

Complaint

IN THE MATTER OF

**TESORO CORPORATION
AND TESORO LOGISTICS OPERATIONS LLC****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7
OF THE CLAYTON ACT**

*Docket No. C-4405; File No. 131 0052
Complaint, June 17, 2013 – Decision, August 5, 2013*

This consent order addresses the \$400 million acquisition by Respondents Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”) of the Northwest Products Pipeline, as well as certain terminals along the Northwest Pipeline, from Chevron Corporation (“Chevron”). Chevron’s terminals are used to offload gasoline and diesel fuels from the pipeline and load such petroleum products onto tank trucks for delivery to retail gas stations and other purchasers. As both Respondents and Chevron own terminals in Boise, Idaho, the complaint alleged the acquisition would reduce the number of terminals with the capability to loan tank trucks in Boise from three to two, and would substantially lessen competition in this market. The order requires Respondents to sell their existing terminal within six months of the acquisition and appoints a monitor to oversee this divestiture.

Participants

For the *Commission*: Anna Chehtova, Philip M. Eisenstat,
and Marc W. Schneider.

For the *Respondents*: Marc Schildkraut, Cooley LLP; and
J. Bruce McDonald, Jones Day.

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Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tesoro Corporation, Tesoro Logistics Operations LLC (“Respondents”), and Chevron Corporation through its subsidiaries have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing

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to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS AND JURISDICTION**Tesoro Corporation**

1. Respondent Tesoro Corporation is a publicly traded corporation principally engaged in the refining and marketing of petroleum products in the United States. Tesoro Corporation is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 19100 Ridgewood Parkway, San Antonio, Texas 78259.

2. Tesoro Corporation is, and at all relevant times has been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Tesoro Logistics Operations LLC

3. Respondent Tesoro Logistics Operations LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 19100 Ridgewood Parkway, San Antonio, Texas 78259. Tesoro Logistics Operations LLC owns Tesoro Logistics Northwest Pipeline LLC.

4. Respondent Tesoro Logistics Operations LLC is a wholly owned subsidiary of Tesoro Logistics LP, a publically traded limited partnership, organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 19100 Ridgewood Parkway, San Antonio, Texas 78259.

5. Respondent Tesoro Corporation individually and through subsidiaries owns Tesoro Logistics GP, LLC, the general partner of Tesoro Logistics LP. Tesoro Logistics GP, LLC manages the operations and employs the personnel of Tesoro Logistics LP.

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Tesoro Corporation directly owns 37.6% of limited partner interest in Tesoro Logistics LP.

6. Tesoro Logistics Operations LLC directly or indirectly owns a number of petroleum products terminals, including one in Boise, Idaho, that receive light petroleum products off the Northwest Pipeline. The Northwest Pipeline originates in Salt Lake City, Utah, and delivers product from Salt Lake City refineries to destinations between Salt Lake City, Utah, and its termination point in Spokane, Washington. The Tesoro terminal in Boise stores product it receives off the pipeline, and provides facilities to load the product onto tank trucks for local distribution.

7. Tesoro Logistics Operations LLC is, and at all relevant times has been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

8. Tesoro Logistics Operations LLC and Tesoro Corporation are collectively referred to as “Tesoro.”

II. THE ACQUIRED COMPANY

9. Chevron Corporation (“Chevron”) is a publicly traded corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business located at 6001 Bollinger Canyon Road, San Ramon, California 94853. Chevron, through its Chevron Pipeline Company, owns and operates the Northwest Pipeline, a 760-mile interstate common carrier pipeline that transports petroleum products from Salt Lake City to the states of Idaho and Washington. Chevron, through its Northwest Terminalling Company, also owns refined petroleum products terminals along the Northwest Pipeline in Idaho and Washington.

III. THE PROPOSED ACQUISITION

10. Pursuant to Asset Sale and Purchase Agreements dated December 6, 2012, Tesoro proposes to purchase Chevron Corporation’s (“Chevron”) Northwest Products Pipeline system,

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and Chevron's adjacent terminals, including a terminal in Boise, Idaho ("the Acquisition"). The total value of the proposed acquisition is \$355 million.

11. The Acquisition would combine two of the three providers, and the two largest providers of refined products terminaling services in the relevant geographic market of Boise, Idaho. Respondent Tesoro and Chevron each owns and operates a refined products terminal in Boise, and compete to provide terminaling services in Boise.

