and in the face of ambiguous evidence, the Commission's burden of proof would be very high indeed. We do not think that the public interest would be well served by including an order provision that is so obviously difficult to enforce that it would have little or no practical effect. Moreover, the proposed safe harbor would complicate enforcement proceedings even further by introducing additional factual issues that would be difficult to resolve.

We do not believe the export restriction is an appropriate measure for the Commission to impose in the context of a merger settlement, especially when structural relief fully restores, and may even improve upon, the status quo ante. The export restriction would address a pre-existing market condition, under which BP allegedly, unilaterally, and sporadically exported ANS crude oil with some slight effect on West Coast prices.³ We acknowledge the public concern over the relatively high price of gasoline on the West Coast, but people will be cruelly disappointed if they are led to believe that the export restriction would have a detectable effect on the situation. Moreover, it is not the Commission's mandate to use merger enforcement as a vehicle

³ We have reason to believe that the upward price effects of these sporadic sales amounted to no more than one-half cent per gallon at the pump.

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for imposing its own notions of how competition may be "improved." Instead, Congress has directed the Commission only to prevent any harm to competition that is likely to flow from a merger. We believe that the divestitures already accomplish that goal.

We acknowledge that the parties were willing to sign an order with an export restriction. We need not speculate about whether they were induced to do so because of a compelling need to strike a deal promptly, or because they believe the restriction is unnecessary or unenforceable. Whatever the reason, in light of the structural relief the order achieves, we see no need to bind the parties to an unnecessary behavioral provision.

Analysis to Aid Public Comment

For the reasons set forth above, we do not believe that the export restriction should be included in the order.

Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment

I. Introduction

The Federal Trade Commission (ACommission@) has accepted for public comment from BP Amoco p.l.c. (ABP Amoco@) and Atlantic Richfield Company (AARCO@) (collectively, AProposed Respondents@) an *Agreement Containing Consent Orders* ("Proposed Consent Order"). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The Commission and BP Amoco and ARCO have also agreed to an Order to Hold Separate and Maintain Assets (AHold Separate Order@) that requires the Proposed Respondents to hold separate and maintain certain divested assets. The Proposed Consent Order is designed to remedy the likely anticompetitive effects arising from BP Amoco=s proposed acquisition of ARCO.

II. The Parties and the Transaction

BP Amoco is a United Kingdom corporation with headquarters in London, England. It is the world=s third largest oil company, with total worldwide revenues of more than \$91 billion in 1999. BP Amoco is engaged in exploration, development, and production of crude oil on the Alaskan North Slope (AANS crude oil@), which it sells to refineries on the West Coast of the United States, Hawaii, and Alaska, and in markets abroad. It also owns capacity on the Trans-Alaska Pipeline

Analysis to Aid Public Comment

System (ATAPS@) and leasehold interests in Jones Act tankers. These specialized tankers are used by BP Amoco to transport ANS crude oil from the North Slope production fields to its refinery customers.

ARCO is a Delaware corporation with headquarters in Los Angeles, California. In 1999, ARCO had total revenues of more than \$12 billion. ARCO is also engaged in the exploration, development, and production of ANS crude. ARCO also owns capacity on TAPS, and it owns its own Jones Act tankers, which it uses to transport ANS crude oil to the West Coast. ARCO also owns and operates two refineries on the West Coast that refine ANS crude oil.

BP Amoco and ARCO were the pioneers in developing the Alaska North Slope, and today are the two most important oil companies doing business there. They account for more than half of all ANS crude oil discovered over the last decade, and currently produce about 74% of all ANS crude oil. BP Amoco and ARCO are the only two operators of ANS crude oil fields, they each own more proven ANS crude oil reserves than any other oil company, they have the largest leaseholds of exploration and production acres, and they have drilled the largest number of exploration wells on the North Slope. Individually, each has won more exploration tracts than any other company in the last decade.

The Alaska North Slope is a major oil-producing region of the United States. ANS crude oil is used to supply refineries in Alaska, Hawaii, the West Coast of the United States, and Asia. Approximately 90% of all ANS crude oil is refined on the United States West Coast, and approximately 45% of all crude oil refined on the United States West Coast is ANS crude oil.

