

Complaint

IN THE MATTER OF

CHEVRON 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-4023; File No. 0110011

Complaint, September 7, 2001--Decision, January 2, 2002

This consent order addresses the merger of Respondent Chevron Corporation and Respondent Texaco Inc., both large integrated oil companies engaged in the exploration for, and production of, oil and natural gas; the pipeline transportation of crude oil, natural gas, and natural gas liquids; the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline and aviation fuel; and other related businesses. The order, among other things, requires the respondents to divest, to Shell Oil Company, all of Respondent Texaco's interests in two joint ventures – Equilon Enterprises, LLC, jointly owned with Shell; and Motiva Enterprises, LLC, jointly owned with Shell and Saudi Refining, Inc. – that together own all of Texaco's United States petroleum refining, marketing and transportation businesses, including (a) gasoline marketing in 22 States; (b) the marketing of California Air Resources Board ("CARB") gasoline in California; (c) refining and bulk supply of CARB gasoline for sale in California; (d) refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; (e) the Explorer Pipeline and the bulk supply of certain reformulated gasoline ("RFG II") into St. Louis; (f) terminaling of gasoline and other light products in ten metropolitan areas in five States; (g) the Equilon pipeline that transports crude oil from California's San Joaquin Valley; and (h) the Equilon crude oil pipeline in the Eastern Gulf of Mexico. The order also requires the respondents to divest Texaco's one-third interest in the Discovery Pipeline System and its interest in the Enterprise fractionating plant in Mont Belvieu, Texas, to acquirers approved by the Commission. In addition, the order requires the respondents to divest Texaco's general aviation business in fourteen states to Avfuel Corporation. An accompanying Order to Hold Separate requires the respondents to hold separate and maintain certain assets pending divestiture.

Participants

For the Commission: *Dennis F. Johnson, Renee S. Henning,
Frank Lipson, Art Nolan, Peter A. Richman, Constance Salemi,
Marc W. Schneider, W. Stephen Sockwell, Patricia V. Galvan,*

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Karen Harris, Phillip L. Broyles, Elizabeth A. Piotrowski, Michael E. Antalics, Naomi Licker, Daniel P. Ducore, M. Sean Royall, Louis Silvia, David W. Meyer and Daniel P. O'Brien.

For the Respondents: *Terry Calvani, Al Boro, John Grenfell, and Cecil Chung, Pillsbury Winthrop, and Marc Schildkraut, Timothy Boyle, and Lisa Jose Fales, Howrey, Simon, Arnold & White.*

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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 ("FTC" or "Commission"), having reason to believe that Respondent Chevron Corporation ("Chevron") and Respondent Texaco Inc. ("Texaco") have entered into an agreement and plan of merger whereby Chevron proposes to acquire all of the outstanding common stock of Texaco, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS**Chevron Corporation**

1. Respondent Chevron 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 575 Market Street, San Francisco, CA 94105.
2. Respondent Chevron is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the exploration for, and production of, oil and natural gas; the pipeline transportation of crude oil, natural gas, and natural gas liquids; the refining of crude oil into

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refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related businesses.

3. Respondent Chevron owns approximately 26% of Dynegy Inc. (“Dynegy”). Dynegy is engaged in the gathering, processing, fractionation, transmission, terminaling, storage, and marketing of natural gas and natural gas liquids. Chevron has a long-term strategic alliance with Dynegy for the marketing of Chevron’s natural gas and natural gas liquids, and the supply of natural gas and natural gas liquids to Chevron’s refineries in the lower 48 states of the United States. Chevron has three positions on Dynegy’s Board of Directors. This relationship gives Chevron access to information concerning Dynegy’s business and allows Chevron to participate in Dynegy’s business decisions.
4. Respondent Chevron 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, as amended, 15 U.S.C. § 44.

Texaco Inc.

5. Respondent Texaco 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 2000 Westchester Ave., White Plains, NY 10650.
6. Respondent Texaco is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the exploration for, and production of, oil and natural gas; the pipeline transportation of crude oil, natural gas and natural gas liquids; the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation,

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terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related businesses.

7. Respondent Texaco 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, as amended, 15 U.S.C. § 44.
8. In 1998, Texaco contributed its U.S. petroleum refining, marketing and transportation businesses to two joint ventures and retained an interest in the joint ventures. The joint ventures are Equilon Enterprises, LLC (“Equilon”), which is owned by Texaco and Shell Oil Company (“Shell”), and Motiva Enterprises, LLC (“Motiva”), which is owned by Texaco, Shell, and Saudi Refining, Inc. (“SRI”).
9. Equilon consists of Texaco’s and Shell’s U.S. western and midwestern refining and marketing businesses, and their nationwide transportation and lubricants businesses. Texaco and Shell jointly control Equilon. Equilon’s major assets include full or partial ownership in four refineries, seven lubricants plants, about 65 terminals, and various pipelines. Equilon markets through approximately 9,700 branded gasoline retail outlets in the U.S.
10. Motiva consists of Texaco’s, Shell’s, and SRI’s U.S. eastern and Gulf Coast refining and marketing businesses. Texaco, Shell and SRI jointly control Motiva. Motiva’s major assets include full or partial ownership in four refineries and about 50 terminals. Motiva markets through approximately 14,000 branded gasoline retail outlets.

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II. THE PROPOSED MERGER

11. Pursuant to an agreement and plan of merger dated October 15, 2000, Chevron intends to acquire all of the outstanding common stock of Texaco in exchange for stock of Chevron. The value of the transaction at the time of the agreement was approximately \$45 billion. The combined entity is to be called ChevronTexaco Corporation. As a result of the merger, Chevron's shareholders will hold approximately 61%, and Texaco's shareholders will hold approximately 39%, of the new combined entity.

III. TRADE AND COMMERCE

A. Relevant Product Markets

12. Relevant lines of commerce in which to analyze the effects of the proposed merger are:
 - a. the marketing of gasoline;
 - b. the marketing of gasoline that meets the specifications of the California Air Resources Board ("CARB" gasoline);
 - c. the refining of CARB gasoline;
 - d. the refining of gasoline and kerosene jet fuel;
 - e. the bulk supply of Phase II Reformulated Gasoline;
 - f. the terminaling of gasoline and other light petroleum products;
 - g. the pipeline transportation of crude oil;
 - h. the pipeline transportation of offshore natural gas;
 - i. the fractionation of natural gas liquids; and

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- j. the marketing of aviation fuel to general aviation customers.
13. Gasoline is a motor fuel used in automobiles and other vehicles. It is produced from crude oil at refineries in the United States and throughout the world. Gasoline is produced in various grades and types, including conventional unleaded gasoline, reformulated gasoline (“RFG”), California Air Resources Board (“CARB”) gasoline, and others. There is no substitute for gasoline as a fuel for automobiles and other vehicles that are designed to use gasoline.
 14. CARB gasoline is a motor fuel used in automobiles that meets the specifications of the California Air Resources Board (“CARB”). CARB gasoline is cleaner burning and causes less air pollution than conventional unleaded gasoline. Since 1996, the sale or use of any gasoline other than CARB gasoline has been prohibited in California. CARB gasoline is generally manufactured primarily at refineries in California and at one other refinery located in Anacortes, Washington. There are no substitutes for CARB gasoline as fuel for automobiles and other vehicles that use gasoline in California.
 15. Jet fuel is a fuel used in jet engines. It contains a large amount of kerosene. Jet engines must use fuel that meets stringent specifications and cannot switch to any other type of fuel. There is no substitute for jet fuel for jet engines designed to use such fuel.
 16. Phase II Reformulated Gasoline (“RFG II”) is a motor fuel used in automobiles. RFG II is cleaner burning than some other types of gasoline and causes less air pollution. The United States Environmental Protection Agency requires the use of RFG II in certain areas (including, as relevant here, the St. Louis metropolitan area). RFG II is supplied in bulk from facilities that have the ability to deliver large quantities

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of the product on a continuing basis, such as pipelines or local refineries. There are no substitutes for pipelines or refineries for the bulk supply of RFG II. Smaller facilities that deliver RFG II in small quantities, such as tank trucks, are not cost competitive with pipelines or refineries.

17. 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.
18. 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. Chevron and Equilon each own a crude oil pipeline that transports crude oil out of the San Joaquin Valley in California. There are no alternatives to pipelines for the transportation of crude oil out of the San Joaquin Valley.
19. Two crude oil pipeline systems transport crude oil from locations in the Eastern Gulf of Mexico to on-shore terminals: the Delta Pipeline System and the Cypress Pipeline System. The Delta system is wholly owned by Equilon. Chevron owns 50% of the Cypress system and is the operator. There are no alternatives to these two pipelines for the transportation of crude oil from locations in the Eastern Gulf of Mexico to on-shore terminals.
20. Natural gas pipelines are used to transport natural gas from offshore producing platforms to shore for processing and distribution. There are no alternatives to pipelines for the transportation of natural gas from offshore gas producing platforms to shore. Chevron and Texaco own controlling interests in competing offshore natural gas pipelines. Chevron and its affiliate Dynegy own a combined 77%

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interest in the Venice Gathering System. Texaco owns approximately 33% of the Discovery Gas Transmission System. Texaco's ownership share is sufficient to allow it to effectively exercise control over important aspects of the business of the Discovery pipeline.

21. Fractionators are specialized facilities that separate raw mix natural gas liquids into specification products such as ethane or ethane-propane, propane, iso-butane, normal-butane, and natural gasoline by means of a series of distillation processes. These specification products are ultimately used in the manufacture of petrochemicals, in the refining of gasoline, and as bottled fuel, among other uses. There are no substitutes for fractionators for the conversion of raw mix natural gas liquids into individual specification products.
22. Aviation fuel is used as fuel for aircraft. There are two types of aviation fuel: aviation gasoline and jet fuel. Aviation gasoline is used in piston-powered aircraft engines, while jet fuel is used in jet engines. There are no substitutes for aviation gasoline or jet fuel for aircraft designed to use such fuels. Aviation fuel is sold through several channels of distribution, including the general aviation channel, which includes fixed base operators ("FBOs") that sell aviation fuel to general aviation customers at airports and distributors that sell to FBOs.

B. Relevant Geographic Markets

23. Relevant sections of the country in which to analyze the proposed merger are the following:
 - a. the State of California, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Bakersfield, Chico-Redding, Fresno-Visalia, Los Angeles, Modesto-Sacramento-Stockton, Monterey-Salinas, Oakland-San Francisco-San Jose, Palm Springs, San Diego,

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and San Luis Obispo-Santa Barbara-Santa Maria, where the merger would reduce competition in the marketing of CARB gasoline, as alleged below;

- b. the western United States (excluding California), including the States of Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Phoenix and Tucson, AZ; Boise, ID; Las Vegas and Reno, NV; Albuquerque-Santa Fe, NM; Eugene, Klamath Falls-Medford, and Portland, OR; Salt Lake City, UT; Seattle-Tacoma, Spokane, and Yakima, WA; and Casper-Riverton, WY; where the merger would reduce competition in the marketing of gasoline, as alleged below;
- c. the southern United States, including the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Anniston, Birmingham, Decatur-Huntsville, Dothan, and Montgomery, AL; Mobile-Pensacola, AL/FL; Fort Lauderdale-Miami, Fort Pierce-West Palm Beach, Gainesville, and Panama City, FL; Albany, Atlanta, Columbus, Macon, and Savannah, GA; Lexington and Paducah, KY; Alexandria, Baton Rouge, El Dorado-Monroe, Lafayette, Lake Charles, New Orleans, and Shreveport, LA; Biloxi-Gulfport, Columbus-Tupelo-West Point, Hattiesburg-Laurel, Jackson, and Meridian, MS; Greenville-New Bern-Washington, NC; Ada-Ardmore, OK; Lawton-Wichita Falls, OK/TX; Chattanooga, TN; Bristol-Johnson City-Kingsport, TN/VA; Abilene-Sweetwater, Amarillo, Austin, Beaumont-Port Arthur, Brownsville-Harlingen-Weslaco, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, Midland-Odessa, San Angelo, San Antonio, Temple-Waco, and Tyler, TX; Lynchburg-Roanoke and Petersburg-Richmond, VA; and Beckley-

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Bluefield-Oak Hill, WV; where the merger would reduce competition in the marketing of gasoline, as alleged below;

- d. the State of Alaska, and smaller areas contained therein, including, but not limited to, Anchorage, Fairbanks, and the southeastern towns of Juneau, Ketchikan, and Sitka, where the merger would reduce competition in the marketing of gasoline, as alleged below;
- e. the State of Hawaii, and smaller areas contained therein, including, but not limited to, the islands of Hawaii, Kauai, Maui, and Oahu, where the merger would reduce competition in the marketing of gasoline, as alleged below;
- f. the State of California, where the merger would reduce competition in the refining and bulk supply of CARB gasoline, as alleged below;
- g. the Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascade mountains, where the merger would reduce competition in the refining and bulk supply of gasoline and jet fuel, as alleged below;
- h. the St. Louis metropolitan area, where the merger would reduce competition in the bulk supply of Phase II Reformulated Gasoline, as alleged below;
- i. the metropolitan areas of Phoenix and Tucson, AZ; San Diego and Ventura, CA; Collins, MS; and El Paso, TX; and the islands of Hawaii, Kauai, Maui, and Oahu, HI; where the merger would reduce competition in the terminaling of gasoline and other light petroleum products, as alleged below;
- j. the San Joaquin Valley in California, where the merger would reduce competition in the pipeline transportation of crude oil, as alleged below;

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- k. locations in the Eastern Gulf of Mexico, including, but not limited to, the Main Pass, Viosca Knoll, South Pass and West Delta Areas, as defined by the Department of Interior Minerals Management Service, where the merger would reduce competition in the pipeline transportation of crude oil, as alleged below;
- l. locations in the Central Gulf of Mexico, including, but not limited to, certain individual lease blocks in the South Timbalier and Grand Isle Areas, and their South Additions, as defined by the Department of Interior Minerals Management Service, including South Timbalier Blocks 30, 37, 38, 44, 45, 58, 59, 61-63, 86-88, 123-35, 151-53, 157, 158, 178-80, 185-87, and 205-08; South Timbalier South Addition Blocks 223-27, 231, 233-37, 248, 251, 256, and 257; Grand Isle Blocks 52, 53, 59, 62, 63, 70-76, 84, and 85; and Grand Isle South Addition Block 86; where the merger would reduce competition for the offshore pipeline transportation of natural gas, as alleged below;
- m. Mont Belvieu, Texas, where the merger would reduce competition for the fractionation of raw mix natural gas liquids, as alleged below;
- n. the western United States, including the States of Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, and smaller areas contained therein, where the merger would reduce competition in the marketing of aviation fuel to general aviation customers, as alleged below; and
- o. the southeastern United States, including the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, and smaller areas contained therein, where the merger would reduce competition in the marketing of aviation fuel to general aviation customers, as alleged below.

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Market Structure

24. The marketing of gasoline in the markets described in Paragraphs 23b through 23e would become highly concentrated, or significantly more concentrated, as a result of the proposed merger. For example, in some markets in the States of Louisiana, Mississippi, Oregon, and Washington, the proposed merger would increase concentration by more than 1,000 points to HHI levels above 3,000. In many other markets, the proposed merger would result in significant increases in concentration to levels at which competition may be harmed.
25. The marketing of CARB gasoline in the markets described in Paragraph 23a would be highly concentrated following the proposed merger. The proposed merger would increase concentration in each of these markets by more than 50 points to HHI levels above 2,000.
26. The market for the refining and bulk supply of CARB gasoline for the State of California would be highly concentrated following the proposed merger. The proposed merger would increase concentration in this market by more than 500 points to an HHI level above 2,000.
27. The market for the refining and bulk supply of gasoline and jet fuel for the Pacific Northwest would be highly concentrated following the proposed merger. The proposed merger would increase concentration in this market by more than 600 points to an HHI level above 2,000.
28. Chevron and Texaco (directly and indirectly through Equilon) each hold substantial interests in the Explorer Pipeline, the largest pipeline provider of bulk RFG II supply into the St. Louis metropolitan area. Chevron owns approximately 16.7 % of Explorer Pipeline, and Equilon and Texaco combined own approximately 35.9% of Explorer. Equilon also has a long-term contract through which it

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obtains supplies of RFG II for the St. Louis metropolitan area. The market for the bulk supply of RFG II into the St. Louis metropolitan area is highly concentrated and would become significantly more concentrated following the proposed merger. The proposed merger would increase concentration in this market by more than 1,600 points to an HHI level of 5,000.

29. The terminaling of gasoline and other light petroleum products in each of the markets identified in Paragraph 23i would be highly concentrated following the proposed merger. The proposed merger would increase concentration in each of these markets by more than 300 points to HHI levels at or above 2,000.
30. The market for the pipeline transportation of crude oil from the San Joaquin Valley in California is highly concentrated and would become significantly more concentrated as a result of the proposed merger. The proposed merger would increase concentration in this market by more than 800 points to an HHI level above 3,300.
31. The pipeline transportation of crude oil from markets in the Eastern Gulf of Mexico identified in Paragraph 23k is highly concentrated and would become significantly more concentrated as a result of the proposed merger. The proposed merger would give the combined Chevron/Texaco substantial ownership interests in the only two pipelines that compete to transport crude oil from the Eastern Gulf of Mexico.
32. The pipeline transportation of offshore natural gas to shore from each of the markets described in Paragraph 23l is highly concentrated and would become significantly more concentrated as a result of the proposed merger. The proposed merger would give the combined Chevron and Texaco controlling interests in the only two pipelines, or two of only three pipelines, in each of these markets.

