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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION, 600 Pennsylvania Ave., N.W. Washington, D.C. 20580 Plaintiff, vs. BP AMOCO, P.L.C., Brittanic House, 1 Finsbury Circus London EC2M 7BA, England and ATLANTIC RICHFIELD COMPANY, 333 S. Hope Street Los Angeles, California 90071 Defendants.	Civil No.

COMPLAINT OF FEDERAL TRADE COMMISSION
FOR A PRELIMINARY INJUNCTION PURSUANT TO
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, brings this action for a preliminary injunction under Section 13(b) of the Federal Trade

Commission Act, 15 U.S.C. § 53(b), to restrain and enjoin defendant BP Amoco p.l.c. ("BP"), including its domestic and foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures, from acquiring through merger or otherwise, any stock, assets, or other interest, either directly or indirectly, of defendant Atlantic Richfield Company ("ARCO"). The proposed merger of BP and ARCO, if allowed to proceed, may substantially lessen competition in the markets for: crude oil sold to targeted West Coast refiners; all crude oil sold to West Coast refiners; crude oil produced on the Alaska North Slope ("ANS crude oil"); bidding for exploration rights on the Alaska North Slope ("ANS"); and oil pipeline and storage services into and in Cushing, Oklahoma. BP and ARCO are, by far, the two largest producers of ANS crude oil, the two largest suppliers of ANS crude oil to refineries in California and Washington, and the two most successful competitors in bidding for oil and gas leases on the North Slope and in exploring for and developing new producing oil fields on those properties. BP and ARCO also have large interests in the oil pipeline and storage facilities that serve the crude oil marketing center in Cushing, Oklahoma. The purpose of this action, pursuant Section 13(b) of the Federal Trade Commission Act, is to maintain the status quo during the pendency of an administrative proceeding challenging defendants' proposed merger, that will be commenced by the Commission pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21.

I.

JURISDICTION

1. Jurisdiction is based upon Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and upon 28 U.S.C. §§ 1337 and 1345. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by Act of Congress to bring this action.

2. BP and ARCO are engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12. BP and ARCO are engaged in, among other things, the production of crude oil in the State of Alaska and

the sale and delivery of that crude oil in the states of California, Oregon, Washington and Hawaii.

II.

VENUE

3. Venue is proper under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), under 28 U.S.C. § 1391(b), (c), and under Section 12 of the Clayton Act, 15 U.S.C. § 22. BP and ARCO transact business and are found within the Northern District of California. This action involves, in part, the threatened loss of competition in the sale of crude oil to refineries located within the Northern District of California. Defendant ARCO owns and operates gasoline service stations located within the Northern District of California.

III.

INTRADISTRICT ASSIGNMENT

4. Assignment of this action to the San Francisco Division is proper. This action involves, in part, the threatened loss of competition in the sale of crude oil to refineries located in the San Francisco Bay area. Defendant ARCO owns and operates gasoline service stations located within the counties encompassed by the San Francisco Division.

IV.

THE PARTIES

5. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 et seq., with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority for enforcing, inter alia, Section 7 of the Clayton Act and Section 5 of the FTC Act.

6. Defendant BP is a corporation organized and existing under the laws of the United Kingdom, with its principal place of business at Brittannic House, 1 Finsbury Circus, London EC2M 7BA, England. BP's principal business offices in the United States are located at BP Amoco, Inc., 200 East Randolph Drive, Chicago, Illinois, 60601-7125.

7. Defendant ARCO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 333 S. Hope Street, Los Angeles, California 90071.

V.

SECTION 13(b) OF THE FTC ACT

8. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

> (b) Whenever the Commission has reason to believe --
>
> (1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
>
> (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public --
>
> the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

VI.

THE PROPOSED MERGER AND THE COMMISSION'S RESPONSE

9. On March 31, 1999, ARCO, BP and Prairie Holdings, Inc., a wholly-owned subsidiary of BP, entered into an Agreement and Plan of Merger pursuant to which ARCO would merge with Prairie Holdings through an exchange of stock, with ARCO being the corporation surviving the merger with Prairie Holdings, and become a wholly owned subsidiary of BP. At the time the proposed merger was announced on April 1, 1999, the transaction was valued at about $26 billion.

