

Complaint

IN THE MATTER OF

EXXON CORPORATION AND MOBIL CORPORATION

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

Docket C-3907; File No. 9910077

Complaint, November 30, 1999--Decision, January 26, 2001

This consent order addresses the merger of Respondent Exxon Corp. -- one of the world's largest integrated oil companies, whose businesses operate petroleum refineries, own or lease gasoline stations nationally; and sell gasoline to distributors or dealers that operate another 6,475 retail outlets throughout the United States -- and Respondent Mobil Corp., another of the world's largest integrated oil companies, whose businesses operate petroleum refineries; and retail outlets that sell Mobil-branded gasoline throughout the United States. The order, among other things, requires the respondents to divest or otherwise surrender control of: (1) all of Mobil's gasoline marketing in the Mid-Atlantic (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California ("Exxon Benicia Refinery"), and all of Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in the Trans Alaska Pipeline System; (8) the terminal and retail operations of Exxon on Guam; (9) a quantity of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business. An accompanying Order to Hold Separate and Maintain Assets requires the respondents to maintain all the assets to be divested as separate, competitively viable businesses, in a manner that will preserve their viability, competitiveness and marketability pending their divestiture.

Participants

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Schneider, Thomas Dahdouh, Gwendolyn Fanger, Marc Jarsulic, Crystal Jones, Anthony Joseph, Jonathan Kanter, Stewart Lawler, Frank Lipson, Thomas Respass, Stephen Riddell, W. Stephen Sockwell, Norris Washington, John Weber, Barbara Shapiro, Nathan J. Muyskens, Jennifer Duckenfield, Mary Rose Emig, William R. Vigdor, Richard Liebeskind, Phillip L. Broyles, Naomi Licker, Rendell A. Davis, Jr., Elizabeth Piotrowski, Daniel P. Ducore, Leslie Farber, Gregory S. Vistnes, and Jeremy I. Bulow.

For the Respondent: *Charles F. Rule, Deborah Garza, and David Meyer, Covington & Burling, and Janet McDavid and Edward Duckers, Hogan & Hartson.*

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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 ("Commission"), having reason to believe that respondent Exxon Corporation ("Exxon"), a corporation, and respondent Mobil Corporation ("Mobil"), a corporation, both subject to the jurisdiction of the Commission, have entered into an agreement and plan of merger, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Exxon Corporation

1. Respondent Exxon is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039.
2. Respondent Exxon is, and at all times relevant herein has been, engaged in the business of refining, transporting, distributing, and marketing crude oil and refined petroleum products,

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including gasoline, jet fuel, other light petroleum products, paraffinic base oil, and jet turbine oil, in the United States.

3. Respondent Exxon is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Mobil Corporation

4. Respondent Mobil 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 3225 Gallows Road, Fairfax, Virginia 22037.
5. Respondent Mobil is, and at all times relevant herein has been, engaged in the business of refining, transporting, distributing, and marketing crude oil and refined petroleum products, including gasoline, jet fuel, other light petroleum products, paraffinic base oil, and jet turbine oil, in the United States.
6. Respondent Mobil is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

The Proposed Merger

7. Pursuant to an Agreement and Plan of Merger dated December 1, 1998, Exxon and Mobil agreed to a merger between Mobil and a wholly owned subsidiary of Exxon. As a result of this agreement, Exxon will acquire 100 percent of the issued and outstanding voting securities of Mobil, and will merge the two companies into a new corporation to be known as Exxon Mobil

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Corporation. Based on the value of the securities at the time of the agreement, the transaction is valued at approximately \$80 billion.

Trade and Commerce

8. Relevant lines of commerce (*i.e.*, product markets) in which to analyze the effects of the proposed merger are:
 - a. the marketing of motor gasoline;
 - b. the refining and marketing of gasoline that meets the specifications of the California Air Resources Board (“CARB” gasoline);
 - c. the bidding for and refining of jet fuel for the U.S. Navy;
 - d. the terminaling of gasoline and other light petroleum products;
 - e. the pipeline transportation of light petroleum products;
 - f. the pipeline transportation of crude oil;
 - g. the refining and marketing of paraffinic base oil; and
 - h. the production and sale of jet turbine oil.
9. Motor gasoline is a fuel used in automobiles and other vehicles. It is manufactured from crude oil at refineries in the United States and throughout the world. There is no substitute for motor gasoline as a fuel for automobiles and other vehicles that are designed to use motor gasoline.
10. CARB gasoline is a special low-pollution formulation of motor gasoline mandated by the California Air Resources Board pursuant to California state law. No other formulation of motor gasoline may be sold for use in California. There is

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no substitute for CARB gasoline as a fuel for automobiles and other vehicles that use gasoline in California.

11. Navy jet fuel (sometimes referred to as “JP-5”) is a specialized fuel used by the U.S. Navy for its jet airplanes. Navy jet fuel requires more stringent specifications than other types of jet fuel because of the dangers associated with storing fuel, and aircraft that contain fuel, aboard ships. There is no substitute for Navy jet fuel for use in U.S. Navy jet airplanes.
12. Terminals are specialized facilities with large storage tanks used for the receipt and local distribution by tank truck of large quantities of gasoline and other light petroleum products. There are no substitutes for terminals for the storage and local distribution of gasoline and other light petroleum products.
13. Refined product pipelines are specialized pipelines for the transportation of refined light petroleum products, including gasoline, diesel fuel, jet fuel, and home heating oil. Colonial Pipeline Co. (“Colonial”) and Plantation Pipe Line Co. (“Plantation”) own and operate the pipelines that are the most economical means of supplying light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia and Tennessee (*i.e.*, the portions of those states more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (hereinafter the “inland Southeast”). Exxon owns approximately 49 percent of Plantation, and has equal control of the board of directors of Plantation with Plantation’s other owner. Mobil owns approximately 11 percent of Colonial, and designates a member of Colonial’s board of directors. There are no substitutes for Colonial and Plantation for the transportation of light petroleum products to the inland Southeast.

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14. Crude oil pipelines are specialized pipelines for the transportation of crude oil from production fields to refineries or locations where the crude oil can be transported to refineries by other means. The Trans-Alaska Pipeline System (“TAPS”) is an 800-mile pipeline used to transport crude oil from the Alaskan North Slope to port facilities at Valdez, Alaska, from which the crude oil can be transported to refineries on the West Coast of the United States. TAPS is owned primarily by seven major refiners. Exxon owns approximately 20% of TAPS, and Mobil owns approximately 3%. The only way that crude oil can be transported from the Alaskan North Slope to port facilities at Valdez is through TAPS.
15. Paraffinic base oil is a refined petroleum product that is used as the principal component, or “base stock,” of most finished lubricant products, including passenger car motor oil, heavy duty engine oil, and automatic transmission fluid. There is no economic substitute for paraffinic base oil as the base stock for those products.
16. Jet turbine oil is a specialized ester-based lubricant used to lubricate jet aircraft engines. There are no substitutes for jet turbine oil in lubricating jet aircraft engines.
17. Relevant sections of the country (*i.e.*, geographic markets) in which to analyze the proposed merger are the following:
 - a. The northeastern United States, consisting of the District of Columbia and the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and smaller areas contained therein, including but not limited to the following metropolitan areas: Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, and New London-Norwich, CT; Dover and Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, and Portland, ME; Baltimore, MD; Barnstable-Yarmouth

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and Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, and Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Dutchess, Nassau-Suffolk, New York, and Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazleton, State College, and York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News and Richmond-Petersburg, VA; Burlington, VT; and smaller areas contained therein, where the merger would reduce competition in the marketing of motor gasoline, as alleged below;

- b. The following metropolitan areas in the State of Texas: Austin, Bryan/College Station, Dallas, Houston, and San Antonio, and smaller areas contained therein, where the merger would reduce competition in the marketing of motor gasoline, as alleged below;
- c. The State of Arizona and smaller areas contained therein, where the merger would reduce competition in the marketing of motor gasoline, as alleged below;
- d. The State of California and smaller areas contained therein, where the merger would reduce competition in the refining and marketing of CARB gasoline, as alleged below;
- e. The West Coast of the United States, where the merger would reduce competition in the bidding for and refining of jet fuel for the U.S. Navy, as alleged below;
- f. The metropolitan areas of Boston, MA, Washington, DC, and Norfolk, VA, where the merger would reduce competition in the terminaling of gasoline and other light petroleum products, as alleged below;

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- g. The inland Southeast and smaller areas contained therein, where the merger would reduce competition in the transportation of refined light petroleum products, as alleged below;
- h. Locations at which crude oil from the Alaskan North Slope is refined, including the States of Alaska, California, and Washington, where the merger would reduce competition in the transportation of crude oil produced on the Alaskan North Slope to port facilities at Valdez and intermediate points, as alleged below;
- i. The Territory of Guam, where the merger would reduce competition in the importation, terminaling and marketing of motor gasoline and other light petroleum products, as alleged below;
- j. The United States and Canada, and smaller areas contained therein, where the merger would reduce competition in the refining and marketing of paraffinic base oil, as alleged below;
- k. The world, where the merger would reduce competition in the manufacture and sale of jet turbine oil, as alleged below.

Market Structure

- 18. The marketing of motor gasoline in the northeastern United States, including the District of Columbia and the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and smaller areas contained therein, including but not limited to the metropolitan areas of Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, and New London-Norwich, CT; Dover and Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, and Portland, ME; Baltimore, MD; Barnstable-Yarmouth and Boston-Worcester-

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Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, and Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Dutchess, Nassau-Suffolk, New York, and Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazleton, State College, and York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News and Richmond-Petersburg, VA; Burlington, VT, would be either moderately or highly concentrated as a result of the merger. The proposed merger would significantly increase concentration in each of these markets.

19. The marketing of motor gasoline in the metropolitan areas of Austin, Bryan/College Station, Dallas, Houston, and San Antonio, TX, and smaller areas contained therein, would be either moderately or highly concentrated as a result of the merger. The proposed merger would significantly increase concentration in each of these markets.
20. The refining and marketing of CARB gasoline for sale in the State of California, and smaller areas contained therein, would be moderately concentrated as a result of the merger. The proposed merger would significantly increase concentration in each of these markets.
21. The marketing of motor gasoline in the State of Arizona and smaller areas contained therein would be moderately concentrated as a result of the merger. Exxon has contractual rights to reacquire stations owned by a competitor. The proposed merger would provide the merged firm with an incentive to reduce the ability of that competitor to compete.
22. The bidding for and refining of jet fuel for the U.S. Navy on the West Coast of the United States is highly concentrated.

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The proposed merger would significantly increase concentration in this market.

23. The terminaling of gasoline and other light petroleum products is highly concentrated in the metropolitan areas of Boston, MA and Washington, DC. The proposed merger would significantly increase concentration in both of these markets.
24. The terminaling of gasoline and other light petroleum products is highly concentrated in the Norfolk, VA metropolitan area. Mobil controls a wharf that is the only means by which a competing terminal can receive gasoline and other light petroleum products from marine vessels. The proposed merger would provide the merged firm with an incentive and ability to restrict the competitive viability of that competitor.
25. The market for the transportation of refined light petroleum products to the inland Southeast is highly concentrated. The proposed merger would significantly increase the risk of coordinated behavior between Colonial and Plantation.
26. The market for transporting crude oil produced on the Alaskan North Slope through TAPS to Valdez and intermediate points is highly concentrated. The proposed merger would significantly increase concentration in this market.
27. The importation, terminaling and marketing of gasoline and other light petroleum products in the Territory of Guam is highly concentrated. The proposed merger would significantly increase concentration in this market.
28. The refining and marketing of paraffinic base oil in the United States and Canada would be moderately concentrated as result of the merger. Exxon is the leading firm in this market. The proposed merger would

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significantly increase concentration in this market and enhance Exxon's position as the leading firm.

29. The worldwide production and sale of jet turbine oil is highly concentrated. The proposed merger would significantly increase concentration in this market and leave Exxon as the dominant firm.

Entry Conditions

30. Entry into the relevant markets in the relevant sections of the country is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger.

First Violation Charged

31. Exxon and Mobil are actual and potential competitors in the marketing of motor gasoline in the northeastern United States, consisting of the District of Columbia and the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and smaller areas contained therein, including but not limited to the metropolitan areas of Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, and New London-Norwich, CT; Dover and Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, and Portland, ME; Baltimore, MD; Barnstable-Yarmouth and Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, and Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Dutchess, Nassau-Suffolk, New York, and Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazleton, State College, and York, PA; Providence-Warwick-Pawtucket, RI;

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Norfolk-Virginia Beach-Newport News and Richmond-Petersburg, VA; and Burlington, VT.

32. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of motor gasoline in the northeastern United States, and in smaller markets contained therein, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
- a. by eliminating direct competition in the marketing of motor gasoline between Exxon and Mobil;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the northeastern United States;

each of which increases the likelihood that the price of motor gasoline will increase in the northeastern United States and smaller areas contained therein.

Second Violation Charged

33. Exxon and Mobil are actual and potential competitors in the marketing of motor gasoline in the following metropolitan areas in the State of Texas: Austin, Bryan/College Station, Dallas, Houston, and San Antonio, and smaller areas contained therein.
34. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of motor gasoline in the relevant metropolitan areas in the State of Texas, and smaller areas contained therein, in

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violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition in the marketing of motor gasoline between Exxon and Mobil;
- b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the relevant metropolitan areas in Texas;

each of which increases the likelihood that the price of motor gasoline will increase in the relevant metropolitan areas in Texas.

Third Violation Charged

35. Exxon and Mobil are potential competitors in the marketing of motor gasoline in the State of Arizona. Exxon sells motor gasoline in Arizona through a distributor to which Exxon sold its owned retail gasoline stores, and does not retain any significant control over that distributor's price or output. Pursuant to that sale, Exxon has a contractual right to reacquire those stores in the event the distributor re-brands the stores to any name other than Exxon. The merger would provide the merged company with the ability and incentive to reduce competition in the State of Arizona by exercising or threatening to exercise this right.
36. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of motor gasoline in the State of Arizona and smaller areas contained therein, in violation of Section 7 of the Clayton

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Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating potential competition in the marketing of motor gasoline between Exxon and Mobil; and
- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in Arizona;

each of which increases the likelihood that the price of motor gasoline will increase in the State of Arizona.

Fourth Violation Charged

37. Exxon and Mobil are actual and potential competitors in the refining and marketing of CARB gasoline in the State of California, and smaller areas contained therein.
38. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and marketing of CARB gasoline in the State of California, and smaller areas contained therein, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition in the refining and marketing of CARB gasoline between Exxon and Mobil;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power;
 - c. by increasing the degree of vertical integration between the refining and marketing of CARB gasoline; and

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- d. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in California;

each of which increases the likelihood that the price of CARB gasoline will increase.

Fifth Violation Charged

- 39. Exxon and Mobil are potential competitors in the bidding for and refining of jet fuel for the U.S. Navy on the West Coast.
- 40. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining of jet fuel for the U.S. Navy on the West Coast in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition in the refining of jet fuel for the U.S. Navy between Exxon and Mobil;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the bidding for and refining of jet fuel for the U.S. Navy on the West Coast;

each of which increases the likelihood that the price of jet fuel for the U.S. Navy will increase.

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Sixth Violation Charged

41. Exxon and Mobil are actual and potential competitors in the terminaling of gasoline and other light petroleum products in the Boston, MA and Washington, DC metropolitan areas.
42. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the terminaling of gasoline and other light petroleum products in the Boston, MA and Washington, DC metropolitan areas in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition in the terminaling of gasoline and other light petroleum products between Exxon and Mobil;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the terminaling of gasoline and other light petroleum products in the Boston, MA and Washington, DC metropolitan areas;

each of which increases the likelihood that the price for terminaling of gasoline and other light petroleum products will increase in the Boston, MA and Washington, DC metropolitan areas.

Seventh Violation Charged

43. Exxon and Mobil are potential competitors in the terminaling of gasoline in the Norfolk, VA metropolitan

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area. Mobil controls a wharf that is the only means by which a competing terminal can receive gasoline by marine vessel.

44. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the terminaling of gasoline in the Norfolk, VA metropolitan area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
- a. by increasing the likelihood that the combined Exxon and Mobil will deny access to the Mobil wharf to their competitor, thereby raising the cost to that competitor of receiving gasoline;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the terminaling of gasoline in the Norfolk, VA metropolitan area;

each of which increases the likelihood that the price for terminaling of gasoline will increase in the Norfolk, VA metropolitan area.

Eighth Violation Charged

45. Exxon and Mobil, through their ownership of and board representation on, Colonial and Plantation, are actual and potential competitors in the transportation of refined light petroleum products to the inland Southeast.
46. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the transportation of refined light petroleum products to the inland Southeast in

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violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between Colonial and Plantation in the transportation of refined light petroleum products to the inland Southeast;
- b. by providing the combined Exxon and Mobil with access to sensitive competitive information of both Colonial and Plantation; and
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Colonial and Plantation, or between the owners of each;

each of which increases the likelihood that the price of transporting refined light petroleum products to the inland Southeast will increase.

Ninth Violation Charged

47. Exxon and Mobil are actual and potential competitors in the transportation of crude oil through TAPS from the Alaskan North Slope to Valdez and intermediate points.
48. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the transportation of crude oil from the Alaskan North Slope through TAPS in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Exxon and Mobil in the transportation of crude oil from the Alaskan North Slope through TAPS;

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- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the transportation of crude oil from the Alaskan North Slope through TAPS;

each of which increases the likelihood that the price of transporting crude oil from the Alaskan North Slope through TAPS will increase.

