

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-4144; File No. 0510125*
Complaint, July 27, 2005--Decision, July 27, 2005

This consent order addresses the merger of Respondent Chevron Corporation -- a major international energy firm engaged in exploring for, developing and producing crude oil and natural gas; refining crude oil into finished petroleum products; marketing crude oil, natural gas, and other finished products derived from petroleum; and transporting crude oil, natural gas, and finished petroleum products by pipeline, marine vessels, and other means -- and Respondent Unocal Corporation, another major international energy firm engaged primarily in oil and gas exploration, development and production. The order, among other things, requires the respondents to cease and desist from any and all efforts to assert or enforce any of Unocal's relevant U.S. patents -- including in particular patents covering technology that refiners must use to produce California Air Resources Board compliant reformulated gasoline, the only type of gasoline that can be sold in California -- against any person to recover any damages or costs for alleged infringements of any of these patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of these patents. The consent order also requires the respondents, within thirty days, to file with the United States Patent and Trademark Office the necessary documents to disclaim or dedicate to the public the remaining term of the patents. In addition, the consent order requires the respondents, within thirty days, to dismiss with prejudice all pending legal actions relating to the alleged infringement of any of the patents.

Participants

For the Commission: *Dennis F. Johnson, Chong S. Park, Frank Lipson, Geary A. Gessler, Phillip Broyles, Geoffrey D. Oliver, Daniel P. Ducore, Jeffrey H. Fischer and Mark Frankena.*

For the Respondent: *Martin R. Lueck and David W. Beehler, Robins, Kaplan, Miller & Ciresi, David S. Neill, Wachtell, Lipton, Rosen & Katz, and Joe Sims, Jones Day.*

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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 (“FTC” or “Commission”), having reason to believe that Respondent Chevron Corporation (“Chevron”) and Respondent Unocal Corporation (“Unocal”) have entered into an agreement and plan of merger whereby Chevron proposes to acquire all of the outstanding common stock of Unocal, 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, formerly ChevronTexaco Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6001 Bollinger Canyon Road, San Ramon, California 94583.
2. Respondent Chevron is, and at all times relevant herein has been, a diversified energy firm engaged, either directly or through affiliates, in the exploration for, and production of, petroleum products; the pipeline transportation of crude oil and natural gas; the refining of crude oil into refined products, including gasoline and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related energy businesses.
3. Respondent Chevron is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in

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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.

Unocal Corporation

4. Respondent Unocal 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 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.
5. Respondent Unocal is, and at all times relevant herein has been, an energy firm engaged, either directly or through affiliates, in the exploration for, and production of, petroleum products; the pipeline transportation of crude oil, natural gas and other petroleum products; and other related energy businesses.
6. Respondent Unocal 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.

II. THE PROPOSED MERGER

7. Pursuant to an agreement and plan of merger dated April 4, 2005, Chevron intends to acquire all of the outstanding common stock of Unocal in exchange for cash and common stock of Chevron. At the time of the agreement, the value of the transaction was approximately \$18 billion.

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III. TRADE AND COMMERCE

8. Gasoline is a motor fuel that is used in automobiles and other vehicles. It is refined from crude oil at refineries in the United States and throughout the world. Gasoline is produced in various grades and formulations, including conventional unleaded gasoline, low emissions reformulated gasoline (“RFG”), California Air Resources Board (“CARB”) compliant reformulated gasoline, and others. There is no substitute for gasoline as a fuel for automobiles and other vehicles that are designed to use gasoline.
9. CARB compliant reformulated gasoline (“CARB RFG”) is a motor fuel that meets the specifications of the California Air Resources Board. CARB RFG is cleaner burning and causes less air pollution than conventional unleaded gasoline. The sale of any gasoline other than CARB RFG is prohibited in California. There is no substitute for CARB RFG as a fuel for automobiles and other vehicles that use gasoline purchased in California.
10. CARB RFG is produced primarily in California and at a few other locations on the West Coast. Chevron is a leading refiner and marketer of CARB RFG. Unocal is not engaged in the refining or marketing of CARB RFG.
11. Through its wholly-owned subsidiary, Union Oil Company of California, Unocal owns a portfolio of five U.S. patents relating to reformulated gasoline. Unocal’s RFG patents cover the production and supply of CARB RFG, particularly in the warmer weather months. Refiners must use the technology covered by the Unocal RFG patents for producing a substantial portion of CARB RFG during warmer weather months – *i.e.*, CARB “summertime” gasoline.
12. Unocal licenses its RFG patents to others in exchange for payments ranging from 1.2 to 3.4 cents per gallon. In

