the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 8, 2001, and the final decision of the Commission shall be issued by May 8, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1024 Filed 1–14–00; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 991 0077]

Exxon Corp., et al.; Analysis To Aid Public Comment and Commissioner Statements

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations. This document also contains the Statement of Chairman Pitofsky, Commissioner Anthony, and Commissioner Thompson, and the Statement of Commissioner Swindle.[1]

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Richard Liebeskind, FTC/H–374, 600 Pennsylvania Avenue, NW., Washington, DC 20580. (202) 326–2574 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days, until January 31, 2000. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. This document also contains the Statement of Chairman Pitofsky, Commissioner Anthony, and Commissioner Thompson, and the Statement of Commissioner Swindle. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 30, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/1999/9911/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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

II. Description of the Parties and the Transaction

Exxon, which is headquartered in Irving, Texas, is one of the world's largest integrated oil companies. Among its other businesses, Exxon operates petroleum refineries that make various grades of gasoline and lubricant base stock, among other petroleum products, and sells these products to intermediaries, retailers and consumers. Exxon owns four refineries in the United States; those four refineries can process approximately 1.1 million barrels of crude oil and other feedstocks daily.[1] Exxon owns or leases approximately 2,049 gasoline stations nationally and sells gasoline to distributors or dealers that operate another 6,475 retail outlets throughout the United States. During fiscal year 1998, Exxon had worldwide revenues of approximately $115 billion and net income of approximately $6 billion.

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

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

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[1] The Commission placed the consent agreement package in this matter on the public record on November 30, 1999; the public comment period began on that date and will continue through January 31, 2000. The Analysis to Aid Public Comment was published in the **Federal Register** on December 6, 1999, at 64 FR 68101. This document corrects a number of typographical errors in that earlier **Federal Register** version of the Analysis—so that it conforms in all respects to the final version placed on the public record on November 30, 1999—and includes the Commissioner Statements.

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

Enterprises; the combination of the refining and marketing businesses of Marathon Oil Co. and Ashland Oil Co., and the acquisition of the refining and marketing businesses of Unocal Corp. by Tosco Corp.

III. The Investigation and the Complaint

The Complaint alleges that consummation of the merger would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) The marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York (collectively ''the Northeast''), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the ''Mid-Atlantic''), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of ''CARB'' gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, D.C., metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia, metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (i.e., the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (''inland Southeast''); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System (''TAPS''); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest or otherwise surrender control of: (1) All of Mobil's gasoline marketing in the Mid-Atlantic (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California (''Exxon Benicia Refinery''), and all of Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in TAPS; (8) the terminal and retail operations of Exxon on Guam; (9) a quantity of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business. The terms of the divestitures and other provisions of the Proposed Order are discussed more fully in Section IV below.

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

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

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

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

Exxon and Mobil today are two of the largest marketers of gasoline from Maine to Virginia, and would be the largest marketer of gasoline in this region after the merger, but for the remedy specified in the Proposed Order. The merging companies are direct and significant competitors in at least 39 metropolitan areas in the Northeast and Mid-Atlantic [2]; in each of these areas, and in each of the States in the Northeast and Mid-Atlantic, the merger would result in a market that is at least moderately concentrated and would significantly increase concentration in that market.[3]

[2] Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, Portland, ME; Baltimore, MD; Barnstable-Yarmouth, Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Duchess, Nassau-Suffolk, New York, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazelton, State College, York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News, Richmond-Petersburg, VA; Burlington, VT. These areas are defined, variously, as ''Metropolitan Statistical Areas'' (''MSAs''), ''Primary Metropolitan Statistical Areas'' (''PMSAs''), and ''New England County Metropolitan Areas'' (''NECMAs'') by the Census Bureau.