BP Amoco and ARCO entered into an agreement on March 31, 1999, to merge their companies. The size of the transaction, based upon the value of the deal when it was announced, was about \$26 billion.

Analysis to Aid Public Comment

III. The Proposed Complaint and Consent Order

The proposed complaint alleges that merger of BP Amoco and ARCO 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 proposed complaint alleges that the merger will lessen competition in each of the following markets: (1) the production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; (3) the production, sale, and delivery of all crude oil used on the West Coast; (4) the purchase of exploration rights on the Alaskan North Slope; (5) the sale of crude oil transportation on TAPS; (6) the development for commercial sale of natural gas on the Alaskan North Slope; and (7) the supply of crude oil pipeline transportation to, and crude oil storage in, Cushing, Oklahoma. The competitive concerns underlying the allegations in the draft complaint are discussed in Part V of this analysis.

IV. The Proposed Consent Order

To remedy the alleged anticompetitive effects of the merger, the Proposed Consent Order requires Proposed Respondents to divest: (1) all of ARCO=s assets and interests related to and primarily used with or in connection with ARCO=s Alaska businesses; and (2) all of ARCO=s assets related to its Cushing, Oklahoma crude oil business. Proposed Respondents will divest all of ARCO=s Alaska assets to Phillips Petroleum Company (APhillips@), an approved up-front buyer. The vast majority of these assets must be divested to Phillips within 30-days of the signing of the Proposed Consent Order. Some of the ARCO Alaska assets require third-party or governmental approvals and Proposed Respondents have up to six (6) months to divest those particular assets. Proposed Respondents will divest the Cushing assets to an acquirer or acquirers that receive the prior approval of the Commission and in a manner approved by the Commission.

Analysis to Aid Public Comment

They must divest the Cushing assets within four (4) months of signing the Proposed Consent Order.

For a period of ten (10) years from the date the Proposed Consent Order becomes final, the Proposed Consent Order prohibits the Proposed Respondents from acquiring, directly or indirectly, any ownership, leasehold or other interests in any of the assets they are required to divest without giving prior notice to the Commission.

The Proposed Consent Order also requires the Proposed Respondents to provide the Commission with a report of compliance with the terms of the Proposed Consent Order within thirty (30) days after the Order becomes final, and every sixty (60) days thereafter, until the Proposed Respondents have fully complied with the divestiture requirements under the Proposed Consent Order. The Proposed Respondents must also file annual compliance reports detailing their compliance with the notice provisions under the Proposed Consent Order.

Proposed Respondents have also agreed to a Hold Separate Order. The purpose of the Hold Separate Order is (a) to preserve the competitive viability of the assets required to be divested under the Proposed Consent Order, pending their actual divestiture, (b) to assure that no material confidential information is exchanged between BP Amoco and the held-separate businesses, and (c) to prevent interim harm to competition pending the divestitures. The Commission may immediately appoint an asset maintenance trustee to monitor both the ARCO Alaska businesses and the ARCO Cushing Assets which are to be divested, and, in the case of the Alaska assets, to monitor whether the necessary waivers and regulatory approvals are being expeditiously pursued.

Under the terms of the Hold Separate Order, if the Proposed Respondents have not completed the divestiture of the ARCO Alaska assets that do not require third party or regulatory approvals within thirty (30) days of consummating the merger of BP Amoco and ARCO, they must maintain the relevant ARCO

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Alaska businesses as a separate, competitively viable businesses, and not combine them with BP Amoco=s operations. A trustee may be appointed to oversee the held separate businesses.

Under the terms of Hold Separate Order, until the divestiture of the ARCO Cushing Assets has been completed, Proposed Respondents must maintain the ARCO Pipeline Company as a separate, competitively viable business, and not combine it with BP Amoco=s operations. The Proposed Consent Order also requires the Proposed Respondents to maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, to avoid causing their wasting or deterioration. Pending divestiture, Proposed Respondents are prohibited from selling, transferring, or otherwise impairing the marketability or viability of the assets to be divested.

Under the terms of the Proposed Consent Order, in the event that BP Amoco and ARCO do not divest the assets required to be divested under the terms and time constraints of the Proposed Consent Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. Also, in the event the assets requiring third-party or governmental regulatory approvals are not divested within the allowed time, a trustee may be appointed to oversee the divestiture of those assets to Phillips.