10. On February 2, 2000, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a temporary restraining order and a preliminary injunction barring the proposed merger during the pendency of administrative proceedings to be commenced by the Commission.

11. Defendant BP has advised the Commission that, in the absence of a court order to the contrary, it will consummate the proposed merger.

12. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the aforesaid proposed merger would violate Section 7 of the Clayton Act because the merger may substantially lessen competition and/or tend to create a monopoly in the relevant markets alleged below.

VII.

TRADE AND COMMERCE

13. The Alaska North Slope is a major oil-producing region of the United States, principally supplying oil refineries on the West Coast of the United States, specifically in California and Washington. Over 90% of the crude oil produced on the North Slope is refined on the West Coast of the United States and Hawaii.

14. The petroleum industry associated with the production and sale of ANS crude oil involves several successive stages of commerce. At the pre-production stage, companies first compete for oil and gas leases and the associated rights to engage in exploration and development on lands principally owned by the State of Alaska and the United States government. Exploration and development, if successful, are followed by production. With the exception of a small amount of ANS crude oil that is used by refineries in Alaska, ANS crude oil is then transported from the North Slope via the Trans-Alaska Pipeline System ("TAPS") to the port of Valdez on Alaska's Prince William Sound, for tanker shipment to refineries on the West Coast or elsewhere. All ANS crude oil production is commingled in TAPS, and all ANS crude oil produced from any field is thus undifferentiated when it reached Valdez. Some of the West Coast refineries are owned by integrated ANS producers such as ARCO and Exxon. Others are independent refiners without crude oil production. ANS crude oil is sold on the spot market and pursuant to term contracts to both independent and integrated refiners, some of which also use crude oil produced in California.

15. Unlike the sale of most crude oil elsewhere around the world, ANS crude oil is sold to refineries on a delivered basis by a producer with its own tanker fleet. West Coast purchasers do not have a practical option of hiring a tanker to carry ANS crude purchased in Valdez. The principal fleet operators are BP, ARCO, and Exxon. Independent producers without a tanker fleet either sell their oil to an integrated producer with a tanker fleet or to the small refineries in Alaska.

16. BP and ARCO are also engaged in providing pipeline transportation and oil storage services into and in the crude oil marketing hub located in Cushing, Oklahoma, which serves as the distribution center for refineries located in the central parts of the United States. Trading in West Texas Intermediate ("WTI") crude oil in Cushing sets a benchmark for crude oil pricing around the world because Cushing is the delivery point for light sweet crude oil futures contracts traded on the New York Mercantile Exchange ("NYMEX").

VIII.

LIKELIHOOD OF SUCCESS ON THE MERITS

17. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the proposed merger, that the proposed merger would violate Section 7 of the Clayton Act as set forth in Counts I-III, Paragraphs 18 through 47, infra.

COUNT I:

LOSS OF COMPETITION IN THE PRODUCTION, SALE, AND DELIVERY OF CRUDE OIL TO WEST COAST REFINERS

18. As alleged below, BP currently exercises monopoly power in various markets for the sale of crude oil to refineries on the West Coast. BP exercises that monopoly power through price discrimination, including efforts to reduce the supply of crude oil to the West Coast by selling ANS crude to Asia, the United States Gulf Coast, or the United States Mid-continent. ARCO is the firm most likely to constrain BP's exercise of monopoly power, principally through ARCO's exploration and production activities, which, but for the merger, likely would increase

the amount of ANS crude oil discovered, produced and available to refiners (including ARCO).

A. Relevant Product Market

19. Crude oil used by targeted West Coast refiners is a relevant product market and line of commerce in which to analyze the competitive effects of this merger. Petroleum refineries use crude oil as the principal input in making gasoline, diesel fuel, kerosene jet fuel, asphalt, coke, and other refined petroleum products. There are no substitutes for crude oil as an input into petroleum refineries or otherwise for the manufacture of petroleum-based fuels.

20. The principal sources of crude oil for refineries on the West Coast are Alaska and California, although some West Coast refineries also use imported crude oil, principally from Latin America. Although all ANS crude oil is substantially undifferentiated, different crude oils have different gravity, sulfur, aromatics, metals and other characteristics. Changing crude oils in a particular refinery may change both the refinery's overall products yields and the yield of particular products. Therefore, refiners cannot freely substitute one crude oil for another, but must make complex decisions, typically assisted by extensive computer linear programs that solve many equations simultaneously, to evaluate the economics of crude substitution.