[3] The Commission measures market concentration using the Herfindahl-Hirschman Index (''HHI''), which is calculated as the sum of the squares of the shares of all firms in the market. Merger Guidelines § 1.5. Markets with HHIs between 1000 and 1800 are deemed ''moderately concentrated,'' and markets with HHIs exceeding 1800 are deemed ''highly concentrated.'' Where the HHI resulting from a merger exceeds 1000 and the merger increases the HHI by at least 100, the merger

Continued

Nineteen of these 39 metropolitan areas would be highly concentrated as a result of this merger.[4] On average, the four top firms in each metropolitan area would have 73% of sales; the top four firms in the Northeast and Mid-Atlantic as a whole (Exxon Mobil, Motiva,[5] BP Amoco, and Sunoco) would on average have 66% of each of these metropolitan areas.

The Complaint alleges that the marketing of gasoline is a relevant product market, and that metropolitan areas and areas contained within them are relevant geographic markets. The Commission used metropolitan statistical areas (''MSAs'') as a reasonable approximation of geographic markets for gasoline marketing in Shell Oil Co., C–3803 (1998), and British Petroleum Co., C–3868 (1999). As described below, the evidence in this investigation suggests that pricing and consumer search patterns may indicate smaller geographic markets than MSAs as defined by the Census Bureau. To that extent, using MSAs or counties to define geographic markets likely understates the relevant levels of concentration.[6]

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

Branded oil companies set the retail prices of gasoline at the stores they operate, and sometimes set those prices on a station-by-station basis. Lessee dealers and open dealers generally purchase from the branded company at a delivered price (''dealer tank wagon'' or ''DTW'') that the branded supplier likewise might set on a station-by-station basis. In the Northeast and Mid-Atlantic, DTW prices charged by Exxon, Mobil and their major competitors are typically set using ''price zones'' established by the supplier. Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations or groups of stations. There might be 10 or more price zones established by an individual oil company in a metropolitan area.

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

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

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

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

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

''potentially raise[s] significant competitive concerns depending on the factors set forth in Sections 2–5 of the Guidelines.'' Merger Guidelines § 1.51.

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

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

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

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

[8] In finding reason to believe that this merger likely would reduce competition, the Commission has not, in the context of this investigation, concluded that these practices of themselves violate the antitrust laws or constitute unfair methods of competition within the meaning of Section 5 of the FTC Act. Rather, evidence of market behavior provides the Commission with reason to believe that these moderately and highly concentrated markets are not fully competitive even prior to the merger, and therefore that the merger likely would reduce competition in these markets whether or not the post-merger market was highly concentrated.

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

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

Entry appears unlikely to constrain noncompetitive behavior in the Northeast and Mid-Atlantic. New gas station sites are difficult to obtain in the Northeast and Mid-Atlantic, and the evidence in this investigation suggests that entry through the construction of new stations is unlikely to occur in a manner sufficient to constrain price increases by incumbents. As in British Petroleum Co., C–3868, the Commission has not seen substantial evidence that jobbers or open dealers are likely to switch to new entrants in the event of a small price increase. Therefore, the Commission has found it unlikely that a new entrant might enter a market by converting such stations in a manner that would meaningfully constrain the behavior of incumbents.

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

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

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

C. Count III—Marketing of Gasoline in Arizona

Mobil markets motor gasoline in Arizona. Exxon gasoline is marketed in Arizona by Tosco Corporation, which acquired Exxon's Arizona marketing assets and businesses and the right to sell Exxon branded gasoline in 1994. Gasoline marketing in Arizona is moderately concentrated.

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

D. Count IV—Refining and Marketing of CARB Gasoline

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

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

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

To a much greater extent than in many other parts of the country, the seven refiner-marketers in California own their stations, and operate through company-operated stations, lessee dealers and open dealers, rather than through distributors. [9] The marketing practices described in the Northeast and Mid-Atlantic, see Section III.A above, are employed in California and are reinforced by the refiner-marketers' more complete control of the marketing channel. One effect of the close integration between refining and marketing in California is that refiners

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

outside the West Coast cannot easily find outlets for imported cargoes of CARB gasoline, since nearly all the outlets are controlled by incumbent refiner-marketers. Likewise, the extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply. The Commission's investigation indicated that vertical integration and the resulting lack of independent import customers, rather than the cost of imports, is the principal barrier to supply from outside the West Coast.