Tenth Violation Charged

- 49. Exxon and Mobil are actual and potential competitors in the importation, terminaling and marketing of gasoline and other light petroleum products in the Territory of Guam.
- 50. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the importation, terminaling and marketing of gasoline and other light petroleum products in the Territory of Guam in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Exxon and Mobil in the importation, terminaling and marketing of gasoline and other light petroleum products;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their other competitor in Guam;

each of which increases the likelihood that the price of gasoline and other light petroleum products will increase in the Territory of Guam.

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Eleventh Violation Charged

51. Exxon and Mobil are actual and potential competitors in the refining and marketing of paraffinic base oil in the United States and Canada.
52. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and marketing of paraffinic base oil in the United States and Canada in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Exxon and Mobil in the refining and marketing of paraffinic base oil;
 - b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Exxon and Mobil and their competitors in the refining and marketing of paraffinic base oil;

each of which increases the likelihood that the price of paraffinic base oil will increase in the United States and Canada.

Twelfth Violation Charged

53. Exxon and Mobil are actual and potential competitors in the production and sale of jet turbine oil in the United States and throughout the world.
54. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the production and sale of jet turbine oil in the United States and throughout the

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world in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between Exxon and Mobil in the production and sale of jet turbine oil; and
- b. by increasing the likelihood that the combination of Exxon and Mobil will unilaterally exercise market power;

each of which increases the likelihood that the price of jet turbine oil will increase in the United States and throughout the world.

Statutes Violated

- 55. The proposed merger between Exxon and Mobil violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of November, 1999, issues its complaint against said respondents.

Decision and Order

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Rule 2.34 of its Rules (16 C.F.R. § 2.34), now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

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1. Respondent Exxon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039.
2. Respondent Mobil Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3225 Gallows Road, Fairfax, Virginia 22037.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

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

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

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

- D. "Respondents" means Exxon and Mobil, individually and collectively, and the successor corporation.
- E. "ANS" means the North Slope of Alaska.
- F. "Base Oil" means paraffinic-based lubricant stock of all types, grades, viscosities, and qualities suitable for blending into finished oils (*e.g.*, passenger car motor oil, heavy duty diesel oil, hydraulic fluids, or gear oils), but does not mean naphthenic or synthetic oils.
- G. "Branded Distributors" means Exxon Branded Sellers or Mobil Branded Sellers that purchase Branded Fuels at a terminal and transport such Branded Fuels to Retail Sites for resale.
- H. "Branded Fuels" means motor gasoline or diesel fuel sold at a Retail Site under a brand name owned by Respondents.
- I. "Branded Products" means any product other than Branded Fuels that is sold at a Retail Site under a brand name owned by Respondents.
- J. "Business Format Franchise" shall have the meaning of "franchise" set forth in 16 C.F.R. § 436.2, excluding franchises granted by Respondents to sell Branded Fuels.
- K. "California-North MSAs" means the following primary metropolitan statistical areas in California as defined by the Census Bureau as of September 30, 1999: Oakland, San Francisco, San Jose, and Santa Rosa.

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- L. “Colonial” means Colonial Pipeline Company.
- M. “Commission” means the Federal Trade Commission.
- N. “Designated Base Oil Refineries” means Mobil’s refinery located at Beaumont, Texas; Exxon’s refinery located at Baytown, Texas; and Exxon’s refinery located at Baton Rouge, Louisiana.
- O. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated.
- P. “Existing Lessee Agreements” means all agreements between Respondents and Exxon Lessee Dealers or Mobil Lessee Dealers relating to such Person’s right or obligation to sell or resell Branded Fuels using Exxon’s brand name or Mobil’s brand name at a Retail Site, including, but not limited to, each Branded Fuels dealer lease agreement and dealer sales agreement. “Existing Lessee Agreements” does not include Business Format Franchises.
- Q. “Existing Supply Agreements” means all agreements between Respondents and Exxon Branded Sellers or Mobil Branded Sellers relating to such Person’s right or obligation to sell or resell Branded Fuels using Exxon’s brand name or Mobil’s brand name at a Retail Site, including, but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, and jobber outlet incentive program contract. “Existing Supply Agreements” does not include Business Format Franchises.
- R. “Exxon Benicia Refinery Assets” means Exxon’s refinery located at Benicia, California and all of Exxon’s interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Exxon in the operation of the refinery; at the acquirer’s

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

- S. "Exxon Branded Seller" means any Person (other than Exxon or Mobil) that has, by virtue of contract or agreement with Exxon in effect at the time Respondents execute the Agreement Containing Consent Orders, the right to sell

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gasoline using Exxon's brand name at Retail Sites, or to resell gasoline to any such person. "Exxon Branded Seller" includes distributors, jobbers, contract dealers, and open dealers, but does not include Lessee Dealers.

- T. "Exxon California-North Marketing Assets" means all Retail Assets in California-North MSAs that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- U. "Exxon California-South Marketing Assets" means all Retail Assets in California other than in California-North MSAs, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- V. "Exxon California Refining and Marketing Assets" means the (1) Exxon Benicia Refinery Assets; (2) Exxon California-North Marketing Assets; and (3) Exxon California-South Marketing Assets.
- W. "Exxon Guam Assets" means the Exxon Guam Marketing Assets and the Exxon Guam Terminal.
- X. "Exxon Guam Marketing Assets" means all Retail Assets in Guam that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- Y. "Exxon Guam Terminal" means all of Exxon's assets relating to its petroleum storage and distribution terminal in the Territory of Guam, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, licenses, permits and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare

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parts, and all other property used in Terminaling; the non-exclusive right to use all patents, know-how, and other intellectual property used by Exxon in the operation of the terminal; and the rights of Exxon in any agreement with Shell Guam, Inc., relating to terminaling in Guam; provided, however, that “Exxon Guam Terminal” shall include, at the option of the acquirer, those assets used by Exxon to operate its LPG business. “Exxon Guam Terminal” does not include Exxon’s proprietary trade names and trademarks or, except as provided above, patents, know-how, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer’s efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

- Z. “Exxon Jet Turbine Oil Business” means all of Exxon’s rights, titles, and interests in the following businesses and assets, tangible and intangible, used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils, regardless of where the businesses or assets are located worldwide:
1. a sole and exclusive worldwide perpetual royalty-free license to practice in the Field of Jet Turbine Oils the patents set out in Appendix B (Confidential) and the supplemental patents selected pursuant to subparagraph XII.B.13., whether such patents have been issued or applied for, without reservation to Respondents of any rights to practice such patents in the Field of Jet Turbine Oils, and including the right to enforce such license in the Field of Jet Turbine Oils and the right to transfer such

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license exclusively or nonexclusively to others through sublicense or any other means;

2. a grant by Respondents to the acquirer (including the acquirer's subsidiaries and affiliates, and any purchaser of acquirer's jet turbine oil business) of immunity from suit in the Field of Jet Turbine Oils under all other patents held, or applied for, by Exxon as of the date of the Merger, or for which the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) has filed an application between the date of the Merger and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business;
3. a royalty-free sublicense of all rights in the Field of Jet Turbine Oils under any patent license held by Exxon as of the date of the Merger, including the right to transfer such sublicense exclusively or nonexclusively to others through any means, and without reservation to Respondents of any such rights in the Field of Jet Turbine Oils;
4. the sole and exclusive right to all Jet Turbine Oil Formulations, including all records containing Jet Turbine Oil Formulations;
5. the following rights:
 - a. the sole and exclusive right to
 - (1) all product names;
 - (2) all trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons, used at any time since January 1, 1995, on cans or other packaging of Jet Turbine Oil by Exxon or by the Held Separate Exxon Jet Turbine Oil Business; and

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- (3) all other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons
 - (a) used exclusively in the Field of Jet Turbine Oils by Exxon or by the Held Separate Exxon Jet Turbine Oil Business, and
 - (b) not used by Respondents outside the Field of Jet Turbine Oils prior to November 30, 1999; and
- b. the right to exclude (for a period of five (5) years from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) any entity, including Respondents, from using in the marketing, customer support, or sale of Jet Turbine Oils any other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons used both inside and outside the Field of Jet Turbine Oils by Exxon or the Held Separate Exxon Jet Turbine Oil Business, but not including the right to use such other trademarks, brand names, service marks, copyrights, slogans, symbols, designs, and icons;
- 6. a sole and exclusive worldwide perpetual royalty-free license in the Field of Jet Turbine Oils, without reservation to Respondents of any rights in the Field of Jet Turbine Oils, to all trade secrets, know-how, inventions, software, and other intellectual property, regardless of whether used exclusively in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils (except as provided by subparagraphs I.Z.5.b. and XII.B.9.), provided, however, that such license
 - a. shall not include (i) patents and patented inventions, (ii) software used in Exxon's general corporate processes, such as accounting software, messaging

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software, and word processing software, and (iii) accounting and auditing processes, and

- b. shall include, but not be exclusive with respect to, Exxon's general business processes and practices, including, without limitation, operations and controls integrity management systems, general scientific analytical techniques, and health, safety and environmental processes;
- 7. military, customer, and original equipment manufacturer approvals for products (to the extent transferable);
- 8. contracts for supply and distribution (to the extent transferable);
- 9. procurement information for products and services used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils;
- 10. the research and test equipment described in Appendix C;
- 11. warehousing services at competitive third-party rates until the acquirer is able to make other arrangements; and
- 12. Exxon's manufacturing facility located in Bayway, New Jersey and all physical assets located at that facility.

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

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

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2. all personnel employed at any time during the Hold Separate Period in that portion of the Held Separate Business defined in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets; and
 3. Karen Brown, Walt Goldeski, Mike Verrault, Martha Arduin, Pat Wysocki, Lee Chen, John Bryant, Joycelyn Failla, John McKechnie, Dave Duckert, Sue Scheuerman, Rich Skillman, Cyril Hutley, Klaus Rudolph, Bernard Pafford, and Paul Berlowitz.
- BB. “Exxon Maine to Virginia Assets” means all Retail Assets in the District of Columbia and the States of Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- CC. “Exxon Mid-Atlantic Marketing Assets” means all Retail Assets in the District of Columbia, and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- DD. “Exxon Northeast Marketing Assets” means all Retail Assets in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York, that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- EE. “Exxon Texas Marketing Assets” means all Retail Assets in the Texas MSAs that are owned by Exxon or leased by Exxon from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

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- FF. “Field of Jet Turbine Oils” means the research, development, manufacture, quality assurance, marketing, customer support, and sale of Jet Turbine Oils, including, but not limited to, the research, development, manufacture, and quality assurance of ingredients for use in Jet Turbine Oils (but not including the research, development, manufacture, and quality assurance of such ingredients for use in products other than Jet Turbine Oils).
- GG. “Jet Turbine Oil Formulations” means (a) product formulae for Jet Turbine Oils, and (b) other proprietary technical information relating exclusively to the manufacture or development of, or research into, Jet Turbine Oils.
- HH. “Jet Turbine Oils” means any lubricants that contain polyol esters and additives and that are used in jet turbine engines, regardless of the application in which the jet turbine engines are employed, which applications include, without limitation, commercial aviation, private aviation, military aviation, marine applications, and stationary applications.
- II. “Key Exxon Jet Turbine Oil Employees” means Pat Godici, Dan Murphy, Jai Bansal, Kim Fyfe, David Hertsgaard, and Nick Cleary.
- JJ. “Key Mobil Jet Turbine Oil Employees” means researchers, research technicians, sales representatives, and manufacturing facility managers employed in the Mobil Jet Turbine Oil Business between January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business.
- KK. “Lessee Dealer” means a dealer who operates a Retail Site leased from Respondents under a lease in effect at the time Respondents execute the Agreement Containing Consent Orders.

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LL. “MBD” means thousands of barrels per day.

MM. “Merger” means the proposed merger involving Exxon and Mobil.

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

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

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

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patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

- PP. “Mobil Branded Seller” means any Person (other than Exxon or Mobil) that has, by virtue of contract or agreement with Mobil in effect at the time Respondents execute the Agreement Containing Consent Orders, the right to sell gasoline using Mobil’s brand name at Retail Sites or to resell gasoline to any such person. “Mobil Branded Seller” includes distributors, jobbers, contract dealers, and open dealers, but excludes Lessee Dealers.
- QQ. “Mobil California Marketing Assets” means all Retail Assets in California that are owned by Mobil or leased by Mobil from another Person as of the date Respondents execute the Agreement Containing Consent Orders.
- RR. “Mobil California Refining and Marketing Assets” means the (1) Mobil Torrance Refinery Assets and (2) Mobil California Marketing Assets.
- SS. “Mobil Jet Turbine Oil Business” means all of Mobil’s rights, titles, and interests in the following businesses and assets, tangible and intangible, used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils, regardless of where the businesses or assets are located worldwide:
1. a sole and exclusive worldwide perpetual royalty-free license to practice in the Field of Jet Turbine Oils all patents, whether issued or applied for, held by Respondents as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business,
 - a. not including patents held by Exxon prior to the Merger, and not including patents for which the Held Separate Exxon Jet Turbine Oil Business (as specified

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in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) has filed an application after the date of the Merger and prior to the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business,

- b. including the right to transfer such license exclusively or nonexclusively to others through sublicense or any other means,
 - c. including the right to enforce those rights in the Field of Jet Turbine Oils and
 - d. without reservation to Respondents of any right to those patents in the Field of Jet Turbine Oils;
2. a royalty-free sublicense of all rights in the Field of Jet Turbine Oils under any patent license held by Exxon Mobil as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, (a) not including licenses held by Exxon prior to the Merger, and not including licenses acquired by the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) after the date of the Merger and prior to the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, (b) including the right to transfer such sublicense exclusively or nonexclusively to others through any means, and (c) without reservation to Respondents of any such rights in the Field of Jet Turbine Oils;
3. the sole and exclusive right to all Jet Turbine Oil Formulations, including all records containing Jet Turbine Oil Formulations;
4. the sole and exclusive right to all trademarks, service marks, product names, and copyrights (except as provided by subparagraph XII.C.9.);

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5. a sole and exclusive worldwide perpetual royalty-free license in the Field of Jet Turbine Oils, without reservation to Respondents of any rights in the Field of Jet Turbine Oils, to all trade secrets, know-how, inventions, software, and other intellectual property, regardless of whether used exclusively in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils (except as provided by subparagraph XII.C.9.), provided, however, that such license
 - a. shall not include (i) patents and patented inventions, (ii) software used in Mobil's general corporate processes, such as accounting software, messaging software, and word processing software, and (iii) accounting and auditing processes, and
 - b. shall include, but not be exclusive with respect to, Mobil's general business processes and practices, including, without limitation, operations and controls integrity management systems, general scientific analytical techniques, and health, safety and environmental processes;
6. military, customer, and original equipment manufacturer approvals for products (to the extent transferable);
7. contracts for supply and distribution (to the extent transferable);
8. procurement information for products and services used in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Jet Turbine Oils;
9. manufacturing, research, and test equipment ;

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10. warehousing services at competitive third-party rates until the acquirer is able to make other arrangements; and
 11. all of Mobil's facilities for the manufacture of Jet Turbine Oils and for the manufacture of ingredients (including esters and additives) used in manufacturing Jet Turbine Oils.
- TT. "Mobil Manassas Terminal" means all of Mobil's assets relating to its petroleum storage and distribution terminal in Manassas, Virginia, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, permits, licenses, and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare parts, and all other property used in Terminaling; and the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the terminal. "Mobil Manassas Terminal" does not include Mobil's proprietary trade names and trademarks or, except as provided above, patents, know-how, and other intellectual property. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.
- UU. "Mobil Mid-Atlantic Marketing Assets" means all Retail Assets in the District of Columbia and the States of New

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Jersey, Pennsylvania, Delaware, Maryland, and Virginia that are owned by Mobil or leased by Mobil from another Person as of the date Respondents execute the Agreement Containing Consent Orders.