IV. JURISDICTION

12. Respondents, and each of their relevant operating subsidiaries and parent entities are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

13. The Acquisition constitutes an acquisition under Section 7 of the Clayton Act.

V. THE RELEVANT MARKET

14. The relevant line of commerce in which to analyze the competitive effects of the Acquisition is the provision of terminaling services for light petroleum products.

15. The relevant geographic market in which to analyze the competitive effects of the acquisition is Boise, Idaho Metropolitan Statistical Area ("MSA").

VI. THE EFFECTS OF THE ACQUISITION

16. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in the following ways, among others:

a. by eliminating direct and substantial competition between Respondent Tesoro and Chevron; and

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b. by increasing the likelihood that Respondent Tesoro will exercise market power unilaterally.

17. The ultimate effect of the Acquisition would be to increase the likelihood that prices for refined products terminaling services would rise above pre-Acquisition levels, or that there would be a decrease in the quality or availability of refined products terminaling services, in the relevant geographic market.

VII. ENTRY CONDITIONS

18. Post-acquisition, entry or expansion into the relevant markets would not be timely, likely, and sufficient in scope to deter or negate the anticompetitive effects of the proposed acquisition.

VIII. VIOLATIONS CHARGED

19. The agreements described in Paragraph 10 constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

20. The acquisition described in Paragraph 10 if consummated, would constitute a 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of June, 2013, issues its Complaint against Respondents.

By the Commission.

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The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”) of certain assets of Chevron Corporation, 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 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 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 its Order to Maintain Assets (“Order to Maintain Assets”) and having accepted the Consent Agreement and placed such 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 enters the following Decision and Order (“Order”):

1. Respondent Tesoro 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 19100 Ridgewood Parkway, San Antonio, Texas 78259.

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2. Respondent Tesoro Logistics Operations LLC is a limited liability company 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 19100 Ridgewood Parkway, San Antonio, Texas 78259. Tesoro Logistics Operations LLC is an indirect subsidiary of Tesoro Corporation.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Tesoro Corporation” means Tesoro Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Corporation (including Tesoro Logistics Operations LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Tesoro Logistics Operations LLC” means Tesoro Logistics Operations LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Logistics Operations LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means the Person identified in Paragraph II.A.1. of this Order.
- E. “Acquisition” means the proposed acquisition described in the Asset Sale and Purchase Agreement Between Northwest Terminalling Company and Tesoro Logistics Operations LLC, dated December 6, 2012.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Confidential Information” means any and all of the following information:
 - 1. all information that is a trade secret under applicable trade secret or other law;
 - 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software, and database technologies, systems, structures, and architectures;
 - 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current, and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, and

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the names and backgrounds of key personnel and personnel training techniques and materials); and

4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non- confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- H. “Contract” means any agreement, contract, lease, consensual obligation, promise, or undertaking (whether written or oral and whether express or implied), whether or not legally binding.
- I. “Direct Cost” means the actual cost of labor, including employee benefits, materials, resources, and services, plus the actual cost of any third-party charges.
- J. “Divestiture Agreement” means any agreement identified in Paragraph VI.B. of this Order.
- K. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee) divest the Boise Terminal Assets pursuant to this Order.
- L. “Boise Terminal Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to operation of the Boise Terminal Business, including but not limited to:

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1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the Boise Terminal Business since the date of the announcement of the Acquisition, and not replaced, if such property was used in connection with the operations of the Boise Terminal Business prior to the Acquisition Date;
3. all inventories other than inventories held by a customer;
4. all (i) trade accounts receivable and other rights to payment from customers and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers, (ii) all other accounts or notes receivable and the full benefit of all security for such accounts or notes, and (iii) any claim, remedy or other right related to any of the foregoing;
5. all Contracts and all outstanding offers or solicitations to enter into any Contract, to the extent such Contracts pertain exclusively to the Boise Terminal Business, and to the extent assignable;
6. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;

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7. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);
8. all intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
9. all insurance benefits, including rights and proceeds; and
10. all rights relating to deposits and prepaid expenses, claims for refunds, and rights to offset in respect thereof.