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33. Because of Chevron's affiliation with Dynegy, the acquisition of Texaco would give Chevron a financial interest in three of the four fractionators in Mont Belvieu, Texas.
34. The marketing of aviation fuel to general aviation customers in the markets described in Paragraphs 23n and 23o would be highly concentrated as a result of the merger. The proposed merger would increase concentration in the southeastern United States by more than 250 points to an HHI level above 1,900, and would increase concentration in the western United States by more than 1,600 points to an HHI level above 3,400.

Entry Conditions

35. Entry into the relevant lines of commerce in the relevant sections of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects resulting from the proposed merger.

IV. VIOLATIONS CHARGED**First Violation Charged**

36. Chevron and Texaco are competitors in the marketing of gasoline in the following relevant sections of the country: (a) the western United States (excluding California), including the States of Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Phoenix and Tucson, AZ; Boise, ID; Las Vegas and Reno, NV; Albuquerque-Santa Fe, NM; Eugene, Klamath Falls-Medford, and Portland, OR; Salt Lake City, UT; Seattle-Tacoma, Spokane, and Yakima, WA; and Casper-Riverton, WY; (b) the southern United States, including the States of Alabama,

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Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Anniston, Birmingham, Decatur-Huntsville, Dothan, and Montgomery, AL; Mobile-Pensacola, AL/FL; Fort Lauderdale-Miami, Fort Pierce-West Palm Beach, Gainesville, and Panama City, FL; Albany, Atlanta, Columbus, Macon, and Savannah, GA; Lexington and Paducah, KY; Alexandria, Baton Rouge, El Dorado-Monroe, Lafayette, Lake Charles, New Orleans, and Shreveport, LA; Biloxi-Gulfport, Columbus-Tupelo-West Point, Hattiesburg-Laurel, Jackson, and Meridian, MS; Greenville-New Bern-Washington, NC; Ada-Ardmore, OK; Lawton-Wichita Falls, OK/TX; Chattanooga, TN; Bristol-Johnson City-Kingsport, TN/VA; Abilene-Sweetwater, Amarillo, Austin, Beaumont-Port Arthur, Brownsville-Harlingen-Weslaco, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, Midland-Odessa, San Angelo, San Antonio, Temple-Waco, and Tyler, TX; Lynchburg-Roanoke and Petersburg-Richmond, VA; and Beckley-Bluefield-Oak Hill, WV; (c) the State of Alaska, and smaller areas contained therein, including, but not limited to, Anchorage, Fairbanks, and the southeastern towns of Juneau, Ketchikan, and Sitka; and (d) the State of Hawaii, and smaller areas contained therein, including, but not limited to, the islands of Hawaii, Kauai, Maui, and Oahu.

37. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of gasoline in the relevant sections of the country identified in the previous paragraph, 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 gasoline between Chevron and Texaco; and

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- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in the relevant sections of the country;

each of which increases the likelihood that the price of gasoline will increase in the relevant sections of the country.

Second Violation Charged

- 38. Chevron and Texaco are competitors in the marketing of CARB gasoline for sale in the State of California, and smaller areas contained therein, including, but not limited to, the following metropolitan areas: Bakersfield, Chico-Redding, Fresno-Visalia, Los Angeles, Modesto-Sacramento-Stockton, Monterey-Salinas, Oakland-San Francisco-San Jose, Palm Springs, San Diego, and San Luis Obispo-Santa Barbara-Santa Maria.
- 39. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of CARB gasoline for sale 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 marketing of CARB gasoline between Chevron and Texaco;
 - b. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in California;

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each of which increases the likelihood that the price of CARB gasoline will increase in the relevant sections of the country.

Third Violation

40. Chevron and Texaco are competitors in the refining and bulk supply of CARB gasoline for sale in the State of California.
41. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and bulk supply of CARB gasoline for sale in the State of California, 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 bulk supply of CARB gasoline between Chevron and Texaco;
 - b. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in California;

each of which increases the likelihood that the price of CARB gasoline will increase in the relevant section of the country.

Fourth Violation

42. Chevron and Texaco are competitors in the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascade mountains.

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43. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest, 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 bulk supply of gasoline and jet fuel between Chevron and Texaco; and
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in the Pacific Northwest;

each of which increases the likelihood that the price of gasoline and jet fuel will increase in the relevant section of the country.

Fifth Violation Charged

44. Chevron and Texaco (directly and indirectly through Equilon) each hold substantial interests in the market for the bulk supply of RFG II in the St. Louis metropolitan area.
45. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the market for the bulk supply of RFG II in the St. Louis 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 eliminating direct competition between Chevron and Texaco in the bulk supply of RFG II in the St. Louis metropolitan area; and

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- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco/Equilon and their competitors in the bulk supply of RFG II in the St. Louis metropolitan area;

each of which increases the likelihood that the price of bulk supply of RFG II in the St. Louis metropolitan area will increase.

Sixth Violation Charged

- 46. Chevron and Texaco are competitors in the terminaling of gasoline and other light petroleum products in the metropolitan areas of Phoenix and Tucson, AZ; San Diego and Ventura, CA; Collins, MS; and El Paso, TX; and the islands of Hawaii, Kauai, Maui, and Oahu, HI.
- 47. 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 relevant areas identified in the previous paragraph, 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 Chevron and Texaco;
 - b. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in the

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terminaling of gasoline and other light petroleum products in the relevant areas;

each of which increases the likelihood that the price for terminaling of gasoline and other light petroleum products will increase in the relevant sections of the country.

Seventh Violation Charged

48. Chevron and Texaco are competitors in the pipeline transportation of crude oil from the San Joaquin Valley in California.
49. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the pipeline transportation of crude oil from the San Joaquin Valley 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 pipeline transportation of crude oil between Chevron and Texaco; and
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors for the pipeline transportation of crude oil from the San Joaquin Valley;

each of which increases the likelihood that the price of crude oil pipeline transportation will increase in the relevant section of the country.

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Eighth Violation Charged

50. Chevron and Texaco are competitors in the pipeline transportation of crude oil from portions of the Eastern Gulf of Mexico to on-shore terminals.
51. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the pipeline transportation of crude oil from portions of the Eastern Gulf of Mexico to on-shore terminals 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 pipeline transportation of crude oil between Chevron and Texaco; and
 - b. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power;

each of which increases the likelihood that the price of crude oil pipeline transportation will increase in the relevant sections of the country.

Ninth Violation Charged

52. Chevron and Texaco are competitors for the pipeline transportation of offshore natural gas to shore from certain locations in the Central Gulf of Mexico, including the South Timbalier and Grand Isle Areas, and their South Additions, as defined by the Department of Interior Minerals Management Service, including, but not limited to, South Timbalier Blocks 30, 37, 38, 44, 45, 58, 59, 61-63, 86-88, 123-35, 151-53, 157, 158, 178-80, 185-87, 205-08; South

Complaint

Timbalier South Addition Blocks 223-27, 231, 233-37, 248, 251, 256, and 257; Grand Isle Blocks 52, 53, 59, 62, 63, 70-76, 84, and 85; and Grand Isle South Addition Block 86.

53. The effect of the proposed merger, if consummated, may be substantially to lessen competition in offshore pipeline transportation of natural gas from the relevant areas identified in the previous paragraph, 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 Chevron and Texaco in the pipeline transportation of offshore natural gas;
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors for the pipeline transportation of offshore natural gas; and
 - c. by increasing the likelihood that the combined Chevron and Texaco will unilaterally exercise market power;

each of which increases the likelihood that the price of offshore natural gas pipeline transportation will increase in the relevant sections of the country.

Tenth Violation Charged

54. Chevron and Texaco, either directly or through affiliates, each have ownership or financial interests in competing facilities used for the fractionation of natural gas liquids raw mix into natural gas liquids specification products at Mont Belvieu, Texas. By virtue of its ownership interest in one fractionator, Texaco obtains confidential information about the operations of that fractionator and also can affect the outcome of voting among owners of the fractionator.

Complaint

Texaco's ownership interest in the fractionator gives Texaco the ability to prevent competition from that fractionator against the other fractionators at Mont Belvieu in which Chevron has a financial interest.

55. The effects of the acquisition, if consummated, may be substantially to lessen competition in the fractionation of natural gas liquids in the vicinity of Mont Belvieu in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
- a. by eliminating direct competition between Texaco and Chevron's affiliate Dynegy in the fractionation of natural gas liquids;
 - b. by providing Chevron's affiliate Dynegy with access to sensitive competitive information from one of its most important competitors at Mont Belvieu;
 - c. by providing Chevron, through its control of Texaco's voting at the fractionator in which Texaco has an interest, with the ability to prevent competition from that fractionator against the other fractionators in Mont Belvieu in which Chevron's affiliate Dynegy has an interest; and
 - d. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power;

each of which increases the likelihood that prices will increase for fractionation services in the vicinity of Mont Belvieu.

Eleventh Violation Charged

56. Chevron and Texaco are competitors in the marketing of aviation fuel to general aviation customers in the western United States, consisting of the States of Alaska, Arizona,

Complaint

California, Idaho, Nevada, Oregon, Utah, and Washington, and smaller areas contained therein; and the southeastern United States, consisting of the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, and smaller areas contained therein.

57. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing of aviation fuel to general aviation customers in the western United States, the southeastern United States, and in 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 between Chevron and Texaco in the marketing of aviation fuel to general aviation customers;
 - b. by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Chevron and Texaco and their competitors in the relevant sections of the country;

each of which increases the likelihood that the price of aviation fuel will increase in the relevant sections of the country.

Statutes Violated

58. The proposed merger between Chevron and Texaco violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated,

Complaint

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 seventh day of September, 2001, issues its complaint against said Respondents.

By the Commission, Chairman Muris recused.

Decision and Order

DECISION AND ORDER

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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“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 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 having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

Decision and Order

1. Respondent Chevron 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 575 Market Street, San Francisco, CA 94105.
2. Respondent Texaco 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 2000 Westchester Ave., White Plains, NY 10650.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Chevron” means Chevron Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Chevron, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Texaco” means Texaco Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Texaco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. “Avfuel” means Avfuel Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the state of Michigan, with its office and principal place of business located at 47 West Ellsworth, Ann Arbor, Michigan 48108.
- D. “Aviation Fuel” means Aviation Gasoline and Jet Fuel.
- E. “Aviation Fuel Divestiture Agreement” means all agreements entered into between Respondents and AvFuel relating to the sale of Texaco’s Overlap General Aviation Business Assets, including but not limited to the Purchase and Sale Agreement, the Trademark License Agreement, all supply agreements, and all other ancillary agreements, dated August 7, 2001, and attached hereto as Confidential Appendix B to this Order.
- F. “Aviation Gasoline” or “AvGas” means gasoline intended for aviation use that meets the specifications set forth by the American Society for Testing and Materials, ASTM specification D910.
- G. “Aviation Marketing Agreements” means all agreements or contracts between Texaco and any Person relating to such Person’s right or obligation to sell, resell or distribute Aviation Fuel under the Texaco brand.
- H. “Aviation Overlap State” means each of the following states: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington.

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- I. “Aviation Supply Agreements” means all agreements or contracts between Texaco and any Person relating to an obligation to sell or supply Aviation Fuel to Texaco, including but not limited to supply agreements and exchange agreements.
- J. “Aviation Terminal” means a facility that provides temporary storage of Aviation Fuel received from a pipeline, marine vessel, truck or railway and the redelivery of Aviation Fuel from storage tanks into tank trucks, transport trailers or railcars.
- K. “Aviation Terminal Throughput Agreements” means all agreements or contracts between Texaco and any Person relating to Texaco’s right to use or have another Person use any tanks, equipment, pipelines, trucks, or other services or facilities at an Aviation Terminal.
- L. “Aviation Transportation Agreements” means all agreements or contracts between Texaco and any Person relating to the transportation of Aviation Fuel.
- M. “Change of Control Provisions” means Section 12.04 of the Equilon LLC Agreement or the Motiva LLC Agreement.
- N. “Concentration Levels” means market concentration, measured in annual volume (gallons) sold (or, if volume in gallons is not available, other standard industry measures), as determined by the Herfindahl Hirschmann Index.
- O. “Disclose” means to convey by any means or otherwise make available information to any person or persons.

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- P. “Discovery Producer Services LLC” means the limited liability company established by the Second Amended and Restated Limited Liability Company Agreement dated May 15, 1998, between and among Texaco Discovery Holdings LLC, Mapco Energy L.L.C., and British-Borneo Pipeline LLC.
- Q. “Discovery System” means Discovery Producer Services LLC, and all of its assets, including but not limited to Discovery Gas Transmission LLC and all of its assets, and including all pipelines of the system that transport natural gas offshore of Louisiana and onshore to the processing plant at LaRose, Louisiana; the processing plant at Larose, Louisiana; all pipelines that transport natural gas between the processing plant and natural gas transmission pipelines; all pipelines that transport raw mix between the processing plant and the fractionating plant at Paradis, Louisiana; the fractionating plant at Paradis, Louisiana; and equipment including but not limited to condensate stabilization facilities and pumping stations.
- R. “Divestiture Trustee” means a trustee appointed pursuant to Paragraph III.B. of this Order with the obligation to divest TRMI and/or TRMI East pursuant to this Order.
- S. “Enterprise Fractionating Plant” means the fractionating plant at Mont Belvieu, Texas, operated by Enterprise Products Company and partially owned by Texaco.
- T. “Equilon” means Equilon Enterprises LLC, a joint venture formed pursuant to the Equilon LLC Agreement.

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- U. “Equilon Interest” means all of the ownership interests in Equilon owned directly or indirectly by Texaco, including the interests owned by TRMI and its wholly owned subsidiaries, Texaco Convent Refining Inc., and Texaco Anacortes Cogeneration Company.
- V. “Equilon LLC Agreement” means the Limited Liability Company Agreement of Equilon Enterprises LLC dated as of January 15, 1998 among certain subsidiaries of Shell and Texaco, as amended.
- W. “General Aviation Business Agreements” means all Aviation Supply Agreements, Aviation Terminal Throughput Agreements, Aviation Transportation Agreements, Aviation Marketing Agreements, and all other agreements or contracts related to Texaco’s Domestic General Aviation Business, including but not limited to aviation retail sales agreements, aviation fuel agreements, aviation dealer support agreements, customer agreements, credit card agreements, distributor agreements, marketer agreements, supply agreements, rail contracts, railcar lease agreements, barge agreements, refueler agreements, loans, grants, or leases.
- X. “Jet Fuel” means fuel intended for use in jet airplanes that meets the specifications set forth by the American Society for Testing and Materials, ASTM specification D1655.
- Y. “JV Agreements” means the Equilon LLC Agreement and the Motiva LLC Agreement.

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- Z. “Members Committee” means the “Members Committee” as defined in Section 6.03 of the Equilon LLC Agreement and the Motiva LLC Agreement.
- AA. “Merger” means any merger between Respondents, including the proposed merger contemplated by the Agreement and Plan of Merger dated October 15, 2000, as amended, among Respondents and Keepep Inc.
- BB. “Merger Date” means the date on which the Merger is consummated.
- CC. “Metropolitan Area” means any Metropolitan Area (including Metropolitan Statistical Areas, Consolidated Metropolitan Statistical Areas, or Primary Metropolitan Statistical Areas) as defined by the U.S. Office of Management and Budget.
- DD. “Motiva” means Motiva Enterprises LLC, a joint venture formed pursuant to the Motiva LLC Agreement.
- EE. “Motiva Interest” means all of the ownership interests in Motiva owned directly or indirectly by Texaco, including the interest owned by TRMI East.
- FF. “Motiva LLC Agreement” means the Limited Liability Company Agreement of Motiva Enterprises LLC dated as of July 1, 1998, among Shell, Shell Norco Refining Company, SRI and TRMI East.
- GG. “Non-Public Equilon Or Motiva Information” means any information not in the public domain relating to Equilon or Motiva.

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- HH. “Operating Trustee” means each trustee appointed pursuant to Paragraph III.O. of this Order with the obligation to manage TRMI and/or TRMI East pursuant to this Order.
- II. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- JJ. “Relevant OCS Area” means the Grand Isle, Grand Isle South, South Timbalier, and South Timbalier South areas as defined by the Department of Interior Minerals Management Service.
- KK. “Respondents” means Chevron and Texaco, individually and collectively, and any successors.
- LL. “Section of the Country” means a Metropolitan Area in those cases where the retail outlets that Respondents have agreed to supply pursuant to Paragraph IV.F. are located in a Metropolitan Area, or a county in those cases where the retail outlets that Respondents have agreed to supply are located outside of a Metropolitan Area.
- MM. “Shell” means Shell Oil Company, a Delaware corporation, with its principal place of business located at One Shell Plaza, Houston, Texas 77002, its parents, and its subsidiaries controlled by Shell.
- NN. “SRI” means Saudi Refining, Inc., a Delaware corporation, with its principal place of business located at 9009 West Loop South, Houston, TX 77210, its parents, and its subsidiaries controlled by SRI.
- OO. “Substitute Aviation Fuel Divestiture Agreement” means an agreement, other than the Aviation Fuel

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Divestiture Agreement, approved by the Commission, for the divestiture of Texaco's Domestic General Aviation Business Assets to an acquirer approved by the Commission.