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

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

XX. “Mobil Torrance Refinery Assets” means Mobil’s refinery located at Torrance, California, and all of Mobil’s interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the refinery; at the acquirer’s option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery’s petroleum product output; at the acquirer’s option, all agreements under which Mobil receives crude oil or other inputs at or for the refinery; and, at the acquirer’s option, all exchange agreements involving the refinery. “Mobil Torrance Refinery Assets” also includes all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property, relating to such plans) related to the operation of, and improvements,

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modifications, or upgrades to, the Torrance refinery. “Mobil Torrance Refinery Assets” also includes, but is not limited to, all of Mobil’s interest in the SJV crude pipeline system between Lost Hills, California, and the refinery (M-70); the Southwest Terminal in Los Angeles Harbor (including the dock, tanks, and other facilities located at the terminal); all crude (M-146) and products pipelines running between the Southwest Terminal dock and the refinery; and the products pipeline between the refinery and Kinder Morgan’s Watson Terminal; the Mobil Pacific Pipe Line Company products pipeline between the GATX terminal and the refinery; the jet fuel pipeline between the refinery and Los Angeles International Airport; and Mobil Pacific Pipeline’s interest in the THUMS Wilmington Crude Gathering System between the Wilmington Field and the refinery (M-131, M-132, M-142); and the Torrance crude system (M-134, M-135). “Mobil Torrance Refinery Assets” does not include Mobil’s proprietary trade names and trademarks. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer’s efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

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

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- ZZ. “Mobil’s Norfolk Wharf” means Mobil’s wharf and the loading/discharge facilities located at Mobil’s Norfolk, Virginia, petroleum products terminal.
- AAA. “Mobil’s TETCO Interest” means all of Mobil’s ownership and/or partnership interest in TETCO as of the date Respondents execute the Agreement Containing Consent Orders.
- BBB. “Mobil’s TETCO Partners/Members” means TETCO, Inc., TETCO Stores-I, LLC, and Tetco-Nevada, Inc.
- CCC. “Paulsboro Refinery” means Valero’s refinery located at Paulsboro, New Jersey.
- DDD. “Person” means any individual, partnership, association, company or corporation.
- EEE. “Plantation” means Plantation Pipe Line Company.
- FFF. “Pre-Existing Base Oil Supply Contracts” means contracts for the supply of Base Oil by Exxon or Mobil that were entered into before January 1, 1999.
- GGG. “Retail Assets” means, for each Retail Site, all fee and leasehold interests of Respondents in the Retail Site, and all of Respondents’ interest in all assets, tangible or intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses, consents, contracts, and agreements used in the operation of the Retail Site, and the non-exclusive right to use all patents, know-how, and other intellectual property used by Respondents in the operation of the Retail Sites. “Retail Assets” also includes all fee and leasehold interests of Respondents in real property that, as of October 1, 1999, was intended for use by Respondents as a Retail Site and all permits, licenses, consents, contracts, and agreements intended for use or used with respect to

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

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pecuniary loss under applicable law to the States, to assign or otherwise convey their rights to the acquirer or to terminate Respondents' rights, but Respondents' failure to assign or terminate such rights due to a State's refusal to accede to such an assignment or termination, Respondents having made such good faith, diligent efforts, shall not constitute non-compliance with this Order. Turnpike Retail Assets that Respondents fail to assign or terminate shall be included among the Retail Sites from which the percentages in Paragraph XV are calculated.

- HHH. "Retail Site" means a business establishment from which gasoline is sold to the general public.
- III. "TAPS" means the Trans Alaska Pipeline System as described in the Trans Alaska Pipeline System Agreement, as amended, entered into on August 27, 1970.
- JJJ. "Terminaling" means the services performed by a facility that provides temporary storage of gasoline received from a pipeline or marine vessel, and the redelivery of gasoline from storage tanks into tank trucks or transport trailers.
- KKK. "TETCO" means TETCO Stores LP and/or TETCO Stores-I LLC.
- LLL. "Texas MSAs" means the Austin, Bryan/College Station, and San Antonio MSAs, and the Dallas and Houston PMSAs, as defined by the Census Bureau as of September 30, 1999.
- MMM. "Turnpike Locations" means the nine (9) Mobil stations located on the Garden State Parkway in New Jersey and the one (1) Mobil station on I-95 in Delaware at which Mobil leases Retail Assets from a State or turnpike authority enabled by a State.

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NNN. “Turnpike Retail Assets” means Retail Assets at Turnpike Locations.

OOO. “Valero” means Valero Energy Corporation.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Exxon California Refining and Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, assign to the acquirer of the Exxon California Refining and Marketing Assets (1) all Existing Lessee Agreements with respect to the Exxon California-South Marketing Assets in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, subject to any applicable right of first refusal under California law exercisable by Exxon’s Lessee Dealers that operate Retail Sites being divested, and (2) all Existing Supply Agreements between Exxon and Exxon Branded Sellers in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets with respect to Retail Sites in California other than the California-North MSAs.
- C. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, enter into an agreement with the acquirer of the Exxon California Refining and Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, pursuant to

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which the acquirer of the Exxon California Refining and Marketing Assets will receive, for a period of ten (10) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets: (1) the exclusive right to sell Branded Fuels under the Exxon brand in California other than in the California-North MSAs, except as permitted by subparagraphs II.J. and II.K., and (2) the exclusive right to use Exxon's brand name in connection with the sale of Branded Fuels under the Exxon brand in California other than in the California-North MSAs, including the exclusive rights to use Exxon's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Exxon credit cards in connection with such sales of Exxon Branded Fuels. Such agreement shall provide for the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase and may provide for payments covering Respondents' costs in connection with the provision of credit card services, additive, and such brand support as the acquirer may choose to purchase. The agreement shall not provide for any payment by the acquirer to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets and escalating each year until the end of the ten (10) year term, by the acquirer to Respondents for the use of Exxon's identification signs, trademarks, and other trade indicia. Acquirer's payments for credit card services, additive and the use of Exxon's brand, but not including such other brand support as acquirer may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the acquirer agree, subject to approval of the Commission. At the end of the ninth year after the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement.

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- D. Respondents shall, upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, at the acquirer's option, also enter into an agreement with the acquirer of the Exxon California Refining and Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, that requires Respondents to supply the acquirer ANS crude oil in ratable quantities of up to 100 MBD for up to ten (10) years.
- E. Respondents shall offer the acquirer of the Exxon California Refining and Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Benicia refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.
- F. Respondents shall divest the Exxon California Refining and Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs II.A., II.B., II.C., II.D., and II.E. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such

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assets or agreements. The Exxon California-North Marketing Assets shall be divested only to a person that commits to offer each of Exxon's Lessee Dealers that operate a Retail Site being divested a non-discriminatory franchise within the meaning of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801, *et seq.*

- G. No later than the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall cancel all Existing Lessee Agreements and Existing Supply Agreements between Exxon and Exxon Lessee Dealers and Exxon Branded Sellers with respect to Retail Sites in the California-North MSAs in effect as of the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets.
- H. Notwithstanding subparagraphs II.A. and II.F, the divestiture of the Exxon California-South Marketing Assets shall be subject to any applicable right of first refusal under California law exercisable by Exxon's Lessee Dealers that operate assets being divested. Respondents shall not attempt in any way to persuade or encourage Exxon Lessee Dealers to exercise such right. Respondents shall not, for a period of seven (7) years from the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, sell Branded Fuels to any Lessee Dealer that exercises such right.
- I. Upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, Respondents shall allow the acquirer of the Exxon California Refining and Marketing Assets the non-exclusive right to sell other Exxon Branded Products (e.g., motor oil) at the acquirer's Exxon branded Retail Sites in California. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the Effective Date of Divestiture of the Exxon California

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

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

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

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

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

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Exxon Guam Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall offer the acquirer of the Exxon Guam Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon Guam Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.

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- C. Respondents shall divest the Exxon Guam Assets and enter into the agreement as required by subparagraphs III.A. and III.B., only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- D. No later than the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall cancel all Existing Lessee Agreements and Existing Supply Agreements between Exxon and Exxon Lessee Dealers and Exxon Branded Sellers with respect to Retail Sites in Guam. Respondents shall not sell Branded Fuels to such Lessee Dealers or Branded Sellers for a period of seven (7) years from the Effective Date of Divestiture of the Exxon Guam Assets. For a period of ten (10) years from the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall be prohibited from using the Exxon brand for the sale of Branded Fuels at Retail Sites in Guam.
- E. Until the Effective Date of Divestiture of the Exxon Guam Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Exxon Guam Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including but not limited to renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Exxon Guam Assets.

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

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Exxon Northeast Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, assign to the acquirer of the Exxon Northeast Marketing Assets (1) all Existing Lessee Agreements with respect to the Exxon Northeast Marketing Assets in effect as of the Effective Date of Divestiture of Exxon Northeast Marketing Assets and (2) all Existing Supply Agreements between Exxon and Exxon Branded Sellers in effect as of the Effective Date of Divestiture of Exxon Northeast Marketing Assets with respect to Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
- C. Respondents shall enter into an agreement with the acquirer of the Exxon Northeast Marketing Assets, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission and which shall be effective upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, pursuant to which the acquirer of the Exxon Northeast Marketing Assets will

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

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- D. Respondents shall offer the acquirer of the Exxon Northeast Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.
- E. Respondents shall divest the Exxon Northeast Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs IV.A., IV.B., IV.C., and IV.D. to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- F. Upon the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall allow the acquirer of the Exxon Northeast Marketing Assets the non-exclusive right to sell other Exxon Branded Products (e.g., motor oil) at the acquirer's Exxon branded Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other

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

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

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- H. Notwithstanding the provisions of subparagraphs IV.C. and IV.G., in the event that the acquirer of the Exxon Northeast Marketing Assets ceases to use the Exxon brand in any of the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine, pursuant to the agreement conveying the right to use the brand described in subparagraph IV.C., Respondents shall have the right to use the brand in such state beginning two (2) years after the acquirer of the Exxon Northeast Marketing Assets ceases to use the brand in such state, but in no event prior to five (5) years after the Effective Date of Divestiture of the Exxon Northeast Marketing Assets.
- I. Until the Effective Date of Divestiture of the Exxon Northeast Marketing Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Exxon Northeast Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph IV.B. occur, Respondents shall not attempt in any way to encourage any Exxon Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement with respect to a Retail Site in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Exxon Branded Sellers with respect to Retail Sites in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine and shall otherwise seek to

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preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Exxon Branded Distributors in States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine the program set forth in Appendix A.

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

V.**IT IS FURTHER ORDERED** that

- A. Respondents shall divest the Mobil Mid-Atlantic Marketing Assets to a single acquirer, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, assign to the acquirer of the Mobil Mid-Atlantic Marketing Assets (1) all Existing Lessee Agreements with respect to the Mobil Mid-Atlantic Marketing Assets in effect as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets and (2) all Existing Supply Agreements between Mobil and Mobil Branded Sellers in effect as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets

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with respect to Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia.

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

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payments, beginning five (5) years after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets and escalating each year until the end of the ten (10) year term, by the acquirer to Respondents for the use of Mobil's identification signs, trademarks, and other trade indicia. Acquirer's payments for credit card services, additive and the use of Mobil's brand, but not including such other brand support as acquirer may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the acquirer agree, subject to approval of the Commission. At the end of the ninth year after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement.

- D. Respondents shall offer the acquirer of the Mobil Mid-Atlantic Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are divested or assigned pursuant to this Paragraph.
- E. Respondents shall divest the Mobil Mid-Atlantic Marketing Assets, assign the Existing Lessee Agreements and Existing Supply Agreements, and enter into the agreements as required by subparagraphs V.A., V.B., V.C., and V.D. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter

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

- F. Upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall allow the acquirer of the Mobil Mid-Atlantic Marketing Assets the non-exclusive right to sell other Mobil Branded Products (e.g., motor oil) at the acquirer's Mobil branded Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The acquirer's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall allow a Mobil Branded Seller or Mobil Lessee Dealer that was Mobil's franchisee with respect to a Business Format Franchise as of the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format Franchisee, subject to any applicable approvals required of the Business Format Franchisor.
- G. Respondents shall not, except as requested by the acquirer of the Mobil Mid-Atlantic Marketing Assets (and except at Retail Sites at Turnpike Locations to the extent that Respondents have failed to assign or terminate their rights in connection therewith), (1) sell or attempt to sell, for twelve (12) years from the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Branded Fuels under the Mobil brand for sale or resale at Retail Sites in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia; provided, however, that Respondents may sell to the acquirer of the

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Mobil Mid-Atlantic Marketing Assets quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the acquirer for purposes of adding Mobil's proprietary additive and making the gasoline salable by acquirer as Mobil Branded Fuels, or (2) sell or attempt to sell, for seven (7) years from the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Branded Fuels under the Exxon brand to any Mobil Branded Seller or Mobil Lessee Dealer for resale at any Retail Site in the District of Columbia and the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia that sold Mobil Branded Fuels as of the date Respondents executed the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Mobil brand with respect to Retail Sites that were not Mobil branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

- H. Notwithstanding the provisions of subparagraph V.C. and V.G., in the event that the acquirer of the Mobil Mid-Atlantic Marketing Assets ceases to use the Mobil brand in the District of Columbia or in any of the States of New Jersey, Pennsylvania, Delaware, Maryland, or Virginia pursuant to the agreement conveying the right to use the brand described in V.C., Respondents shall have the right to use the brand in such District or State beginning two (2) years after the acquirer of the Mobil Mid-Atlantic Marketing Assets ceases to use the brand in such District or State, but in no event prior to five (5) years after the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets.
- I. Until the Effective Date of Divestiture of the Mobil Mid-Atlantic Marketing Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not

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

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

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

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

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

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

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

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

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

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

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

- E. Respondents shall, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, assign to a single person in each of the Texas MSAs (each of whom shall be a "Mobil Texas Assignee") that receives the prior approval of the Commission, all Existing Supply Agreements between Mobil and Mobil Branded Sellers in effect as of the date of the assignment with respect to Retail Sites in the applicable Texas MSA.
- F. Respondents shall enter into agreements with each Mobil Texas Assignee, the terms of which and subsequent amendments to which shall be subject to the prior approval of the Commission, which shall be effective upon the effective date of the assignments pursuant to subparagraph VI.E., pursuant to which each Mobil Texas Assignee will receive, for a period of ten (10) years from the effective date of the assignment to the Mobil Texas Assignee(s), in the pertinent Texas MSA or MSAs: (1) the exclusive right to sell Branded Fuels under the Mobil brand, except as permitted by subparagraphs VI.I. and VI.J., and (2) the exclusive right to use Mobil's brand name, including the exclusive right to use Mobil's identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Mobil credit cards in connection with such sales of Branded Fuels under the Mobil brand. Such agreement shall provide for provision of credit card services, additive, and such brand support as the assignee may choose to purchase and may provide for payments covering Respondents' costs for the provision of credit card

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services, additive, and such brand support as the assignee may choose to purchase. The agreement shall not provide for any payment by the assignee to Respondents for the use of the brand name for the first five years of the agreement, but may provide for additional payments, beginning five (5) years after the effective date of the assignment to the Mobil Texas Assignee(s) and escalating each year until the end of the ten (10) year term, by the assignee to Respondents for the use of Mobil's identification signs, trademarks, and other trade indicia. Assignee's payments for credit card services, additive and the use of Mobil's brand, but not including such other brand support as the assignee may choose to purchase, shall not exceed 2.5 cents per gallon, except that the agreement may provide for an annual minimum payment to which Respondents and the assignee agree, subject to approval of the Commission. At the end of the ninth year after the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall offer to meet with the assignee to discuss a renewal of the agreement.

- G. Upon the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall allow the assignee the non-exclusive right to sell other Mobil Branded Products (e.g., motor oil) at the acquirer's Mobil branded Retail Sites in the pertinent Mobil Texas MSA (or MSAs). The assignee's access to all such other products or services acquired from Respondents for resale at such Retail Sites shall be on commercial, arm's length terms no less favorable than those given by Respondents to other wholesale purchasers. Upon the effective date of the assignment to the Mobil Texas Assignee(s), Respondents shall allow a Mobil Branded Seller or Mobil Lessee Dealer that was Mobil's franchisee with respect to a Business Format Franchise as of the effective date of the assignment to the Mobil Texas Assignee(s) to continue as Respondents' franchisee with respect to such Business Format Franchise. Respondents shall not object to an assumption by the acquirer of Respondents' obligations as Business Format

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Franchisee, subject to any applicable approvals required of the Business Format Franchisor.

- H. Respondents shall offer each Mobil Texas Assignee an indemnity, subject to the prior approval of the Commission and to be effective upon the effective date of the pertinent assignment, which indemnity shall allocate among Respondents and the assignee, on such terms as the Respondents and the assignee agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Retail Sites that are assigned to the assignee pursuant to subparagraph VI.E.
- I. Respondents shall not, except as requested by the Mobil Texas Assignee(s) in a Texas MSA, (1) sell or attempt to sell, for twelve (12) years from the effective date of the assignment to the Mobil Texas Assignee(s) in that MSA, Branded Fuels under the Mobil brand for sale or resale at Retail Sites in the Texas MSAs; provided, however, that Respondents may sell to each Mobil Texas Assignee quantities of Branded Fuels equal to quantities of unadditized gasoline sold to Respondents by the assignee for purposes of adding Mobil's proprietary additive and making the gasoline salable by assignee as Mobil Branded Fuels, or (2) sell or attempt to sell, for seven (7) years from the effective date of the assignment to the Mobil Texas Assignee(s), Branded Fuels under the Exxon brand to any Mobil Branded Seller or Lessee Dealer for resale at Retail Sites in the Texas MSAs that sold Mobil Branded Fuels as of the date Respondents executed the Agreement Containing Consent Orders. This subparagraph shall not prohibit sales, solicitations, discussions or negotiations involving brands other than the Mobil brand with respect to Retail Sites in a Texas MSA that were not Mobil branded Retail Sites as of the date Respondents execute the Agreement Containing Consent Orders.

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- J. Notwithstanding the provisions of subparagraph VI.F. and VI.I., in the event that the Mobil Texas Assignee(s) ceases to use the Mobil brand in any of the Texas MSAs pursuant to the agreement conveying the right to use the brand described in subparagraph VI.F, Respondents shall have the right to use the brand in that MSA beginning two (2) years after the Mobil Texas Assignee(s) ceases to use the brand in that MSA, but in no event prior to five (5) years after the effective date of the assignment.
- K. Until the Effective Date of Divestitures of the Mobil Texas Marketing Assets and Mobil's TETCO Interest, Respondents shall take such actions as are necessary to maintain the viability and marketability of the respective assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the respective assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, Business Format Franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Mobil Texas Marketing Assets. Until the assignments of Existing Supply Agreements provided by subparagraph VI.E. occur, Respondents shall not attempt in any way to encourage any Mobil Branded Seller to terminate, nor shall Respondents terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)), an Existing Supply Agreement with respect to a Retail Site in the Texas MSAs, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with Mobil Branded Sellers with respect to Retail Sites in the Texas MSAs and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders. Respondents shall offer to all Mobil Branded Distributors in the Texas MSAs the program set forth in Appendix A.