Provided, however, that the Boise Terminal Assets need not include (i) any software that can readily be purchased or licensed from sources other than Respondents and which has not been materially modified (other than through user preference settings), (ii) any assets that are shared with, or also pertain to, other businesses owned by Respondents prior to the Acquisition, unless such assets primarily relate to the Boise Terminal Business, and (iii) any part of the Boise Terminal Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

- M. “Boise Terminal Business” means the light petroleum products Terminaling business conducted by Respondents in Boise, Idaho, prior to the Acquisition.

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- N. “Boise Terminal Employee” means any full-time, part-time, or contract individual (i) who is employed by Respondents as of the Acquisition Date, and (ii) whose job responsibilities relate or related primarily to the Boise Terminal Business at any time from the date of the announcement of the Acquisition.
- O. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondents in which Respondents have a proprietary interest, including (i) commercial names, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (vi) and all rights in internet web sites and internet domain names presently used by Respondents.
- P. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- Q. “Public Record Date” means the date on which the Commission accepts the Consent Agreement and places it on the public record for comment.
- R. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- S. “Shared Intellectual Property” means any Intellectual Property (i) that pertains to operation of the Boise Terminal Business and any other business owned by Respondents prior to the Acquisition and (ii) is

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excluded from the definition of the Boise Terminal Assets; provided, however, that Shared Intellectual Property shall not include any software that can readily be purchased or licensed from sources other than Respondents and which has not been materially modified (other than through user preference settings) and shall not include any commercial names, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications.

- T. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- U. “Terminal Customer” means any Person who has a Contract with Respondents for Terminaling services in Boise, Idaho (including Contracts that Respondents acquire as a result of the Acquisition).
- V. “Terminaling” means the temporary storage of light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of light petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.
- W. “Transitional Assistance” means any (i) administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the provision of light petroleum products terminaling services.

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II.**IT IS FURTHER ORDERED** that:**A.** Respondents shall:

1. No later than 180 days from the date this Order is issued, divest the Boise Terminal Assets, absolutely and in good faith, at no minimum price, as an on-going business, to a Person that receives the prior approval of the Commission (hereinafter referred to as “Acquirer”) and in a manner that receives the prior approval of the Commission; and
2. No later than the Divestiture Date, grant a worldwide, royalty-free, irrevocable, and transferable license (subject to the prior approval of the Commission) under all Shared Intellectual Property to the Acquirer that will enable the Acquirer to operate the Boise Terminal Business in substantially the same manner as Respondents prior to the Acquisition, including the freedom to extend existing services and products and develop new services and products.

B. No later than the Divestiture Date, Respondents shall secure all approvals, consents, ratifications, waivers, or other authorizations from all Persons that are necessary for the divestiture of the Boise Terminal Assets.**C.** At the request of the Acquirer and in a manner that receives the prior approval of the Commission, Respondents shall provide Transitional Assistance to the Acquirer for a period of not more than nine (9) months after Respondents divest the Boise Terminal Assets:

1. Such assistance shall be sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner and at the same quality achieved by Respondents prior to the divestiture; and

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2. Respondents shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services; (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of the agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction; or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide Transitional Assistance.
- D. For a period of two (2) years after the Boise Terminal Assets are divested, Respondents shall not solicit the employment of any Boise Terminal Employee who becomes employed by Acquirer at the time the Boise Terminal Assets are divested; provided, however, a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.

III.

IT IS FURTHER ORDERED that for a period of six (6) months after the Divestiture Date:

- A. Respondents shall allow any Terminal Customer to terminate its Contract with respect to any or all Terminaling services provided by Respondents in Boise, Idaho, without penalty or charge, upon request of the Terminal Customer.

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- B. Respondents shall notify each Terminal Customer of its right to terminate its Contract (i) no later than ten (10) days after the Public Record Date for Contracts in effect on the Public Record Date; (ii) no later than the execution of the Contract for Contracts that Respondents enter into or renew after the Public Record Date; and (iii) in substantially the same form as the notification attached to this Order as Appendix A.