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addition, Unocal has won a patent infringement suit against major refiners of CARB RFG and obtained a court judgment awarding Unocal royalties of 5.75 cents per infringing gallon produced in California.

Relevant Product Market

13. Relevant lines of commerce in which to analyze the effects of the proposed merger are the marketing and refining of CARB RFG.

Relevant Geographic Market

14. Relevant sections of the country in which to analyze the proposed merger are the State of California and smaller areas contained therein.

Market Structure

15. The relevant markets for the refining and marketing of CARB RFG are either highly concentrated or moderately concentrated.

Entry Conditions

16. 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. VIOLATION CHARGED

17. Because of factors such as Unocal's perception of possible actions by the California Air Resources Board or other governmental authorities, Unocal is likely to be constrained in charging the full monopoly level price to licensees of the Unocal patents. Unocal has no operations at downstream levels of the industry through which it could attempt to

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recoup any additional profits. Because of its significant operations at the refining and marketing levels, Chevron will have a greater ability than Unocal to obtain additional profits by coordinating with its competitors at the downstream refining and marketing levels.

18. As part of Unocal's license agreements, Unocal regularly collects detailed reports from licensees about their production of CARB RFG and other refinery operations. Such information is not otherwise available to members of the industry, and could be used to facilitate coordination among refiners and marketers of CARB RFG.
19. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing and refining of CARB RFG in the relevant sections of the country, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between Chevron and its competitors in the refining of CARB RFG in the relevant sections of the country,
 - b. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between Chevron and its competitors in the marketing of CARB RFG in the relevant sections of the country,

each of which increases the likelihood of anticompetitive price increases for CARB RFG in the relevant sections of the country.

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

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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 27th day of July, 2005, issues its complaint against said Respondents.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger between Respondent Chevron Corporation (“Chevron”) and Respondent Unocal Corporation (“Unocal”) (collectively “Respondents”), 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 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint 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, 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 Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6001 Bollinger Canyon Road, San Ramon, California 94583.

2. Respondent Unocal Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

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

ORDER**I.**

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

- A. “Chevron” means Chevron Corporation (formerly ChevronTexaco Corporation), its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Chevron Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Unocal” means Unocal Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including but not limited to Union Oil Company of California), divisions, groups and affiliates controlled by Unocal Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. "Respondents" means Chevron and Unocal.
- D. "Commission" means the Federal Trade Commission.
- E. "Action" means any lawsuit or other action, whether legal, equitable, or administrative, as well as any arbitration, mediation, or any other form of private dispute resolution, in the United States or anywhere else in the world.
- F. "License Agreement" means any contract, agreement, arrangement or other understanding between Unocal and any other party or parties that requires, calls for, or otherwise contemplates, payment of fees, royalties or other monies, in cash or in kind, to practice under the Relevant U.S. Patents.
- G. "Merger" means the proposed merger between Chevron and Unocal, as contemplated by the Agreement and Plan of Merger dated as of April 4, 2005 among Unocal Corporation, ChevronTexaco Corporation, and Blue Merger Sub Inc.
- H. "Merger Effective Date" means the earlier of the following dates:
 - 1. the date that the certificate of merger for the Merger is filed with the Secretary of State of Delaware or such later time as specified in such certificate of merger, or
 - 2. the date that Chevron acquires control of Unocal Corporation, as "control" is defined by 16 C.F.R. § 801.1(b).
- I. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

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- J. “Relevant U.S. Patents” means United States Patent Numbers 5,288,393, 5,593,567, 5,653,866, 5,837,126, 6,030,521, and any other patents presently in existence or to be issued in the future that claim priority to United States Patent Application Number 07/628,488, filed December 13, 1990.