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

VII.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Mobil Boston Terminal, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall divest the Mobil Boston Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- C. Until the Effective Date of Divestiture of the Mobil Boston Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

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

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

- A. Respondents shall divest the Mobil Manassas Terminal, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders.
- B. Respondents shall divest the Mobil Manassas Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission;
- C. Until the Effective Date of Divestiture of the Mobil Manassas Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- D. The purpose of this Paragraph is to ensure the continuation of the Mobil Manassas Terminal as an ongoing, viable enterprise engaged in the Terminaling of gasoline and other petroleum products, and to remedy the lessening of competition resulting from the Merger in Terminaling markets as alleged in the Commission's complaint

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IX.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, either all of Mobil's interest in Colonial or all of Exxon's interest in Plantation.
- B. Respondents shall divest the Colonial or Plantation interest identified in subparagraph A. above only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Pending divestiture of either Mobil's interest in Colonial or Exxon's interest in Plantation, Respondents shall not serve on Colonial's board of directors or any committee thereof, attend meetings of Colonial's board of directors or any committee thereof, vote any of Mobil's stock in Colonial (provided, however, that Respondents shall vote its stock in Colonial to create unanimity only when unanimous action by all owners of Colonial is required and Respondents' vote is necessary to create unanimity), or receive any information from Colonial not made available to all shippers or to the public at large, except that a representative of Respondents may observe meetings of the Colonial Board of Directors and may receive and use nonpublic information of Colonial solely for the purpose of effectuating the divestiture of Mobil's interest in Colonial pursuant to this Order. Said representative of Respondents shall be identified to the Commission, shall not divulge any nonpublic Colonial information to Respondents (other than employees of Respondents whose sole responsibility is to effectuate the divestiture, and agents of Respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

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

X.**IT IS FURTHER ORDERED** that

- A. Respondents shall divest, absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, all of Mobil's interest in TAPS; provided, however, that divestiture of (1) Mobil's interest in the Prince William Sound Oil Spill Response Corporation and (2) Mobil's interest in the terminal tankage governed by Section 3.2 of the Trans Alaska Pipeline System Agreement in excess of a 3% interest in such tankage, shall be at the acquirer's option.
- B. Respondents shall divest Mobil's interest in TAPS only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- C. Until the Effective Date of Divestiture of Mobil's interest in TAPS, Respondents shall take such actions as are necessary to maintain the viability and marketability of the assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

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

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to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI.

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

XII.

IT IS FURTHER ORDERED that:

- A. Within nine (9) months from the date Respondents execute the Agreement Containing Consent Orders, Respondents shall divest the Exxon Jet Turbine Oil Business to a single acquirer, as set forth in subparagraph XII.B., absolutely and in good faith and at no minimum price. Respondents shall divest the Exxon Jet Turbine Oil Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- B. Respondents shall carry out the divestiture of the Exxon Jet Turbine Oil Business on the following terms:
 - 1. Respondents shall assign to the acquirer all contracts for the supply of Jet Turbine Oils by Exxon, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable approvals, permits or contracts with customers for the purchase of Jet Turbine Oils, Respondents shall use best efforts to assist in the transfer to the acquirer of such contracts. Best efforts shall include a written reasoned recommendation, the provision to the acquirer of all

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information and records available to Exxon relating to such customers, the provision to the acquirer of available customer contact data and information on the customer decision maker(s) and, if the acquirer so requests in accordance with reasonable commercial practice, the organization of joint visits with the acquirer to such customers.

2. For a two (2) year period from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business and subject to terms and conditions to be mutually agreed upon between the acquirer and Respondents, Respondents shall not solicit for the purpose of selling Jet Turbine Oils any commercial aviation customers to which Exxon has sold any Jet Turbine Oils between January 1, 1999, and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business. Respondents may approach such customers for the purpose of selling products other than Jet Turbine Oils. To the extent that Mobil sold Jet Turbine Oils to any customers of the Exxon Jet Turbine Oil Business after January 1, 1999, and before October 1, 1999, nothing herein shall be construed to prevent Respondents from continuing to sell Mobil Jet Turbine Oils to such customers.
3. Respondents shall assign to the acquirer all of Exxon's contracts for the purchase of esters and additives used by Exxon in manufacturing Jet Turbine Oils, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable contracts for the purchase of esters and additives used by Exxon in manufacturing Jet Turbine Oils, Respondents shall use their best efforts to assist in the transfer to the acquirer of such contracts.
4. At the time Respondents apply to the Commission for approval of the divestiture, Respondents shall provide the Commission with copies of the approval by the leaseholder of Exxon's manufacturing facility located in

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Bayway, New Jersey to the divestiture of that facility. With respect to permits, licenses or other rights granted by governmental authorities (other than patents), Respondents shall provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights.

5. Respondents shall take reasonable steps from the date Respondents execute the Agreement Containing Consent Orders, including appropriate incentive schemes (such as payment of all current and accrued benefits, e.g., bonuses and pensions, etc., to which the employees are entitled), to cause the Exxon Jet Turbine Oil Employees to accept offers of employment from the acquirer. For a period of at least two (2) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not hire or solicit Exxon Jet Turbine Oil Employees who accept such offers unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Exxon Jet Turbine Oil Employees to stay with Respondents, and shall not assign Exxon Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least two (2) years following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business.
6. Respondents shall require that, as a condition of continued employment with Respondents after the divestiture of the Exxon Jet Turbine Oil Business, any of Respondents' employees with knowledge of Jet Turbine Oil Formulations, trade secrets, know-how, and other intellectual property conveyed to the acquirer pursuant to this Paragraph XII enter into agreements with the acquirer not to disclose to Respondents or to any third party any such intellectual property, except that such agreements may permit such employees to disclose to Respondents intellectual property other than Jet Turbine Oil Formulations for uses outside the Field of Jet Turbine Oils. To permit the acquirer to protect the confidentiality

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of intellectual property conveyed to it, Respondents shall assign to the acquirer (to the extent assignable) such rights under contracts between Exxon and its former employees as require such employees to preserve the confidentiality of such intellectual property. To the extent that such agreements with Exxon's former employees are not assignable, Respondents shall enforce such confidentiality provisions at the request and expense, and with the assistance of, the acquirer. Respondents shall not accept, nor seek to obtain, from any current or former employee of Exxon,

- a. for any use, Jet Turbine Oil Formulations, or
- b. for use within the Field of Jet Turbine Oils, other intellectual property conveyed to the acquirer pursuant to this Paragraph XII,

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

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

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

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

8. Respondents shall place no restrictions on the use by the acquirer of any of the business or assets of the Exxon Jet Turbine Oil Business, other than the field of use

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restrictions set forth in this Paragraph XII and in the definition of “Exxon Jet Turbine Oil Business.”

9. Notwithstanding any other provisions of this Paragraph XII and notwithstanding subparagraph I.Z.5., Respondents shall not be required to convey to the acquirer any rights to the Excluded Jet Turbine Oil Assets or to the mark and slogan “Fly with the Tiger”, except that Respondents shall allow the acquirer to identify itself (for a period of one (1) year from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) as the acquirer of the “Exxon” or “Esso” Jet Turbine Oil Business. For a period of two (2) years after the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not use the Excluded Jet Turbine Oil Assets in the marketing, customer support, or sale of Jet Turbine Oils, except that Respondents may use the word “Exxon” as part of the “Exxon Mobil” (or “ExxonMobil”) name or mark. For a period of five (5) years after the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not use the mark and slogan “Fly with the Tiger” in the marketing, customer support, or sale of Jet Turbine Oils. Respondents shall not be required to allow the acquirer to use the names “ETO” and “Exxon Turbo Oil,” except that Respondents shall allow the acquirer to use the term “turbo oil” and shall allow the acquirer to identify its products (for a period of one (1) year from the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business) as formerly known as “ETO” or “Exxon Turbo Oil.” Respondents shall not use the names “ETO” and “Exxon Turbo Oil” in the Field of Jet Turbine Oils. However, Respondents shall be allowed to use the phrase “turbo oil” in the Field of Jet Turbine Oils if that phrase is not preceded immediately by the word “Exxon”. In particular, Respondents shall be allowed to use the phrase “turbo oil” in the Field of Jet Turbine Oils if that phrase is immediately preceded by the words “Exxon Mobil” or “ExxonMobil”. Respondents shall

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agree with the acquirer to comply with the requirements of this subparagraph XII.B.9. For purposes of this subparagraph XII.B.9., “Excluded Jet Turbine Oil Assets” means the following names, marks, copyrights, slogans, symbols, designs, or icons: Exxon; Esso; Humble; Live Running Tiger; Crossed X (Interlocking X Device); Oil Drop Character Design; Happy Motoring; Whimsical Tiger; Run with the Tiger; and Rely on the Tiger.

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

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

11. Following the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall not manufacture or sell any Jet Turbine Oils that have the same formulation or product name as any Jet Turbine Oils manufactured or sold by the Exxon Jet Turbine Oil Business at any time prior to the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business.
12. With respect to Exxon's contracts for the distribution of Jet Turbine Oils, Respondents shall, at the acquirer's option, use their best efforts to assist the acquirer in securing contractual rights with distributors of Exxon Jet Turbine Oils comparable to the rights in Exxon's distributor contracts used by Exxon to distribute Jet Turbine Oils.
13. Within one (1) year of the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, Respondents shall supplement Appendix B (Confidential), subject to the prior approval of the Commission, with any and all additional patents selected by the acquirer, provided that:
 - a. each such patent was (i) issued to, or applied for by, Exxon as of the date of the Merger, or (ii) was the subject of a patent application filed by the Held Separate Exxon Jet Turbine Oil Business (as specified in subparagraph I.K.5. of the Order to Hold Separate and Maintain Assets) between the date of the Merger and the Effective Date of Divestiture of the Exxon Jet Turbine Oil Business, and
 - b. with respect to each such patent, prior to the Merger and within the Field of Jet Turbine Oils, Exxon (i)

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practiced an invention claimed in the patent, or (ii) engaged in research on, or development of, an invention (or an application of an invention) claimed in the patent.

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

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

1. Respondents shall assign to the acquirer all contracts for the supply of Jet Turbine Oils by Mobil, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable approvals, permits or contracts with customers for the purchase of Jet Turbine Oils, Respondents shall use best efforts to assist in the transfer to the acquirer of such contracts. Best efforts shall include a written reasoned recommendation, the provision to the acquirer of all information and records available to Mobil relating to such customers, the provision to the acquirer of available customer contact data and information on the customer decision maker(s) and, if the acquirer so requests in accordance with reasonable commercial practice, the organization of joint visits with the acquirer to such customers.
2. For a two (2) year period from the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business and subject to terms and conditions to be mutually agreed upon between the acquirer and Respondents, Respondents shall not solicit for the purpose of selling Jet Turbine Oils any commercial aviation customers to

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which Mobil has sold any Jet Turbine Oils between January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business. Respondents may approach such customers for the purpose of selling products other than Jet Turbine Oils. To the extent that Exxon sold Jet Turbine Oils to any customers of the Mobil Jet Turbine Oil Business after January 1, 1999, and the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, nothing herein shall be construed to prevent Respondents from continuing to sell Exxon Jet Turbine Oils to such customers.

3. Respondents shall assign to the acquirer all of Mobil's contracts for the purchase of esters and additives used by Mobil in manufacturing Jet Turbine Oils, where permissible under applicable law and/or the terms of the contracts. With respect to existing non-assignable contracts for the purchase of esters and additives used by Mobil in manufacturing Jet Turbine Oils, Respondents shall use their best efforts to assist in the transfer to the acquirer of such contracts.
4. Respondents shall assist the Divestiture Trustee in obtaining all third-party approvals necessary to accomplish the divestiture of the manufacturing facilities of the Mobil Jet Turbine Oil Business.
5. Respondents shall take reasonable steps from the date Respondents execute the Agreement Containing Consent Orders, including appropriate incentive schemes (such as payment of all current and accrued benefits, e.g., bonuses and pensions, etc., to which the employees are entitled) to cause the sales, research, manufacturing, and supervisory personnel associated with the Mobil Jet Turbine Oil Business to accept offers of employment from the acquirer. For a period of at least two (2) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not hire or solicit Mobil Jet Turbine Oil Employees who accept such

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offers unless the employees have been terminated by the acquirer. Respondents shall not offer incentives to Mobil Jet Turbine Oil Employees to stay with Respondents, and shall not assign Mobil Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least two (2) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business.

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

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

7. Respondents shall provide Key Mobil Jet Turbine Oil Employees with the following financial incentives to continue in their employment positions pending divestiture and to accept employment with the acquirer at the time of the divestiture or at any time within two (2) years thereafter:
 - a. Vesting of all pension benefits current and accrued as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business;
 - b. A bonus equal to thirty (30) percent of the employee's annual salary (including any other bonuses) as of the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business for any individual who agrees to employment with the acquirer, payable upon the beginning of employment by the acquirer.

With respect to Key Mobil Jet Turbine Oil Employees, compliance with such incentives shall constitute the “reasonable steps” required by subparagraph XII.C.5. For a period of at least three (3) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not hire or solicit Key Mobil Jet Turbine Oil Employees who accept offers of employment from the acquirer unless the employees have been terminated by the acquirer. Respondents shall not offer

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incentives to Key Mobil Jet Turbine Oil Employees to stay with Respondents, and shall not assign Key Mobil Jet Turbine Employees to Respondents' Jet Turbine Oils business for a period of at least three (3) years following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business. If any researchers associated with the Mobil Jet Turbine Oil Business continue to be employed by Respondents after the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall, at the acquirer's option, assign each of them as consultants to the acquirer for up to full-time for two years, with the acquirer paying (a) a prorated share of each such employee's salary and employee benefits and (b) reasonable travel expenses (including meals and lodging).

8. Respondents shall place no restrictions on the use by the acquirer of any of the business or assets of the Mobil Jet Turbine Oil Business, other than the field of use restrictions set forth in this Paragraph XII and in the definition of "Mobil Jet Turbine Oil Business."
9. Notwithstanding any other provisions of this Paragraph XII, Respondents shall not be required to allow the acquirer to use the "Mobil" name and/or trademark (or the Red O, Pegasus Character, Airplane Character, or AVREX trademarks), except that Respondents shall allow the acquirer to identify itself (for a period of one (1) year from the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business) as the acquirer of the Mobil Jet Turbine Oil Business. For a period of two (2) years after the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall not use the "Mobil" name and/or trademark (or the Red O, Pegasus Character, Airplane Character, or AVREX trademarks) in connection with the marketing or sale of Jet Turbine Oils, except that Respondents may use the word "Mobil" as part of the "Exxon Mobil" name and/or trademark.

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

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12. With respect to Mobil's contracts for the distribution of Jet Turbine Oils, Respondents shall, at the acquirer's option, use their best efforts to assist the acquirer in securing contractual rights with distributors of Mobil Jet Turbine Oils comparable to the rights in Mobil's distributor contracts used by Mobil to distribute Jet Turbine Oils.
 13. The trustee shall have the power to divest to the acquirer any other assets of Mobil if and to the extent necessary to permit the Mobil Jet Turbine Oil Business to remain viable after divestiture. Such assets may include, but shall not be limited to, intellectual property relating to products (other than, and in addition to, Jet Turbine Oils) produced by the manufacturing facilities of the Mobil Jet Turbine Oil Business.
 14. For one (1) year following the Effective Date of Divestiture of the Mobil Jet Turbine Oil Business, Respondents shall promptly upon the acquirer's request offer to the acquirer technical assistance in transferring and gaining approvals and certifications.
- D. The purpose of the divestiture of the Exxon Jet Turbine Oil Business or the Mobil Jet Turbine Oil Business is to ensure that either the Exxon Jet Turbine Oil Business or the Mobil Jet Turbine Oil Business is independent of, and is a viable and vigorous competitor to, the Jet Turbine Oil business retained by Respondents, and to remedy the lessening of competition resulting from the proposed Merger in markets for Jet Turbine Oils as alleged in the Commission's Complaint.

XIII.

IT IS FURTHER ORDERED that for so long as Mobil's Norfolk Wharf is owned by Respondents, Respondents shall not provide the "prior written notice of termination" set forth in

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Section III of the Wharf Agreement dated October 1, 1992, as amended, between Mobil Oil Corporation and Louis Dreyfus Energy Corporation, predecessor of TransMontaigne, Inc., respecting TransMontaigne, Inc.'s access to Mobil's Norfolk Wharf.

XIV.