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

- A. Respondents shall (i) keep confidential (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information held or controlled by Respondents relating to the Boise Terminal Business and Boise Terminal Asset (other than information relating to Respondents' own transactions in the course of conducting business as throughput customers of the Boise Terminal Business); *provided, however*, that Respondents may disclose or use such confidential information:
1. To perform their obligations or as permitted under this Order, the Order to Maintain Assets, or a Divestiture Agreement; and
 2. To comply with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Boise Terminal Business or Boise Terminal Assets, or as required by law;

Provided further, that Respondents shall require that employees who have had access to any Confidential Information relating to the Boise Terminal Business or Boise Terminal Assets (other than information relating to Respondents' own transactions in the course of conducting business as throughput customers of the Boise Terminal Business) within the one (1) year

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period prior to the Acquisition Date sign an agreement to maintain the confidentiality of such information.

- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of their employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

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

- A. If Respondents have not divested the Boise Terminal Assets as required by Paragraphs II. and III. of this Order, the Commission may appoint a Divestiture Trustee to divest the Boise Terminal Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of the Order to Maintain Assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or

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any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

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1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the 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 Divestiture Trustee, by the court.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

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4. The Divestiture Trustee shall use commercially reasonable 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 and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; 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 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.
5. 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 or a court may set. The Divestiture 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 Divestiture Trustee's duties and responsibilities. The Divestiture 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 Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in

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significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. 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 losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants,

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accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, 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 accomplish the divestiture required by this Order.

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

- A. Respondents shall enter into, and submit to the Commission for approval, one or more agreements with Acquirer that sets forth the manner in which Respondents shall complete (i) the divestiture of the Boise Terminal Assets required by this Order and (ii) any other obligation under this Order that requires prior approval of the Commission.
- B. Respondents shall comply with all provisions of any agreement between Respondents and Acquirer that has been approved by the Commission ("Divestiture Agreement"). In the event of a conflict between the terms of this Order and a Divestiture Agreement, or any ambiguity in the language used in a Divestiture Agreement, the terms of this Order shall govern to resolve such conflict or ambiguity.
- C. Respondents shall not modify the terms of a Divestiture Agreement without the prior approval of

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the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

VII.

IT IS FURTHER ORDERED that the purpose of the divestiture of the Boise Terminal Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order and the Order to Maintain Assets:
 - 1. No later than thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraph II.A. – II.C. of this Order; and
 - 2. No later than one (1) year after the date this Order is issued and annually thereafter until Respondents have completed their obligations under Paragraphs II. and III. of this Order, and at such other times as the Commission staff may request.
- B. With respect to the divestiture required by Paragraph II. of this Order, Respondents shall include in their compliance reports (i) the identities of all parties and a description of all substantive contacts or negotiations relating to the divestiture and approval, (ii) copies, other than of privileged materials, of all written

Decision and Order

communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and (iii) as applicable, a statement that any divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondents completed such divestiture and the date the divestiture was accomplished.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of either Respondent;
- B. Acquisition, merger, or consolidation of either Respondent; or
- C. Any other change in either Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

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 and upon five (5) days' notice to Respondents, Respondents shall without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and

Decision and Order

- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on August 5, 2023.

By the Commission.

Decision and Order

APPENDIX A
Notice

To settle concerns arising from Tesoro's acquisition of certain assets of Chevron Corporation, on [insert date of consent agreement], Tesoro agreed with the staff of the Federal Trade Commission ("FTC") to allow customers that purchase Terminaling services for light petroleum products in Boise, Idaho, to terminate their contracts with respect to any or all of the services, at the option of the customer, without penalty or charge, immediately upon request of the customer at any time from the [insert Public Record Date] until six (6) months after Tesoro has sold its current terminal in Boise, Idaho.

You are being sent this notice because you are or will be a customer that purchases Terminaling services from Tesoro in Boise, Idaho. You may read and download a copy of the Order from the FTC at its web site at [web link to Order] as well as other documents relating to the settlement. Tesoro's obligations with respect to contract termination are set out in Paragraph __ of the Order. Capitalized terms used in the Order are defined in Paragraph I. of the Order.

If you wish to terminate your contract with respect to any or all of the Terminaling services you purchase from Tesoro, please contact xxxxxxxxxxxx, Tel: xxxxxxxxxxxx, Email: xxxxxxxxxxxx. If you have any questions or concerns about these obligations, you may contact the staff of the Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, D.C., Tel: 202-326-xxxx.

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”) of certain assets of Chevron Corporation 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 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 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 accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets (“Order to Maintain Assets”):

1. Respondent Tesoro 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 19100 Ridgewood Parkway, San Antonio, Texas 78259.