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

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

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

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

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

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

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

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

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

The Complaint charges that the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is highly concentrated, and would become significantly more concentrated as a result of the merger. Entry into the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[10] Paragraphs VII and VIII of the Proposed Order therefore require Respondents to divest Mobil's Boston and Manassas, Virginia, terminals.

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

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

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

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

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines largely run parallel to each other from Louisiana to Washington, D.C., and directly compete to provide petroleum product transportation services to the inland Southeast. Mobil owns approximately 11 percent of Colonial and has representation on the Colonial Board of Directors. Exxon owns approximately 49 percent of Plantation, is one of Plantation's two shareholders, and has representation on Plantation's Board.

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

Order requires Respondents to divest to a third party or parties the Exxon or Mobil pipeline interest.

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

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

Exxon and Mobil both have available capacity on TAPS, *i.e.,* capacity not needed to carry their own production. Based on available capacity, the merger would increase the HHI by 268, to 5103. The merger would eliminate Mobil, a significant discounter on TAPS, as an independent firm, and reduce Exxon's incentives to discount TAPS tariffs. Entry is unlikely to defeat this price increase, since a second crude oil pipeline is highly unlikely to be built. In the absence of the Proposed Order, the merger could raise costs to purchasers of ANS crude oil by $3.5 million annually. The Proposed Order eliminates this risk by requiring the Respondents to divest Mobil's interest in TAPS.

J. Count X—Terminaling and Marketing of Gasoline and Other Light Petroleum Products in Guam

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

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

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

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

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

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

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

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

M. Count XII—Jet Turbine Oil

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

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

IV. Resolution of the Competitive Concerns

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

A. General Terms

Each divestiture or other disposition required by the Proposed Order must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within nine months of executing the Agreement Containing Consent Orders (except that the divestiture of the Benicia Refinery and Exxon marketing in California must be completed within twelve months of executing the Agreement Containing Consent Orders).

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

In the event Respondents fail to complete the required divestitures and other obligations in a timely manner, the Proposed Order authorizes the Commission to appoint a trustee or trustees to negotiate the divestiture of

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

either the divestiture assets or of ''crown jewels,'' alternative asset packages that are broader than the divestiture assets. The crown jewel for the Exxon Northeastern Marketing Assets is Mobil's marketing in the same area; for the Mobil Mid-Atlantic Marketing Assets, Exxon's marketing in the same area [12]; for the Exxon California Refining and Marketing Assets, the Mobil California Refining and Marketing Assets; for the Mobil Texas Marketing Assets, the Exxon Texas Marketing Assets; for Mobil's interest in TAPS, Exxon's interest in TAPS; for the paraffinic base oil to be sold, Mobil's Beaumont Refinery; and for Exxon's Jet Turbine Oil Business, Mobil's Jet Turbine Oil Business. In each case, the crown jewel is a significantly larger asset package than the divestiture assets.

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

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

B. Gasoline Marketing in the Northeast and Mid-Atlantic

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

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

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

The acquirer will nonetheless be allowed to continue to offer the Exxon or Mobil name, as the case may be, to dealers and jobbers in order to allow the acquirer to preserve the network to the greatest extent feasible and to comply with the requirements of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.* (''PMPA''). Thus, the acquirer will be able to continue to offer Exxon or Mobil branded fuel, as the case may be, to dealers and jobbers that are today selling Exxon or Mobil branded fuel and displaying those brands. Over time, the acquirer in its business judgment may choose to convert the business it acquires to its own brand name, subject to the requirements of law or with the consent of the dealers and jobbers in question.

To effectuate the divestiture and allow the acquirers an opportunity to

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

[13] The consent decree between Respondents and the States of Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and Virginia provides that a State that objects to a proposed acquirer must petition the court before which the decree is pending to rule on the suitability of the proposed acquirer. In the event such a motion is made, Respondents' time to divest under the Proposed Order is tolled until the matter is resolved.