II.

IT IS FURTHER ORDERED that, immediately upon the Merger Effective Date, Respondents shall cease and desist from any and all efforts, and shall not undertake any new efforts, by any means, directly or indirectly, in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, to assert or enforce any of the Relevant U.S. Patents against any Person, to recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of the Relevant U.S. Patents, including but not limited to fees, royalties, or other payments, in cash or in kind, to be collected pursuant to any License Agreement, provided, however, that nothing in this Order obligates or requires Respondents to refund any fees, royalties or other payments collected in connection with any of the Relevant U.S. Patents prior to the Merger Effective date.

III.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days following the Merger Effective Date, Respondents shall file, or cause to be filed, with the United States Patent and Trademark Office, the necessary documents pursuant to 35 U.S.C. § 253, 37 C.F.R. § 1.321, and the Manual of Patent Examining Procedure to disclaim or dedicate to the public the remaining term of the Relevant U.S. Patents, provided, however, that such disclaimer or dedication to the public shall not constitute an admission or

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representation by Respondents with respect to the validity or patentability of the claims of the Relevant U.S. Patents.

- B. Respondents shall correct as necessary, and shall not withdraw or seek to nullify, any disclaimers, or dedications filed pursuant to Paragraph III. A.

IV.

IT IS FURTHER ORDERED that, within thirty (30) days following the Merger Effective Date, Respondents shall move to dismiss, with prejudice, all Actions relating to the alleged infringement of any Relevant U.S. Patents, including but not limited to the following actions pending in the United States District Court for the Central District of California: *Union Oil Company of California v. Atlantic Richfield Company, et al.*, Case No. CV-95-2379-CAS and *Union Oil Company of California v. Valero Energy Corporation*, CV-02- 00593 SVW.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, Respondents shall distribute a copy of this Order and the complaint in this matter to:
1. any Person that either Respondent has contacted regarding possible infringement of any of the Relevant U.S. Patents,
 2. any Person against which either Respondent is, or was, in any Action regarding possible infringement of any of the Relevant U.S. Patents,
 3. any licensee or other Person from which either Respondent has collected any fees, royalties or other

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payments, in cash or in kind, for the practice of the Relevant U.S. Patents, and

4. any Person that either Respondent has contacted with regard to the possible collection of any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents.
- B. Within thirty (30) days after the date this Order becomes final, Respondents shall distribute a copy of this Order and the complaint in this matter to every officer and director of Respondents having responsibility for any of Respondents' obligations under this Order, and to every employee or agent having managerial responsibility for any of Respondents' obligations under this Order.
- C. For a period of five (5) years after the date this Order becomes final, Respondents shall furnish a copy of this Order and the complaint in this matter to each new officer and director of Respondents who will have responsibility for any of Respondents' obligations under this Order, and to each new employee or agent of Respondents who will have managerial responsibility for any of Respondents' obligations under the Order. Such copies shall be furnished within thirty (30) days after each such person assumes his or her position as officer, director, employee, or agent. For purposes of this Paragraph V.C., "new employee or agent" shall include, without limitation, Respondents' employees and agents whose duties change during their employment or agency relationship to include managerial responsibility for any of Respondents' obligations under this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall, within sixty (60) days after the date this Order becomes final, submit to the Commission a verified

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written report setting forth in detail the manner and form in which each Respondent intends to comply, is complying, and has complied with this Order.

- B. Respondents shall, one year from the date this Order becomes final and annually thereafter for five (5) years, submit a verified written report to the Commission setting forth in detail the manner and form in which each Respondent has complied and is complying with the Order.

VII.

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

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

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of either Respondent, (2) acquisition, merger, or consolidation of either Respondent, or (3) other change in either Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or

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dissolution of subsidiaries, or any other change in either Respondent.