Order to Maintain Assets

2. Respondent Tesoro Logistics Operations LLC is a limited liability company 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 19100 Ridgewood Parkway, San Antonio, Texas 78259. Tesoro Logistics Operations LLC is an indirect subsidiary of Tesoro Corporation.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Tesoro Corporation” means Tesoro Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Corporation (Tesoro Logistics Operations LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Tesoro Logistics Operations LLC” means Tesoro Logistics Operations LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Logistics Operations LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.

Order to Maintain Assets

- D. “Acquirer” means the Person identified in Paragraph II.A.1. of the Decision and Order.
- E. “Acquisition” means the proposed acquisition described in the Asset Sale and Purchase Agreement Between Northwest Terminalling Company and Tesoro Logistics Operations LLC, dated December 6, 2012.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Boise Terminal Assets” means the assets identified in Paragraph I.L. of the Decision and Order.
- H. “Boise Terminal Business” means the light petroleum products Terminalling business conducted by Tesoro in Boise, Idaho, prior to the Acquisition.
- I. “Boise Terminal Employee” means any full-time, part-time, or contract individual (i) who is employed by Respondents after the Acquisition Date, and (ii) whose job responsibilities relate or related primarily to the Boise Terminal Business at any time from the date of the announcement of the Acquisition.
- J. “Confidential Information” means any and all of the following information:
 - 1. all information that is a trade secret under applicable trade secret or other law;
 - 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware,

Order to Maintain Assets

software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information de-scribed above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

K. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.

Order to Maintain Assets

- L. “Divestiture Agreement” means any agreement identified in Paragraph VI.B. of the Decision and Order.
- M. “Final Report” means the report as defined in Paragraph V.C.(ii) of this Order to Maintain Assets.
- N. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- O. “Terminaling” means the temporary storage of light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

II.

IT IS FURTHER ORDERED that from the date Respondents execute the Consent Agreement until the Divestiture Date, Respondents shall manage the Boise Terminal Business and Boise Terminal Assets in the ordinary course of business consistent with past practices as of the date that Respondents announced the Acquisition. Respondents shall, among other requirements:

- A. Maintain the Boise Terminal Business and Boise Terminal Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents execute the Consent Agreement;
- B. Keep available the services of all Boise Terminal Employees (that are performing in a satisfactory manner) and maintain the relations and good will with suppliers, customers, landlords, creditors, agents, and others having business relationships with the Boise Terminal Business and Boise Terminal Assets;

Order to Maintain Assets

- C. Preserve the Boise Terminal Business and Boise Terminal Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Boise Terminal Business and Boise Terminal Assets would be diminished; and
- D. Provide the Boise Terminal Business with sufficient financial and other resources to:
 - 1. Operate the Boise Terminal Business and Boise Terminal Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition;
 - 2. Perform all maintenance to, and replacements or remodeling of, the assets of the Boise Terminal Business in the ordinary course of business and in accordance with past practice and current plans;
 - 3. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, or expansion projects; and
 - 4. Maintain the viability, competitiveness, and marketability of the Boise Terminal Business and Boise Terminal Assets:

Such financial resources to be provided to the Boise Terminal Business shall include, but shall not be limited to, (i) general funds, (ii) capital, and (iii) working capital.

Order to Maintain Assets

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

- A. Respondents shall staff the Boise Terminal Business and Boise Terminal Assets with sufficient employees to maintain the viability and competitiveness of the Boise Terminal Business and Boise Terminal Assets, including but not limited to, providing each Boise Terminal Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Boise Terminal Assets.
- B. Respondents shall allow the Acquirer an opportunity to identify, recruit, and hire any Boise Terminal Employee:
 - 1. No later than twenty (20) days before execution of a Divestiture Agreement, Respondents shall (i) identify all Boise Terminal Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all Boise Terminal Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview Boise Terminal Employees;
 - 2. Respondents shall (i) remove any impediments that may deter or prevent any Boise Terminal Employee from accepting employment with Acquirer, including any non-compete or confidentiality provision of an employment contract (other than Confidential Information relating to Respondents in their role as a customer of the Boise Terminal Business and Confidential Information not relating to the Boise Terminal Business and Boise Terminal Assets) and (ii) vest all accrued retirement benefits as of the date of transition of employment with Acquirer for all

Order to Maintain Assets

Boise Terminal Employees who accept an offer of employment from Acquirer; and

3. Respondents shall (i) not solicit or induce any Boise Terminal Employee to decline an offer of employment with Acquirer, and (ii) provide any Key Employee to whom Acquirer has made a written offer of employment with a financial incentive, if necessary, to accept a position with Acquirer at the time the Boise Terminal Assets are divested, pursuant to the terms set forth in Confidential Appendix A attached to this Order.