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

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

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

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

C. Marketing of Gasoline in Texas

To remedy the reduction in competition in the five metropolitan areas in Texas alleged in Count II of the Complaint, Paragraph VI of the Proposed Order requires Respondents to divest and assign Mobil's marketing businesses in those five metropolitan areas. Mobil's marketing assets in those metropolitan areas include interests of Mobil in partnerships with TETCO Inc. and Southland Corp. The Proposed Order requires that Respondents divest Mobil's interest in its partnership with TETCO to TETCO or to another acquirer approved by the Commission, in either event only in a manner approved by the Commission. The Proposed Order also requires Respondents to assign their Existing Supply Agreements to Assignees approved by the Commission, on the same terms as discussed with regard to Northeastern and Mid-Atlantic marketing, Part IV.B above. Respondents will divest approximately 10 owned or leased Mobil stores and assign supply agreements for Mobil's distributor-supplied stores in Texas.

D. Marketing of Gasoline in Arizona

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

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

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

As part of its divestiture of the refinery, Respondents shall (at the acquirer's option) enter into a supply contract with the acquirer for a ratable quantity of Alaska North Slope (''ANS'') crude oil up to 100 thousand barrels per day (an amount equivalent to the refinery's historic usage). Exxon is one of the three principal producers of ANS crude oil (the other two are BP Amoco and ARCO).

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

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

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

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

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

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

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

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

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

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

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

To remedy the reduction in competition in the importation, terminaling and marketing of light petroleum products in Guam, Paragraph III of the Proposed Order requires Respondents to divest Exxon's terminal and marketing in Guam. Essentially all of Exxon's gasoline marketing in Guam

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

K. Count XI—Paraffinic Base Oil

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

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

By changing Mobil's contract with Valero and entering into a Gulf off-take agreement, Mobil's share of the base oil market will effectively be given to Valero and some new entrant(s) in the base oil market or other suitable acquirers. The status quo in the base oil market will be maintained.

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

L. Count XII—Jet Turbine Oil

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

V. Opportunity for Public Comment

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

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

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson; Exxon/Mobil

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

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

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

1. About 60 percent of the assets of the merged firms are located outside the United States. Competitive effects in foreign countries have been reviewed by antitrust authorities abroad and the merger has been approved by those reviewing authorities with some restructurings.

2. In the United States, the most important overlaps involve gasoline marketing in states along the Atlantic Coast, California, Texas and Guam, gasoline refining in California, and the production and sale of paraffinic base oil, an ingredient in motor oil, throughout the United States. These overlaps amount to only about 3 percent of the merged assets.

3. Where there are significant competitive overlaps, the companies have consented to substantial restructuring of the deal, including the

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

largest divestiture ever ordered by the Federal Trade Commission. In those areas of principal concern, the restructuring consisted of the following:

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

Refining: Exxon's Benicia, California refinery will be sold.

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

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

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

5. The Commission has assured itself not only that restructuring will occur, but that there are companies ready, willing and able to acquire divested assets and to be effective competitors. When the time comes to approve or disapprove buyers, the Commission will treat as a major concern the effect of divestitures on the welfare of station owners and employees. Also, the Commission will insist that the buyers of divested assets are sensitive to the role of independent station owners and lessees in continuing to play an important role in preserving competition in the retail sector of the gasoline market.

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

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

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

1. Commissioner Swindle assumes efficiencies in exploration and production outside the United States. That may be correct, but we are unwilling to assume the existence of efficiencies in markets that the Commission did not fully investigate.

2. Relevant geographic market in which anticompetitive effects might be measured was pleaded in the complaint as ranging from states to metropolitan areas to smaller areas within metropolitan areas. Commissioner Swindle would prefer to limit the pleading to metropolitan areas. As the Analysis to Aid Public Comment indicates, there is some evidence of coordinated action in parts of metropolitan areas (usually termed ''price zones''), and there is precedent in this industry for pleading geographic markets as statewide.[1] At the pleading stage, we believe pleading in the alternative is traditional and justified.