- PP. "Texaco-Williams Contract" means the Product Sale, Purchase and Exchange Agreement dated February 1, 1997, between Mapco Energy L.L.C. and Bridgeline Gas Distribution LLC.
- QQ. "Texaco's Domestic General Aviation Business" means the supply, distribution, marketing, transportation, and sale of Aviation Fuel by Texaco on a direct or distributor basis to customers (other than commercial airlines and military) in the United States (including the Aviation Overlap States), including but not limited to fixed base operators, airport dealers, distributors, jobbers, resellers, brokers, corporate accounts, or consumers.
- RR. "Texaco's Domestic General Aviation Business Assets" means all assets, tangible or intangible, relating to Texaco's Domestic General Aviation Business in the United States, including but not limited to all General Aviation Business Agreements used in or relating to Texaco's Domestic General Aviation Business.
- SS. "Texaco's Overlap General Aviation Business" means the supply, distribution, marketing, transportation, and sale of Aviation Fuel by Texaco on a direct or distributor basis to customers (other than commercial airlines and military) in the Aviation Overlap States, including but not limited to fixed base operators, airport dealers, distributors, jobbers, resellers, brokers, corporate accounts, or consumers, but excluding the assets

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and agreements set forth on Schedule 2.3(c) of the Aviation Fuel Divestiture Agreement.

- TT. “Texaco’s Overlap General Aviation Business Assets” means all assets, tangible or intangible, relating to Texaco’s Overlap General Aviation Business, including but not limited to all General Aviation Business Agreements used in or relating to Texaco’s Overlap General Aviation Business, but excluding the assets and agreements set forth on Schedule 2.3(c) of the Aviation Fuel Divestiture Agreement.
- UU. “TRMI” means Texaco Refining and Marketing Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and its subsidiary, Texaco Convent Refining Inc., and Texaco’s interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Equilon.
- VV. “TRMI East” means Texaco Refining and Marketing (East) Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and Texaco’s interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Motiva.
- WW. “Trust” means the trust established by the Trust Agreement.
- XX. “Trust Agreement” means the Agreement and Declaration of Trust approved by the Commission and attached hereto and made part hereof as Appendix A to this Order.

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YY. “Venice System” means Venice Energy Services Company, L.L.C., and all of its assets, including but not limited to (i) natural gas processing, fractionation and natural gas liquids storage and terminaling facilities at the Venice Complex (as that term is defined in the Second Amended and Restated Limited Liability Company Agreement of Venice Energy Services Company, L.L.C.), (ii) onshore and offshore natural gas pipelines upstream from the Venice Complex, known as the Venice Gathering System, (iii) compression, separation, dehydration, and residue gas and liquid gas handling facilities at or associated with the Venice Complex (excluding any residue gas pipelines and metering facilities owned by the downstream pipelines), and (iv) natural gas liquids facilities (excluding natural gas liquids pipelines downstream from the Venice Complex) related to such processing, fractionation, storage and termination facilities.

I.

IT IS FURTHER ORDERED that:

A. Respondents shall divest:

1. either (a) the Equilon Interest to Shell no later than the Merger Date, in a manner that receives the prior approval of the Commission, or (b) no later than eight (8) months after the Merger Date, in a manner that receives the prior approval of the Commission, either (i) the Equilon Interest to Shell or (ii) TRMI, absolutely and in good faith, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission; and

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2. either (a) the Motiva Interest to Shell and/or SRI no later than the Merger Date, in a manner that receives the prior approval of the Commission, or (b) no later than eight (8) months after the Merger Date, in a manner that receives the prior approval of the Commission, either (i) the Motiva Interest to Shell and/or SRI or (ii) TRMI East, absolutely and in good faith, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission.

Such divestitures shall be accomplished by Respondents prior to or on the Merger Date or, after the Merger Date, by the Divestiture Trustee pursuant to the provisions of Paragraph III. of this Order or as otherwise approved by the Commission.

B. Respondents shall not consummate the Merger unless and until Texaco:

1. has either (a) divested the Equilon Interest pursuant to Paragraph II.A.1.(a) of this Order or (b) transferred TRMI to the Trust pursuant to Paragraph III. of this Order;

and

2. has either (a) divested the Motiva Interest pursuant to Paragraph II.A.2.(a) of this Order or (b) transferred TRMI East to the Trust pursuant to Paragraph III. of this Order.

Provided, however, if Texaco has triggered the Change of Control Provisions pursuant to either or both of the JV Agreements, then the transfer by Respondents to the Trust of TRMI and/or TRMI East shall not prevent Shell and/or SRI from exercising any rights they may have under the applicable JV Agreement to acquire the

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Equilon Interest and/or the Motiva Interest pursuant to the valuation process described in Sections 12.04 and 12.05 of the JV Agreement; further, should Shell and/or SRI decline to exercise their rights to acquire the Equilon Interest and/or the Motiva Interest pursuant to Section 12.04 of the applicable JV Agreement, then Shell and/or SRI shall not be precluded, as a result of the transfer to the Trust or as a result of Shell and/or SRI declining to exercise their rights, from offering to acquire either the Equilon Interest or TRMI and/or the Motiva Interest or TRMI East pursuant to Paragraph III. of this Order.

C. If the Trust is rescinded, unwound, dissolved, or otherwise terminated at any time after the Merger but before Respondents have complied with Paragraph II.A. of this Order, then Respondents shall immediately upon such rescission, unwinding, dissolution, or termination, hold TRMI and TRMI East separate and apart from Respondents pursuant to the Order to Hold Separate and Maintain Assets issued in this matter.

D. The purpose of these divestitures is to ensure the continuation of Equilon and Motiva as ongoing, viable businesses engaged in the same businesses as Equilon and Motiva are presently engaged, to ensure the ownership of the Equilon Interest (or TRMI) and the Motiva Interest (or TRMI East) by a person other than Respondents that has been approved by the Commission, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that, if Respondents have not divested the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI pursuant to the requirements of Paragraph II. of this Order on or before the Merger Date:

A. Texaco shall, on or before the Merger Date: (1) enter into the Trust Agreement, and (2) transfer or

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cause to be transferred (a) TRMI to the Trust if the Equilon Interest has not been divested to Shell, and/or (b) TRMI East to the Trust if the Motiva Interest has not been divested to Shell and/or SRI. Simultaneously with the Merger, Texaco shall cause its representatives to resign from the Members Committee of Equilon and Motiva.

- B. Respondents shall agree to the appointment of Robert A. Falise as Divestiture Trustee and enter into the Trust Agreement no later than the Merger Date.
- C. No later than the Merger Date, Respondents shall transfer to the Divestiture Trustee the sole and exclusive power and authority to divest TRMI and/or TRMI East or to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, consistent with the terms of Paragraph II. of this Order and subject to the prior approval of the Commission. After such transfer, the Divestiture Trustee shall have the sole and exclusive power and authority to divest such assets or interests, subject to the prior approval of the Commission, and the Divestiture Trustee shall exercise such power and authority and carry out the duties and responsibilities of the Divestiture Trustee in a manner consistent with the purposes of this Order in consultation with the Commission's staff.
- D. The Divestiture Trustee shall have eight (8) months from the Merger Date to accomplish the divestitures required by Paragraph II. of this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the eight-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the Divestiture Trustee's divestiture period

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may be extended by the Commission. An extension of time by the Commission under this subparagraph shall not preclude the Commission from seeking any relief available to it for any failure by Respondents to divest the Equilon Interest or TRMI and/or the Motiva Interest or TRMI East consistent with the requirements of Paragraph II. of this Order.

- E. If, on or prior to the Merger Date, Texaco has executed but has not consummated an agreement or agreements to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, and the Commission has approved such agreement or agreements, then Texaco shall, no later than the Merger Date, assign such agreement or agreements to the Trust and grant sole and exclusive authority to the Divestiture Trustee to consummate any divestiture contemplated thereby.
- F. The Divestiture Trustee shall divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, in a manner that receives the prior approval of the Commission, pursuant to the terms of the applicable agreement or agreements approved by the Commission, if either (1) Texaco has executed an agreement or agreements with Shell and/or SRI with respect to such divestiture or divestitures prior to the Merger Date, and such agreement or agreements have been approved by the Commission and have not been breached by Shell and/or SRI; or (2) Shell has exercised its right to acquire the Equilon Interest pursuant to the Equilon LLC Agreement and/or Shell and/or SRI have exercised their rights to acquire the Motiva Interest pursuant to the Motiva LLC Agreement.
- G. Subject to Respondents' absolute and unconditional obligation to divest expeditiously at

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no minimum price, the Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of (1) TRMI if the Divestiture Trustee has not divested the Equilon Interest pursuant to subparagraph F. of this Paragraph and/or (2) TRMI East if the Divestiture Trustee has not divested all or part of the Motiva Interest pursuant to subparagraph F. of this Paragraph. Each divestiture shall be made only in a manner that receives the prior approval of the Commission, and, unless the acquirers are Shell and/or SRI, the divestiture shall be made only to an acquirer or acquirers that receive the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture 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.

- H. The Divestiture Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of Respondents, TRMI and TRMI East, as needed to fulfill the Divestiture Trustee's obligations, or to any other relevant information, as the Divestiture Trustee may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under this Order. Respondents or the Operating Trustees, as appropriate, shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall

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cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's ability to perform his or her responsibilities.

- I. The Divestiture 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 may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such financial advisors, consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Divestiture Trustee's duties and responsibilities.
- J. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 Divestiture Trustee.
- K. The Divestiture Trustee shall account for all monies derived from the sale and all expenses incurred, subject to the approval of the Commission. After approval by the Commission of the account of the Divestiture Trustee, all remaining monies shall be paid as directed in the Trust Agreement, and the Divestiture Trustee's powers shall be terminated.

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- L. The Divestiture Trustee shall report in writing to the Commission thirty (30) days after the Merger Date and every thirty (30) days thereafter concerning the Divestiture Trustee's efforts to accomplish the requirements of this Order until such time as the divestitures required by Paragraph II. of this Order have been accomplished and Respondents have notified the Commission that the divestitures have been accomplished.
- M. If, for any reason, Robert A. Falise cannot serve or cannot continue to serve as Divestiture Trustee, or fails to act diligently, the Commission shall select a replacement Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any replacement Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed replacement Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed replacement Divestiture Trustee. The replacement Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures.
- N. The Commission may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- O. Respondents shall agree to the appointment of Joe B. Foster as Operating Trustee of TRMI (with respect to the Equilon Interest) and John Linehan as Operating Trustee of TRMI East (with respect to

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the Motiva Interest) and enter into the Trust Agreement no later than the Merger Date.

- P. The Operating Trustees shall have sole and exclusive power and authority to manage TRMI and/or TRMI East (as the case may be), as set forth in the Trust Agreement and specifically to cause TRMI and TRMI East respectively to exercise the rights of TRMI and TRMI East under the Equilon and Motiva LLC Agreements. Each Operating Trustee may engage in any other activity such Operating Trustee may deem reasonably necessary, advisable, convenient or incidental in connection therewith and shall exercise such power and authority and carry out the duties and responsibilities of the Operating Trustee in a manner consistent with the purposes of this Order in consultation with the Commission's staff.
- Q. Each Operating Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of TRMI and/or TRMI East as needed to fulfill such Operating Trustee's obligations, or to any other relevant information, as such Operating Trustees may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under this Order. Respondents shall develop such financial or other information as such Operating Trustees may reasonably request and shall cooperate with the Operating Trustees. Respondents shall take no action to interfere with or impede the Operating Trustees' ability to perform his or her responsibilities.
- R. The Operating Trustees shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary

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terms and conditions as the Commission may set. Each Operating 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 such Operating Trustee's duties and responsibilities.

- S. Respondents shall indemnify each Operating Trustee and hold each Operating Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of such Operating 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 such Operating Trustee.
- T. The Operating Trustees shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
- U. Each Operating Trustee shall report in writing to the Commission thirty (30) days after the Merger Date and every thirty (30) days thereafter concerning the Operating Trustee's performance of his or her duties under this Order and the Trust Agreement. The Operating Trustees shall serve until such time as Respondents have complied with their obligation to divest TRMI and/or TRMI East as required by this Order and Respondents have notified the Commission that the divestitures have been accomplished.

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- V. If for any reason Joe B. Foster cannot serve or cannot continue to serve as Operating Trustee of TRMI or John Linehan cannot serve or cannot continue to serve as Operating Trustee of TRMI East, or fails to act diligently, the Commission shall select a replacement Operating Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any replacement Operating Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed replacement Operating Trustee, Respondents shall be deemed to have consented to the selection of the proposed replacement Operating Trustee. The replacement Operating Trustee shall be a person with experience and expertise in the management of businesses of the type engaged in by Equilon and Motiva.
- W. The Commission may on its own initiative or at the request of either Operating Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- X. Except as provided herein or in the Trust Agreement, neither the Divestiture Trustee nor the Operating Trustees shall disclose any Non-Public Equilon Or Motiva Information to an employee of Respondents.
- Y. Respondents may require the Divestiture Trustee or Operating Trustees to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his or her role as Divestiture Trustee or Operating Trustee to anyone other than the Commission.

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- Z. The purpose of this Paragraph III. is to effectuate the divestitures required by Paragraph II. of this Order and to maintain operation of TRMI, TRMI East, Equilon and Motiva separate and apart from Respondents' operations pending the required divestitures.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall offer to extend the license provided to Equilon and Motiva, on terms and conditions comparable to those in existence as of the date the Consent Agreement is executed by Respondents, for the use of the Texaco brand for the marketing of motor fuels until June 30, 2002 for Equilon and until June 30, 2003, for Motiva (the "Brand License Date"). Provided however, the license for the marketing of motor fuels shall be provided on an exclusive basis in those areas of the United States where Equilon and Motiva respectively are currently licensed to market motor fuels.
- B. For the purposes of this Paragraph IV., "Waives and Releases" shall mean to waive and release: (1) all amounts any Texaco branded dealer or wholesale marketer may be required to pay under any Facility Development Incentive Program Agreement (or any other agreement requiring that such dealer or marketer reimburse Equilon or Motiva) in existence as of the date the Commission accepts this Order for public comment, which amounts become due (or which Equilon or Motiva contends become due) as a result of the loss of the Texaco brand at any retail outlet; and (2) all deed restrictions prohibiting or restricting the sale of motor fuel not sold by Equilon or Motiva at any Texaco retail outlet for which Equilon or Motiva has not executed an agreement for the sale of Shell branded gasoline on or before the Brand License Date.

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- C. If Equilon Waives and Releases the amounts and deed restrictions set forth in Paragraph IV.B., Texaco shall further offer (1) to extend the license set forth in Paragraph IV.A. to Equilon on an exclusive basis until June 30, 2003 (which shall then become the new “Brand License Date” for Equilon), and (2) to extend the license on a nonexclusive basis for up to an additional three (3) years, until June 30, 2006, on terms and conditions comparable to those in existence as of the date the Consent Agreement is executed by Respondents, for all retail outlets for which Equilon has executed agreements with such retail outlets on or before the Brand License Date for the conversion of such retail outlets to the Shell brand.
- D. If Motiva Waives and Releases the amounts and deed restrictions set forth in Paragraph IV.B., Texaco shall further offer to extend the license set forth in Paragraph IV.A. to Motiva on a nonexclusive basis for up to an additional three (3) years, until June 30, 2006, on terms and conditions comparable to those in existence as of the date the Consent Agreement is executed by Respondents, for all retail outlets for which Motiva has executed agreements with such retail outlets on or before the Brand License Date for the conversion of such retail outlets to the Shell brand.
- E. If either Equilon or Motiva does not Waive and Release the amounts set forth in Paragraph IV.B., Respondents shall indemnify each Texaco dealer and wholesale marketer for all amounts such dealer or marketer may be required to pay under any Facility Development Incentive Program Agreement (or any other agreement requiring that such dealers or marketers reimburse Equilon or Motiva) in existence as of the date the Commission accepts this Order for public comment, which amounts become due (or which Equilon or Motiva contends become due) as a result of the loss of the Texaco brand at any retail outlet, together with any reasonable litigation or

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arbitration expenses incurred by such dealer or marketer in contesting or defending against such payment, provided that (1) the dealer or marketer has declined a request for payment from Equilon or Motiva, (2) Equilon or Motiva has commenced litigation or arbitration to compel payment, and (3) the dealer or marketer has, at the Respondents' option, either (a) vigorously defended the litigation or arbitration or (b) afforded Respondents the right to defend the litigation or arbitration on the dealer's or marketer's behalf. Provided further, however, that no such indemnification need be provided for any retail outlet (a) as to which the dealer or marketer terminates its brand relationship prior to the Brand License Date, (b) which becomes a Shell branded outlet, or (c) which received or will receive compensation, directly or indirectly, for the amounts such dealer or marketer may be required to pay, but only to the extent of such compensation.