IT IS FURTHER ORDERED that:

- B. Within six (6) months of the date Respondents execute the Agreement Containing Consent Orders, Respondents shall offer, in good faith, to amend the Mobil-Valero Paulsboro Agreement in compliance with this Paragraph and in the manner set forth in Appendix D (Confidential). Respondents shall offer only such terms as have received the prior approval of the Commission. At the time Respondents submit their proposed terms to the Commission for its approval, they shall also provide a copy to Valero. The amendment subsequently offered to Valero shall consist only of the terms approved by the Commission, and shall not be conditioned on Valero's acceptance of any other terms. The offer shall be held open for one (1) year after the Commission approves Respondents' proposed terms. If Valero accepts the offer, Respondents shall comply with the Mobil-Valero Paulsboro Agreement as amended, and any failure by Respondents to comply with any provision of the amendments offered to and accepted by Valero shall constitute a failure to comply with this Order; provided, however, that such failure shall not be a basis for the appointment of a trustee pursuant to Paragraph XV or for the alternative remedy set forth in Paragraph XV.
- C. Within nine (9) months of the date the Merger is consummated, Respondents shall enter into Base Oil supply contract(s) that receive the prior approval of the Commission with at least one, but not more than three, acquirer(s) that receive the prior approval of the Commission, to supply to acquirer(s) a cumulative total of

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twelve (12) MBD of Base Oil. Each such contract with each acquirer shall contain the following terms:

1. Respondents will supply Base Oil for a term of ten (10) years.
2. The Base Oil may be supplied from any or all of the Designated Base Oil Refineries, to be determined by mutual agreement between Respondents and each acquirer.
3. The agreement shall require the acquirer (a) to take delivery of the Base Oil to be supplied and shall not provide for any waiver of acquirer's obligation to take delivery; and (b) to provide Respondents with advance notice of the quantities and qualities to be purchased under the contract.
4. Respondents must initially make available to the acquirer Base Oil in proportionate grades, viscosities, qualities, and amounts that correspond to the 1999 production of Mobil's Beaumont, Texas, refinery. Beginning January 1, 2001, and on an annual basis thereafter, Respondents shall be obligated to provide the acquirer the option of purchasing Base Oil in the proportionate grades, viscosities, qualities, and amounts that correspond to Respondents' planned production at all of the Designated Base Oil Refineries.
5. The agreement will specify formula price terms for each grade, viscosity, and other quality of Base Oil to be supplied initially. The formula price terms for each grade, viscosity, and other quality of Base Oil not supplied initially shall reflect adjustments to existing price formulae that are established by mutual agreement, or by binding arbitration if the parties fail to agree. The formula price terms shall be subject to renegotiation no more frequently than every three years, with binding arbitration if the parties fail to agree on price terms,

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

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

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

XV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not, within the time periods required, complied with the requirements to divest, assign, enter into agreements, or make an offer of amendment, as applicable, of Paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XII, or XIV absolutely and in good faith and with the Commission's prior approval and in the manner approved by the Commission, the Commission may appoint a person or persons as trustee or trustees (as used herein "trustee" shall mean "trustee or trustees") to effectuate the divestiture, assign all agreements, and effectuate all other provisions of the applicable paragraph or paragraphs; provided, however,

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that the trustee may, subject to the approval of the Commission, substitute the following assets for the assets described in the applicable paragraph or paragraphs: (1) in connection with Paragraph II., the Mobil California Refining and Marketing Assets, and the applicable brand name; (2) in connection with Paragraph IV, the Mobil Northeast Marketing Assets, and the applicable brand name (provided, however, that if Respondents fail to divest pursuant to both Paragraphs IV and V, the trustee may substitute the Exxon Maine-Virginia Assets, and the applicable brand name, for the assets to be divested pursuant to Paragraphs IV and V); (3) in connection with Paragraph V, the Exxon Mid-Atlantic Marketing Assets, and the applicable brand name (provided, however, that if Respondents fail to divest pursuant to both Paragraphs IV and V, the trustee may substitute the Exxon Maine-Virginia Assets, and the applicable brand name, for the assets to be divested pursuant to Paragraphs IV and V); (4) in connection with Paragraph VI, the Exxon Texas Marketing Assets, and the applicable brand name; (5) in connection with Paragraph X, Exxon's Interest in TAPS; (6) in connection with Paragraph XII, Mobil's Jet Turbine Oil Business; and (7) in connection with Paragraph XIV, the Mobil Beaumont Refinery Assets. Provided, however, that with respect to Paragraphs IV and V, the trustee may enter into an agreement with the acquirer, granting the acquirer rights to the Exxon or Mobil brand, as the case may be, on a royalty-free basis for up to twenty years, with the right to renew indefinitely thereafter on an annual basis, at the acquirer's option, on further terms to which the Respondents and the acquirer agree or, in the absence of agreement, on commercially reasonable terms as determined by binding arbitration (instead of the ten-year period as specified in subparagraphs IV.C. and V.C.).

Provided, further, however, that if within the applicable time period Respondents have divested and assigned rights with respect to at least 95% of the Retail Sites as to which divestiture or assignment is required in (a) for Paragraph II,

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

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

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- C. If a trustee is appointed by the Commission or a court pursuant to Paragraph XV.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee or trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested, assign the agreements required to be assigned, and enter into the required agreements, thereby binding Respondents, all on such terms and conditions as are necessary to comply with the requirements of the applicable paragraph, to comply with all applicable laws, and to effectuate the remedial purposes of this Order. Subject to the prior approval of the Commission, the trustee shall have the sole authority to divest the assets described in subparagraphs XV.A.(2) and (3), in smaller packages as the trustee deems necessary to effectuate divestiture of the assets and to effectuate the remedial purposes of this Order, provided, however, that no package of assets shall comprise less than all the Retail Assets, Existing Lessee Agreements, and Existing Supply Agreements in an individual state or District. Provided, however, that with respect to Paragraphs IV and V, the trustee may enter into an agreement with the acquirer, granting the acquirer rights to the Exxon or Mobil brand, as the case

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may be, on a royalty-free basis for up to twenty years, with the right to renew indefinitely thereafter on an annual basis, at the acquirer's option, on further terms to which the Respondents and the acquirer agree or, in the absence of agreement, on commercially reasonable terms as determined by binding arbitration (instead of the ten-year period as specified in subparagraphs IV.C. and V.C.).

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph XV.C.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as

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determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as approved by the Commission, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity for any package of assets, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission, provided further, however, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement

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contingent on the trustee's divesting the assets to be divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph XV.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

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

- A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II., III., IV., V., VI., VII, VIII, IX, X, XI, XII, XIII, XIV, and XV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with these Paragraphs. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
- B. One (1) year from the date this Order becomes final, annually for the next nineteen (19) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with each provision of this Order.

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

- A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale

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resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

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

XVIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of each Respondent relating to any matters contained in this Order; and
- B. Upon five days' notice to each Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

XIX.

IT IS FURTHER ORDERED that, if Respondents fail to complete any of the divestitures required by this Order within the time period required, the Commission may appoint a trustee pursuant to Paragraph XV of this Order to divest the applicable package of assets as described in Paragraph XV (subject to the extension as set forth in Paragraph XV); provided, however, that if Respondents submit an application for approval to divest a package of assets to an acceptable acquirer no later than 65 days before the date by which the Order requires completion of that

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required divestiture and the Commission subsequently approves the application for approval to divest that package of assets, but Respondents are unable to complete that required divestiture because the Commission has not acted on Respondents' application before the date by which the order requires that Respondents must divest that package of assets, then the time by which Respondents must divest that package of assets shall be extended for one month from the time the Commission approves the application relating to that package of assets.

XX.

IT IS FURTHER ORDERED that if (1) within the time period required for divestiture or other relief pursuant to Paragraphs II, IV, V, VI, X and XII of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

Decision and Order

XXI.

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

By the Commission, Commissioner Leary recused.

Decision and Order

APPENDIX A**Branded Distributor Retention Program**

1. Within thirty (30) days of the date Respondents execute the Agreement Containing Consent Orders, Respondents shall establish a fund (the “Fund”) in the amount of \$30,000,000.00 to be distributed within thirty (30) days of the later of (a) twelve (12) months after the date on which Respondents execute the Agreement Containing Consent Orders and (b) ninety (90) days after the last Effective Date of Divestiture pursuant to Paragraphs II., IV., V., and VI. of this Order (hereinafter the “Distribution Date”) in the manner described in subparagraph 3 to eligible Branded Distributors as to which Existing Supply Agreements are to be assigned pursuant to Paragraphs II., IV., V., and VI. of this Order.
2. Branded Distributors as to which Existing Supply Agreements are to be assigned pursuant to Paragraphs II., IV., V. and VI. of this Order shall be eligible for a distribution from the Fund only if:
 - (a.) The assignment of the Branded Distributor’s Existing Supply Agreement with Exxon or Mobil, as applicable, becomes effective within the periods required by subparagraphs II.A., IV.A., V.A., or VI.E. of the Order;
 - (b.) The Branded Distributor has been a Branded Distributor of Branded Fuels under the Exxon or Mobil brand, as applicable, for Respondents or the acquirer or assignee, as applicable, continuously from the date Respondents execute the Agreement Containing Consent Orders to the Distribution Date; and
 - (c.) The aggregate volume of Exxon or Mobil branded gasoline, as applicable, purchased by the Branded Distributor for resale under the Exxon or Mobil brand, as applicable, pursuant to Existing Supply Agreements assigned pursuant to this Order during the twelve (12)

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calendar months preceding the Distribution Date is at least 95% of the aggregate volume during the twelve (12) calendar months preceding the date Respondents execute the Agreement Containing Consent Orders.

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

Decision and Order

APPENDIX B (Confidential)

[Redacted from Public Record Version]

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APPENDIX C

**Research and Test Equipment of Exxon Jet Turbine Oil
Business**

Inclined Panel Deposit Test

Pratt & Whitney Pressure Cylinder Test

U.S. Navy Vapor Phase Coker Test

Rolls Royce Dynamic Coking Test

High Press. Differential Scanning Calorimetry (HPDSC)

Hydrolytic Stability Test

Coker Mister Test

Navy Ball Corrosion Test

Falex Four Ball Extreme Pressure Wear Test

Rolls Royce Volatility and Thermal Stability Tests

Rolls Royce Corrosion Tests

Rolls Royce Confined Heat Stability Test

Mod (DERD) Rolls-Royce Elastomers Compatibility

Four Ball Initial Seizure Test

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APPENDIX D (Confidential)

[Redacted from Public Record Version]

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that 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 Agreement Containing Consent Orders and to place such Consent Agreement on the public record for a period of sixty (60) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Exxon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298.

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2. Respondent Mobil Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3225 Gallows Road, Fairfax, Virginia 22037-0001.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate, the following definitions and provisions shall apply:

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

Order

- D. “Respondents” means Exxon and Mobil, individually and collectively, and the successor corporation.
- E. "Commission" means the Federal Trade Commission.
- F. “Assets to be Divested” means all the assets required to be divested, the rights required to be assigned, and all other obligations pursuant to Paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XII, XIV, and XV if applicable, of the Decision & Order contained in the Consent Agreement.
- G. “Branded Fuels” means motor gasoline or diesel fuel sold at a Retail Site under a brand name owned by Respondents.
- H. “Computer Networks and Systems” means Respondents’ computer systems, applications and shared knowledge networks used to operate and/or manage Respondents’ businesses and which contain Material Confidential Information of the Held Separate Business or provide access to Material Confidential Information of the Held Separate Business, including, but not limited to, SAP SALADIN, React, TMS, MIMS/Petrosoft/Optimizer, Business Warehouse, Burster, Filenet, Intelligent Agent, Acxiom, Process Industry Modeling System, PROMIS, Khalix, Dataflex, Bestnet, Exchange Reconciliation, Express and associated tax programs.
- I. “Existing Business Units” means the personnel employed in, and all tangible and intangible property and other assets, used by the units identified in subparagraph I.J.6.a. as of October 1, 1999, except as provided in subparagraph II.B.3.
- J. “Held Separate Business” means:
 - 1. The following Mobil “Natural Business Units” (“NBUs”) and “Integrated Business Unit” (“IBU”):

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- a. New England Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut (the "New England States"), either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the New England States and all Terminal Assets used in the operation of those terminals; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the terminals described in clause (ii), including, but not limited to, all field marketing personnel, field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;
- b. New York Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the State of New York, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the State of New

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York and all Terminal Assets used in the operation of those terminals; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the terminals described in clause (ii), including, but not limited to, all field marketing personnel and field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;

- c. Pennsylvania and New Jersey Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the States of Pennsylvania and New Jersey, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the States of Pennsylvania and New Jersey and all Terminal Assets used in the operation of those terminals; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the terminals described in clause (ii), including, but not limited to, all field marketing personnel and field

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office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;

- d. Mid-Atlantic Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the District of Columbia and the States of Delaware, Maryland, Virginia and North Carolina (the "Mid-Atlantic States"), either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all petroleum storage and distribution terminals owned or leased by Mobil located in the District of Columbia and the Mid-Atlantic States and all Terminal Assets used in the operation of those terminals; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the terminals described in clause (ii), including, but not limited to, all field marketing personnel and field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;

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- e. Florida Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the States of Florida and Georgia, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the States of Florida and Georgia and all Terminal Assets used in the operation of those terminals; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation or management of the service stations described in clause (i) and the terminals described in clause (ii), including, but not limited to, all field marketing personnel and field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;
- f. Texas Fuels Marketing NBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the States of Texas and Louisiana, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the States of Texas and Louisiana and all Terminal Assets used in the operation of those terminals, except for the truck rack and associated light petroleum products storage facilities at Mobil's

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Chalmette refinery, which shall remain outside of the Held Separate Business; provided, however, that the Held Separate Business shall have the right to lift light petroleum products from that truck rack; (iii) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the terminals described in clause (ii), including, but not limited to, all field marketing personnel and field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements; and

- g. Team Mobil West, an IBU, consisting of: (i) all of Mobil's interest in all Mobil branded operating service station facilities as of October 1, 1999, in the States of California, Arizona and Nevada, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil; (ii) all light petroleum products storage and distribution terminals owned or leased by Mobil located in the States of California, Arizona and Nevada and all Terminal Assets used in the operation of those terminals; (iii) the Mobil Torrance Refinery Assets as defined in the Consent Agreement; (iv) except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's

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business relationship with the service stations described in clause (i) which are not operated by Mobil, the terminals described in clause (ii), the Mobil Torrance Refinery Assets described in clause (iii), and all persons covered by the contractual rights and obligations described in clause (v); and (v) all contractual rights and obligations associated with the assets described in clauses (i), (ii) and (iii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements.

2. Mobil Alaska Pipeline Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware;
3. Mobil's interest in the Colonial Pipeline Company;
4. Mobil's Guam Fuels Marketing Business, including Mobil Oil Guam, Inc. ("MOGI"), a corporation organized, existing, and doing business under and by virtue of the laws of the Territory of Guam, and the assets located on or used in connection with Mobil's fuels marketing businesses for the Commonwealth of the Northern Mariana Islands and the Federated States of Micronesia (collectively, with the Territory of Guam, the "Guam Area"), all of which more specifically consist of:
 - (i) all Mobil branded operating service station facilities as of October 1, 1999, in the Guam Area, either owned by Mobil, leased by Mobil or supplied by Mobil or its distributors, together with all Retail Assets used in the operation of those facilities owned or leased by Mobil;
 - (ii) all docks, pipelines, petroleum storage and distribution terminals owned or leased by Mobil located in the Guam Area, including Mobil's interest in the terminals, storage and loading facilities, and other assets and structures located on Cabras Island, and all Terminal Assets used in the operation of those terminals; (iii)

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except as provided in subparagraph II.B.3, all persons employed as of October 1, 1999, in the operation of the service stations described in clause (i) which are operated by Mobil or in the management of Mobil's business relationship with the service stations described in clause (i) which are not operated by Mobil, and the docks, pipelines and terminal assets described in clause (ii), including, but not limited to, all field marketing personnel and field office support staff and persons covered by the contractual rights and obligations described in clause (iv); and (iv) all contractual rights and obligations associated with the assets described in clauses (i) and (ii) above, including, without limitation, real estate and facility leases, franchise agreements, service contracts (both third party and shared service agreements) and exchange agreements;

5. The Exxon Jet Turbine Oil Business as defined in the Decision & Order contained in the Consent Agreement, and including: (1) the Business Support Coordinator named in Paragraph II. of Appendix A and (2) all other employees listed in the organizational chart attached as Appendix C; provided, however, that the Manager may select, within sixty (60) days of the date this Hold Separate becomes final, any of Exxon's employees, who, within the last two years, have had responsibilities or duties relating to the sales, research, or manufacture of Jet Turbine Oil, as replacements for or in addition to any of the employees listed on the organizational chart.
6. The Existing Business Units, current personnel, Newly-constituted Support Service Units, and newly-created positions, which assist the Manager in managing the Held Separate Business and provide support services (described in Appendix A) within the Held Separate Business, described below:
 - a. The following Existing Business Units of Mobil's North America Marketing & Refining Division:

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- (1) Mobil's existing East/Southwest Inventory - Gasolines Unit;
 - (2) Mobil's existing Fuels Customer Support and Delivery Operations Control Center Units;
 - (3) Mobil's existing Fuels Pricing Unit;
 - (4) Mobil's existing Retail Operations & Information Services Unit;
 - (5) Mobil's existing Point of Sale ("POS") Support Unit;
- b. The following current personnel, Newly-constituted Support Service Units, and newly-created positions within the Held Separate Business:
- (1) Personnel from Mobil's existing Business & Performance Analysis Unit as identified in Appendix A;
 - (2) Personnel from Mobil's existing Global Manufacturing Development Unit as identified in Appendix A;
 - (3) A chief financial officer, as identified in Appendix A, to manage the funds described in Paragraph II.B.10., and staffed with the personnel identified in Appendix A;
 - (4) A Marketing Manager as identified in Appendix A;
 - (5) A Distillate Manager as identified in Appendix A;
 - (6) Personnel, as identified in Appendix A, who will provide or arrange for the provision of the following services to the Held Separate Business:
 - (a) Implementation of marketing programs and policies, management of relationships with dealers and jobbers, and development and implementation of local and regional promotional activities based on local market factors;
 - (b) Employee relations services;
 - (c) Legal services;
 - (d) Public relations services;
 - (e) Information systems management;

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- (f) Refined product trading, to the extent not acquired from Respondents or third parties;
 - (g) Authorize and direct maintenance and construction services provided to Retail Sites and terminals within the NBUs;
 - (h) Maintenance and engineering provided in the normal course of business within the Torrance Refinery; and
 - (i) Support of environmental health and personnel safety services at the Torrance Refinery, Retail Sites, and Terminals within the NBUs.
7. Offices located in the Willow Oaks Building, Willow Oaks Corporate Drive, Fairfax, Virginia 22031, consisting of space in that building that, during the Hold Separate Period, will be maintained under separate keyed access for the sole and exclusive use of the Held Separate Business.