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

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

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

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

Separate Statement of Commissioner Orson Swindle in Exxon Corporation, File No. 991–0077

In this matter, the Commission has investigated the proposed $80 billion merger between Exxon Corporation (''Exxon'') and Mobil Corporation (''Mobil''). The proposed merger would create the largest privately owned oil company in the world, with both Exxon and Mobil having extensive operations in terms of exploration, production, refining, pipelines, terminal operations, wholesaling, and retailing. The Commission has accepted for public comment a consent agreement to resolve complaint allegations with regard to a number of markets in which Exxon and Mobil have overlapping operations.

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

A. Overview

The proposed merger would reunite two parts of the Standard Oil Trust. Exxon is the successor to Standard Oil of New Jersey, and Mobil is the successor to Standard Oil of New York. At the turn of the last century, the Standard Oil Trust controlled about 90% of all refining of oil and other petroleum products in the United States. See *Standard Oil Co. of New*

Jersey v. *United States,* 221 U.S. 1 (1911). Since that time, however, all aspects of the oil industry—exploration, production, refining, pipelines, terminals, wholesaling, and retailing—in the United States and throughout the world have undergone tremendous changes. Simply stated, although the public may perceive that allowing the merger of Exxon and Mobil is an ominous sign that the government is allowing the Standard Oil Trust to be reassembled, the merger is not, as Yogi Berra once said, ''deja vu all over again.''

The Commission has conducted an extensive and thorough investigation of the economic effects of the proposed merger between Exxon and Mobil. The Commission has alleged that the proposed merger would raise competitive concerns in specific refinery, pipeline, terminal, wholesale, and retail gas station markets in which Exxon and Mobil have competing operations. The proposed relief that the Commission has obtained to address these competitive concerns is comprehensive and extensive.

The proposed consent order specifically would require the merged firm to divest up to about $2 billion (as estimated by the parties) out of its $80 billion in assets. However, even though $2 billion in divestitures is a substantial amount, the fact that the amount is a relatively small portion of the total assets involved underscores for me a vital point—the proposed merger between Exxon and Mobil appears to be, in large part, a benefit (or at least not a detriment) to competition and consumers.[1]

In particular, the proposed merger may allow Exxon and Mobil to realize efficiencies in exploration and production without creating any competitive concerns. Following the merger, the combined firm will own only about 1% of the world's oil reserves and produce only about 3% of the world's oil. By contrast, the national oil companies (such as Saudi Arabia's Aramco, Venezuela's PdVSA, and Mexico's PEMEX) collectively own 90% of the world's oil reserves and produce about 70% of the world's oil. By merging, Exxon and Mobil thus may become a more effective competitor in oil exploration and production, thereby benefitting American consumers and the American economy.

I want to provide one caveat about Commission law enforcement in the oil industry. The oil industry is undergoing and may continue to undergo tremendous restructuring, including mergers between large oil companies. In analyzing the competitive effects of these mergers, the Commission, of course, applies the standards set forth in the *Horizontal Merger Guidelines.* United States Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines* (Apr. 8, 1997). As concentration increases in some markets as a result of mergers, it becomes more likely that the Commission will challenge future mergers that affect those markets. This greater probability of challenge would not be the result of expansive antitrust enforcement—rather, it would be the result of the consistent application of the *Horizontal Merger Guidelines* to the changing state of competition in the oil industry. In my view, the Commission can and should take into account these changes in determining whether law enforcement action concerning a particular merger is appropriate.

B. Wholesale and Retail Marketing of Gasoline

The complaint alleges that the merger between Exxon and Mobil may substantially lessen competition for the wholesaling and retailing of gasoline in many and various markets. Specifically, the complaint defines as a relevant geographic market each of the States from Virginia to Maine, ''smaller areas'' within those states including particular metropolitan areas, and even ''smaller areas'' within those metropolitan areas.¶¶s 17a, 18, 31, and 32 of the Complaint. It also defines as relevant geographic markets five metropolitan areas in Texas (Austin, Bryan/College Station, Dallas, Houston, and San Antonio), and ''smaller areas'' contained within those metropolitan areas. ¶¶s 17b, 19, 33, and 34 of the Complaint. The complaint further defines Arizona and ''smaller areas'' within Arizona as relevant geographic markets.¶¶s 17c, 21, 35, and 36 of the Complaint.