“Key Employee” means any individual identified as a key employee by agreement between Respondents and Acquirer and included in a Divestiture Agreement.

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

- A. Respondents shall (i) keep confidential (including as to Respondents’ employees) and (ii) not use for any reason or purpose, any Confidential Information held or controlled by Respondents relating to the Boise Terminal Business and Boise Terminal Assets (other than information relating to Respondents’ own transactions in the course of conducting business as throughput customers of the Boise Terminal Business); *provided, however*, that Respondents may disclose or use such confidential information:
 1. To perform their obligations, or as permitted, under this Order to Maintain Assets, the Decision and Order, or any Divestiture Agreement; or
 2. To comply with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Boise Terminal Business or Boise Terminal Assets, or as required by law;

Order to Maintain Assets

Provided further, that Respondents shall require that employees who have had access to any Confidential Information relating to the Boise Terminal Business or Boise Terminal Assets (other than information relating to Respondents' own transactions in the course of conducting business as throughput customers of the Boise Terminal Business) within the one (1) year period prior to the Acquisition Date sign an agreement to maintain the confidentiality of such information.

- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order to Maintain Assets, Respondents shall limit such information (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of their employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

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

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Walter Schanbacher to serve as Monitor.

Order to Maintain Assets

- B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order to Maintain Assets and the Decision and Order, and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondents shall (i) insure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order to Maintain Assets;
 3. The Monitor shall (i) serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other

Order to Maintain Assets

expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days from the Acquisition Date, (ii) no later than thirty (30) days from the date Respondents have completed all obligations required by Paragraphs II. and III. of the Decision and Order ("Fi-nal Report"), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order to Maintain Assets and the Decision and Order.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties shall terminate three business days after the Monitor has completed his final report pursuant to Paragraph V.C.(ii) of this Order to Maintain Assets, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the

Order to Maintain Assets

Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the Boise Terminal Business and Boise Terminal Assets as a viable, competitive, and ongoing business independent of Respondents until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

Order to Maintain Assets

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of either Respondent;
- B. Acquisition, merger or consolidation of either Respondent; or
- C. Any other change in either Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, 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 related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondents at their expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

Analysis to Aid Public Comment

IX.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the Monitor has completed his Final Report required by Paragraph V.C.(ii) of this Order to Maintain Assets.

By the Commission.

**ANALYSIS OF CONSENT ORDER
TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission (the “Commission”), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (“Consent Agreement”) with Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”). On December 6, 2012, Respondents executed related Asset Sale and Purchase Agreements with the Northwest Terminalling Company and Chevron Pipeline Company, subsidiaries of Chevron Corporation, to acquire the Northwest Products Pipeline system and Chevron’s associated terminals, including a terminal in Boise, Idaho, for a total of \$355 million (the “Acquisition”). Respondents already own and operate a terminal in Boise, Idaho (the “Tesoro Terminal”).

The Commission’s Complaint alleges that Respondents have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended,

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15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, by substantially lessening competition in terminaling services for light petroleum products in the Boise, Idaho Metropolitan Statistical Area (“Boise MSA”). The Acquisition would reduce the competitive options for terminaling services in the Boise MSA from three to two, with Respondents owning the two largest terminals. The proposed Consent Agreement effectively remedies the Acquisition’s possible anticompetitive effects by requiring Respondents to divest its own terminal in Boise, the Tesoro Terminal.

II. Respondents and Other Relevant Entities**A. Tesoro Corporation**

Tesoro Corporation is a publically traded corporation principally engaged in the refining and marketing of petroleum products in the United States.

B. Tesoro Logistics Operations LLC

Tesoro Logistics Operations LLC, a limited liability company, is a wholly owned subsidiary of Tesoro Logistics LP, a publically traded limited partnership. Respondent Tesoro Corporation individually and through its subsidiaries owns Tesoro Logistics GP, LLC, the general partner of Tesoro Logistics LP. Tesoro Logistics GP, LLC manages the operations and employs the personnel of Tesoro Logistics LP, and owns a two percent general partner interest in the partnership. Tesoro Corporation directly owns 37.6% of limited partner interest in Tesoro Logistics LP.