IX.

IT IS FURTHER ORDERED that this Order will terminate twenty (20) years after the date it becomes final.

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,” formerly ChevronTexaco Corporation) and Unocal Corporation (“Unocal”) (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 order (“Agreement Containing Consent Order”) pursuant to which Respondents agree to be bound by a proposed consent order (“Proposed Consent Order”). The Proposed Consent Order remedies the likely anticompetitive effects arising from Respondents’ proposed merger, as alleged in the Complaint.

II. Description of the Parties and the Transaction

A. Chevron

Chevron is a major international energy firm with operations in North America and about 180 foreign countries in Europe, Africa, South America, Central America, Indonesia, and the Asia-Pacific region. Its petroleum operations consist of exploring for, developing and producing crude oil and natural gas; refining crude oil into finished petroleum products; marketing crude oil, natural gas, and various finished products derived from petroleum; and transporting crude oil, natural gas, and finished petroleum products by pipeline, marine vessels, and other means. The company operates light petroleum refineries for products such as gasoline, jet fuel, kerosene and fuel oil at Pascagoula, Mississippi; El Segundo, California; Richmond, California; Salt Lake City, Utah; and Kapolei, Hawaii. Chevron is a major refiner and marketer of gasoline that meets the requirements of the California Air Resources Board (“CARB”). Chevron also has operations for the manufacture and marketing of commodity petrochemicals for

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industrial uses and additives for fuels and lubricants. For 2004, the company had total revenues of approximately \$155.3 billion and total assets of approximately \$93.2 billion.

B. Unocal

Unocal is also a major international energy firm with operations in North America, Asia, and other locations around the world. Its primary activities are oil and gas exploration, development and production. It has oil and gas operations located in various countries, including Thailand, Myanmar, Indonesia, Azerbaijan, Bangladesh, and Vietnam. Unocal sold most of its downstream operations in the United States to another company in the mid-1990's. As a result, Unocal has no downstream operations in refining or gasoline retailing, and with a few exceptions almost all of Unocal's operations are in the upstream segment of the industry, *i.e.*, exploration and production. The company had total revenues for 2004 of approximately \$8.2 billion and total assets of approximately \$13.1 billion.

III. The Transaction

Pursuant to an Agreement and Plan of Merger dated April 4, 2005, Chevron plans to acquire 100% of the voting securities of Unocal. Unocal will merge into a direct wholly-owned subsidiary of Chevron, with the subsidiary continuing as the surviving entity and a wholly-owned subsidiary of Chevron. Under the terms of the agreement, Unocal shareholders may elect to receive 1.03 shares of Chevron stock, \$65 in cash, or the combination of \$16.25 in cash and 0.7725 of a share of Chevron common stock. The election is subject to the limitation that 75% of the outstanding shares of Unocal common stock will be exchanged for Chevron common stock and 25% will be exchanged for cash, with prorationing in the event the cash election is oversubscribed or undersubscribed. The total value of the transaction is estimated at approximately \$18 billion, which includes approximately \$1.6 billion in assumed debt.

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The transaction is subject to various closing conditions, including the approval of Unocal shareholders and the expiration or early termination of the waiting period under the Hart-Scott-Rodino Act, 15 U.S.C. § 18A. The parties expect to close the transaction as soon as practicable after the last of the conditions to closing have been satisfied.

IV. The Complaint

The Complaint alleges that the merger of Chevron and Unocal 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 the refining and marketing of reformulated gasoline that has been approved by the California Air Resources Board (“CARB”) for sale in California. Through its wholly-owned subsidiary, Union Oil Company of California (“Union Oil”), Unocal owns a portfolio of five U.S. patents relating to reformulated gasoline (“RFG”). These patents (the “Relevant U.S. Patents”) cover the production and supply of CARB RFG, particularly in warmer weather months. To remedy the alleged anticompetitive effects of the merger, the Proposed Consent Order requires Respondents to take certain actions, including (1) to cease and desist from any efforts to assert or enforce any of the Relevant U.S. Patents against any person, to recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents, or to collect any fees, royalties or other payments for the practice of the Relevant U.S. Patents; and (2) to take the necessary actions to dedicate to the public the remaining terms of the patents.