- F. For a period of one (1) year following the date on which Equilon or Motiva stops supplying gasoline under the Texaco brand to any retail outlet branded Texaco as of the date this Consent Agreement is executed by Respondents, Respondents shall not enter into any agreement for the sale of branded gasoline to such retail outlet, sell branded gasoline to such retail outlet, or approve the branding of such retail outlet, under the Texaco brand or under any brand that contains the Texaco brand, unless either (1) such agreement, sale, or approval would not result in an increase in Concentration Levels in the sale of gasoline in any Section of the Country, based on market share data supplied to the Commission by Respondents that is verifiable by the Commission, or (2) there are no sales of Chevron branded gasoline in that Section of the Country. Respondents shall notify the Commission of each such agreement no later than sixty (60) days after the execution of the agreement, including in the notification: (1) a copy of the agreement, (2) the address (street, city, county, state) of each retail outlet covered by the agreement, and the most recent annual sales volume (in gallons) at each

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such retail outlet, (3) the identity of the branded dealer or wholesale marketer that owns or supplies the retail outlets covered by the agreement, (4) the identity of each Section of the Country in which each such retail outlet is located, (5) the changes in Concentration Levels that Respondents believe will result from such agreement in each Section of the Country, together with the basis for such belief, (6) to the extent known or reasonably available, the annual sales volume and market shares of each of Shell, Texaco and Chevron branded gasoline, and the retail outlets subject to the agreement, in each Section of the Country affected by the agreement, both prior to and after execution of the agreement, measured by volume in gallons sold (or, if volume in gallons is not available, by other standard industry measures), and (7) all market survey data for such Section of the Country obtained from New Image, NPD, Lundberg, or any other independent third-party market surveyor, or conducted by Respondents, together with all other data relied upon by Respondents as the basis for their assessment of Concentration Levels or changes in Concentration Levels. This Paragraph IV.F. shall expire on June 30, 2007.

- (1) It shall not be a violation of this Order if Respondents rescind any agreement for the sale of Texaco branded gasoline to a retail outlet that results in an increase in Concentration Levels under the standards set forth in this Paragraph IV.F., if Respondents rescind such agreement within thirty (30) days of being informed by the Commission that the Commission believes such agreement would result in such an increase.
- (2) In any enforcement proceeding brought by or on behalf of the Commission, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. Sec. 45(l), or

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any other statute enforced by the Commission, Respondents shall have the burden of proving that the agreement does not result in an increase in Concentration Levels in the sale of gasoline in any Section of the Country.

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall, within six (6) months of the Merger Date, divest absolutely and in good faith, at no minimum price, all of Texaco's interest in the Discovery System.
- B. Respondents shall divest all of Texaco's interest in the Discovery System only to an acquirer or acquirers that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall, prior to divestiture of Texaco's interest in the Discovery System and subject to the prior approval of the Commission, enter into an agreement with the acquirer of Texaco's interest in the Discovery System for the purchase, sale or exchange of natural gas liquids that is no less favorable for the acquirer than the terms of the Texaco-Williams Contract; provided, however, that the volumes of natural gas liquids to be transported or exchanged under such agreement may be limited to volumes attributable to natural gas production transported by the Discovery System from natural gas producing wells originating from the Relevant OCS Area. The purpose of this agreement is to prevent Respondents from imposing rates or terms for pipeline transportation to markets from the

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Discovery System's fractionating plant that would impede the ability of the Discovery System to compete for natural gas transportation from the Relevant OCS Area, and to fully preserve the viability of the Discovery System.

- D. Respondents shall waive and not enforce Texaco's right to terminate the Texaco-Williams Contract pursuant to Section 1.1 of the Texaco-Williams Contract if Texaco owns less than a twenty percent (20%) interest in the Discovery System.
- E. No later than five (5) business days following the Merger Date, Respondents shall, pursuant to the Agreement for the Operation and Management of the Larose Gas Processing Plant & Paradis Fractionation Facility dated February 1, 1997, and any other applicable agreements, give notice to the other owners of the Discovery System of Texaco's resignation as operator of the Discovery System. Texaco shall resign as operator of the Discovery System immediately after it obtains the approvals required by the Agreement for the Operation and Management of the Larose Gas Processing Plant & Paradis Fractionation Facility dated February 1, 1997, and any other applicable agreements, but in no event later than one (1) year from the date Respondents give notice of Texaco's resignation as operator of the Discovery System. Respondents shall use best efforts to obtain those approvals as early as possible.
- F. The purpose of the divestiture of Texaco's interest in the Discovery System is to eliminate the overlap of ownership between the Discovery System and the Venice System and to remedy the lessening of competition 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, absolutely and in good faith and at no minimum price, within six (6) months from the Merger Date, all of Texaco's interest in the Enterprise Fractionating Plant.
- B. Respondents shall divest all of Texaco's interest in the Enterprise Fractionating Plant 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. The purpose of the divestiture of Texaco's interest in the Enterprise Fractionating Plant is to eliminate an overlap of ownership between the Enterprise Fractionating Plant and other fractionating plants at Mont Belvieu, Texas, in which Respondents or their affiliates own interests, and to remedy the lessening of competition resulting from the proposed Merger as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

- A. No later than ten (10) days after the Merger Date, Respondents shall divest, absolutely and in good faith, Texaco's Overlap General Aviation Business Assets to Avfuel, pursuant to and in accordance with the Aviation Fuel Divestiture Agreement. Any failure by Respondents to comply with any provision of the Aviation Fuel Divestiture Agreement shall constitute a failure to comply with this Order; provided, however, that if Respondents fail to divest Texaco's Overlap General Aviation

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Business Assets to Avfuel pursuant to and in accordance with the Aviation Fuel Divestiture Agreement within ten (10) days after the Merger Date, Respondents shall divest Texaco's Domestic General Aviation Business Assets, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission in a manner that receives the prior approval of the Commission pursuant to a Substitute Aviation Fuel Divestiture Agreement. Divestiture of Texaco's Domestic General Aviation Business Assets to an acquirer or acquirers that receive the prior approval of the Commission in a manner that receives the prior approval of the Commission pursuant to a Substitute Aviation Fuel Divestiture Agreement shall not preclude the Commission or the Attorney General from seeking civil penalties or any other relief available 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 their obligation to divest Texaco's Overlap General Aviation Business Assets to Avfuel pursuant to the Aviation Fuel Divestiture Agreement.

- B. If Respondents have divested Texaco's Overlap General Aviation Business Assets to Avfuel pursuant to the Aviation Fuel Divestiture Agreement, and at the time the Commission makes this Order final, it determines that Avfuel is not acceptable as the acquirer of Texaco's Overlap General Aviation Business Assets or that the Aviation Fuel Divestiture Agreement is not an acceptable manner of divestiture, and the Commission so notifies Respondents, Respondents shall within ten (10) days of such notification rescind the Aviation Fuel Divestiture Agreement with Avfuel.

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- C. If the Aviation Fuel Divestiture Agreement with Avfuel is rescinded pursuant to Paragraph VII.B. of this Order, then Respondents shall, within four (4) months of the Merger Date, divest Texaco's Domestic General Aviation Business Assets, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission, pursuant to a Substitute Aviation Fuel Divestiture Agreement.
- D. On or before the date of consummation of the Substitute Aviation Fuel Divestiture Agreement, Respondents shall assign to the acquirer all General Aviation Business Agreements used in or relating to Texaco's Domestic General Aviation Business; provided, however, should Respondents fail to obtain any such assignments, Respondents shall, subject to the prior approval of the Commission, substitute alternative agreements or arrangements sufficient to enable the acquirer approved by the Commission to operate Texaco's Domestic General Aviation Business in the same manner and at the same level and quality as Texaco operated it at the time of the announcement of the Merger.
- E. Respondents shall include in the Substitute Aviation Fuel Divestiture Agreement, at the option of the acquirer, a license for a period of up to ten (10) years from the date of such Agreement to use the Texaco brand in connection with the acquirer's operation of Texaco's Domestic General Aviation Business Assets. The license shall be royalty free for five (5) years from the date of consummation of such Substitute Aviation Fuel Divestiture Agreement, but subject to Commission approval may provide for payments beginning five (5) years

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after the date of the Agreement and escalating each year until the end of the ten-year term.

- F. For a period of six (6) months after the date of consummation of any Substitute Aviation Fuel Divestiture Agreement, Respondents shall not solicit, engage in discussions concerning, participate in, offer to enter into, or enter into, any contract or agreement for the direct supply of branded Aviation Fuel to any fixed base operator or distributor that had a Marketing Agreement for the sale of Texaco-branded Aviation Fuel in the United States.
- G. For a period of twelve (12) months after the acquirer pursuant to any Substitute Aviation Fuel Divestiture Agreement stops supplying Texaco-branded Aviation Fuel to a fixed base operator or distributor, Respondents shall not (1) enter into any contract or agreement for the direct or indirect supply of Texaco-branded Aviation Fuel to such fixed base operator or distributor, or (2) approve the branding of such fixed base operator or distributor with the Texaco brand.
- H. The purpose of the divestiture of Texaco's Overlap General Aviation Business Assets, or of Texaco's Domestic General Aviation Business Assets, is to ensure the continuation of such assets in the same business in which the assets were engaged at the time of the announcement of the Merger by a Person other than Respondents, and to remedy the lessening of competition alleged in the Commission's Complaint.

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VIII.

IT IS FURTHER ORDERED that:

- A. If Respondents have divested neither: (1) Texaco's Overlap General Aviation Business Assets as required by Paragraph VII. of this Order, nor (2) Texaco's Domestic General Aviation Business Assets as required by Paragraph VII. of this Order within four (4) months of the Merger Date, the Commission may appoint a trustee to divest Texaco's Domestic General Aviation Business Assets. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VIII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1.1 The Commission shall select a trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in

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acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the 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.

- 1.2 Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Texaco Domestic General Aviation Business Assets.
- 1.3 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.
- 1.4 The trustee shall have four (4) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the four-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; provided, however, the Commission may extend this period only two (2) times. The decision by

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the Commission to extend the time during which the trustee may accomplish the divestiture shall not preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

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

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however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

- 1.7 The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.
- 1.8 Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection

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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.

- 1.9 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 VIII.B.1. of this Order.
- 1.10 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.
- 1.11 The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
- 1.12 The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

IX.

IT IS FURTHER ORDERED that, 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., and XI.

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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 those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures of assets or businesses specified in this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

X.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to its principal office, Respondents shall permit any duly authorized representatives of the Commission:

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

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XI.

IT IS FURTHER ORDERED that within five (5) business days after the date on which the Commission accepts this Order for public comment, but in no event less than thirty (30) days before the Merger Date, Respondents shall notify Shell and SRI of the projected Merger Date and shall serve on Shell and SRI, by overnight delivery, copies of the Agreement Containing Consent Orders and all documents attached thereto, including the Trust Agreement, omitting or redacting from such service any information contained therein or attached thereto that is confidential business information. Any omissions or redactions to such agreements or documents attached thereto shall be subject to the prior approval of the Commission.

XII.

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 the Order.

XIII.

IT IS FURTHER ORDERED that:

- A. If (i) the Divestiture Trustee or Respondents have submitted a complete application in support of the divestiture of the assets, interests or businesses to be divested pursuant to Paragraph II. of this Order (including the buyer, manner of divestiture and all other matters subject to Commission approval) at least one month before the deadline for such divestiture; and (ii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iii) the Divestiture Trustee or

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Respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that a State, notwithstanding timely and complete application by Respondents to the State, has failed to approve the divestiture under a consent decree in an action commenced by any State requiring such divestiture, then, with respect to that divestiture, the time in which the divestiture is required under this Order to be complete shall be extended for sixty (60) days. During such sixty (60) day period, Respondents or the Divestiture Trustee shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

- B. If any Trustee or Respondents are unable to comply with any obligation of this Order, with the exception of the obligations of Paragraph II. of this Order, because of any failure to act or any action by any State or any court pursuant to a consent decree in an action commenced by any State in connection with the Merger, the time in which such obligation of this Order must be completed shall be extended for sixty (60) days. During such sixty (60) day period, Respondents or the applicable Trustee shall exercise utmost good faith and best efforts to resolve the concerns of the particular State or court.

By the Commission, Chairman Muris recused.

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger (the “Merger”) of Respondent Chevron Corporation (“Chevron”) and Respondent Texaco Inc. (“Texaco”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

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1. Respondent Chevron 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 575 Market Street, San Francisco, CA 94105.
2. Respondent Texaco 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 2000 Westchester Ave., White Plains, NY 10650.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Chevron” means Chevron Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Chevron, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Texaco” means Texaco Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Texaco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Order

- C. “Agreement Containing Consent Orders” means the agreement executed by Respondents in this matter containing the Decision and Order and this Hold Separate Order.
- D. “Avfuel” means Avfuel Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the state of Michigan, with its office and principal place of business located at 47 West Ellsworth, Ann Arbor, Michigan 48108.
- E. “Aviation Fuel” means Aviation Gasoline and Jet Fuel.
- F. “Aviation Fuel Divestiture Agreement” means all agreements entered into between Respondents and AvFuel relating to the sale of Texaco’s Overlap General Aviation Business Assets, including but not limited to the Purchase and Sale Agreement, the Trademark License Agreement, all supply agreements, and all other ancillary agreements, dated August 7, 2001, and attached as Confidential Appendix B to the Decision and Order.
- G. “Aviation Overlap State” means each of the following states: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington.
- H. “Decision and Order” means the Decision and Order contained in the Agreement Containing Consent Orders accepted by the Commission in this matter.
- I. “Disclose” means to convey by any means or otherwise make available information to any person or persons.
- J. “Discovery System” means Discovery Producer Services LLC, and all of its assets, including but not limited to Discovery Gas Transmission LLC and all of its assets, and including all pipelines of the system that transport natural

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gas offshore of Louisiana and onshore to the processing plant at LaRose, Louisiana; the processing plant at Larose, Louisiana; all pipelines that transport natural gas between the processing plant and natural gas transmission pipelines; all pipelines that transport raw mix between the processing plant and the fractionating plant at Paradis, Louisiana; the fractionating plant at Paradis, Louisiana; and equipment including but not limited to condensate stabilization facilities and pumping stations.

- K. “Divestiture Trustee” means a trustee appointed pursuant to Paragraph III.B. of the Decision and Order with the obligation to divest TRMI and/or TRMI East.
- L. “Enterprise Fractionating Plant” means the fractionating plant at Mont Belvieu, Texas, operated by Enterprise Products Company and partially owned by Texaco.
- M. “Equilon” means Equilon Enterprises LLC, a joint venture formed pursuant to the Equilon LLC Agreement.
- N. “Equilon Interest” means all of the ownership interests in Equilon owned directly or indirectly by Texaco, including the interests owned by TRMI and its wholly owned subsidiaries, Texaco Convent Refining Inc. and Texaco Anacortes Cogeneration Company.
- O. “Equilon LLC Agreement” means the Limited Liability Company Agreement of Equilon Enterprises LLC dated as of January 15, 1998 among certain subsidiaries of Shell and Texaco, as amended.
- P. “Held Separate Business” means all of Respondents’ interests and assets comprising the Trust, as defined and described in the Decision and Order, immediately before rescission of the Trust, including but not limited to TRMI and TRMI East to the extent they are assets of the Trust at such time.

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- Q. “Hold Separate Operating Trustees” means the same person as each of the Operating Trustees or any replacement Operating Trustees.
- R. “Hold Separate Divestiture Trustee” means the same person as the Divestiture Trustee or any replacement Divestiture Trustee.
- S. “Hold Separate Agreement” means the agreement between and among Respondents and the Hold Separate Operating Trustees and the Hold Separate Divestiture Trustee to effectuate the divestitures required by Paragraph II. of the Decision and Order, substantially similar to the Trust Agreement, and subject to the prior approval of the Commission.
- T. “Hold Separate Period” means, if the Trust is rescinded, unwound, dissolved, or otherwise terminated at a time after the Merger but before Respondents have complied with Paragraph II.A. of the Decision and Order, the period beginning on the Rescission Date and lasting until the business day after the divestitures required by the Decision and Order in this matter have been accomplished and Respondents have so notified the Commission.
- U. “JV Agreements” means the Equilon LLC Agreement and the Motiva LLC Agreement.
- V. “Merger” means any merger between Respondents, including the proposed merger contemplated by the Agreement and Plan of Merger dated October 15, 2000, as amended, among Respondents and Keepep Inc.
- W. “Motiva” means Motiva Enterprises LLC, a joint venture formed pursuant to the Motiva LLC Agreement.