Tesoro Logistics Operations LLC directly or indirectly owns a number of petroleum products terminals, including the Tesoro Terminal in Boise, Idaho, that receive light petroleum products off the Northwest Pipeline. The Tesoro Terminal in Boise stores product it receives off the pipeline and provides facilities to load the product onto tank trucks for local distribution.

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C. Chevron Corporation

Chevron Corporation (“Chevron”) is a publicly traded corporation principally engaged in fully integrated petroleum operations in the United States, including the exploration, production, manufacture, transportation, and sale of petroleum products. Chevron, through Chevron Pipeline Company, owns and operates the Northwest Pipeline, a 760-mile interstate common-carrier pipeline that transports petroleum products from Salt Lake City to the States of Idaho and Washington. Chevron, through Northwest Terminalling Company owns petroleum terminals along the Northwest Pipeline in Idaho and Washington, including one in Boise, Idaho.

III. Distribution of Petroleum Products and Competitive Effects

Pipelines and terminals play a key role in the distribution of refined light petroleum products, a product category that includes gasoline, diesel fuel, and jet fuel. Pipelines are the least expensive means of moving bulk quantities of light petroleum products across land. The alternatives, rail transportation and truck transportation, are not cost competitive when pipeline transportation is available.

Terminals provide a critical connection between bulk supply through pipelines and local distribution of light petroleum products. The efficient operation of pipelines requires continuous shipment of large volumes of light petroleum products. Efficient local distribution utilizes tank trucks to pick up product from the terminal and deliver it to customers.

Terminals have specialized truck-loading facilities, known as “truck racks,” to transfer light petroleum products from storage tanks to individual tank trucks. Terminal services provided to suppliers of light petroleum products include storage, dispensing, and ethanol and additive blending. Suppliers of light petroleum products trying to reach a particular local market have no economically viable alternative to terminals.

The Acquisition would reduce the competitive options for terminalling services in Boise from three to two, with Tesoro

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owning the two largest terminals. Currently, in the Boise MSA, there are three terminals and one storage facility lacking truck racks. Tesoro, Chevron, and United Oil Company each own and operate terminals. Holly Energy Partners and Sinclair Corporation jointly own a storage facility under the name Boise Petroleum. This facility cannot load light petroleum products into tank trucks because it lacks a truck rack. Companies storing light petroleum products at Boise Petroleum must move the products to another terminal to load it onto tank trucks for delivery to the Boise market.

Of the three terminals in Boise, the Tesoro Terminal and the Chevron terminal together account for most of the terminal capacity. The United Oil terminal is the smallest terminal in Boise. Tesoro's control of most of the terminal capacity in Boise may substantially lessen competition in the relevant market. It increases the likelihood that Tesoro would exercise market power unilaterally by raising the terminaling fees or denying access to terminaling services for light petroleum products in the Boise MSA.

IV. The Proposed Agreement Containing Consent Orders

Under the Proposed Agreement Containing Consent Orders, Respondents have one hundred and eighty (180) days from the issuance of the Decision and Order ("Order") to divest the Tesoro Terminal, to a Commission-approved buyer. Pursuant to the Order, Respondents may complete the Acquisition of Chevron's Northwest Pipeline and associated terminals immediately upon issuance of the Order. The required divestiture of the Tesoro Terminal will maintain the level of competition that existed in the market for terminaling services in the Boise MSA prior to the Acquisition. The Order to Maintain Assets (discussed in the next section) will protect the competitive status quo until Respondents are able to find a suitable buyer of the Tesoro Terminal.

The Order contains an "open season" provision. Respondents agree to let any customer at the Chevron Boise terminal terminate its contract without penalties for a period of six months after the divestiture sale of the Tesoro Terminal. Respondents agree to notify customers at the Chevron Boise terminal of their right to

Analysis to Aid Public Comment

terminate their existing contracts. These provisions will ensure that the new owner of the Tesoro Terminal can compete for new business to replace Respondents' current business at the Tesoro Terminal. Respondents are the only customer of the Tesoro Terminal and they could move their business to the Chevron Boise terminal when the divestiture is completed.