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

Rather than very large geographic areas (*e.g.,* entire states)[2] or very small geographic areas (*e.g.,* price zones), I think that standard metropolitan statistical areas (''MSAs'') are the most appropriate areas to use as geographic markets because they are consistent with the general boundaries of competition in the wholesaling and retailing of gasoline, and they are consistent with the size of the geographic markets that the Commission generally has used in analyzing past oil mergers. See British Petroleum Co., plc., Dkt. No. C–3868 (1999) (¶ 19 of Complaint) (''cities and metropolitan areas''); see also Shell Oil Co., Dkt. No. C–3803 (1998) (¶¶ 21 and 22 of Complaint) (San Diego County, California) (Oahu Island, Hawaii).[3]

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

I have reason to believe that the proposed merger between Exxon and Mobil may substantially lessen competition in wholesale and retail gasoline in highly concentrated markets,

[1] *See Horizontal Merger Guidelines* at § 0.1 (''While challenging competitively harmful mergers, the [Commission] seeks to avoid unnecessary interference with the larger universe of mergers that are either competitively beneficial or neutral.'').

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

[3] Using MSAs as geographic markets also promotes greater consistency in analysis because most oil industry data is reported by MSA.

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

In the recent past, the Commission has challenged mergers that would significantly increase concentration in highly concentrated gasoline markets. In 1998, the Commission alleged that a joint venture may substantially lessen competition where it would have significantly increased concentration in the highly concentrated markets for wholesaling and retailing of gasoline in San Diego County, California, and on Oahu, Hawaii. Shell Oil Co. In 1999, the Commission similarly alleged that a merger between British Petroleum and Amoco may substantially lessen competition where it would have significantly increased concentration in twenty-five highly concentrated markets [4] for the wholesaling and retailing of gasoline in the Southeastern United States. British Petroleum Co., plc. [5]

In this case, the complaint alleges that the merger between Exxon and Mobil would significantly increase concentration in twenty highly concentrated wholesale and retail gasoline markets—nineteen markets in the Northeastern United States and one in Texas. [6] The theory that major brands coordinate on price is more plausible in these highly concentrated markets given the limited number of firms that need to coordinate their actions concerning gasoline prices, a conclusion that is consistent with the presumption accorded under the Horizontal Merger Guidelines. New entry is not likely to defeat a coordinated price increase in these markets because of the difficulty of entering into the wholesale and retail gasoline business to a sufficient extent due to restrictive zoning laws, regulatory approvals, deed restrictions, the scarcity of sites for stations, and high costs. Sufficient jobber switching in response to a coordinated price increase is also not likely to occur because (unlike my assessment of the facts in the Southeastern United States markets in *British Petroleum Co.*) switching generally has not been prevalent in these markets and the cost of doing so has been increasing significantly. Consequently, I support the complaint allegations with regard to these highly concentrated markets and the corresponding order requirement that the retail gasoline stations in these markets be divested or assigned.

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

Specifically, I do not support the complaint allegations that the proposed merger between Exxon and Mobil may substantially lessen competition in twenty-three wholesale and retail gasoline markets that would be only moderately concentrated after the merger—eighteen markets in the Northeastern United States, four markets in Texas, and one market in Arizona. [7] Such mergers are not presumed to cause competitive harm, but instead ‘‘potentially raise significant competitive concerns depending on [factors such as potential adverse competitive effects and entry.].’’ Horizontal Merger Guidelines at § 1.51(b).