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- X. “Motiva Interest” means all of the ownership interests in Motiva owned directly or indirectly by Texaco, including the interest owned by TRMI East.
- Y. “Motiva LLC Agreement” means the Limited Liability Company Agreement of Motiva Enterprises LLC dated as of July 1, 1998, among Shell, Shell Norco Refining Company, SRI and TRMI East.
- Z. “Non-Public Equilon Or Motiva Information” means any information not in the public domain relating to Equilon or Motiva.
- AA. “Non-Public Discovery System Information” means any information not in the public domain relating to the Discovery System, including but not limited to information pertaining to the Relevant OCS Area Disclosed by customers or potential customers to employees or representatives of the Discovery System. Non-Public Discovery System Information shall not include information that was publicly available prior to the date this Hold Separate Order is signed by Respondents or that is thereafter Disclosed to Respondents without any violation of this Hold Separate Order by Respondents or violation of law by or known to Respondents.
- BB. “Non-Public Venice System Information” means any information not in the public domain relating to the Venice System, including but not limited to information pertaining to the Relevant OCS Area Disclosed by customers or potential customers to employees or representatives of the Venice System. Non-Public Venice System Information shall not include information that was publicly available prior to the date this Hold Separate Order is signed by Respondents or that is thereafter Disclosed to Respondents without any violation of this Hold Separate Order by Respondents or violation of law by or known to Respondents.

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- CC. “Operating Trustee” means each trustee appointed pursuant to Paragraph III.O. of the Decision and Order with the obligation to manage TRMI and/or TRMI East pursuant to the Decision and Order.
- DD. “Rescission Date” means the date on which the Trust was rescinded, unwound, dissolved, or otherwise terminated, if such rescission, unwinding, dissolution, or termination occurs.
- EE. “Respondents” means Chevron and Texaco, individually and collectively, and any successors.
- FF. “Shell” means Shell Oil Company, a Delaware corporation, with its principal place of business located at One Shell Plaza, Houston, Texas 77002, its parents, and its subsidiaries controlled by Shell.
- GG. “SRI” means Saudi Refining, Inc., a Delaware corporation, with its principal place of business located at 9009 West Loop South, Houston, TX 77210, its parents, and its subsidiaries controlled by SRI.
- HH. “Texaco’s Domestic General Aviation Business” means the supply, distribution, marketing, transportation, and sale of Aviation Fuel by Texaco on a direct or distributor basis to customers (other than commercial airlines and military) in the United States (including the Aviation Overlap States), including but not limited to fixed base operators, airport dealers, distributors, jobbers, resellers, brokers, corporate accounts, or consumers
- II. “Texaco’s Domestic General Aviation Business Assets” means all assets, tangible or intangible, relating to Texaco’s Domestic General Aviation Business in the United States, including but not limited to all General Aviation Business Agreements used in or relating to

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Texaco's Domestic General Aviation Business.

- JJ. "Texaco's Overlap General Aviation Business" means the supply, distribution, marketing, transportation, and sale of Aviation Fuel by Texaco on a direct or distributor basis to customers (other than commercial airlines and military) in the Aviation Overlap States, including but not limited to fixed base operators, airport dealers, distributors, jobbers, resellers, brokers, corporate accounts, or consumers, but excluding the assets and agreements set forth in Schedule 2.3(c) of the Aviation Fuel Divestiture Agreement.
- KK. "Texaco's Overlap General Aviation Business Assets" means all assets, tangible or intangible, relating to Texaco's Overlap General Aviation Business, including but not limited to all General Aviation Business Agreements used in or relating to Texaco's Overlap General Aviation Business, but excluding the assets and agreements set forth in Schedule 2.3(c) of the Aviation Fuel Divestiture Agreement.
- LL. "TRMI" means Texaco Refining and Marketing Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and its subsidiary, Texaco Convent Refining Inc., and Texaco's interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Equilon.
- MM. "TRMI East" means Texaco Refining and Marketing (East) Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and Texaco's interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Motiva.
- NN. "Trust" means the trust established by the Trust Agreement as required by the Decision and Order.

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- OO. “Trust Agreement” means the Agreement and Declaration of Trust approved by the Commission and attached as Appendix A to the Decision and Order.
- PP. “Venice System” means Venice Energy Services Company, L.L.C., and all of its assets, including but not limited to (i) natural gas processing, fractionation and natural gas liquids storage and terminaling facilities at the Venice Complex (as that term is defined in the Second Amended and Restated Limited Liability Company Agreement of Venice Energy Services Company, L.L.C.), (ii) onshore and offshore natural gas pipelines upstream from the Venice Complex, known as the Venice Gathering System, (iii) compression, separation, dehydration, and residue gas and liquid gas handling facilities at or associated with the Venice Complex (excluding any residue gas pipelines and metering facilities owned by the downstream pipelines), and (iv) natural gas liquids facilities (excluding natural gas liquids pipelines downstream from the Venice Complex) related to such processing, fractionation, storage and termination facilities.

II.

IT IS FURTHER ORDERED that

- A. Pending divestiture of Texaco’s interest in the Discovery System, Respondents shall vote Texaco’s interest in the Discovery System in accordance with the majority of votes cast by its other owners so long as Texaco’s rights and obligations arising from the vote are commensurate with Texaco’s ownership interest in the Discovery System.
- B. Pending divestiture of Texaco’s interest in the Enterprise Fractionating Plant, Respondents shall vote Texaco’s

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interest in the Enterprise Fractionating Plant in accordance with the majority of votes cast by its other owners, so long as Texaco's rights and obligations arising from the vote are commensurate with Texaco's ownership interest in the Enterprise Fractionating Plant.

- C. From the date Respondents sign the Consent Agreement in this matter until the divestiture required by Paragraph V. of the Decision and Order has been completed or the Commission determines that no further relief pursuant to Paragraph V. of the Decision and Order is necessary, Respondents shall not Disclose any Non-Public Discovery System Information to (1) any employee of Respondents who receives any Non-Public Venice System Information, (2) any employees of the Venice System, or (3) any employees of any other owner of the Venice System.
- D. From the date Respondents sign the Consent Agreement in this matter until the divestiture required by Paragraph V. of the Decision and Order has been completed or the Commission determines that no further relief pursuant to Paragraph V. of the Decision and Order is necessary, Respondents shall not Disclose any Non-Public Venice System Information to (1) any employee of Respondents who receives any Non-Public Discovery System Information, (2) any employees of the Discovery System, or (3) any employees of any other owner of the Discovery System.
- E. Respondents shall take all steps to ensure that if, contrary to the requirements of Paragraph II.C. of this Hold Separate Order, Respondent employees who receive any Non-Public Venice System Information receive any Non-Public Discovery System Information during the time period described in Paragraph II.C., they will not use such information for any purpose.

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- F. Respondents shall take all steps to ensure that if, contrary to the requirements of Paragraph II.D. of this Hold Separate Order, Respondent employees who receive any Non-Public Discovery Information, receive any Non-Public Venice System Information during the time period described in Paragraph II.D., they will not use such information for any purpose.

III.

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 Order and shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Operating Trustees, except to the extent that Respondents must exercise direction and control over the Held Separate Business to assure compliance with this Hold Separate Order, or with the Decision and Order issued in this matter, and except as otherwise provided in this Hold Separate Order or the Decision and Order, and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business.
- B. The purpose of this paragraph of this Hold Separate Order is, in the event that the Trust is rescinded, unwound, dissolved, or otherwise terminated at any time after the Merger but before Respondents have complied with Paragraph II.A of the Decision and Order, to: (i) preserve the Held Separate Business, including TRMI and TRMI East, as viable, competitive, and ongoing businesses independent of Respondents until the divestitures required by the Decision and Order have been accomplished; (ii) prevent interim harm to competition pending the relevant divestitures; and (iii) help remedy any anticompetitive

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effects of the proposed Merger.

- C. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. No later than two (2) business days after the Rescission Date, Respondents shall agree to the appointment of Robert A. Falise as Hold Separate Divestiture Trustee and enter into an agreement substantially similar to the Trust Agreement, subject to the prior approval of the Commission, that transfers to the Hold Separate Divestiture Trustee the sole and exclusive power and authority to divest TRMI and/or TRMI East or to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, consistent with the terms of Paragraph II. of the Decision and Order and subject to the prior approval of the Commission as set forth in such Decision and Order. After such transfer, the Hold Separate Divestiture Trustee shall have the sole and exclusive power and authority to divest such assets or interests, subject to the prior approval of the Commission as set forth in such Decision and Order, and the Hold Separate Divestiture Trustee shall exercise such power and authority and carry out the duties and responsibilities of the Hold Separate Divestiture Trustee in a manner consistent with the purposes of this Hold Separate Order in consultation with the Commission's staff.
 2. The Hold Separate Divestiture Trustee shall have eight (8) months from the Merger Date and such additional time as is provided pursuant to Paragraph XIII. of the Decision and Order to accomplish the divestitures required by Paragraph II. of the Decision and Order, which shall be

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subject to the prior approval of the Commission as set forth in the Decision and Order. If, however, at the end of this period, the Hold Separate Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the Hold Separate Divestiture Trustee's divestiture period may be extended by the Commission. An extension of time by the Commission under this subparagraph shall not preclude the Commission from seeking any relief available to it for any failure by Respondents to divest the Equilon Interest or TRMI and/or the Motiva Interest or TRMI East consistent with the requirements of Paragraph II of the Decision and Order.

3. If, on or prior to the Rescission Date, Respondents have executed but have not consummated an agreement or agreements to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, then Respondents shall, no later than the Rescission Date, grant sole and exclusive authority to the Hold Separate Divestiture Trustee to consummate any divestiture contemplated thereby subject to the Commission's prior approval as set forth in the Decision and Order.
4. The Hold Separate Divestiture Trustee shall divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, in a manner that receives the prior approval of the Commission, pursuant to the terms of the applicable agreement or agreements approved by the Commission, if either (a) Respondents have executed an agreement or agreements with Shell and/or SRI with respect to such divestiture or divestitures prior to the Rescission Date, and such agreement or agreements have been approved by the

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Commission and have not been breached by Shell and/or SRI; or (b) Shell has exercised its right to acquire the Equilon Interest pursuant to the Equilon LLC Agreement and/or Shell and/or SRI have exercised their rights to acquire the Motiva Interest pursuant to the Motiva LLC Agreement.

5. Subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price, the Hold Separate Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of (a) TRMI, if the Hold Separate Divestiture Trustee has not divested the Equilon Interest pursuant to subparagraph 4 of this paragraph, and/or (b) TRMI East, if the Hold Separate Divestiture Trustee has not divested all or part of the Motiva Interest pursuant to subparagraph 4 of this paragraph. Each divestiture shall be made only in a manner that receives the prior approval of the Commission, and, unless the acquirers are Shell and/or SRI, the divestiture shall be made only to an acquirer or acquirers that receive the prior approval of the Commission; provided, however, if the Hold Separate Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Hold Separate Divestiture 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.
6. The Hold Separate Divestiture Trustee shall have full and complete access to all personnel, books,

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records, documents, and facilities of Respondents, TRMI and TRMI East, as needed to fulfill the Hold Separate Divestiture Trustee's obligations, or to any other relevant information, as the Hold Separate Divestiture Trustee may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under this Hold Separate Order and the Decision and Order. Respondents or the Hold Separate Operating Trustees, as appropriate, shall develop such financial or other information as the Hold Separate Divestiture Trustee may reasonably request and shall cooperate with the Hold Separate Divestiture Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Divestiture Trustee's ability to perform his or her responsibilities.

7. The Hold Separate Divestiture 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 may set. The Hold Separate Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such financial advisors, consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Divestiture Trustee's duties and responsibilities.
8. Respondents shall indemnify the Hold Separate Divestiture Trustee and hold the Hold Separate Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Divestiture Trustee's duties,

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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 Divestiture Trustee.

9. The Hold Separate Divestiture Trustee shall account for all monies derived from the sale and all expenses incurred, subject to the approval of the Commission. After approval by the Commission of the account of the Hold Separate Divestiture Trustee, all remaining monies shall be paid as directed in the Hold Separate Agreement, and the Hold Separate Divestiture Trustee's powers shall be terminated.
10. The Hold Separate Divestiture Trustee shall report in writing to the Commission thirty (30) days after appointment and every thirty (30) days thereafter concerning the Hold Separate Divestiture Trustee's efforts to accomplish the requirements of this Hold Separate Order and the Decision and Order until such time as the divestitures required by Paragraph II. of the Decision and Order have been accomplished and Respondents have notified the Commission that the divestitures have been accomplished.
11. If, for any reason, Robert A. Falise cannot serve or cannot continue to serve as Hold Separate Divestiture Trustee, or fails to act diligently, the Commission shall select a replacement Hold Separate Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not

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opposed, in writing, including the reasons for opposing, the selection of any replacement Hold Separate Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed replacement Hold Separate Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed replacement Hold Separate Divestiture Trustee. The replacement Hold Separate Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures.

12. The Commission may on its own initiative or at the request of the Hold Separate Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order or the Decision and Order.
13. No later than two (2) business days after the Rescission Date, Respondents shall agree to the appointment of Joe B. Foster as Hold Separate Operating Trustee of TRMI (with respect to the Equilon Interest) and John Linehan as Hold Separate Operating Trustee of TRMI East (with respect to the Motiva Interest) and enter into a Hold Separate Agreement substantially similar to the Trust Agreement, subject to the prior approval of the Commission, that transfers to the Hold Separate Operating Trustees sole and exclusive power and authority to manage TRMI and/or TRMI East (as the case may be).
14. The Hold Separate Operating Trustees shall have sole and exclusive power and authority to manage TRMI and/or TRMI East (as the case may be), as set forth in the Hold Separate Agreement and

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specifically to cause TRMI and TRMI East respectively to exercise the rights of TRMI and TRMI East under the Equilon and Motiva LLC Agreements. Each Hold Separate Operating Trustee may engage in any other activity such Hold Separate Operating Trustee may deem reasonably necessary, advisable, convenient or incidental in connection therewith and shall exercise such power and authority and carry out the duties and responsibilities of the Hold Separate Operating Trustee in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order in consultation with the Commission's staff.

15. Each Hold Separate Operating Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of TRMI and/or TRMI East as needed to fulfill such Hold Separate Operating Trustee's obligations, or to any other relevant information, as such Hold Separate Operating Trustees may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under this Hold Separate Order and the Decision and Order. Respondents shall develop such financial or other information as such Hold Separate Operating Trustees may reasonably request and shall cooperate with the Hold Separate Operating Trustees. Respondents shall take no action to interfere with or impede the Hold Separate Operating Trustees' ability to perform his or her responsibilities.
16. The Hold Separate Operating Trustees shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and

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customary terms and conditions as the Commission may set. Each Hold Separate Operating 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 such Hold Separate Operating Trustee's duties and responsibilities.

17. Respondents shall indemnify each Hold Separate Operating Trustee and hold each Hold Separate Operating Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of such Hold Separate Operating 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 such Hold Separate Operating Trustee.
18. The Hold Separate Operating Trustees shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
19. Each Hold Separate Operating Trustee shall report in writing to the Commission thirty (30) days after the Rescission Date and every thirty (30) days thereafter concerning the Hold Separate Operating Trustee's performance of his or her duties under this Hold Separate Order, the Decision and Order, and the Hold Separate Agreement. The Hold Separate Operating Trustees shall serve until such time as Respondents have complied with their

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obligation to divest TRMI and/or TRMI East as required by this Hold Separate Order and the Decision and Order, and Respondents have notified the Commission that the divestitures have been accomplished.

20. If for any reason Joe B. Foster cannot serve or cannot continue to serve as Hold Separate Operating Trustee of TRMI or John Linehan cannot serve or cannot continue to serve as Hold Separate Operating Trustee of TRMI East, or fails to act diligently, the Commission shall select a replacement Hold Separate Operating Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any replacement Hold Separate Operating Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed replacement Hold Separate Operating Trustee, Respondents shall be deemed to have consented to the selection of the proposed replacement Hold Separate Operating Trustee. The replacement Hold Separate Operating Trustee shall be a person with experience and expertise in the management of businesses of the type engaged in by Equilon and Motiva.
21. The Commission may on its own initiative or at the request of either Hold Separate Operating Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order or the Decision and Order.
22. Except as provided herein or in the Hold Separate Agreement, neither the Hold Separate Divestiture

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Trustee nor the Hold Separate Operating Trustees shall disclose any Non-Public Equilon or Motiva Information to an employee of Respondents.

23. Respondents may require the Hold Separate Divestiture Trustee or Hold Separate Operating Trustees to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his or her role as Hold Separate Divestiture Trustee or Hold Separate Operating Trustee to anyone other than the Commission.
24. The purpose of this Paragraph III is to effectuate the divestitures required by Paragraph II. of the Decision and Order and to maintain operation of TRMI, TRMI East, Equilon and Motiva separate and apart from Respondents' operations pending the required divestitures.

IV.

IT IS FURTHER ORDERED that, pending divestiture of Texaco's Overlap General Aviation Business Assets (or Texaco's Domestic General Aviation Business Assets, as appropriate) pursuant to Paragraphs VII. or VIII. of the Decision and Order, Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of Texaco's Domestic General Aviation Business Assets and to prevent the destruction, removal, wasting, or deterioration of Texaco's Domestic General Aviation Business Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.