21. BP discriminates among its customers in the price it charges for ANS crude oil based upon each customer's ability to shift to alternative sources of crude oil.

22. BP exercises monopoly power by selling ANS crude to individual customers at different prices according to their "trigger points." Refiners with the least ability to substitute away from ANS crude are targeted for the highest prices, while those with more flexibility to substitute are charged lower prices. The difference between the prices charged to targeted customers and the prices charged to the most favored customers is significant. The ability to set ANS prices in this manner and price discriminate among customers demonstrates monopoly power (the unilateral ability to raise price profitably) in the sale of crude oil to targeted West Coast refineries.

23. BP also exercises monopoly power by charging targeted West Coast refiners higher prices than it charges foreign customers. BP exports ANS crude to Asia at a lower price,

net of transportation cost, than it could obtain by selling the same cargo on the West Coast. BP exports ANS crude oil, even at a lower price, in order to restrict the supply of crude oil on the West Coast and elevate its price to West Coast customers.

24. The production, sale, and delivery of all crude oil used by refiners on the West Coast is also an appropriate relevant product market within which to assess the likely effects of the proposed merger.

25. The production, sale, and delivery of ANS crude oil is also an appropriate relevant product market within which to assess the likely effects of the proposed merger.

B. <u>Relevant Geographic Market</u>

26. The West Coast, and smaller areas therein, is a relevant geographic market and section of the country in which to analyze the competitive effects of this merger. The refinery customers affected by this merger are located on the West Coast (in the Los Angeles, San Francisco and Seattle areas), and cannot practicably transfer their operations elsewhere.

C. <u>Concentration</u>

27. The proposed merger would substantially increase market concentration in all three relevant markets.

D. <u>Effects of the Proposed Merger in Production and Delivery of Crude Oil</u>

28. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the production and sale of crude oil used by targeted West Coast refiners by, among other things, eliminating ARCO as an effective competitor, eliminating substantial actual competition between BP and ARCO, eliminating the likelihood of even greater competition between BP and ARCO in the future, and increasing the market power that BP already is exercising in the sale of crude oil to targeted West Coast refiners.

29. BP and ARCO are substantial actual and potential competitors in the production of crude oil for West Coast refineries, specifically, ANS crude oil. BP and ARCO are the two largest explorers, developers and producers of ANS crude oil. As alleged below, BP and ARCO compete for exploration rights and to explore for, develop, and produce crude oil. The merger

will reduce competition in the market for crude oil to targeted refineries on the West Coast by reducing the amount of ANS crude oil reserves found and developed, and the amount of ANS crude oil produced. The elimination of an independent ARCO, therefore, is substantially likely to reduce the exploration for, development of and production of ANS crude oil, and, therefore, increase the price of crude oil to targeted refineries on the West Coast.

30. BP and ARCO are, have been, and in the future will be, substantial competitors in each of the relevant markets.

31. Substantial, timely, and effective entry into the relevant markets, sufficient to deter or counteract the anticompetitive effects of the proposed merger, is unlikely.

COUNT II:

LOSS OF COMPETITION IN BIDDING FOR RIGHTS TO EXPLORE ON THE ALASKA NORTH SLOPE

32. BP and ARCO are the two most important competitors in bidding for exploration leases for oil and gas on lands owned by the State of Alaska and the United States.

A. The Relevant Product Market

33. For the State of Alaska and the United States, there are no substitutes for the commercialization of their oil and gas resources. Accordingly, the purchase of exploration rights is a relevant product market and line of commerce within which to assess the likely effects of the proposed merger.

B. The Relevant Geographic Market

34. The State of Alaska and the United States own land, for which there are no geographic substitutes, that may be appropriate for exploration, development and production of crude oil on the Alaska North Slope. Accordingly, the Alaska North Slope is the appropriate section of the country and geographic market within which to assess the likely effects of the proposed merger on bidding for exploration rights.

C. Concentration

35. The proposed merger would substantially increase market concentration in an

already highly concentrated market for bidding on exploration rights for new ANS fields. After its merger with ARCO, BP would be the dominant bidder and alone would control a dominant share of exploration and development assets.