V. The Competitive Concerns

The merger of BP Amoco and ARCO gives rise to competitive concerns in seven relevant markets, each of which is discussed below.

A. Production and Sale of ANS Crude Oil

BP Amoco currently has about a 44% share of all ANS crude oil production and ARCO has about 30% share. BP Amoco owns no refineries that it supplies with ANS crude oil. As a

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consequence, all of its ANS crude oil sales are to third party customers. ARCO, on the other hand, owns two refineries that use ANS crude oil. One is located in the Los Angeles area (at Carson) and the second is in the Seattle area (at Cherry Point). Because ARCO supplies its West Coast refineries with ANS crude oil, ARCO now sells only relatively small amount of ANS crude oil to third parties.

According to the complaint the Commission intends to issue, BP Amoco already exercises market power in the sale of ANS crude oil to refineries on the West Coast. The evidence of this market power is the fact that BP Amoco engages in price discrimination on two fronts: First, BP Amoco sells ANS crude to West Coast refinery customers at different prices, net of transportation (Anetbacks@). Second, BP sells ANS crude to the West Coast refineries at higher netbacks than to refineries in the Far East. The Commission=s draft complaint alleges the existence of three relevant markets implicated by BP Amoco=s ANS crude oil pricing: (1) the production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; and (3) the production, sale, and delivery of all crude oil used by refiners on the West Coast.

According to the Commission=s draft complaint, for several reasons, ARCO is the firm most likely to be able to constrain BP Amoco=s future exercise of market power. First, with the opening of the Alpine oil field, ARCO has new production that is about to commence. Second, with a new and increased ability to substitute away from ANS crude oil to other types of crude oil at its Los Angeles refinery, ARCO will have incentives to substitute cheaper imports for ANS crude oil if the price of ANS crude oil becomes non-competitive. Third, ARCO is the firm best positioned and most likely to find new sources of ANS crude oil, and bring that oil to market.

Entry into the crude oil markets implicated by this merger is unlikely to occur in a timely or sufficient manner to prevent the merger from reducing competition in the relevant markets. Entry

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has not constrained BP Amoco's exercise of market power to date. Nor is it likely that producers of other types of crude oils will supply West Coast refineries in a manner that would constrain BP Amoco's ability to exercise market power. The most compelling evidence is that they have not already done so, even as BP Amoco has been exercising market power directed at West Coast refineries for many years.

B. Bidding for ANS Crude Oil Exploration Rights

BP Amoco and ARCO are the two most important competitors in bidding for exploration leases for oil and gas on the Alaska North Slope. They own or control all exploration, development, and production assets and won over 60% of all State of Alaska lease auctions over the last decade. During that same period the top four firms won 75%. In the most recent North Slope lease sale, BP Amoco and ARCO collectively won more than 70% of the tracts bid.

After the merger, no single firm, or combination of firms, will be both large enough and sufficiently well informed with respect to the value of individual tracts, to replace the loss of revenues to the State of Alaska and the Federal Government, from bidding revenues. Moreover, the reduced competition in the bidding for oil and gas leaseholds will eventually result in less exploration and development, and less production of ANS crude oil.

New entry will not be timely, likely or sufficient to undermine the anticompetitive effects of the merger. Firms that lack the information, infrastructure, and interest in North Slope bidding will simply be unable to fill the void created by the loss of ARCO as an independent bidder for exploration and development acreage.

C. TAPS Pipeline Competition

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Seven companies jointly own the TAPS pipeline, with BP Amoco and ARCO the two largest owners. BP has about a 50% interest and ARCO has about a 22% interest. Each owner of TAPS has an exclusive right to sell space on its ownership-share of TAPS capacity and to set its own tariff, and to discount those tariffs, for carriage on that capacity. After the merger, BP Amoco would control a 72% interest in TAPS. Alyeska Pipeline Service Company operates TAPS.

The owners of TAPS are entitled to capacity on the pipeline in proportion to their ownership interests. Because not all oil producers have an interest in TAPS, or an interest in TAPS in proportion to their oil production, TAPS owners can and do discount their tariffs in an effort to attract additional shippers. According to the Commission's draft complaint, the increase in concentration in TAPS ownership may cause the TAPS tariffs to increase.