V.

IT IS FURTHER ORDERED that Respondents shall, within ten (10) days of the Rescission Date, circulate to all of

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Respondents' employees a copy of this Hold Separate Order and shall post a notice accessible to all employees informing employees of Respondents' obligations pursuant to this Hold Separate Order.

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

1. Within thirty (30) days after the Rescission Date and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II and III of the Decision and 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 those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures of assets or businesses specified in this Hold Separate Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports, copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.
2. Within thirty (30) days after this Hold Separate Order is final, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II. and IV. of this Hold Separate 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 those provisions.
3. With the agreement of the staff of the Commission, Respondents may submit one compliance report to the

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Commission, at sixty (60) day intervals, including the information required by Paragraphs VI.A. and VI.B. of the Hold Separate Order, and Paragraph IX. of the Decision and Order, which will, if it includes all required information, be considered a timely filing of each of the compliance reports required by these provisions.

VII.

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

1. During office hours and in the presence of counsel, access to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Hold Separate Order; and
2. Upon five business days' notice to Respondents and without restraint or interference from Respondents, to interview officers or employees of Respondents who may have counsel present, regarding such matters.

By the Commission, Chairman Muris recused.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment**I. Introduction**

The Federal Trade Commission (“Commission” or “FTC”) has issued a complaint (“Complaint”) alleging that the proposed merger of Chevron Corporation (“Chevron”) and Texaco Inc. (“Texaco”) (collectively “Respondents”) 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, and has entered into an agreement containing consent orders (“Agreement Containing Consent Orders”) pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets (“Proposed Consent Order”) and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (“Hold Separate Order”). The Proposed Order remedies the likely anticompetitive effects arising from Respondents’ proposed merger, as alleged in the Complaint. The Hold Separate Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Chevron, headquartered in San Francisco, California, is one of the world’s largest integrated oil companies. Chevron is engaged, either directly or through affiliates, in the exploration for, and production of, oil and natural gas; the pipeline transportation of crude oil, natural gas, and natural gas liquids; the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline and aviation fuel; and other related businesses. During fiscal year 1999, Chevron had worldwide revenues of approximately \$35.4 billion and net income of approximately \$2.1 billion.

Chevron sold its natural gas and natural gas liquids transportation, distribution and marketing operations to NGC Corporation in 1996 and retained a stock interest in the company. NGC subsequently became Dynegy Inc. Dynegy is engaged in

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the gathering, processing, fractionation, transmission, terminaling, storage, and marketing of natural gas and natural gas liquids. Chevron owns approximately 26% of Dynegy. Chevron has a long-term strategic alliance with Dynegy for the marketing of Chevron's natural gas and natural gas liquids, and the supply of natural gas and natural gas liquids to Chevron's refineries in the lower 48 states of the United States. Chevron has three positions on Dynegy's Board of Directors. This relationship gives Chevron access to information concerning Dynegy's business and allows Chevron to participate in Dynegy's business decisions.

Texaco, headquartered in White Plains, New York, is one of the world's largest integrated oil companies. Among its other businesses, Texaco is engaged, either directly or through affiliates, in the exploration for, and production of, oil and natural gas; the pipeline transportation of natural gas and natural gas liquids; the pipeline transportation of crude oil; the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline and aviation fuel; and other related businesses. During fiscal year 1999, Texaco had worldwide revenues of approximately \$35.7 billion and net income of approximately \$1.2 billion.

In 1998, Texaco contributed its U.S. petroleum refining, marketing and transportation businesses to two joint ventures and retained an interest in the ventures. The joint ventures are Equilon Enterprises, LLC ("Equilon"), which is owned by Texaco and Shell Oil Company ("Shell"), and Motiva Enterprises, LLC ("Motiva"), which is owned by Shell, Texaco, and Saudi Refining, Inc. ("SRI"). The two joint ventures are referred to collectively as "the Alliance."

Equilon consists of Texaco's and Shell's western and midwestern U.S. refining and marketing businesses, and their nationwide transportation and lubricants businesses. Texaco and Shell jointly control Equilon. Equilon's major assets include full or partial ownership in four refineries, seven lubricants plants, about 65 terminals, and various pipelines. Equilon markets

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through approximately 9,700 branded gasoline retail outlets in the U.S.

Motiva consists of Texaco's, Shell's, and SRI's U.S. eastern and Gulf Coast refining and marketing businesses. Texaco, Shell and SRI jointly control Motiva. Motiva's major assets include full or partial ownership in four refineries and about 50 terminals. Motiva markets through approximately 14,000 branded gasoline retail outlets.

Pursuant to an agreement and plan of merger dated October 15, 2000, Chevron has agreed to acquire all of the outstanding common stock of Texaco in exchange for stock of Chevron. As a result of the merger, Chevron's shareholders will hold approximately 61%, and Texaco's shareholders will hold approximately 39%, of the new combined entity.

III. The Investigation and the Complaint

The Complaint alleges that the merger of Chevron and Texaco 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, by substantially lessening competition in each of the following markets: (1) the marketing of gasoline in the western United States (including the States of Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), the southern United States (including the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia), the States of Alaska and Hawaii, and smaller areas contained therein; (2) the marketing of CARB gasoline in the State of California; (3) the refining and bulk supply of CARB gasoline for sale in the State of California; (4) the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascade mountains; (5) the bulk supply of Phase II Reformulated Gasoline ("RFG II") in the St. Louis metropolitan area; (6) the terminaling of gasoline and other light petroleum products in Arizona (Phoenix and Tucson), California (San Diego

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and Ventura), Mississippi (Collins), and Texas (El Paso), and the islands of Hawaii, Kauai, Maui, and Oahu in Hawaii; (7) the pipeline transportation of crude oil from California's San Joaquin Valley; (8) the pipeline transportation of crude oil from portions of the Eastern Gulf of Mexico; (9) the pipeline transportation of offshore natural gas to shore from locations in the Central Gulf of Mexico; (10) the fractionation of raw mix into natural gas liquids specification products in the vicinity of Mont Belvieu, TX; and (11) the marketing and distribution of aviation fuel, including aviation gasoline and jet fuel, to general aviation customers in the western United States, including the States of Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, and the southeastern United States, including the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, and smaller areas contained therein.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest all of Texaco's interests in the Alliance (including both Equilon and Motiva), which includes (among other businesses) all of Texaco's interests in the following: (a) gasoline marketing in the States of Alaska and Hawaii, in the Western United States (Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), and the Southern (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia); (b) marketing of CARB gasoline in California; (c) refining and bulk supply of CARB gasoline for sale in California; (d) refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; (e) the Explorer Pipeline and the bulk supply of RFG II into St. Louis; (f) terminaling of gasoline and other light products in ten metropolitan areas in Arizona, California, Mississippi, and Texas, and four islands in Hawaii; (g) the Equilon pipeline that transports crude oil from California's San Joaquin Valley; and (h) the Equilon crude oil pipeline in the Eastern Gulf of Mexico. In addition to its interest in the Alliance, Texaco must divest its one-third interest in the Discovery pipeline system; its interest in the Enterprise fractionating plant in Mont Belvieu; and its general aviation business in fourteen states (Alaska, Alabama, Arizona,

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California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington) to Avfuel Corporation.

The Complaint alleges in 11 counts that the merger would violate the antitrust laws in various lines of business and sections of the country, each of which is discussed below.

A. Count I - Marketing of Gasoline

Chevron and Texaco, through its ownership interest in the Alliance (including Equilon and Motiva), are competitors in the marketing of gasoline in the Western and Southern United States and in the States of Alaska and Hawaii. The marketing of gasoline in numerous markets within these areas would become highly concentrated, or significantly more concentrated, as a result of the proposed merger.¹ For example, in some markets in the states of Louisiana, Mississippi, Oregon and Washington, the proposed merger would increase concentration by more than 1,000 points to HHI levels above 3,000. In many other markets, the proposed merger would result in significant increases in concentration to levels at which competition may be harmed. Complete divestiture of Texaco's ownership interest in the Alliance is the most practical solution to resolve the anticompetitive effects in these markets that would result from the proposed acquisition. This total divestiture will achieve relief in all markets where the merger would substantially lessen competition.

¹ 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. *FTC and Department of Justice Horizontal Merger Guidelines* ("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." *Merger Guidelines* § 1.51.

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The marketing of gasoline is a relevant line of commerce, *i.e.*, a relevant product market, for which the proposed merger may lead to an increase in price. Gasoline is a motor fuel used in automobiles and other vehicles. It is produced in various grades and types, including conventional unleaded gasoline, reformulated gasoline (“RFG”), California Air Resources Board (“CARB”) gasoline, and others. There is no substitute for gasoline as a fuel for automobiles and other vehicles that are designed to use gasoline.

The Complaint alleges that the proposed transaction would lessen competition in the western United States (Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), the southern United States (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia), the States of the Alaska and Hawaii, and in smaller areas contained therein. Numerous metropolitan areas in the western United States² and the southern United States,³ would be affected by the

² Phoenix and Tucson, AZ; Boise, ID; Las Vegas and Reno, NV; Albuquerque-Santa Fe, NM; Eugene, Klamath Falls-Medford, and Portland, OR; Salt Lake City, UT; Seattle-Tacoma, Spokane, and Yakima, WA; and Casper-Riverton, WY. In addition, in Alaska, the relevant areas are Anchorage, Fairbanks, Juneau, Ketchikan, and Sitka. In Hawaii, there are four individual islands, Hawaii, Kauai, Maui, and Oahu, that would be affected by the proposed transaction.

³ Anniston, Birmingham, Decatur-Huntsville, Dothan, and Montgomery, AL; Mobile-Pensacola, AL/FL; Fort Lauderdale-Miami, Fort Pierce-West Palm Beach, Gainesville, and Panama City, FL; Albany, Atlanta, Columbus, Macon, and Savannah, GA; Lexington and Paducah, KY; Alexandria, Baton Rouge, El Dorado-Monroe, Lafayette, Lake Charles, New Orleans, and Shreveport, LA; Biloxi-Gulfport, Columbus-Tupelo-West Point, Hattiesburg-Laurel, Jackson, and Meridian, MS; Greenville-New Bern-Washington, NC; Ada-Ardmore, OK; Lawton-Wichita Falls,

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proposed acquisition. The Commission used metropolitan statistical areas (“MSAs”) as a reasonable approximation of geographic markets for gasoline marketing in Shell Oil Co., C-3803 (1998), British Petroleum Co., C-3868 (1999), and Exxon, C-3907 (2000).

The marketing segment of the business involves the wholesale and retail sale of branded and unbranded gasoline. Branded gasoline is sold under an oil company trade name (or “flag”) such as Chevron, Texaco, Exxon or Shell. Unbranded gasoline is typically sold under a private label or independent trade name. Gasoline is generally sold to the general public through several different types of retail outlets, including: (1) company-operated stations, which are owned and operated by the parent oil company; (2) lessee-dealers, stations leased from the parent oil company, but operated by independent dealers; (3) open dealers, stations owned and operated by independent dealers under a franchise agreement with the parent oil company or under a supply agreement with a distributor; and (4) distributors (or “jobbers”), who own and operate a network of stations in a particular area under a franchise agreement with the parent oil company.

Branded oil companies set the retail prices of gasoline on a station-by-station basis at the stores they operate. Lessee-dealers and many open dealers purchase from the branded company at a delivered price (“dealer tank wagon” or “DTW”). DTW prices charged by major oil companies are typically set using “price zones.” Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations

OK/TX; Chattanooga, TN; Bristol-Johnson City-Kingsport, TN/VA; Abilene-Sweetwater, Amarillo, Austin, Beaumont-Port Arthur, Brownsville-Harlingen-Weslaco, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, Midland-Odessa, San Angelo, San Antonio, Temple-Waco, and Tyler, TX; Lynchburg-Roanoke and Petersburg-Richmond, VA; and Beckley-Bluefield-Oak Hill, WV.

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or groups of stations and are generally unrelated to the cost of hauling fuel from the terminal to the retail store. Distributors or jobbers typically purchase branded gasoline from the branded company at a terminal (paying a terminal “rack” price), and deliver the gasoline to their own stations or to jobber-supplied stations at prices set by the distributor.

New entry is unlikely to constrain anticompetitive behavior in the markets at issue. New entrants typically face significant obstacles to becoming effective competitors, including obtaining a reliable supply of gasoline at a competitive price, and gaining access to a sufficient number of retail outlets. As a result, it is unlikely that entry will constrain a price increase resulting from the merger.

The Complaint alleges that Texaco, through the Alliance, and Chevron are direct competitors in the marketing of motor gasoline in the relevant geographic areas. The Commission is concerned that the proposed merger would increase the likelihood of coordination among the few participants in the relevant areas, by effectively combining the Chevron, Texaco and Shell brands, which would lead to an increase in the price of gasoline in the affected areas. To address the overlap in gasoline marketing between Chevron and Texaco in the relevant markets, the Proposed Order requires Texaco to divest its interest in Equilon and Motiva.

B. Count II - Marketing of CARB Gasoline

Texaco, through Equilon, and Chevron are competitors in the marketing of CARB gasoline for sale throughout the State of California. The merger would result in highly concentrated markets throughout the State of California.⁴ Concentration in

⁴ The metropolitan areas alleged in the Complaint are Bakersfield, Chico-Redding, Fresno-Visalia, Los Angeles, Modesto-Sacramento-Stockton, Monterey-Salinas, Oakland-San Francisco-San Jose, Palm Springs, San Diego, and San Luis

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some markets, such as Bakersfield, Fresno-Visalia, and Palm Springs, would increase to HHI levels above 2,500. The proposed merger would increase concentration in each of the California markets alleged in the complaint by more than 100 points to HHI levels above 2,000.

The refining and marketing of gasoline in California is tightly integrated, and there are only a 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. The extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply. Refiners that lack marketing in California, and marketers that lack refineries in these relevant markets, do not effectively constrain the price and output decisions of incumbent refiner-marketers. Entry is not likely to constrain an anticompetitive price increase.

The marketing of CARB gasoline in metropolitan areas in California is a relevant market. CARB gasoline is a motor fuel used in automobiles that meets the specifications of the California Air Resources Board ("CARB"). CARB gasoline is cleaner burning and causes less air pollution than conventional gasoline. Since 1996, the sale or use of any gasoline other than CARB gasoline has been prohibited in California. There are no substitutes for CARB gasoline as a fuel for automobiles and other vehicles that use gasoline in California. In the current investigation and in past decisions, the Commission concluded that the marketing of CARB gasoline in metropolitan areas in California is a relevant market.⁵

Obispo-Santa Barbara-Santa Maria.

⁵ Shell Oil Co., C-3803 (1998); Exxon, C-3907 (2000).

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More than 90% of the CARB gasoline sold in California is refined by seven vertically-integrated refiners (Chevron, Equilon, BP, Ultramar, Valero, ExxonMobil and Tosco). These seven firms also control more than 90% of retail sales of gasoline in California through gas stations under their brands.

CARB gasoline is a homogeneous product, and 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 can readily identify firms that deviate from a coordinated or collusive price.

California is largely isolated from most external sources of supply. CARB gasoline is generally manufactured primarily at refineries in California and at one other refinery located in Anacortes, Washington. 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. Non-West Coast refineries 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.

The Complaint charges that the proposed merger, absent relief, is likely to result in an increased likelihood of coordination in the marketing of CARB gasoline on the West Coast, and is likely to lead to higher prices of CARB gasoline in California. The Complaint further charges that Chevron/Texaco would likely be able to unilaterally increase prices in California in the absence of coordination. To remedy the likely harm, the Proposed Order requires Texaco to divest its interest in Equilon, which holds Texaco's marketing interests in the State of California.

C. Count III - Refining and Bulk Supply of CARB Gasoline

Texaco, through Equilon, and Chevron are competitors in the refining and bulk supply of CARB gasoline for sale in the State of

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California.⁶ The market for the refining and bulk supply of CARB gasoline would be highly concentrated following the proposed merger. Based on CARB refining capacity, the proposed merger would increase concentration for the refining of CARB gasoline by West Coast refineries by more than 500 points to an HHI level above 2,000.

The refining and bulk supply of CARB gasoline is a relevant product market, and the West Coast is a relevant geographic market. As explained in Count II, only CARB gasoline can be legally sold in the State of California. No refineries outside of California and one Washington refinery regularly produce CARB gasoline in significant quantities. The relevant geographic market is the West Coast. The West Coast is geographically isolated, and California's volatile wholesale gasoline prices discourage imports. Refiners outside of the West Coast are unlikely to bring in CARB gasoline to defeat a price increase. The extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply.

Entry is difficult and unlikely. New refineries are not likely to be built, and the lack of independent buyers in California makes it unlikely that regular supplies would be brought to California by a non-West Coast refiner. A new refinery would face severe environmental constraints and substantial sunk costs.