Provided, however, that the Held Separate Business need not include those service station facilities that were Mobil branded operating service station facilities as of October 1, 1999, and would otherwise be included within the Held Separate Business as defined in subparagraphs I.J.1.a.–g. and I.J.4., but that, as of the date Respondents execute the Agreement Containing Consent Orders, have been or are in the process of being terminated by Respondents pursuant to mutual agreement or otherwise in compliance with the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.*, with such termination effective on or before December 31, 1999; provided, further, that the Held Separate Business shall include all operating service station facilities that have been approved as Mobil branded operating service stations since October 1, 1999, in the geographic areas described in subparagraphs I.J.1.a. – g. and I.J.4.

- K. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin no later than ten (10) days after the date the Hold Separate becomes final and terminate pursuant to Paragraph V hereof.

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

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pipeline between the GATX terminal and the refinery; the jet fuel pipeline between the refinery and Los Angeles International Airport; and Mobil Pacific Pipeline's interest in the THUMS Wilmington Crude Gathering System between the Wilmington Field and the refinery (—131, —132, —142); and the Torrance crude system (—134, —135).

- O. “Newly-constituted Support Services Unit” means a business function, staffed with personnel identified in Appendix A and charged with providing or arranging for the provision of support services to the Held Separate Business.
- P. “Retail Assets” means, for each Retail Site, all fee and leasehold interests of Respondents in the Retail Site, and all of Respondents’ interest in all assets, tangible or intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses, consents, contracts, and agreements used in the operation of the Retail Site, and the non-exclusive right to use all patents, know-how, and other intellectual property used by Respondents in the operation of the Retail Sites. “Retail Assets” also includes all fee and leasehold interests of Respondents in real property that, as of October 1, 1999, was intended for use as a Retail Site and all permits, licenses, consents, contracts, and agreements intended for use or used with respect to that real property. “Retail Assets” also includes all of Respondents’ interest in all assets relating to all ancillary businesses (including, but not limited to, automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site, including all permits, licenses, consents, contracts, and agreements used in the operation of the ancillary businesses, and the non-exclusive right to use all know-how, patents, and other intellectual property used in the operation of the ancillary businesses. “Retail Assets” also includes all tank trucks and all contracts with all other persons for supplying Branded Fuels to the Retail Sites.

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- Q. “Retail Site” means a business establishment within the Held Separate Business from which gasoline is sold to the general public.
- R. “Terminal Assets” means all of Mobil’s assets relating to its petroleum storage and distribution terminals, including all assets, tangible and intangible, that are used to operate the terminal for the storage and distribution of petroleum products, including, but not limited to, all real estate, storage tanks, loading and unloading facilities, licenses, permits and contracts pertaining to the terminal facilities, offices, buildings, warehouses, equipment, machinery, fixtures, tools, spare parts, and all other property used in Terminaling; and the non-exclusive right to use all patents, know-how, and other intellectual property used by Mobil in the operation of the terminal.
- S. “Terminaling” means the services performed by a facility that provides temporary storage of gasoline received from a pipeline or marine vessel, and the redelivery of gasoline from storage tanks into tank trucks or transport trailers.

II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondents shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate, except to the extent that Respondents must exercise direction and control over the Held Separate Business to assure compliance with this Hold Separate, or with the Decision & Order contained in the Consent Agreement, and except as otherwise provided in this Hold Separate, and shall vest the Held Separate Business with all rights, powers, and authorities necessary to conduct their business. The purpose of this Hold Separate is to: (i) preserve the Held Separate Business, including the Assets to be Divested, as viable, competitive, and ongoing businesses independent of Respondents until the relevant

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divestitures are achieved; (ii) assure that no Material Confidential Information is exchanged between Respondents and the Held Separate Business, except in accordance with the provisions of this Hold Separate; (iii) prevent interim harm to competition pending the relevant divestitures and other relief; and (iv) help remedy any anticompetitive effects of the proposed Merger.

B. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:

1. The Commission may appoint a Hold Separate 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 the Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondents of the identity of any Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 - a. No later than five (5) days after the appointment of the Hold Separate Trustee, Respondents shall enter into an agreement with the Hold Separate Trustee that will, subject to the approval of the Commission, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Order to Hold Separate and Maintain Assets and consistent with the purposes of the Decision & Order contained in the Consent Agreement. The trustee agreement shall require that thirty (30) days after the Order to Hold Separate and Maintain Assets becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses

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comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

- b. No later than five (5) days after the Commission's approval of the agreement between the Hold Separate Trustee and the Respondents, Respondents shall transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Order to Hold Separate and Maintain Assets and consistent with the purposes of the Decision & Order contained in the Consent Agreement.
- c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision & Order contained in the Consent Agreement, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for assuring Respondents' compliance with their obligations pursuant to this Hold Separate and the Decision & Order contained in the Consent Agreement.
- d. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the 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 Held Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee.

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Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.

- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Respondents may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee in the same manner as provided in Paragraph II. of this Hold Separate. In the event a substitute Hold Separate Trustee is appointed, Respondents shall be notified of the name of the substitute Hold Separate Trustee. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Hold Separate Trustee within ten (10) business days after notice by the Commission to Respondents of the identity of any proposed Hold

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Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed Hold Separate Trustee.

2. No later than one (1) day after this Order to Hold Separate and Maintain Assets becomes final, Respondents shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business to, Brian R. Baker, President of Mobil's North America Marketing & Refining Division, the individual Respondents have selected to act as Manager.
 - a. In the event that Brian Baker ceases to act as Manager, then Respondents shall select a substitute Manager, subject to the approval of the Hold Separate Trustee, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Order to Hold Separate and Maintain Assets.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate.
 - c. The Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives

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of this Hold Separate. For a period of two (2) years beginning after the end of the Hold Separate Period, Respondents shall not retain the services of such former Manager.

- d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee.
- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove persons identified in Appendix A and replace them with others of similar experience or skills. If any person identified in Appendix A ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute person, which person the Manager shall have the right to approve.
- f. In addition to those employees within the Held Separate Business, the Manager shall employ such employees as are reasonably necessary to assist the Manager in managing the Held Separate Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balanced scorecard, expense, volume, shared services reporting) customer relations personnel and marketing administration personnel.
- g. The Hold Separate Trustee shall be permitted to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Hold Separate Trustee, on the same

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terms and conditions as provided in subparagraph II.B.2 of this Hold Separate.

3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. Employees of the Held Separate Business shall include (i) all personnel described in subparagraph I.J.; and (ii) any persons hired from other sources. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the divestiture of the Assets to be Divested, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services not included within the Held Separate Business:
 - a. Respondents shall offer and the Held Separate Business shall obtain the following services and products only from Respondents:
 - (1) National brand advertising and promotion programs;
 - (2) Federal and state regulatory policy development and compliance;
 - (3) Human resources administrative services;
 - (4) Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
 - (5) Preparation of tax returns; and
 - (6) Audit services.
 - b. Respondents shall offer to the Held Separate Business any services and products that Respondents provide to their other businesses directly or through third party

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contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since October 1, 1999. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondents. The services and products that Respondents shall offer the Held Separate Business shall include, but shall not be limited to the following:

- (1) Refined fuels product trading and acquisition;
- (2) Wholesale engineering services, including engineering, design, and maintenance of terminals;
- (3) Convenience store category management;
- (4) Development of new POS systems;
- (5) Credit card processing;
- (6) Information systems, which constructs, maintains, and supports all SAP and other computer systems;
- (7) Medical services, including drug testing;
- (8) Public affairs, which provides media and community relations services;
- (9) Processing of accounts payable;
- (10) Security services;
- (11) Technical support;
- (12) Financial accounting services;
- (13) Aviation services;
- (14) Procurement of refinery supplies for the Mobil Torrance Refinery (*e.g.* catalysts, chemicals, repair services, maintenance);
- (15) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business;
- (16) Legal services;
- (17) Service station design, maintenance, and construction;
- (18) New product development services from Mobil Technical Center;

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- (19) Real estate services, including the identification and development of new sites (to be provided by Trammel Crow under existing contracts); and
 - (20) Any and all services and products relating to and including the distribution and sale of Jet Turbine Oils.
- c. In connection with services and products other than those listed in II.B.4.a., and including but not limited to those listed in II.B. 4.b., the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondents.
- d. Except as otherwise provided in this Hold Separate, for such services and products provided pursuant to this subparagraph II.B.4., Respondents may charge the Held Separate Business the same amount, if any, charged by Respondents to their other businesses.
- e. Respondents' personnel supplying services or products to the Held Separate Business pursuant to this subparagraph must retain and maintain any and all Material Confidential Information of the Held Separate Business on a confidential basis. Except as permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing Material Confidential Information of the Held Separate Business to or with any person whose employment involves any of Respondents' businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.
5. Respondents shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate

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Business having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, 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 Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sales, marketing, and financial operations of the competing products of Respondents.

6. No later than five (5) days after the date this Order to Hold Separate and Maintain Assets becomes final, Respondents shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate.
7. No later than ten (10) days after the date this Order to Hold Separate and Maintain Assets becomes final, Respondents shall circulate to employees of the Held Separate Business and to Respondents' employees who are responsible for the sale or distribution of motor fuels in the United States, a notice of this Hold Separate and Consent Agreement, in the form attached as Attachment A.
8. The Hold Separate Trustee and the Manager 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.

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9. Respondents shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager'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 Hold Separate Trustee or the Manager.
10. Respondents shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of refinery production and product sales) and at no less than the rates of operation projected in the business plans of Respondents as of October 1, 1999 (including, but not limited to, the rates of refinery production and product sales projected in such business plans); provided that failure to achieve production or sales goals projected in Respondents' business plans shall not be deemed to be a violation of this Hold Separate,
 - b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business,
 - c. to carry on capital projects and business plans (as reflected in plans dated no later than October 1, 1999) at their scheduled pace, and
 - d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

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- e. Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision & Order contained in the Consent Agreement, the Hold Separate Trustee may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.
11. Except as provided in this Order to Hold Separate, Respondents shall not, during the Hold Separate Period, offer employees of the Held Separate Business positions with Exxon Mobil. Each Commission-approved acquirer of Assets to be Divested that are contained within the Held Separate Business shall have the option of offering employment to any employees of those Assets to be Divested, as described by subparagraphs I.J.1.a.- d., I.J.1.f.-g., and I.J.2. - 5, to the extent applicable. Respondents shall not interfere with the employment, by any Commission-approved acquirer of Assets to be Divested, of employees of those Assets to be Divested; shall not offer any incentive to such employees of any Assets to be Divested to decline employment with any Commission-approved acquirer of Assets to be Divested or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with any Commission-approved acquirer of Assets to be Divested including, but not limited to, any noncompete or confidentiality provisions of employment relating to the Assets to be Divested or other contracts that would affect the ability of such employees to be employed by any acquirer of Assets to be Divested, and the payment, or the transfer for the account of the employee, of all

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current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.

12. For a period of one (1) year commencing on the date each package of Assets to be Divested are divested and assigned, as appropriate, Respondents shall not employ or make offers of employment to employees of the Held Separate Business who have accepted offers of employment with any acquirer unless the individual has been terminated by the acquirer.
13. Notwithstanding the requirements of subparagraph 11, Respondents may offer a bonus or severance to employees included in the Held Separate Business that continue their employment with the Held Separate Business until termination of the Hold Separate Period (in addition to any other bonus or severance to which the employees would otherwise be entitled).
14. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business, the Hold Separate Trustee, the Manager, or any of its operations; provided, however, that Respondents shall exercise such direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business' compliance with policies and standards concerning the safety, health, and environmental aspects of their operations and the integrity of their financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.

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15. Except for the Manager, employees of the Held Separate Business, and support services employees involved in providing services to the Held Separate Business pursuant to subparagraph II.B.4 and except to the extent provided in subparagraph II.B.14, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
16. Respondents shall maintain the viability, competitiveness, and marketability of the Held Separate Business; shall not sell, transfer, or encumber said assets (other than in the normal course of business or as required to comply with Respondents' obligations under the Consent Agreement); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Held Separate Business.
17. Respondents shall assure that employees of the Held Separate Business receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
18. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Merger, negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence; complying with this Hold Separate or the Consent Agreement; overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business' financial controls; defending legal claims, investigations or enforcement actions threatened or

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brought against the Held Separate Business; or obtaining legal advice, Respondents' employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to subparagraph II.B.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information, not in the public domain, of the Held Separate Business. Nor shall the Manager or employees of the Held Separate Business receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondents may receive aggregate financial information relating to the Held Separate Business to the extent necessary to allow Respondents to prepare United States consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

19. Respondents and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls for the Computer Networks and Systems to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate.

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III.

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

IV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, 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 the Respondents relating to compliance with this Hold Separate; 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.

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V.

IT IS FURTHER ORDERED that this Held Separate shall terminate at 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. the day after the last of the divestitures required by the Consent Agreement is completed; provided, however, that certain assets controlled by the Held Separate Business shall be released upon the occurrence of the following events:
 - 1. When an Asset to be Divested that is included within the Held Separate Business is divested pursuant to the Consent Agreement, that asset shall cease to be held by the Held Separate Business;
 - 2. When the Exxon Northeast Marketing Assets are divested and Respondents have complied with subparagraphs IV.A., IV.B., IV.C., IV.D., IV.E., and IV.F. of the Decision & Order contained in the Consent Agreement, the Mobil Mid-Atlantic Marketing Assets are divested and Respondents have complied with subparagraphs V.A., V.B., V.C., V.D., V.E., and V.F. of the Decision & Order contained in the Consent Agreement, and the Mobil Texas Marketing assets have been divested and Respondents have complied with subparagraphs VI.A., VI.B., VI.C., VI.D., VI.E., VI.F., VI.G., and VI.H. of the Decision & Order contained in the Consent Agreement (or if Paragraph XV of the Consent Agreement is invoked, when Respondents have divested the Mobil Northeast Marketing Assets, the Exxon Mid-Atlantic Marketing Assets, or the Exxon Maine-Virginia Assets, as the case may be, and Respondents have complied with the applicable subparagraphs), then the Held Separate Business shall transfer the following assets to Exxon Mobil (to the

Order

- extent they have not been divested): Assets in the Mobil Texas Fuels Marketing NBU not required to be divested; assets in the Mid-Atlantic Fuels Marketing NBU not required to be divested; the Mobil New England, New York and Florida Fuels Marketing NBUs; and the Existing Business Units, Newly-constituted Support Service Units, and personnel identified in subparagraph I.J.6., except to the extent deemed necessary by the Hold Separate Trustee in accordance with the terms of this Hold Separate to support assets of the Held Separate Business, if any, which have not been divested;
3. When Mobil's interest in the Trans Alaska Pipeline System and either Mobil's interest in Colonial Pipeline or Exxon's interest in the Plantation Pipeline have been divested pursuant to Paragraphs IX and X of the Consent Agreement, then the Held Separate Business shall transfer the following assets to Exxon Mobil: Mobil Alaska Pipeline Company and Mobil's interest in the Colonial Pipeline Company if it has not been divested;
 4. When the Exxon California Refining and Marketing Assets have been divested and Respondents have complied with subparagraphs II.A., II.B., II.C., II.D., II.E., II.F., II.G., II.H., and II.I. of the Decision & Order contained in the Consent Agreement, then the Held Separate Business shall transfer the following assets to Exxon Mobil: Mobil's Team Mobil West; and
 5. When the Exxon Guam Assets have been divested pursuant to Paragraph III of the Consent Agreement, then the Held Separate Business shall transfer the following assets to Exxon Mobil: Mobil Guam Fuels Marketing Business.

By the Commission, Commissioner Leary not participating.