I do not find the Commission's theory that major brands have coordinated their gasoline prices in these moderately concentrated markets [8] to be sufficiently persuasive to support the complaint allegations. Coordinating gasoline prices tends to be more difficult in markets with moderate concentration levels than with high concentration levels because there generally are more firms whose prices have to be coordinated. Price coordination also may be complicated by variations in the boundaries of the price zones that major brands use and the difficulty in accounting for a variety of other factors that may affect gasoline prices, such as brand name strength, retail location, and credit card programs. Moreover, even if a coordinated price could be established, it likely would be difficult to maintain because, although retail gasoline prices may be publicly posted, cheating on the price could also occur through hard-to-monitor discounts on the wide variety of other goods and services that stations offer, especially the convenience store items which are becoming an increasingly large source of retail gasoline station revenue.

I do not think that it is unreasonable to conclude that gasoline prices might be coordinated in markets that would be moderately concentrated. However, I think that the better view of the evidence is that such coordination is not occurring and is not likely to occur following the merger. I consequently dissent from the complaint allegations with regard to the wholesale and retail gasoline markets in the Northeast, Texas, and Arizona that would be moderately concentrated, and I would not require the divestiture and assignment of retail gasoline stations located in those markets.

C. Refining, Pipelines, and Terminal Markets

With regard to the remaining complaint allegations relating to refining, pipeline, and terminal markets, I support the allegations with regard to each of these markets. However, a brief treatment of two of these markets is warranted. I am not persuaded that a full trial on the merits would demonstrate that the proposed merger may substantially lessen competition in the United States and Canadian market for refining paraffinic base oil, ¶¶ s 51 and 52 of the Complaint, or in the West Coast market for refining CARB gasoline. ¶¶ s 37 and 38 of the Complaint. The information that the Commission staff has compiled during their extensive and thorough investigation, however, persuades me that there is at least ‘‘reason to believe’’ that the proposed merger may substantially lessen competition in these two markets. Because this showing is enough to meet the applicable legal standard at the time of

[4] The Commission also alleged that the merger may substantially lessen competition in five markets that were only moderately concentrated.

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

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

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

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

complaint issuance, I am willing to support the allegations relating to these two markets.

The proposed relief appears to be necessary and appropriate to address the complaint allegations in the refining, pipeline, and terminal markets. In my view, the Commission's staff and the merging parties have worked diligently and creatively to craft relief to remedy the competitive concerns in these markets. However, given the extraordinary complexity of the divestitures and other relief negotiated, I welcome public comments addressing whether the order would fulfill its remedial purpose without causing unintended adverse effects on competition or consumers. In particular, I would be interested in public comment on whether the merging parties should be required to divest the Exxon refinery in Benicia, California, and the Exxon retail gasoline stations in California to a single buyer. From a purely economic basis, there seems to be little logic in forcing the divestiture of the refinery and the retail stations to a single buyer.

[FR Doc. 00–570 Filed 1–10–00; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Availability

The General Services Administration (GSA) has prepared a Record of Decision as the final document in the Environmental Impact Statement process for the renovation of the Tecate Port of Entry, Tecate, California. This project is designed to relocate the commercial operations, improve the working conditions for the U.S. Customs Service and U.S. Immigration and Naturalization Service, and improve the water systems on the port. For a copy of the Record of Decision contact: General Services Administration, 450 Golden Gate, Portfolio Division, San Francisco, California 94102, Attn: Rosanne Nieto, Phone: (415) 522–3490.

Arlin M. Timberlake,

Director, Portfolio Division, Public Buildings Service, General Services Administration.

[FR Doc. 00–1003 Filed 1–14–00; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. PHS Supplements to the Application for Federal Assistance—SF–424 (0920–0428)—Extension. The Centers for Disease Control and Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application (SF–424). The Checklist, Program Narrative, and the Public Health System Impact Statement (third party notification) (PHSIS) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding.

The total annual cost to the respondents is $1,184,452.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State and local health departments; non-profit and for-profit organizations	7,755	1	4.215	32,687
Total				32,687

Dated: January 11, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–1026 Filed 1–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60 Day–00–19]

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