The Order requires Respondents to provide transitional assistance and support services to the buyer of the Tesoro Terminal. Respondents must also license any key software and intellectual property to the buyer. The Order allows the buyer to recruit Respondents' employees who work at the Tesoro Terminal. For a period of two years after the divestiture of the Tesoro Terminal, Respondents may not solicit the employees that accept employment offers from the buyer, to rejoin Respondents. The Order also limits Respondents' access to, and use of, confidential business information pertaining to the Tesoro Terminal.

If Respondents fail to fully divest the Tesoro Terminal within the one hundred and eighty (180) day time period, the Order grants the Commission power to appoint a divestiture trustee to complete the divestiture. The Commission may also appoint a divestiture trustee, if it brings an action against Respondents pursuant to Section 5(l) of the FTC Act. The Order also governs the divestiture trustee's duties, privileges, and powers.

The Order requires Respondents, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the Tesoro Terminal and the status of that undertaking. Commission representatives may gain reasonable access to Respondents' business records related to compliance with the consent agreement. The Order terminates ten (10) years after its issuance.

V. The Order to Maintain Assets

The Order to Maintain Assets seeks to preserve the Tesoro Terminal as a viable, competitive, ongoing business, and to ensure that Respondents do not access the confidential business information belonging to this business. Respondents agree to preserve the Tesoro Terminal in substantially the same condition existing at the time when Respondents executed the Consent

Analysis to Aid Public Comment

Agreement. Pursuant to the Order to Maintain Assets, Respondents will provide the Tesoro Terminal with sufficient financial and other resources to maintain current operation levels and carry already planned capital and improvement projects.

The Order to Maintain Assets also empowers the Commission to appoint a monitor to oversee Respondents' compliance with their obligations under the Order. The Order to Maintain Assets outlines the rights, duties, and responsibilities of the monitor, including access to business records, hiring necessary consultants and attorneys, and any other thing reasonably necessary to carry out their duties. The Order to Maintain Assets further prohibits Respondents from interfering with the monitor's obligations and requires them to indemnify the monitor.

The monitor shall submit periodic reports to the Commission concerning compliance with the Order to Maintain Assets. The Commission may appoint a different monitor if the original monitor fails to carry out his duties. The Order to Maintain Assets terminates either (1) three days after the Commission withdraws its acceptance of the Consent Agreement or (2) three days after the monitor completes its final report required by Paragraph V.C.(ii) of this Order to Maintain Assets.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

By accepting the proposed Consent Agreement 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 to aid the Commission in its determination of whether it should

Analysis to Aid Public Comment

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

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

Docket No. C-4411; File No. 131 0069
Complaint, August 27, 2013 – Decision, August 27, 2013

This consent order addresses the acquisition by General Electric Company (“GE”) of the aviation division of Avio S.p.A. (“Avio”) for approximately \$4.3 billion. Avio’s aviation division designs and manufactures modules, component parts and electrical systems for civil and military engines. The complaint alleges that the acquisition raised competitive concerns in the aircraft engine market, as aircraft engines are highly differentiated products. Thus, a hypothetical monopolist for engines designed for a specific type of aircraft could profitably increase prices. Avio has the sole design responsibility for the aircraft gearbox on a forthcoming Pratt & Whitney PW1100F engine, one of two engines available on the Airbus A320neo aircraft. The only other available engine is manufactured by CFM, of which GE owns a 50% interest. Accordingly, the complaint alleges the acquisition would eliminate competition for this engine and would provide GE with the ability and incentive to disrupt the design and certification of the Avio-supplied airline gearbox for the Pratt & Whitney PW1100G engine. The consent order provides a narrowly tailored remedy of the acquisition’s likely anticompetitive effects. The order bars GE from interfering with Avio staffing decisions with respect to the PW1100G project and further requires GE to provide certain transition services, including licenses to essential intellectual property and access to Avio specialized tools, in the event Pratt & Whitney wishes to use an alternative supplier to manufacture the PW1100G. The order further appoints a monitor to oversee GE’s compliance with the terms of the order.

Participants

For the *Commission*: *Stephen W. Rodger* and *Mark D. Silvia*.

For the *Respondent*: *Deborah L. Feinstein*, *Jonathan I. Gleklen*, and *Matthew M. Schultz*, *Arnold & Porter, LLP*.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to