APPENDIX A

- I. The included support services required by Paragraph I.J.6 of this Hold Separate shall be provided to the Held Separate Business by support services units and personnel who have been selected or approved by the Manager, including those described and identified below:
- A. Mobil's East/Southwest Inventory - Gasolines Unit, which will (1) schedule and monitor fuels product deliveries to terminals within the NBUs and notify traders of any product acquisition needs beyond existing supply and exchange agreements (Respondents will use existing price formulas set forth in Appendix B (Confidential) to charge the Held Separate Business for any product deliveries the Held Separate Business may in its discretion request from Respondents), and (2) monitor and implement existing fuels product exchange agreements and enter into any new exchange agreements required by the Held Separate Business;
 - B. Mobil's existing Fuels Customer Support and Fuels Delivery Operations Control Center Units, which are located at the Malvern Corporate and Administrative Center, which will receive and process customer orders for Branded Fuels products, schedule trucks and deliveries to Retail Sites within the NBUs, and provide customer billing, collections and other customer services to the NBUs; it also will supply such services under contract to the Mobil's Midwest NBU (which is not part of the Held Separate Business);
 - C. Mobil's existing Fuels Pricing Unit, which will collect pricing data and recommend prices to the NBUs, subject to review by the Manager, with the exception of the personnel who are responsible for pricing fuels products for Mobil's Midwest NBU;
 - D. Mobil's existing Retail Operations & Information Services Unit, which will handle administration and retail accounting for company operated Retail Sites within the NBUs; it also will supply such services under contract to Mobil's Midwest NBU (which is not part of the Held Separate Business);
 - E. Mobil's existing Point of Sale ("POS") Support Unit, which will provide technology support services maintenance of POS and Speedpass systems; it will also supply such services under contract to the Mobil's Midwest NBU (which is not part of the Held Separate Business);
 - F. The following personnel from Mobil's existing Business & Performance Analysis Unit, who will provide competitive and financial performance analysis, support, and strategic planning for the Held Separate Business (e.g., balanced scorecards, volume, and shared services reporting) and to monitor the funds as described in Paragraph II.B.10 of the Hold Separate:

- Manager Business Performance/Analysis/CFO
 - Earnings Consolidation
 - Analysis/Planning
 - Capital/Cash Management
 - Expense Analysis
 - Volume Analysis
 - Balanced Scorecard
 - Shared Service Monitoring
 - Industry Analysis
- K. Campbell
J. O'Neill
J. Cashion
D. Monaghan
W. Fine
D. Hightower
R. Long
P. Greco
J. Wadley;

G. The following person from Mobil's existing Global Manufacturing Development unit, who will conduct periodic review and analysis of Torrance Refinery operations data to optimize output:

- Manufacturing Manager
- A. Johnson;

H. • Marketing Manager

A. Spiess

The Marketing Manager of the Held Separate Business will monitor the performance of outsourced contractors providing: (1) Operations Management for Convenience Stores, a service which is provided by a third party (Strasburger) under existing contracts; (2) Supplies and Inventory Management for convenience stores, which will be provided by a third party (McLane) under an existing contract; and (3) credit card processing, which is provided by a third party (First Data) under existing contracts; these third-party service providers will also be permitted to continue supplying similar services to Mobil's Midwest NBU (which is not part of the Held Separate Business) under the separate direction of Respondents' personnel. In addition, the Marketing Manager will provide guidance and direction to the following personnel in the Held Separate Business, who will provide or arrange for the provision of services to those businesses in connection with the implementation of marketing programs and policies, management of relationships with dealers and jobbers, and development and implementation of local and regional promotional activities based on local market factors:

- Customer Relations
 - Retail Dealer Coordination
 - Distributor Coordination
 - Advertising/Programs
 - Fuels Customer Support
 - Real Estate Coordination
 - Salary Field Operations
- O. Williams
R. Gavlick
S. Lucas
C. Colvett
J. Bernard
D. Diccico
K. Kane
(Strasburger Employee)

I. • Distillate Manager

K. Weir

The Distillate Manager will provide guidance and support directly and through other personnel for the sales and distribution of Mobil's branded and unbranded distillate products within the geographic areas covered by the Held Separate Business.

J. The Held Separate Business will also include the following personnel who will provide or arrange for the provision of the following services to those businesses:

Employee relations services:

- Employee/Industrial Relations Manager R. Amrhein

Legal services:

- Managing Counsel D. Rogers

Public relations services:

- Public Affairs Manager B. Eaton

Information systems management:

- Systems Liaison P. President

Refined product trading, to the extent not acquired from Respondents or third parties:

- Product Trader C. Das

Authorize and direct maintenance and construction services provided to Retail Sites and terminals within the NBUs:

- Engineering/Maintenance Coordination L. Wyte

II The Business Support Coordinator for the Exxon Jet Turbine Oil Business to be held separate described in subparagraph I.B.5. will be Stan Linnick.

APPENDIX B

[Redacted from Public Record Version]

Exxon Synthetic Aviation Turbine Oil Hold-Separate Organization



BESU - Bayway Employee Salary Union

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Exxon Corporation ("Exxon") and Mobil Corporation ("Mobil"), hereinafter referred to as Respondents (which includes the entity resulting from the merger of Exxon and Mobil), have entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission relating to the divestiture of certain assets and other relief.

As used herein, the term "Held Separate Business" means the businesses and personnel as defined in Paragraph I.J. of the Order to Hold Separate and Maintain Assets contained in the Consent Agreement. Under the terms of the Decision & Order contained in the Consent Agreement, Exxon and Mobil must divest certain packages of assets, some of which are included within the Held Separate Business, within nine to 12 months of the date Exxon and Mobil executed the Consent Agreement.

During the Hold Separate Period (which begins after the Order to Hold Separate and Maintain Assets becomes final and ends after Respondents have completed the required divestitures), the Held Separate Business shall be held separate, apart, and independent of Respondents' businesses. The Held Separate Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of Respondents until Respondents have completed the required divestitures. All competitive information relating to the Held Separate Business must be retained and maintained by the persons involved in the operation of the Held Separate Business on a confidential basis. 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 other of Respondents' businesses, except as advised by legal counsel of the Held Separate Business. These persons involved in the operation of the Held Separate Business shall not be involved in any way in the management, production, distribution, sales, marketing, or financial operations of Respondents relating to competing products. Similarly, persons involved in similar activities in Respondents' businesses shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Held Separate Business.

Any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on November 30, 1999.

I. Introduction

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

II. Description of the Parties and the Transaction

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

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

Analysis

Exxon had worldwide revenues of approximately \$115 billion and net income of approximately \$6 billion.

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

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

III. The Investigation and the Complaint

The Complaint alleges that consummation of the merger would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) the marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont,

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Massachusetts, Rhode Island, Connecticut, and New York (collectively “the Northeast”), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the “Mid-Atlantic”), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of “CARB” gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, D.C., metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.*, the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (“inland Southeast”); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System (“TAPS”); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest or otherwise surrender control of: (1) all of Mobil’s gasoline marketing in the Mid-Atlantic (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon’s gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil’s gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon’s option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon’s refinery located in Benicia, California (“Exxon Benicia Refinery”), and all of Exxon’s gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area,

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

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

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

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

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

Exxon and Mobil today are two of the largest marketers of gasoline from Maine to Virginia, and would be the largest marketer of gasoline in this region after the merger, but for the remedy specified in the Proposed Order. The merging companies are direct and significant competitors in at least 39 metropolitan areas in the Northeast and Mid-Atlantic;² in each of these areas,

² Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, Portland, ME; Baltimore, MD; Barnstable-Yarmouth, Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Dutchess, Nassau-Suffolk, New York, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazleton, State College, York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News,

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and in each of the States in the Northeast and Mid-Atlantic, the merger would result in a market that is at least moderately concentrated and would significantly increase concentration in that market.³ Nineteen of these 39 metropolitan areas would be

Richmond-Petersburg, VA; Burlington, VT. These areas are defined, variously, as “Metropolitan Statistical Areas” (“MSAs”), “Primary Metropolitan Statistical Areas” (“PMSAs”), and “New England County Metropolitan Areas” (“NECMAs”) by the Census Bureau.

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

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highly concentrated as a result of this merger.⁴ On average, the four top firms in each metropolitan area would have 73% of sales; the top four firms in the Northeast and Mid-Atlantic as a whole (Exxon Mobil, Motiva,⁵ BP Amoco, and Sunoco) would on average have 66% of each of these metropolitan areas.

The Complaint alleges that the marketing of gasoline is a relevant product market, and that metropolitan areas and areas contained within them are relevant geographic markets. The Commission used metropolitan statistical areas (“MSAs”) as a reasonable approximation of geographic markets for gasoline marketing in *Shell Oil Co.*, C-3803 (1998), and *British Petroleum Co.*, C-3868 (1999). As described below, the evidence in this investigation suggests that pricing and consumer search patterns

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

⁵ Motiva LLC is the refining and marketing joint venture between Shell Oil Co., Texaco Inc. and Saudi Aramco, and sells gasoline under the “Shell” and “Texaco” names in the Eastern United States. Equilon LLC, a refining and marketing joint venture between Shell and Texaco, sells gasoline under the “Shell” and “Texaco” names in the Western United States.

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may indicate smaller geographic markets than MSAs as defined by the Census Bureau. To that extent, using MSAs or counties to define geographic markets likely understates the relevant levels of concentration.⁶

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

Branded oil companies set the retail prices of gasoline at the stores they operate, and sometimes set those prices on a station-by-station basis. Lessee dealers and open dealers generally purchase from the branded company at a delivered price ("dealer tank wagon" or "DTW") that the branded supplier likewise might set on a station-by-station basis. In the

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

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Northeast and Mid-Atlantic, DTW prices charged by Exxon, Mobil and their major competitors are typically set using “price zones” established by the supplier. Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations or groups of stations. There might be 10 or more price zones established by an individual oil company in a metropolitan area.

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

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

The use of price zones in the manner described above indicates that these competitors set their prices on the basis of their competitors’ prices, rather than on the basis of their own costs. This is an earmark of oligopolistic market behavior. Thus, Exxon,

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

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

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

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

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

⁸ In finding reason to believe that this merger likely would reduce competition, the Commission has not, in the context of this investigation, concluded that these practices of themselves violate the antitrust laws or constitute unfair methods of competition

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

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

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

within the meaning of Section 5 of the FTC Act. Rather, evidence of market behavior provides the Commission with reason to believe that these moderately and highly concentrated markets are not fully competitive even prior to the merger, and therefore that the merger likely would reduce competition in these markets whether or not the post-merger market was highly concentrated.

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the event of a small price increase. Therefore, the Commission has found it unlikely that a new entrant might enter a market by converting such stations in a manner that would meaningfully constrain the behavior of incumbents.

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

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

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

C. Count III – Marketing of Gasoline in Arizona

Mobil markets motor gasoline in Arizona. Exxon gasoline is marketed in Arizona by Tosco Corporation, which acquired

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Exxon's Arizona marketing assets and businesses and the right to sell Exxon branded gasoline in 1994. Gasoline marketing in Arizona is moderately concentrated.

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

D. Count IV – Refining and Marketing of CARB Gasoline

Exxon and Mobil both refine motor gasoline for use in California, which requires that motor gasoline used in that State meet particularly stringent pollution specifications mandated by the California Air Resources Board ("CARB," hence "CARB gasoline"). More than 95% of the CARB gasoline sold in California is refined by seven firms (Chevron, Tosco, Equilon, ARCO, Exxon, Mobil and Ultramar Diamond Shamrock), all of which operate refineries in California. Those seven firms also control more than 90% of retail sales of gasoline in California through gas stations under their brands.

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

Analysis

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

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

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

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economically and thus must rely on California refiners for their usual supply. The Commission's investigation indicated that vertical integration and the resulting lack of independent import customers, rather than the cost of imports, is the principal barrier to supply from outside the West Coast.

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

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

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

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

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

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

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

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

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

The Complaint charges that the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is highly concentrated, and would become significantly more concentrated as a result of the merger. Entry into the terminaling of gasoline and other light petroleum products in each of these

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metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.¹⁰ Paragraphs VII and VIII of the Proposed Order therefore require Respondents to divest Mobil's Boston and Manassas, Virginia, terminals.

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

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

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

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

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

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on the Colonial Board of Directors. Exxon owns approximately 49 percent of Plantation, is one of Plantation's two shareholders, and has representation on Plantation's Board.

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

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

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

Exxon and Mobil both have available capacity on TAPS, *i.e.*, capacity not needed to carry their own production. Based on

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available capacity, the merger would increase the HHI by 268, to 5103. The merger would eliminate Mobil, a significant discounter on TAPS, as an independent firm, and reduce Exxon's incentives to discount TAPS tariffs. Entry is unlikely to defeat this price increase, since a second crude oil pipeline is highly unlikely to be built. In the absence of the Proposed Order, the merger could raise costs to purchasers of ANS crude oil by \$3.5 million annually. The Proposed Order eliminates this risk by requiring the Respondents to divest Mobil's interest in TAPS.

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

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

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

Analysis

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

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

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

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

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

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

Analysis

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

M. Count XII – Jet Turbine Oil

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

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

IV. Resolution of the Competitive Concerns

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

A. General Terms

Each divestiture or other disposition required by the Proposed Order must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission,

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and must be completed within nine months of executing the Agreement Containing Consent Orders (except that the divestiture of the Benicia Refinery and Exxon marketing in California must be completed within twelve months of executing the Agreement Containing Consent Orders).

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

In the event Respondents fail to complete the required divestitures and other obligations in a timely manner, the Proposed Order authorizes the Commission to appoint a trustee or trustees to negotiate the divestiture of either the divestiture assets or of “crown jewels,” alternative asset packages that are broader than the divestiture assets. The crown jewel for the Exxon Northeastern Marketing Assets is Mobil’s marketing in the same area; for the Mobil Mid-Atlantic Marketing Assets, Exxon’s marketing in the same area¹²; for the Exxon California Refining and Marketing Assets, the Mobil California Refining and Marketing Assets; for the Mobil Texas Marketing Assets, the Exxon Texas Marketing Assets; for Mobil’s interest in TAPS, Exxon’s interest in TAPS; for the paraffinic base oil to be sold, Mobil’s Beaumont Refinery; and for Exxon’s Jet Turbine Oil Business, Mobil’s Jet Turbine Oil Business. In each case, the crown jewel is a significantly larger asset package than the divestiture assets.

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

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

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

¹³ The consent decree between Respondents and the States of Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and Virginia provides that a State that objects to a proposed acquirer must petition the court before

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

B. Gasoline Marketing in the Northeast and Mid-Atlantic

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

which the decree is pending to rule on the suitability of the proposed acquirer. In the event such a motion is made, Respondents’ time to divest under the Proposed Order is tolled until the matter is resolved.

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

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

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

The acquirer will nonetheless be allowed to continue to offer the Exxon or Mobil name, as the case may be, to dealers and jobbers in order to allow the acquirer to preserve the network to the greatest extent feasible and to comply with the requirements of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.* ("PMPA"). Thus, the acquirer will be able to continue to offer

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

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Exxon or Mobil branded fuel, as the case may be, to dealers and jobbers that are today selling Exxon or Mobil branded fuel and displaying those brands. Over time, the acquirer in its business judgment may choose to convert the business it acquires to its own brand name, subject to the requirements of law or with the consent of the dealers and jobbers in question.

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

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

C. Marketing of Gasoline in Texas

To remedy the reduction in competition in the five metropolitan areas in Texas alleged in Count II of the Complaint, Paragraph VI of the Proposed Order requires Respondents to divest and assign Mobil's marketing businesses in those five metropolitan areas. Mobil's marketing assets in those metropolitan areas include interests of Mobil in partnerships with TETCO Inc. and Southland Corp. The Proposed Order requires that Respondents divest Mobil's interest in its partnership with

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

D. Marketing of Gasoline in Arizona

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

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

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

As part of its divestiture of the refinery, Respondents shall (at the acquirer's option) enter into a supply contract with the acquirer for a ratable quantity of Alaska North Slope ("ANS")

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crude oil up to 100 thousand barrels per day (an amount equivalent to the refinery's historic usage). Exxon is one of the three principal producers of ANS crude oil (the other two are BP Amoco and ARCO).

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

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

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

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

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

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

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

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

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

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

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

To remedy the reduction in competition in the importation, terminaling and marketing of light petroleum products in Guam, Paragraph III of the Proposed Order requires Respondents to

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

K. Count XI – Paraffinic Base Oil

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

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

By changing Mobil's contract with Valero and entering into a Gulf off-take agreement, Mobil's share of the base oil market will

Analysis

effectively be given to Valero and some new entrant(s) in the base oil market or other suitable acquirers. The status quo in the base oil market will be maintained.

If Respondents do not offer the aforementioned terms to Valero within six months and do not enter into base oil supply contracts with suitable entities within nine months, they must divest Mobil's Beaumont, Texas refinery.¹⁶

L. Count XII – Jet Turbine Oil

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

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

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V. Opportunity for Public Comment

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

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

Statement

**Statement of Chairman Robert Pitofsky and Commissioners
Sheila F. Anthony and Mozelle W. Thompson**

The Federal Trade Commission has issued a consent order to settle charges that the Exxon Corporation's acquisition of the Mobil Corporation would violate the antitrust laws. We write to explain the reasons for our decision to approve a settlement that allows the merger to occur, and to ensure that the Commission's action in this matter is fully understood.

The merger between Exxon and Mobil involves the second- and fourth-largest vertically integrated oil companies in the world and the two largest headquartered in the United States, with the acquired assets valued at about \$80 billion. We emphasize, however, that Commission approval in this matter does not indicate that continuing trends toward undue and unjustified concentration will be countenanced by this agency in the oil industry or elsewhere in the United States economy.

The merger has significant competitive effects in seven different product markets. Because these were markets where competition was likely to be affected adversely, the Commission has required extensive restructuring. The details of the divestitures and other remedial provisions designed to address those competitive problems were summarized in the Analysis to Aid Public Comment. We touch here only on the most significant reasons why a merger between such large companies that have been direct competitors in some markets is allowed to occur at all.

1. About 60 percent of the assets of the merged firms were located outside the United States. Competitive effects in foreign countries have been reviewed by antitrust authorities abroad and the merger has been approved by those reviewing authorities with some restructurings.
2. In the United States, the most important overlaps involved gasoline marketing in states along the Atlantic Coast, California, Texas and Guam, gasoline refining in California,

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and the production and sale of paraffinic base oil, an ingredient in motor oil, throughout the United States. These overlaps amounted to only about 3 percent of the merged assets.