The Complaint charges that the proposed merger would likely reduce competition in the refining and bulk supply of CARB gasoline in California, thereby increasing wholesale prices of CARB gasoline. The proposed merger increases the likelihood of coordination among refiners, as well as unilateral reduction in

⁶ A bulk supply market consists of firms that have the ability to deliver large quantities of gasoline on a regular and continuing basis, such as pipelines or local refineries.

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output by Chevron/Texaco. The Proposed Order requires Texaco to divest its interest in Equilon, which holds Texaco's interest in the refineries that produce CARB gasoline for sale in California.

D. Count IV - Refining and Bulk Supply of Gasoline and Jet Fuel

Texaco, through Equilon, and Chevron are competitors in the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascade mountains. The market for the refining and bulk supply of gasoline and jet fuel for the Pacific Northwest would be highly concentrated following the proposed merger. The proposed merger would increase concentration in this market by more than 600 points to an HHI level above 2,000.

Gasoline and jet fuel constitute relevant product markets. There are no substitutes for gasoline in gasoline-fueled automobiles. Jet fuel is a motor fuel used in jet engines. Jet engines must use fuel that meets stringent specifications and cannot switch to any other type of fuel. There is no substitute for jet fuel for jet engines designed to use such fuel.

The Pacific Northwest is a relevant geographic market. Customers in the Pacific Northwest cannot practicably turn outside of the market to obtain supplies in sufficient quantities in response to a small but significant and nontransitory increase in price.

Entry by a refiner would not be likely, timely or sufficient to defeat an anticompetitive price increase. The West Coast as a whole is supply-constrained both in terms of available local production and its geographic isolation from other refining centers. A new entrant would face severe environmental constraints and substantial sunk costs.

The Complaint charges that the proposed merger would eliminate direct competition in the refining and bulk supply of gasoline and jet fuel between Chevron and Texaco, and would

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increase the likelihood of collusion or coordinated interaction between Respondents and their competitors, which would likely result in increased prices for the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest. The Proposed Order requires Texaco to divest its interest in Equilon, which holds Texaco's interest in the Alliance's West Coast refineries, to remedy the overlap presented by the merger.

E. Count V - Bulk Supply of Phase II Reformulated Gasoline

Phase II Reformulated Gasoline, referred to as "RFG II," is a motor fuel used in automobiles. RFG II is cleaner burning than some other types of gasoline and causes less air pollution. The United States Environmental Protection Agency requires the use of RFG II in certain areas, including the St. Louis metropolitan area. RFG II is supplied in bulk from facilities that have the ability to deliver large quantities of the product on a continuing basis, such as pipelines or local refineries.

The bulk supply of RFG II is a relevant product market. There are no substitutes for pipelines or refineries for the bulk supply of RFG II. Smaller facilities that deliver RFG II in small quantities, such as tank trucks, are not cost competitive with pipelines or refineries.

One area in which RFG II is required is the St. Louis metropolitan area. Customers in the St. Louis area cannot turn to RFG suppliers outside of the area in response to a small but significant and nontransitory increase in the price of RFG II in the St. Louis area.

Texaco, through Equilon, and Chevron each hold substantial interests in the market for the bulk supply of RFG II in the St. Louis metropolitan area. Chevron owns approximately 16.7% of Explorer Pipeline, and Texaco holds interests totaling approximately 35.9% of Explorer. The Explorer Pipeline is the largest pipeline provider of bulk RFG II supply in the St. Louis metropolitan area. Equilon also has a long-term contract through

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which it obtains supplies of RFG II for the St. Louis metropolitan area.

The market for the bulk supply of RFG II into the St. Louis metropolitan area is highly concentrated and would become significantly more concentrated following the proposed merger. The proposed merger would increase concentration in this market by more than 1,600 points to an HHI level of 5,000. Entry would not be likely, timely or sufficient to prevent anticompetitive effects resulting from the proposed merger.

The Complaint charges that the proposed merger would substantially lessen competition in the market for the bulk supply of RFG II in the St. Louis metropolitan area by eliminating direct competition between Chevron and Texaco, and by increasing the likelihood of collusion or coordinated interaction in the bulk supply of RFG II in the St. Louis area. The Proposed Order requires Texaco to divest Equilon, which will prevent the increase in concentration that would result from the merger.

F. Count VI - Terminaling

Texaco, through the Alliance, and Chevron are competitors in the terminaling of gasoline and other light petroleum products in metropolitan areas in Arizona, California, Mississippi, and Texas, and on certain islands in the State of Hawaii. The terminaling of gasoline and other light petroleum products in each of these markets would be highly concentrated following the proposed merger. The proposed merger would increase concentration in each of these markets by more than 300 points to HHI levels above 2,000.

The terminaling of gasoline and other light petroleum products is a relevant product market. Terminals are specialized facilities with large storage tanks used for the receipt and local distribution of large quantities of gasoline and other products. There are no substitutes for terminals for these uses. The proposed merger would be likely to lessen competition in Phoenix and Tucson, AZ,

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San Diego and Ventura, CA, Collins, MS, and El Paso, TX, and on the islands of Hawaii, Kauai, Maui, and Oahu, HI.

Entry is not likely to defeat an anticompetitive increase in the cost of terminaling in the affected areas. The combination of sunk costs, significant scale economies, and environmental regulations make terminal entry unlikely.

The Complaint alleges that the effect of the proposed merger would be to substantially lessen competition in the terminaling of gasoline and other light petroleum products in the relevant markets. Respondents, either unilaterally or in coordination with other terminal operators, would likely be able to increase the price of terminaling gasoline and other light petroleum products in the relevant sections of the country as a result of the merger. The Proposed Order requires Texaco to divest its interests in the Alliance, which holds its interests in the terminals in the relevant areas.

G. Count VII - Crude Oil Pipelines Out of San Joaquin Valley, CA

Texaco, through Equilon, and Chevron are competitors in the pipeline transportation of crude oil from California's San Joaquin Valley. This market is highly concentrated and would become significantly more concentrated as a result of the proposed merger. The proposed merger would increase concentration in this market by more than 800 points to an HHI level above 3,300.

Crude oil pipelines are specialized pipelines for the transportation of crude oil from production fields to refineries or to locations where the crude oil can be transported to refineries by other means. Chevron and Equilon each own a crude oil pipeline that transports crude oil out of the San Joaquin Valley in California. There are no alternatives to pipelines for the transportation of crude oil out of the San Joaquin Valley.

New entry is unlikely to constrain anticompetitive behavior in this market. New pipeline construction requires substantial sunk

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costs, and existing pipelines have a significant cost advantage over new entrants.

The Complaint alleges that the proposed merger eliminates direct competition between Chevron and Texaco and that the merger, if consummated, increases the likelihood of coordinated interaction for the pipeline transportation of crude oil from the San Joaquin Valley. In order to remedy the anticompetitive effects arising from the proposed merger, the Proposed Order requires Texaco to divest its interest in Equilon, which owns one of the pipelines that transports crude oil from the San Joaquin Valley.

H. Count VIII - Crude Oil Pipelines from the Eastern Gulf of Mexico

Texaco, through Equilon, and Chevron are competitors in the pipeline transportation of crude oil from portions of the Eastern Gulf of Mexico to on-shore terminals. The pipeline transportation of crude oil from locations in the Eastern Gulf of Mexico is highly concentrated and would become significantly more highly concentrated as a result of the proposed merger. The proposed merger would give the combined Chevron/Texaco substantial ownership interests in the only two pipelines that compete to transport crude oil from certain locations in the Eastern Gulf of Mexico.

A relevant product market is the pipeline transportation of crude oil. A relevant geographic market consists of locations in the Eastern Gulf of Mexico, including the Main Pass, Viosca Knoll, South Pass and West Delta Areas, as defined by the Department of Interior Minerals Management Service. There are two pipeline systems that transport crude oil from locations in the Eastern Gulf of Mexico to on-shore terminals: the Delta Pipeline System and the Cypress Pipeline System. The Delta system is wholly owned by Equilon. Chevron owns 50% of the Cypress system and is the operator. There are no alternatives to these two pipelines for the transportation of crude oil from locations in the Eastern Gulf of Mexico to on-shore terminals. Moreover, new

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entry into this market is unlikely because of the large economies of scale enjoyed by existing pipeline carriers.

The Complaint alleges that Chevron and Texaco are direct competitors in the pipeline transportation of crude oil from portions of the Eastern Gulf of Mexico to on-shore terminals, and that the proposed merger would give Respondents the ability to unilaterally raise prices for the pipeline transportation of crude oil from locations in the Eastern Gulf. To remedy the Commission's concerns, the Proposed Order requires Texaco to divest its interest in Equilon, which owns the Delta pipeline system.

I. Count IX - Offshore Pipeline Transportation of Natural Gas

Chevron and Texaco own interests in competing offshore natural gas pipelines in the Central Gulf of Mexico. Chevron and its affiliate Dynegy own a combined 77% interest in the Venice Gathering System. Texaco owns approximately 33% of the Discovery Gas Transmission System. Texaco's ownership share is sufficient to allow it to effectively exercise veto control over important aspects of the business of the Discovery pipeline. The pipeline transportation of offshore natural gas to shore from each of the markets alleged in the Complaint is highly concentrated and would become significantly more concentrated as a result of the proposed merger. The proposed merger would give the combined Chevron and Texaco controlling interests in the only two pipelines, or two of only three pipelines, in each of these markets.

The pipeline transportation of natural gas from locations in the Central Gulf of Mexico is a relevant market. Natural gas pipelines are specialized pipelines used to transport natural gas from offshore producing platforms to shore for processing and distribution. There are no alternatives to pipelines for the transportation of natural gas from offshore locations to shore.

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The affected areas are certain individual lease blocks⁷ in the Central Gulf of Mexico, in areas including the South Timbalier and Grand Isle Areas, and their South Additions, as defined by the Department of Interior Minerals Management Service. Producers within these areas have few or no alternatives to the Discovery and Venice pipelines for transporting natural gas to shore.

Entry is difficult and unlikely. New pipeline construction requires substantial sunk costs, giving existing pipelines a significant cost advantage over new entrants.

The Complaint alleges that the proposed merger will decrease competition in the offshore pipeline transportation of natural gas from the specified blocks in the affected areas. The proposed merger would enable the combined Chevron/Texaco to unilaterally increase price for those areas that have no alternative to Respondents' pipelines, and would increase the likelihood of coordination among pipelines for producers who have only limited alternatives to Respondents' pipelines. To remedy the Commission's competitive concerns, the Proposed Consent Order requires Respondents to divest Texaco's entire interest in the Discovery System, including the offshore natural gas pipeline, processing plant and fractionation plant.

J. Count X - Fractionation of Natural Gas Liquids at Mont Belvieu, TX

Texaco competes with Chevron's affiliate, Dynegy, in the market for the fractionation of natural gas liquids at Mont Belvieu, Texas. Fractionators are specialized facilities that separate raw mix natural gas liquids into specification products such as ethane or ethane-propane, propane, iso-butane, normal-

⁷ South Timbalier Blocks 30, 37, 38, 44, 45, 58, 59, 61-63, 86-88, 123-35, 151-53, 157, 158, 178-80, 185-87, and 205-08; South Timbalier South Addition Blocks 223-27, 231, 233-37, 248, 251, 256, and 257; Grand Isle Blocks 52, 53, 59, 62, 63, 70-76, 84, and 85; and Grand Isle South Addition Block 86.

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butane, and natural gasoline by means of a series of distillation processes. These specification products are ultimately used in the manufacture of petrochemicals, in the refining of gasoline, and as bottled fuel, among other uses. There are no substitutes for fractionators for the conversion of raw mix natural gas liquids into individual specification products.

Mont Belvieu, TX, is an important hub for the fractionation of raw mix natural gas liquids and the subsequent sale of fractionated specification products. Producers of raw mix natural gas liquids throughout the areas served by Mont Belvieu, which includes much of Texas, New Mexico, and other states, would not likely turn to fractionators located outside Mont Belvieu for their fractionation needs.

There are four facilities providing fractionation services at Mont Belvieu. Chevron's affiliate Dynegy owns large interests in two of the Mont Belvieu fractionators, the Cedar Bayou fractionator and the Gulf Coast fractionator. Chevron's 26% ownership of Dynegy gives it representation on Dynegy's Board of Directors as well as a direct financial stake in Dynegy's prices and profits. Texaco owns a minority interest in another fractionator known as the Enterprise fractionator.

Competitive concern arises from the ability of a firm in Chevron's position to lessen competition among the few separate facilities in this market. Competitive vigor could be compromised if, for example, sensitive information about one competitor's plans or costs were to become known by another competitor in the market. Also, Texaco's minority interest could provide a swing vote that could prevent the Enterprise fractionating facility from making a competitive move against either of the other two facilities affiliated with Chevron.

The Complaint charges that the proposed merger would lessen competition by eliminating direct competition between Texaco and Chevron's affiliate Dynegy in the fractionation of natural gas liquids at Mont Belvieu; by providing Dynegy with access to sensitive competitive information about one of its most important

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competitors in Mont Belvieu; by providing Chevron, through its control of Texaco's voting at the fractionator in which Texaco has an interest, with the ability to prevent competition from that fractionator against the other fractionators in Mont Belvieu in which Dynegy has an interest; and by increasing the likelihood that the combination of Chevron and Texaco will unilaterally exercise market power. The Proposed Order requires Chevron to divest Texaco's interest in the Enterprise fractionator within six months to a purchaser approved by the Commission.

K. Count XI - Marketing of Aviation Fuel

Chevron and Texaco are competitors in the marketing of aviation gasoline and jet fuel to general aviation customers in the western United States (Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington) and the southeastern United States (Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee).

Aviation fuel is used as a motor fuel for aircraft. There are two types of aviation fuel: aviation gasoline and jet fuel. Aviation gasoline is used in piston-powered aircraft engines, while jet fuel is used in jet engines. There are no substitutes for aviation gasoline or jet fuel for aircraft designed to use such fuels. Aviation fuel is sold through several channels of distribution, including the general aviation channel. This channel consists of fixed base operators ("FBOs") that sell fuel at retail to customers at airports, and distributors that sell to FBOs. FBOs in turn sell fuel to general aviation customers such as corporate aircraft, crop dusters, owners of private airplanes, and similar users (other than commercial airlines and military aircraft).

Chevron and Texaco are among only a few marketers of aviation fuel to general aviation customers in the western and southeastern United States. The marketing of aviation fuel to general aviation customers in each of these markets would be highly concentrated as a result of the merger. The proposed merger would increase concentration in the southeastern United States by more than 250 points to an HHI level above 1,900, and

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would increase concentration in the western United States by more than 1,600 points to an HHI level above 3,400.

The Complaint alleges that the proposed merger will likely lessen competition in the marketing and distribution of aviation fuel to general aviation customers in the western United States and the southeastern United States, by increasing the likelihood that the merged firm will unilaterally exercise market power, and by increasing the likelihood of collusion or coordinated interaction. The Proposed Consent Order requires Respondents to divest Texaco's general aviation business in the western and southeastern United States to an up-front buyer, Avfuel Corporation, within ten (10) days following the merger, to remedy the Commission's concerns.

IV. Resolution of the Competitive Concerns

The Commission has provisionally entered into the Agreement Containing Consent Orders with Chevron and Texaco in settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Hold Separate Order for the divestiture of certain assets described below.

A. The Alliance

The proposed combination of Chevron and Texaco would effectively combine the downstream operations of Chevron, Shell, and Texaco in the United States. In order to deal with the overlap issues involving the downstream segments of the businesses, Paragraphs II - III of the Proposed Order require Respondents to divest Texaco's entire interest in the Alliance. Paragraph IV contains provisions dealing with the licensing of the Texaco brand and Chevron's ability to compete for dealers and distributors using the Texaco brand following the merger.

Paragraph II of the Proposed Order requires Respondents to divest either (a) the Alliance interests to Shell (and SRI in the case of Motiva) no later than the date of the Chevron/Texaco merger,

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or (b) within eight months after the Chevron/Texaco merger, at no minimum price, either (i) the Alliance interests to Shell (and SRI in the case of Motiva), or (ii) the Texaco subsidiaries that own the Alliance interests (TRMI and TRMI East)⁸ to an acquirer or acquirers approved by the Commission. Shell and SRI are appropriate buyers of the assets because they already are partners with Texaco in the Alliance. All assets in each portion of the Alliance already are under common ownership and control, and divestiture of these interests to Shell and SRI would closely maintain the situation that currently exists. If the required divestitures occur prior to or on the date of the Chevron/Texaco merger, they are to be accomplished by Respondents; if they occur after the merger date, they are to be accomplished by a divestiture trustee pursuant to the provisions of Paragraph III of the Proposed Order.

Paragraph II further provides that Chevron and Texaco may not consummate the merger unless and until Texaco has either divested the Alliance interests to Shell and/or SRI, or has transferred TRMI and TRMI East to a trustee. The paragraph also contains provisions that ensure that Shell's and SRI's rights under the agreements establishing the Alliance will be protected. It also provides that, if the trust is rescinded, unwound, dissolved or otherwise terminated at any time before the divestitures have been accomplished, then Respondents will hold TRMI and TRMI East separate and apart from Respondents pursuant to the Hold Separate Order.