D. <u>Effect of the Proposed Merger on Leasing, Exploration and Development Activities</u>

36. The effect of the proposed merger, if consummated, may be substantially to lessen competition in bidding for leases on state and federal properties on the Alaska North Slope. The proposed merger will also raise the already formidable barriers to entry in the North Slope bidding market as well as in the markets alleged in Count I and enhance the incentive and capability of BP to reduce the pace of exploration and development, and ultimately, the amount of crude oil produced.

37. Substantial, timely, and effective entry into the relevant markets, sufficient to deter or counteract the anticompetitive effects of the proposed merger, is unlikely.

COUNT III:

LOSS OF COMPETITION IN PIPELINE AND OIL STORAGE SERVICES IN CUSHING, OKLAHOMA, AND RESULTING EFFECTS ON NYMEX TRADING IN LIGHT SWEET CRUDE OIL FUTURES

38. Cushing, Oklahoma is a major crude oil marketing hub in the United States. A substantial portion of the crude oil traded in Cushing consists of West Texas Intermediate (WTI) crude which arrives from pipelines originating in Texas, and imported crude which is offloaded from tankers on the Gulf Coast and transported to Cushing by pipeline. These crude oils are then transported by a network of pipelines to refineries located in the central parts of the United States.

39. Prices for WTI crude traded in Cushing serve as a benchmark for the pricing of many other crude oils around the world.

40. Cushing also serves as a focal point for light sweet crude oil futures trading on the NYMEX. When the NYMEX contracts expire, traders typically meet their obligations to deliver light sweet crude oil by tendering WTI crude oil. NYMEX contracts for crude oil futures typically designate Cushing as the delivery point.

41. Efficient functioning of the pipeline and oil storage facilities into and in Cushing is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. Restriction of pipeline or storage capacity can affect the deliverable supply of crude oil in Cushing, and consequently affect both WTI cash prices and NYMEX futures prices.

A. <u>The Relevant Product Market</u>

42. There are no substitutes for pipelines for the transport of crude oil to Cushing, and no substitute for storage facilities in Cushing for the temporary storage of crude oil pending delivery. The oil pipeline and storage services into and in Cushing therefore are an appropriate relevant product market within which to assess the likely effects of the proposed merger.

B. <u>The Relevant Geographic Market</u>

43. Pipeline and storage facilities located in other regions cannot serve the crude oil trading activities in Cushing. Accordingly, Cushing is the appropriate section of the country and geographic market within which to assess the likely effects of the proposed merger on pipeline and storage services for crude oil trading based in Cushing.

C. <u>Concentration</u>

44. The proposed merger would substantially increase market concentration in an already highly concentrated market for pipeline and storage services into and in Cushing. After the proposed merger, BP would control over 40% of the pipeline and storage capacity serving Cushing.

D. <u>Effect of the Proposed Merger on Pipeline and Storage Services in Cushing</u>

45. The effect of the proposed merger, if consummated, may be substantially to lessen competition in pipeline and storage services into and in Cushing by, among other things, eliminating ARCO as an effective competitor, eliminating substantial actual competition between BP and ARCO, and creating or enhancing market power.

46. Market power over the pipeline and storage services into and in Cushing likely would enable BP to manipulate NYMEX trading in light sweet crude oil futures by restricting or

otherwise manipulating the deliverable supply of crude oil in Cushing.

47. Substantial, timely, and effective entry into the relevant market, sufficient to deter or counteract the anticompetitive effects of the proposed merger, is unlikely.

IX.

NEED FOR RELIEF

48. The reestablishment of ARCO as an independent viable competitive entity if it were to be acquired by and merged with BP would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore the two companies as they originally existed. Furthermore, it would be difficult or impossible for the Commission to devise effective divestiture remedies after an administrative proceeding, if ARCO or any part of ARCO were to be acquired by and merged with BP. Finally, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

49. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

(1) Preliminarily enjoin defendant BP, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the proposed merger with ARCO, or any other acquisition of stock, assets, or other interest, either directly or indirectly, in ARCO;

(2) Order the defendants to maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such merger, and until such complaint is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

(3) Award such other and further relief as the Court may determine to be proper and just, including costs.

Respectfully submitted,

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