3. Where there were significant competitive overlaps, the companies consented to substantial restructuring of the deal, including the largest divestiture ever ordered by the Federal Trade Commission. In those areas of principal concern, the restructuring consisted of the following:

Retail Gas Stations: In all of the United States, a total of over 2,400 stations have been sold or contracts assigned. In the Northeast and Mid-Atlantic states, sale of 676 owned stations and assignment of supply contracts with 1,064 stations formerly branded Exxon and Mobil was required. In California, 360 stations were required to be sold or assigned.

Refining: Exxon's Benicia, California refinery was sold.

Terminaling: The consent required Exxon-Mobil to divest Mobil's terminals in Boston, Massachusetts and Manassas, Virginia, as well as Exxon's terminal in Guam.

Basic Paraffinic Motor Oil Ingredient: The consent required the sale of an amount of output equivalent to the amount formerly controlled by Mobil in North America.

4. While there has been a significant trend toward concentration in the oil industry, in the world and in the United States, and that trend will continue to receive our attention, it remains true that in the United States there are still at least a dozen remaining oil companies, though some are much smaller than others, and some are more regional than national. After the Exxon-Mobil merger, the top four firms in the United States accounted for about 42% of refining capacity and gasoline sales, a level of concentration that is not ordinarily a subject of concern in antitrust enforcement. In regional and local markets, likely anticompetitive effects were more pronounced, but those have been addressed by the consent order.

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5. The Commission assured itself not only that restructuring would occur, but that there were companies ready, willing and able to acquire divested assets and to be effective competitors. In approving or disapproving buyers, the Commission has treated as a major concern the effect of divestitures on the welfare of station owners and employees. Also, the Commission has insisted that the buyers of divested assets are sensitive to the role of independent station owners and lessees in continuing to play an important role in preserving competition in the retail sector of the gasoline market.

Increasing concentration in the oil industry may simply reflect the needs of firms competing in a global market. With the recent mergers in the industry however, concentration has significantly increased. Accordingly the Commission has been demanding in its requirements for restructuring this transaction, and will review any future proposed mergers in this industry with special concern.

We intend to ensure that competition, and the welfare of consumers, is protected. As with our recent enforcement actions, the Commission will assess the effectiveness of the remedies in this case in determining whether settlement, instead of litigation, would be appropriate in future transactions within this industry.

Finally, we offer a brief response to the concurring statement of our colleague, Commissioner Orson Swindle.

1. Relevant geographic market in which anticompetitive effects might be measured was pleaded in the complaint as ranging from states to metropolitan areas to smaller areas within metropolitan areas. Commissioner Swindle would have preferred to limit the pleading to metropolitan areas. As the Analysis to Aid Public Comment indicated, there was some evidence of coordinated action in parts of metropolitan areas (usually termed “price zones”), and there is precedent in this industry for pleading

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geographic markets as statewide.¹ At the pleading stage, we believe pleading in the alternative is traditional and justified.

2. Commissioner Swindle would have limited any finding of anticompetitive effects to highly concentrated markets. It is true that in such markets, mergers of significant size may be presumed to lead to anticompetitive effects. But that does not mean the effect of mergers in less concentrated markets should be ignored. On the contrary, there is considerable judicial precedent for finding violations in moderately concentrated markets.² Also, the Department of Justice - FTC Guidelines state that in moderately concentrated markets, significant competitive concerns depend on a review of additional factors. Many of the factors cited in the Guidelines are present in oil industry distribution and marketing: key price and other competitively significant information is easily available in the marketplace; gasoline is a homogeneous product (despite aggressive advertising efforts to introduce product differentiation) so that coordinated action is easier to achieve; there are high though not insurmountable barriers to entry into terminaling and distribution; and there is some history of successful collusion among companies in this market.³ For all those reasons, a remedy that reaches competitive effects in moderately concentrated markets - following the example that the Commission set in settling its case against British Petroleum's acquisition of Amoco - is justified.

¹ See, e.g., Marathon Oil Co. v. Mobil Corp., 669 F.2d 378, 380 (6th Cir. 1981).

² See Brown Shoe Co. v. United States, 370 U.S. 294 (1962); United States v. Pabst Brewing Co., 384 U.S. 546 (1966); United States v. Philadelphia National Bank, 374 U.S. 321 (1963).

³ See, e.g., United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litigation, 906 F.2d 432 (9th Cir.1990).

Statement

Separate Statement of Commissioner Orson Swindle

In this matter, the Commission investigated the \$80 billion merger between Exxon Corporation (“Exxon”) and Mobil Corporation (“Mobil”). The merger created the largest privately owned oil company in the world, having extensive operations in terms of exploration, production, refining, pipelines, terminal operations, wholesaling, and retailing. The Commission has issued a consent order to resolve complaint allegations with regard to a number of markets in which Exxon and Mobil had overlapping operations.

Of the great many markets that are addressed in the complaint and consent order, I dissent only from the provisions concerning the wholesaling and retailing of gasoline in markets that would be only moderately concentrated after the merger. The merger between Exxon and Mobil is not likely to lead to consumer harm in the form of higher prices for gasoline in these markets because of the difficulties that oil companies face in coordinating their prices in these markets. Unlike my colleagues, I therefore would not require that ExxonMobil divest or assign its retail gasoline stations located in these markets.

1. Wholesale and Retail Marketing of Gasoline

The complaint alleges that the merger between Exxon and Mobil may substantially lessen competition for the wholesaling and retailing of gasoline in many and various markets. Specifically, the complaint defines as a relevant geographic market each of the states from Virginia to Maine, “smaller areas” within those states including particular metropolitan areas, and even “smaller areas” within those metropolitan areas. ¶¶ 17a, 18, 31, and 32 of the complaint. It also defines as relevant geographic markets five metropolitan areas in Texas, and “smaller areas” contained within those metropolitan areas. *Id.* ¶¶ 17b, 19, 33, and 34. The complaint further defines Arizona and “smaller areas” within Arizona as relevant geographic markets. *Id.* ¶¶ 17c, 21, 35, and 36.

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In analyzing the competitive effects of a merger, it is critical to identify the proper geographic markets. As explained above, the Commission alleged that the proper geographic markets here include everything from entire states to metropolitan areas within these states to “smaller areas” within these metropolitan areas, which presumably include counties, cities, towns, townships, price zones, etc. A geographic market is “a region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a ‘small but significant and non-transitory increase in price.’” United States Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 1.21 (1992).

Rather than very large geographic areas (e.g., entire states)¹ or very small geographic areas (e.g., price zones), I think that standard metropolitan statistical areas (“MSAs”) are the most appropriate areas to use as geographic markets. MSAs are consistent with the general boundaries of competition in the wholesaling and retailing of gasoline. Using MSAs as geographic markets also promotes greater consistency in analysis because most oil industry data are reported by MSA. Finally, MSAs are consistent with the size of the geographic markets that the Commission generally has used in analyzing past oil mergers. See *British Petroleum Co., plc.*, Dkt. No. C-3868 (1999) (¶19 of

¹ In its statement, the majority cites *Marathon Oil Co. v. Mobil Corp.*, 669 F. 2d 378 (6th Cir. 1981), as precedent for the proposition that geographic markets for the marketing of gasoline may include entire states. In that case, the Sixth Circuit did conclude that, in granting a preliminary injunction, the district court had not erred in using individual state markets rather than a national market for the marketing of gasoline. *Id.* at 380. However, simply because a court found that there were statewide markets for the marketing of gasoline in certain midwestern states nearly twenty years ago does not persuade me that today there are statewide markets for the marketing of gasoline in the northeastern and mid-Atlantic United States, Texas, and Arizona.

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complaint) (“cities and metropolitan areas”); *see also Shell Oil Co.*, Dkt. No. C-3803 (1998) (¶¶ 21 and 22 of complaint) (San Diego County, California; Oahu Island, Hawaii).

The basic theory underlying the complaint was that so-called major brands (including Exxon, Mobil, Shell/Texaco, BPAmoco, and Sunoco) priced as an oligopoly. Major brands allegedly observe the gasoline prices that other major brands are charging at their retail locations in specific areas, known as “price zones.” Armed with this information, major brands purportedly adjust their prices only in that particular price zone so that the resulting retail price for their brand of gasoline is in line with those of other major brands. Because major brands determine their gasoline prices based on the prices charged by other major brands and not exclusively on cost, major brands supposedly can and do find it profitable to increase their gasoline prices. Allowing Exxon and Mobil to merge, it was theorized, would reduce the number of major brands, thereby purportedly making it even easier to coordinate and maintain higher gasoline prices.

I have reason to believe that the merger between Exxon and Mobil could substantially lessen competition in wholesale and retail gasoline in *highly* concentrated markets, i.e., highly concentrated MSAs. Mergers that significantly increase concentration in highly concentrated markets are *presumed* to be likely to cause competitive harm. *Horizontal Merger Guidelines* § 1.51(c). In the absence of proof of entry that is timely, likely, and sufficient or in the absence of other countervailing considerations that would rebut the presumption of competitive harm, the Commission typically concludes that such a merger may substantially lessen competition.

In recent years, the Commission challenged mergers that would significantly increase concentration in highly concentrated gasoline markets. In 1998, the Commission alleged that a joint venture may substantially lessen competition where it would have significantly increased concentration in the highly concentrated markets for wholesaling and retailing of gasoline in San Diego County, California, and on Oahu, Hawaii. *Shell Oil Co.* In 1999,

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the Commission similarly alleged that a merger between British Petroleum and Amoco may substantially lessen competition where it would have significantly increased concentration in twenty-five highly concentrated markets² for the wholesaling and retailing of gasoline in the southeastern United States. *British Petroleum Co., plc.*³

In this case, the complaint alleges that the merger between Exxon and Mobil would significantly increase concentration in twenty highly concentrated wholesale and retail gasoline markets -- nineteen markets in the northeastern United States and one in Texas.⁴ The theory that major brands coordinate on price is more plausible in these highly concentrated markets given the limited number of firms that need to coordinate their actions concerning gasoline prices, a conclusion that is consistent with the

² The Commission also alleged that the merger of BP and Amoco may substantially lessen competition in five markets that were only moderately concentrated. The majority cites this case as “precedent” for challenging oil mergers because of their effects in moderately concentrated markets. Commission consent orders lack precedential effect. Moreover, the most that *British Petroleum Co.* stands for is the proposition that some oil mergers cause competitive problems in some moderately concentrated markets, not that all oil mergers cause competitive problems in all moderately concentrated markets.

³ I dissented in *British Petroleum Co.* because I concluded that the likelihood of entry and jobber switching in markets in the southeastern United States warranted overcoming the presumption that the merger would have raised serious competitive concerns.

⁴ The highly concentrated markets are Washington, D.C.; Hartford, CT; New London, CT; Dover, DE; Wilmington, DE; Bangor, ME; Portland, ME; Barnstable, MA; Bergen, NJ; Jersey City, NJ; Monmouth, NJ; Trenton, NJ; Albany, NY; Newburgh, PA; Allentown, PA; Altoona, PA; Johnstown, PA; State College, PA; Burlington, VT; and Bryan/College Station, TX.

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presumption accorded under the *Horizontal Merger Guidelines*. New entry is not likely to defeat a coordinated price increase in these markets because of the difficulty of entering into the wholesale and retail gasoline business to a sufficient extent due to restrictive zoning laws, regulatory approvals, deed restrictions, the scarcity of sites for stations, and high costs. Sufficient jobber switching in response to a coordinated price increase is also not likely to occur because (unlike my assessment of the facts in the southeastern United States markets in *British Petroleum Co.*) switching generally has not been prevalent in these markets and the cost of doing so has been increasing significantly. Consequently, I remain comfortable with the complaint allegations with regard to these highly concentrated markets and the corresponding order requirement that the retail gasoline stations in these markets be divested or assigned.

However, in addition to alleging that the merger may substantially lessen competition in highly concentrated markets for the wholesaling and retailing of gasoline, the majority has alleged that the merger is likely to cause competitive harm in markets that would be only *moderately* concentrated. I disagree.

Specifically, nothing that has transpired since the Commission accepted the consent agreement would lead me to support the complaint allegations that the merger between Exxon and Mobil may substantially lessen competition in twenty-three wholesale and retail gasoline markets that would be only *moderately* concentrated after the merger -- eighteen markets in the northeastern and mid-Atlantic United States, four markets in Texas, and one market in Arizona.⁵ Such mergers are not

⁵ The moderately concentrated markets are New Haven, CT; Lewiston, ME; Baltimore, MD; Boston, MA; Atlantic City, NJ; Middlesex, NJ; Newark, NJ; Vineland, NJ; New York, NY; Harrisburg, PA; Lancaster, PA; Philadelphia, PA; Reading, PA; Scranton, PA; York, PA; Providence, RI; Norfolk, VA; Richmond, VA; Austin, TX; Dallas, TX; Houston, TX, San Antonio, TX, and Arizona.

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presumed to cause competitive harm, but instead “potentially raise significant competitive concerns depending on [factors such as potential adverse competitive effects and entry.]” *Horizontal Merger Guidelines* § 1.51(b).

I still find the Commission’s theory that major brands have coordinated their gasoline prices in these moderately concentrated markets⁶ to be insufficiently persuasive to support the complaint allegations. Coordinating gasoline prices tends to be more difficult in markets with moderate concentration levels than with high concentration levels because there generally are more firms whose prices have to be coordinated. Price coordination also may be complicated by variations in the boundaries of the price zones that major brands use and the difficulty in accounting for a variety of other factors that may affect gasoline prices, such as brand name strength, retail location, and credit card programs. Moreover, even if a coordinated price could be established, it likely would be difficult to maintain because, although retail gasoline prices may be publicly posted, cheating on the price could also occur through hard-to-monitor discounts on the wide variety of other goods and services that stations offer, especially the convenience store items that are becoming an increasingly large source of retail gasoline station revenue.

I do not think that it is unreasonable to conclude that gasoline prices *might be* coordinated in markets that would be moderately concentrated. The better view of the evidence, however, is that

⁶ Of course, I recognize that when we decide to challenge a merger only with regard to its effects in markets that are highly concentrated, there is a risk of missing some markets in which its effects raise the same competitive concerns even though they have slightly lower concentration levels. *See Horizontal Merger Guidelines* § 1.5 (“other things being equal, cases falling just above and just below a threshold present comparable competitive issues”). Nevertheless, I think that using highly concentrated markets here as a cut-off is a reasonable approach, albeit a necessarily imperfect one.

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such coordination was not occurring premerger and is not likely to occur following the merger. I consequently dissented from the complaint allegations with regard to the wholesale and retail gasoline markets in the northeastern and mid-Atlantic United States, Texas, and Arizona that would be moderately concentrated, and I would not have required the divestiture and assignment of retail gasoline stations located in those markets.⁷

2. Refining, Pipelines, and Terminal Markets

Although I support the remaining complaint allegations relating to refining, pipeline, and terminal markets, a brief treatment of two of these markets is warranted. I am not persuaded that a full trial on the merits would have demonstrated that the merger may substantially lessen competition in the United States and Canadian market for refining paraffinic base oil (¶¶ 51 and 52 of the complaint) or in the West Coast market for refining CARB gasoline (*id.* ¶¶ 37 and 38). The information that the Commission staff compiled during its extensive and thorough investigation, however, persuaded me that there was at least “reason to believe” that the merger could substantially lessen competition in these two markets. Because this showing was enough to meet the applicable legal standard, I was willing to support the allegations relating to these two markets.

⁷ The majority states that the “effects of mergers in less concentrated markets should [not] be ignored” and that “there is considerable judicial precedent for finding violations in moderately concentrated markets.” I agree with these statements. But I merely disagree with the conclusion that the facts show anticompetitive effects are likely in the moderately concentrated markets at issue in this case.

Complaint

IN THE MATTER OF

EL PASO ENERGY CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-3997; File No. 0010121**Complaint, January 30, 2001--Decision, January 30, 2001*

This consent order addresses the acquisition by Respondent El Paso Energy Corporation -- a firm engaged in the transportation, gathering, processing, and storage of natural gas; the marketing of natural gas, power, and other energy-related commodities; power generation; the development and operation of energy infrastructure facilities worldwide; and the domestic exploration and production of natural gas and oil -- of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corporation from Respondent PG&E Corporation, a California holding company that provides energy services throughout North America. The order, among other things, requires the respondents to divest all of El Paso's interest in the Oasis Pipe Line Company to Aquila Gas Pipeline Corporation, Dow Hydrocarbons and Resources, Inc., and the Oasis Pipe Line Company, and all of PG&E's pipeline assets in Matagorda to Panther Pipeline. The order also requires the respondents to divest (1) a fifty percent interest in the Trans Texas pipeline segment from Waha to New Braunfels, Texas; (2) all of PG&E's interest in the Trans Texas pipeline segment running from New Braunfels to Dewville, Texas; and (3) all of PG&E's interest in the Trans Texas pipeline segment running from Dewville to Katy, Texas, to acquirers approved by the Commission. In addition, the order, for ten years, prohibits Respondent El Paso from acquiring, directly or indirectly, any of the assets to be divested, or altering the governance provisions of the Teco pipeline, without obtaining prior Commission approval.

Participants

For the Commission: *Nathan J. Muyskens, W. Stephen Sockwell, Jr., Patricia V. Galvan, Alison M. Chin, Kenton A. James, Evelyn J. Boynton, William R. Vigdor, Phillip L. Broyles, Joseph Eckhaus, Daniel P. Ducore, John D. Simpson, Jeffrey H. Fischer and Daniel P. O'Brien.*

For the Respondent: *Bernard Nigro, Eric Queen and James Rhilinger, Fried, Frank, Shriver and Jacobson, and Michael Fremuth and Kenneth Minesinger, Andrews and Kurth.*