According to the Complaint, gasoline is a motor fuel used in automobiles and other vehicles. It is produced in various grades and formulations, including conventional unleaded gasoline, low emissions reformulated gasoline (“RFG”), California Air Resources Board (“CARB”) compliant reformulated gasoline, and others. CARB compliant reformulated gasoline (“CARB RFG”) is a type of gasoline that meets the specifications of the California

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Air Resources Board. CARB RFG is cleaner burning and causes less air pollution than conventional unleaded gasoline. The sale of any gasoline other than CARB RFG is prohibited in California, and there is no substitute for CARB RFG as a fuel for automobiles and other vehicles that use gasoline purchased in California. As a result, CARB RFG is a relevant line of commerce in which to analyze the potential effects of the merger.

CARB RFG is produced primarily in California and at a few other locations on the West Coast. The Complaint alleges that the state of California, and smaller areas contained therein, are relevant sections of the country in which to analyze the potential effects of the merger.

Chevron is a leading refiner and marketer of CARB RFG. Unocal does not refine or market CARB RFG. However, through its wholly-owned subsidiary, Union Oil, Unocal owns Relevant U.S. Patents relating to CARB RFG. Refiners must use the technology covered by the Unocal Relevant U.S. Patents for producing CARB RFG during warmer weather months – *i.e.*, CARB “summertime” gasoline. Thus, Unocal controls an important input used by CARB refiners to produce CARB gasoline.

Unocal licenses its RFG patents to others in exchange for payments ranging from 1.2 to 3.4 cents per gallon. In addition, Unocal has won a patent infringement suit against major refiners of CARB RFG and obtained a court judgment awarding Unocal royalties of 5.75 cents per infringing gallon produced in California.

There are relatively few producers of CARB RFG. As a result, the relevant markets for the refining and marketing of CARB RFG are either highly concentrated or moderately concentrated. The Complaint further alleges that 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.

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The Complaint states that, because of factors such as Unocal's perception of possible actions by the California Air Resources Board or other governmental authorities, Unocal is likely to be constrained in charging the full monopoly level price to licensees of the Unocal patents. Moreover, Unocal has no operations at downstream levels of the industry through which it could attempt to recoup any additional profits.

Because of its significant operations at the refining and marketing levels, Chevron will have a greater ability than Unocal to obtain additional profits by coordinating with its competitors at the downstream refining and marketing levels. As part of Unocal's license agreements, Unocal regularly collects detailed reports from licensees about their production of CARB RFG and other refinery operations. By obtaining the Unocal patents, Chevron would receive additional information about the production of competitors and other information not otherwise available to members of the industry. Chevron could facilitate coordination among refiners and marketers of CARB RFG by using this information to monitor a collusive agreement and thus detect cheating on a collusive agreement. The anticompetitive effects from such coordination would be likely to outweigh any efficiencies that would be obtained by the integrated firm.

As a result, the Complaint charges that the effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing and refining of CARB RFG in the relevant sections of the country, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

V. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Order with Chevron and Unocal in settlement of the Complaint. The Agreement Containing Consent Orders

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contemplates that the Commission would issue the Complaint and enter the Proposed Consent Order requiring the relief described below.

In order to remedy the anticompetitive effects that have been identified, Chevron and Unocal have agreed to take several actions. First, they will cease and desist from any and all efforts, and will not undertake any new efforts, to assert or enforce any of Unocal's Relevant U.S. Patents against any person, to recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of the Relevant U.S. Patents, including but not limited to fees, royalties, or other payments, in cash or in kind, to be collected pursuant to any License Agreement. These obligations become effective as of the "Merger Effective Date," which is defined as the earlier of (1) the date that the certificate of merger for the Merger is filed with the Secretary of State of Delaware or such later time as specified in such certificate of merger, or (2) the date that Chevron acquires control of Unocal Corporation, as "control" is defined by 16 C.F.R. § 801.1(b).