If the divestiture has not occurred before the merger, Paragraph III of the Proposed Order requires Respondents to enter into a trust agreement and transfer TRMI and TRMI East to the trustee. A divestiture trustee will then have the sole and exclusive power and authority to divest the Alliance interests, subject to the prior

⁸ Texaco's interest in the Alliance is held by a Texaco subsidiary, Texaco Refining and Marketing, Inc. ("TRMI"). A subsidiary of TRMI, known as TRMI East, holds Texaco's interest in Motiva.

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approval of the Commission. The trustee will have eight months to accomplish the divestitures, at no minimum price, to a buyer or buyers approved by the Commission (which could still include Shell and/or SRI). Respondents' transfer of the Alliance interests into trust does not prevent Shell and/or SRI from exercising any rights they may have under the applicable joint venture agreement to acquire Texaco's interests in Equilon or Motiva. Further, if Shell or SRI decline to exercise their rights to acquire Equilon or Motiva under the joint venture agreements, then they may offer to acquire the interests from the trustee, on equal footing with any other interested buyers.

The trust will have a divestiture trustee to accomplish the divestitures, and two operating trustees (one for TRMI and one for TRMI East) to manage and operate the Alliance interests separate and apart from Respondents' operations. The proposed Divestiture Trustee is Robert A. Falise, who most recently has been Chairman and Managing Trustee of the Manville Personal Injury Settlement Trust. Mr. Falise is an attorney and businessman with extensive experience in mergers and acquisitions. The proposed Operating Trustees are Joe B. Foster and John Linehan. Mr. Foster is the Chairman of Newfield Exploration Company, a Houston-based oil and gas exploration and production company that he founded in 1989. Mr. Linehan most recently served as Executive Vice President and Chief Financial Officer of Kerr-McGee Corporation. Both Mr. Foster and Mr. Linehan have extensive experience in the types of business engaged in by the Alliance.

Paragraph IV of the Proposed Order deals with issues concerning the licensing of the Texaco brand. It provides that Respondents shall offer to extend the license for the Texaco brand provided to Equilon and Motiva, on terms and conditions comparable to those in existence when the Agreement Containing Consent Orders was signed, on an exclusive basis until June 30, 2002 for Equilon and June 30, 2003 for Motiva. These dates correspond with the dates when the franchise agreements expire for many of the Equilon and Motiva distributors.

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If Equilon agrees to waive certain provisions in its contracts with distributors and dealers requiring the distributors and dealers to repay money that has been paid or reimbursed by Equilon for various Alliance programs during the past few years, such as station re-imaging, and if it agrees to waive any deed restrictions prohibiting or restricting the sale of motor fuel not sold by Equilon at any retail outlet that does not agree to become a Shell branded outlet, then Texaco shall offer Equilon an additional year of exclusivity (so exclusivity would expire at the same time for both Equilon and Motiva). If Equilon and Motiva waive the provisions described above, Texaco shall offer additional license extensions, on a non-exclusive basis, until June 30, 2006, for all retail outlets for which Equilon and Motiva have entered into agreements for re-branding under the Shell brand. If Equilon or Motiva do not waive the contract provisions requiring repayment from dealers and distributors, then Respondents are required to indemnify the dealers and distributors for all such amounts (plus litigation and arbitration costs), provided that (1) the dealer or distributor has declined a request for payment from Equilon or Motiva, (2) Equilon or Motiva has commenced litigation or arbitration to compel payment, and (3) the dealer or distributor has either defended the litigation or afforded Respondents the right to do so. In addition, no indemnification need be provided for any retail outlet (1) as to which the dealer or distributor terminates its brand relationship prior to the date on which Equilon and Motiva lose their license exclusivity for the Texaco brand (June 30, 2002 or June 30, 2003), (2) which becomes a Shell branded outlet, or (3) which receives compensation for such amounts from another source.

Paragraph IV also provides that, for a period of one year following the date on which Equilon or Motiva stops supplying gasoline under the Texaco brand to any retail outlet branded Texaco as of the date the Agreement Containing Consent Orders is executed by Respondents, Respondents shall not enter into any agreement for the sale of branded gasoline to such retail outlet, sell branded gasoline to such retail outlet, or approve the branding of such retail outlet, under the Texaco brand or under any brand that contains the Texaco brand, unless either (1) such agreement,

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sale, or approval would not result in an increase in concentration in the sale of gasoline in any metropolitan area (or county outside a metropolitan area), or (2) there are no sales of Chevron branded gasoline in that market. The purpose of this provision is to prevent Respondents from defeating the purpose of the Proposed Order by supplying Texaco-branded gasoline to the same stations that resulted in the original violation.

By requiring divestiture of Texaco's interests in the Alliance, the Proposed Order remedies anticompetitive effects in the following markets: (a) gasoline marketing in markets in the western United States, the southern United States, and the States of Alaska and Hawaii; (b) the marketing of CARB gasoline in California; (c) the refining and bulk supply of CARB gasoline for sale in California; (d) the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; (e) the bulk supply of RFG II gasoline into St. Louis; (f) the terminaling of gasoline and other light products in markets in the States of Arizona, California, Hawaii, Mississippi, and Texas; (g) the pipeline transportation of crude oil from California's San Joaquin Valley; and (h) the transportation of crude oil from locations in the Eastern Gulf of Mexico.

B. The Non-Alliance Operations

Paragraphs V through VIII of the Proposed Order deal with the divestitures that are required outside of the Alliance.

**1. Pipeline Transportation of Offshore Louisiana
Natural Gas**

Paragraph V of the Proposed Order requires Texaco to divest its interest in the Discovery pipeline, including the associated processing plant and fractionator (collectively the "Discovery System"), within six months of the date of the merger, at no minimum price, to a buyer or buyers that receive the approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of Texaco's interest in the Discovery System is to eliminate the

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overlap of ownership between the Discovery System and the Venice System and to remedy the lessening of competition resulting from the proposed merger as alleged in the Commission's Complaint.

The Proposed Order also provides that Texaco shall resign its position as operator of the Discovery System immediately after it obtains the approvals of the other partners in the Discovery System. In addition, prior to divestiture of Texaco's interest in the Discovery System, Respondents are to offer to enter into an agreement with the acquirer for the purchase, sale or exchange of natural gas liquids that is no less favorable for the acquirer than the terms of an existing contract with one of Texaco's partners in the Discovery System. Texaco owns a natural gas liquids pipeline that transports liquids away from the Discovery fractionator. Williams, a co-owner of the Discovery System, currently has a contract with Texaco for the disposition of its natural gas liquids that are processed at the Discovery fractionator. The purpose of this provision is to ensure that Respondents do not attempt to impose rates or terms for pipeline transportation to markets from the Discovery System's fractionating plant that would impede the ability of the Discovery System to compete for natural gas transportation from the relevant areas in the Central Gulf of Mexico.

2. Fractionation of Natural Gas Liquids at Mont Belvieu, Texas

Paragraph VI of the Proposed Order requires Respondents to divest Texaco's interest in the Enterprise fractionator at Mont Belvieu, at no minimum price, within six months after the merger, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. The purpose of the divestiture of Texaco's interest in the Enterprise fractionator is to eliminate the overlap of ownership between the Enterprise fractionator and other fractionating plants at Mont Belvieu, Texas, in which Respondents or their affiliates own interests, and to remedy the lessening of competition resulting from the proposed merger.

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3. Marketing of Aviation Fuel

Paragraph VII of the Proposed Order requires Respondents to divest, within ten days of the merger date, Texaco's general aviation business in 14 states (Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington), to an up-front buyer, Avfuel Corporation ("Avfuel"). Respondents must sell Texaco's general aviation business to Avfuel pursuant to an agreement approved by the Commission.

Avfuel is an existing marketer of aviation fuel that, unlike most other marketers, is not vertically integrated into the production of aviation gasoline or jet fuel. The company is well regarded as an independent competitive force in the industry, and appears to be particularly well situated to purchase just the assets relating to these 14 states and successfully integrate them into its business. An up-front buyer is preferable for these assets because they consist largely of contractual relationships rather than an on-going divestible business. In addition, because the business being divested consists largely of contractual relationships, an existing participant in the business is likely to have advantages with respect to maintaining and growing these relationships.

In the event Respondents fail to divest Texaco's general aviation business in the relevant areas to Avfuel, the Proposed Order requires Respondents to divest an alternative asset package that is broader than the initial divestiture assets. The broader package consists of Texaco's entire general aviation marketing business in the United States. The package is broader than the package being divested to Avfuel because other buyers may need the entire business in order to be viable. If this broader package is divested, the Order requires that the divestiture be accomplished within four months of the merger date, at no minimum price, to an acquirer that receives the prior approval of the Commission. If neither the divestiture to Avfuel nor the divestiture of the broader package has occurred within four months after the merger, then the Commission will appoint a trustee to divest Texaco's entire general aviation marketing business in the United States.

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If the business is not sold to Avfuel pursuant to the agreement, Respondents are required to assign to the other post-merger acquirer all agreements used in or relating to Texaco's domestic general aviation business. If Respondents fail to obtain any such assignments, Respondents are to substitute arrangements sufficient to enable the acquirer to operate the business in the same manner and at the same level and quality as Texaco operated it at the time of the merger's announcement. At the option of the acquirer, Respondents are to enter into an agreement that grants the acquirer, for a period of up to ten years from the date of such agreement, a license to use the Texaco brand in connection with the operation of Texaco's general aviation business in the U.S. For twelve months following the discontinuation of the supply of Texaco-branded aviation fuel to a fixed base operator or distributor, Respondents may not enter into any contract or agreement for the supply of Texaco-branded aviation fuel to such fixed base operator or distributor, or approve the branding of such fixed base operator or distributor with the Texaco brand. In addition, for six months following the consummation of any post-merger divestiture, Respondents are not to compete for the direct supply of branded aviation fuel to any fixed base operator or distributor that had an agreement for the sale of Texaco-branded aviation fuel in the U.S.

Pursuant to Paragraph VIII of the Proposed Order, if Respondents have failed to divest either: (1) Texaco's general aviation business in the relevant overlap areas, or (2) Texaco's domestic general aviation business within four months of the merger date, the Commission may appoint a trustee to divest Texaco's domestic general aviation business, at no minimum price, to a buyer approved by the Commission.

The purpose of the divestiture of Texaco's general aviation business in the affected areas, or of Texaco's entire domestic general aviation business, is to ensure the continuation of such assets in the same business in which the assets were engaged at the time of the announcement of the merger by a person other than Respondents, and to remedy the lessening of competition alleged in the Complaint.

Analysis

C. Other Terms

Paragraphs IX - XIII of the Proposed Order detail certain general provisions. Pursuant to Paragraph IX, Respondents are required to provide the Commission with a report of compliance with the Proposed Order every sixty days until the divestitures are completed. Paragraph X requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order.

Paragraph XI provides that, no less than 30 days prior to the merger, Respondents must notify Shell and SRI of the projected merger date and provide copies of the Agreement Containing Consent Orders and all non-confidential documents attached thereto to Shell and SRI.

Paragraph XII provides for notification to the Commission in the event of any changes in the corporate Respondents. Finally, Paragraph XIII provides that if a State fails to approve any of the divestitures contemplated by the Proposed Order, then the period of time required under the Proposed Order for such divestiture shall be extended for sixty days.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) 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 Hold Separate Order. Comments received during this thirty day comment period will become part of the public record. After thirty (30) 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.

Analysis

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, and 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 Commissioners Sheila F. Anthony and
Mozelle W. Thompson**

The Commission today voted to finalize a consent order enabling the \$45 billion merger of Chevron and Texaco to proceed, subject to a number of divestitures affecting multiple relevant markets in the United States. While we concur in the Commission's decision, we write separately to highlight a concern relating to the divestiture of Texaco's interests in two joint ventures.

First, a bit of history is needed. In 1998, Texaco and Shell Oil Company contributed virtually all of their U.S. petroleum refining, transportation, and marketing operations to Equilon Enterprises, LLC¹ and Motiva Enterprises, LLC² (collectively, the "Alliance"). These joint ventures created what was, at the time, the single largest refiner and marketer of petroleum products in the United States. For antitrust purposes, the Commission evaluated the formation of the Alliance as if it were a complete merger of the downstream operations of Texaco and Shell. As a condition of approving the proposed joint ventures, the Commission required Texaco and Shell to divest a broad package of assets sufficient to remedy competitive overlaps in markets for gasoline, jet fuel, asphalt, and transportation of refined light

¹ Equilon is currently owned 56% by Shell affiliates and 44% by Texaco affiliates. See Equilon/Motiva web site, *available at* <http://www.equilon.com/content/equilon_who_we_are_text.asp>.

² At the time of its formation, Motiva was owned 35% by Shell affiliates and 32.5% each by affiliates of Texaco and Saudi Refining, Inc. ("SRI"). The current provisional ownership percentages are 30% for Shell and 35% each for Texaco and SRI. See Equilon/Motiva web site, *available at* <http://www.equilon.com/content/motiva_who_we_are_text.asp>.

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petroleum products.³ In all subsequent oil merger investigations undertaken by the Commission, we have considered Texaco and Shell to be a single entity when evaluating downstream market concentration.

In late 2000, when Chevron and Texaco proposed to merge, it became apparent that Chevron and the Alliance had a number of unacceptable downstream overlaps, particularly in gasoline refining, transportation, and marketing. To remedy these overlaps, the Commission has required that Texaco divest its entire interest in the Alliance to Shell⁴ or another buyer that is approved by the Commission.

After a careful analysis, the Commission has concluded that Shell's acquisition of Texaco's Alliance interest will eliminate the identified anticompetitive overlaps between Chevron and Texaco, and will not create additional competitive problems in any downstream markets. In the Analysis to Aid Public Comment that accompanied the proposed consent agreement, the Commission explained why it would be acceptable to allow Texaco to divest its interest in the Alliance to Shell:

[a]ll assets in each portion of the Alliance already are under common ownership and control, and divestiture of these interests to Shell . . . would closely maintain the situation that currently exists.⁵

³ FTC Press Release, "Shell, Texaco To Divest Assets To Settle FTC Charges" (Dec. 19, 1997), *available at* <<http://www.ftc.gov/opa/1997/9712/shell.htm>>.

⁴ In the case of Motiva, the Texaco interest would be divested to both Shell and SRI, the third joint venture partner.

⁵ Chevron Corporation/Texaco Inc., Dkt. No. C-4023, "Analysis to Aid Public Comment" (Sept. 7, 2001), *available at* <<http://www.ftc.gov/os/2001/09/chevtexana.htm>>.

Statement

In short, the Commission has concluded that Texaco's transfer of its Alliance interest to Shell, Texaco's current joint venture partner, will remedy the problems posed by this merger and will not significantly change the competitive *status quo*, even under the rigorous concentration standards the Commission has applied to mergers in the oil industry in recent years.

While we are comfortable with the result in this matter, we remain concerned that the Chevron/Texaco consent order may have created a misimpression: that the Commission gives an automatic antitrust "pass" to transactions stemming from buy-outs of joint venture partners. In our view, this is far from true. It seems to us that when one joint venture partner buys out another partner's interest, that transaction should be subject to antitrust analysis under current market conditions – regardless of the analysis that may have been undertaken when the joint venture initially was formed.⁶ Any other approach would risk permanently immunizing joint venturers from antitrust enforcement, regardless of subsequent changes in their relationship and in the marketplace. The resulting double standard would be unfair to merger parties not previously engaged in joint venture arrangements with each other, and such a double standard likely would lead to consumer harm as well.

⁶ Of course, the Commission would be entitled to review such a transaction even if it were not reportable under the Hart-Scott-Rodino premerger notification regime.

Complaint

IN THE MATTER OF

KONINKLIJKE AHOLD NV, 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-4027; File No. 0110247

Complaint, December 7, 2001--Decision, January 16, 2002

This consent order addresses the acquisition by Respondent Koninklijke Ahold NV ("Ahold"), a global food service and food retailer headquartered in The Netherlands, with more than 1,300 supermarkets and other retail food stores in the United States – of Respondent Bruno's Supermarkets Inc., the largest supermarket chain in the State of Alabama. The order, among other things, requires the respondents to divest a supermarket in Milledgeville, Georgia to The Kroger Company, and to divest a supermarket in Sandersville, Georgia to Winn-Dixie Stores, Inc. The order also requires the respondents to maintain the viability, marketability and competitiveness of the supermarkets identified for divestitures. In addition, the order requires Respondent Ahold, for ten years, to give the Commission prior notice before acquiring any supermarkets, or any interest in any supermarkets, located in the counties that include Milledgeville and Sandersville, Georgia.

Participants

For the Commission: *Susan Huber, David Von Nirschl, Ramon Gras, Morris Morkre, Sara Harkavy, Richard Liebeskind, Elizabeth A. Piotrowski, Mary T. Coleman and Charissa P. Wellford.*

For the Respondents: *J. Mark Gidley, George Paul, and Doug Jasinski, White & Case, and Michael Byowitz, Wachtell, Lipton, Rosen & Katz.*

COMPLAINT

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 Koninklijke Ahold NV