D. Natural Gas Commercialization

BP Amoco and ARCO are the two largest holders of natural gas reserves on the Alaska North Slope. ExxonMobil is the only other company that holds sufficiently large volumes of natural gas reserves to have the potential to develop those reserves for significant commercial use. The merger of BP Amoco and ARCO would reduce the potential for future competition in the sale of North Slope natural gas from three firms to two firms.

Although it is unclear at this time when the North Slope gas fields will be commercialized, it is likely that this will eventually occur. To date, over \$1 billion has been spent by various firms in an effort to commercialize the North Slope's natural gas reserves. When gas commercialization does become a reality, the benefit of three firms competing for this business, rather than a market characterized by a duopoly, will result in increased competition and lower prices.

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E. Crude Transportation and Storage Services in Cushing, Oklahoma

Efficient functioning of the pipeline and oil storage facilities leading into, and in, Cushing, Oklahoma, is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. The restriction of pipeline or storage capacity can affect the deliverable supply of crude oil in Cushing, and consequently affect both WTI crude oil cash prices and NYMEX futures prices.

The proposed merger would concentrate control of over 43% of Cushing storage capacity, 49% of Cushing pipeline delivery capacity, and 95% of the trading services provided at Cushing. A firm that controls substantial crude oil storage capacity in Cushing, and crude oil pipeline capacity leading into Cushing, would be able to manipulate NYMEX futures trading markets. This threat of manipulation will cause prices to rise and, because WTI crude oil is a benchmark crude oil, have ripple effects throughout the oil industry.

VI. Resolution of the Competitive Concerns

The Proposed Consent Order alleviates the competitive concerns arising from the merger as discussed below.

A. The Proposed Order Resolves Competitive Concerns in Alaska by Requiring that All of ARCO's Alaska Assets be Divested to Phillips

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, BP Amoco has agreed to divest to Phillips all of the assets, properties, businesses, and goodwill, tangible and intangible, that as of March 15, 2000, were related to and

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primarily used with or in connection with ARCO's Alaska businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest to Phillips include the following: (a) ARCO Alaska, Inc.; (b) ARCO Transportation Alaska, Inc., (including any interest in Alyeska Pipeline Service Company and Prince William Sound Oil Spill Response Company; (c) ARCO Marine, Inc.; (d) ARCO Marine Spill Response Company; (e) Union Texas Alaska assets of Union Texas Petroleum Holdings, Inc.; (f) Union Texas Alaska, LLC; (g) Kuparuk Pipeline Company, (including any interests in Kuparuk Transportation Company and Kuparuk Transportation Capital Corporation); (h) Oliktok Pipeline Company; (i) Alpine Pipeline Company; (j) Cook Inlet Pipeline Company; (k) All Alaska oil and gas leases; (l) AMI Leasing Inc.; (m) ARCO Beluga, Inc. (a wholly-owned subsidiary of CH-Twenty, Inc.); (n) ARCO's office complex in Anchorage; (o) intellectual property; (p) Patents; (q) seismic data; (r) ship construction contracts; (s) customer and vendor lists; (t) ARCO records; and (u) long-term supply agreements entered between BP Amoco and several West Coast refiners.

To ensure that key ARCO employees remain with the company, and become available to work for Phillips, the Proposed Consent order also provides that (a) BP Amoco not solicit for employment any ARCO employee unless that employee was terminated by Phillips; (b) vest all current and future pension benefits; and (c) pay a bonus of not less than 35% of the base salary for certain key ARCO employees.

Phillips is headquartered in Bartlesville, Oklahoma and is the sixth largest United States oil company. In 1999 it had total revenues of about \$14 billion. Phillips currently has about a one percent interest in ANS crude oil production and about a 1.4% interest in TAPS. Phillips also owns oil and gas leases in the National Petroleum Reserve area of the North Slope.

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The divestiture of ARCO's Alaska Businesses is intended to preserve the level of competition that existed before the merger in the production, sale and delivery of crude oil to the West Coast, bidding for exploration rights on the Alaskan North Slope, and in pipeline transportation services for ANS crude oil.