Second, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Respondents shall file, or cause to be filed, with the United States Patent and Trademark Office, the necessary documents pursuant to 35 U.S.C. § 253, 37 C.F.R. § 1.321, and the Manual of Patent Examining Procedure to disclaim or dedicate to the public the remaining term of the Relevant U.S. Patents. The Proposed Consent Order further requires that Respondents shall correct as necessary, and shall not withdraw or seek to nullify, any disclaimers or dedications filed pursuant to the order.

Third, the order requires that, within thirty (30) days following the Merger Effective Date, Respondents shall move to dismiss, with prejudice, all pending legal actions relating to the alleged infringement of any Relevant U.S. Patents, including but not limited to the following actions pending in the United States

Analysis

District Court for the Central District of California: *Union Oil Company of California v. Atlantic Richfield Company, et al.*, Case No. CV-95-2379-CAS and *Union Oil Company of California v. Valero Energy Corporation*, Case No. CV-02- 00593 SVW.

Paragraph V of the Proposed Consent Order requires Respondents to distribute a copy of the Order and the Complaint in this matter to certain interested parties, including (1) any person that either Respondent has contacted regarding possible infringement of any of the Relevant U.S. Patents, (2) any person against which either Respondent is, or was, involved in any legal action regarding possible infringement of any of the Relevant U.S. Patents, (3) any licensee or other person from which either Respondent has collected any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents, and (4) any person that either Respondent has contacted with regard to the possible collection of any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents.

Paragraph V also requires Respondents to distribute a copy of the Order and the Complaint to present and future officers and directors of Respondents having responsibility for any of Respondents' obligations under the Order, and to employees and agents having managerial responsibility for any of Respondents' obligations under the Order.

Paragraphs VI, VII and VIII of the Proposed Consent Order contain standard reporting, access, and notification provisions designed to allow the Commission to monitor compliance with the order. Paragraph IX provides that the Order shall terminate twenty (20) years after the date it becomes final.

VI. Opportunity for Public Comment

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

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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.

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, 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.

Complaint

IN THE MATTER OF

UNION OIL COMPANY OF CALIFORNIA

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

Docket D-9305; File No. 0110214

Complaint, March 4, 2003--Decision, July 27, 2005

This consent order addresses a series of actions taken by Respondent Union Oil Company of California, an international energy firm, with respect to proceedings conducted by the California Air Resources Board (“CARB”) to set regulations and standards governing the composition of low emissions, reformulated gasoline (“RFG”), in an effort to reduce California air pollution levels. The order, among other things, requires the respondent to cease and desist from any and all efforts to assert or enforce any of its relevant U.S. patents – including in particular patents covering technology that refiners must use to produce CARB-compliant reformulated gasoline, the only type of gasoline that can be sold in California – against any person to recover any damages or costs for alleged infringements of any of these patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of these patents. The consent order also requires the respondent, within thirty days, to file with the United States Patent and Trademark Office the necessary documents to disclaim or dedicate to the public the remaining term of the patents. In addition, the consent order requires the respondent, within thirty days, to dismiss with prejudice all pending legal actions relating to the alleged infringement of any of the patents.

Participants

For the Commission: *J. Robert Robertson, Chong S. Park, David F. Conn, Peggy Bayer Femenella, John Roberti, Lisa Fialco, Suzanne Michel, Sean P. Gates, Lore Unt, Thomas Krattenmaker, Dean C. Graybill, John S. Martin, Richard B. Dagen, Geoffrey D. Oliver, Daniel P. Ducore, Terri Martin, Robert A. Walters, Elizabeth J. Grimm, Paige E. Pidano, Jessica Picone, Diana Cowen, Guru Raj, Kathleen Jones, Yasmine Carson, Mark D. Williams, Jeffrey H. Fischer, and Mark Frankena.*