1. The Proposed Respondents Have Thirty (30) Days To Divest Most of the ARCO Alaska Assets to Phillips

Except for those ARCO Alaska assets that require consents, waivers, or approvals by regulatory authorities or other third parties before they may be transferred to Phillips (e.g., pipelines, oil and gas leases, rights of way), the Proposed Respondents must complete the required divestitures of the Alaska assets within thirty (30) days of the acquisition. The Proposed Respondents must cooperate with Phillips and use reasonable best efforts to assist Phillips in securing the consent and waivers that may be required from private entities. The Proposed Respondents must complete all other divestitures within six (6) months of consummating their merger.

2. Transition Services

The Proposed Consent Order requires that the Proposed Respondents enter into a transition services agreement with Phillips. Under this agreement, the Proposed Respondents must provide Phillips with the transition services it may need in order to conduct the ARCO businesses as they are currently being conducted.

3. Licensing Agreements

The Proposed Consent Order requires that the Proposed Respondents enter into various licensing agreements with Phillips for intellectual property necessary or related to the ARCO Alaska Assets. These agreements are in addition to the absolute transfer of other intellectual property.

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B. The Proposed Order Resolves Competitive Concerns in Cushing by Requiring that All of ARCO=s Cushing Assets be Sold Within 120 Days to an Acquirer Approved by the Commission

Under the terms of the Proposed Consent Order, BP Amoco agreed to divest ARCO=s assets related to its Cushing, Oklahoma crude oil business to an acquirer to be approved by the Commission and in a manner approved by the Commission. Those assets include all of ARCO's assets, properties, businesses and goodwill, tangible and intangible, in the Seaway Crude Oil Pipeline and the Mid-Continent Crude Oil Logistics Services Businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest include the following: (a) ARCO=s crude oil interest in Seaway Pipeline Company, a partnership with subsidiaries of Phillips; (b) ARCO=s crude oil terminal facilities in Cushing, Oklahoma and Midland, Texas, including the line transfer and pumpover business at each location; (c) ARCO=s undivided ownership interest in the Rancho Pipeline, a 400-mile, 24-inch diameter crude oil pipeline from West Texas to Houston; (d) ARCO=s undivided ownership interest in the Basin Pipeline, a 416-mile crude oil pipeline running from Jal, N.M., to Wichita Falls, Texas and then on to Cushing, Oklahoma; and (e) the ARCO West Texas Trunk System of receipt and delivery pipelines, which is centered around Midland.

BP Amoco and ARCO must complete the required divestitures of the Cushing assets, within 120 days of their signing the Proposed Consent Order, to an acquirer or acquirers that receive the prior approval of the Commission.

VII. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part

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of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent 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 Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Complaint

IN THE MATTER OF

SONY MUSIC ENTERTAINMENT, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3971; File No. 9710070
Complaint, August 30, 2000--Decision, August 30, 2000*

This consent order addresses Sony Music's practices that restricted competition in the domestic market for prerecorded music. The complaint alleges that Sony Music adopted, implemented, and enforced Minimum Advertised Price ("MAP") provisions in their Cooperative Advertising Programs. By defining advertising broadly enough to include all in-store displays and signs, the MAP policies effectively precluded many retailers from communicating prices below MAP to their customers. The order requires Respondent to discontinue its MAP program for a period of seven years and contains several prohibitions to ensure that Respondent is unable to maintain the anticompetitive status quo in some other way.

Participants

For the Commission: *William L. Lanning, Karin F. Richards, James W. Frost, Geoffrey M. Green, Karen Mills, Jeffrey Goodman, June Casalmir, Kent Cox, Kristin Malmberg, Beverly Dodson, Brynna Connolly, Lorenzo Cellini, Veronica G. Kayne, Michael E. Antalics, John Howell, Daniel P. O'Brien, and Gregory Vistnes.*

For the Respondents: *William T. Lifland and Dean Ringel, Cahill Gordon & Reidel, George S. Cary, Cleary, Gottlieb, Steen & Hamilton, and James J. Calder, Rosenmann & Colin LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended,¹⁵ U.S.C. ' ' 41 et seq., by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sony Music Entertainment Inc. has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. ' ' 45, and it appearing to the