

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

\_\_\_\_\_  
In the Matter of )  
)  
Valero Energy Corp., )  
a corporation, )  
)  
and )  
)  
Ultramar Diamond )  
Shamrock Corp., )  
a corporation. )  
\_\_\_\_\_)

Docket No. C-4031

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondent Valero Energy Corporation (“Valero”) and Respondent Ultramar Diamond Shamrock Corporation (“Ultramar”) have entered into an agreement and plan of merger whereby Valero proposes to acquire all of the outstanding common stock of Ultramar, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

Valero Energy Corporation

1. Respondent Valero is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Place, San Antonio, TX 78212.
2. Respondent Valero is, and at all times relevant herein has been, a diversified energy

company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related businesses.

3. Respondent Valero is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

### **Ultramar Diamond Shamrock Corporation**

4. Respondent Ultramar is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6000 N. Loop 1604 West, San Antonio, TX 78249.
5. Respondent Ultramar is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related businesses.
6. Respondent Ultramar is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **II. THE PROPOSED MERGER**

7. Pursuant to an agreement and plan of merger dated May 6, 2001, Valero intends to acquire all of the outstanding voting securities of Ultramar in exchange for cash, stock of Valero, or a combination of cash and stock of Valero. The value of the transaction at the time of the agreement was approximately \$6 billion. The surviving entity is to be called Valero Energy Corporation.

## **III. TRADE AND COMMERCE**

### *A. Relevant Product Markets*

8. Relevant lines of commerce in which to analyze the effects of the proposed merger are:

- a. the refining and bulk supply of gasoline that meets the current specifications of the California Air Resources Board (“CARB 2” gasoline); and
  - b. the refining and bulk supply of gasoline that meets the proposed specifications of the California Air Resources Board to become effective January 1, 2003 (“CARB 3” gasoline).
9. Motor gasoline is a fuel used in automobiles and other vehicles. It is produced from crude oil at refineries in the United States and throughout the world. Gasoline is produced in various grades and types, including conventional unleaded gasoline, reformulated gasoline, CARB 2 and CARB 3 gasoline, and others. There is no substitute for gasoline as a fuel for automobiles and other vehicles that are designed to use gasoline.
10. CARB 2 gasoline is a motor fuel used in automobiles that meets the current Phase 2 specifications of the California Air Resources Board. CARB 2 gasoline is cleaner burning and causes less air pollution than conventional unleaded gasoline. Since 1996, the use of any gasoline other than CARB 2 gasoline has been prohibited in California. CARB 2 gasoline is manufactured primarily at refineries on the West Coast of the United States. There are no substitutes for CARB 2 gasoline as fuel for automobiles and other vehicles that use gasoline in California.
11. CARB 3 gasoline is a motor fuel to be used in automobiles that meets the proposed Phase 3 specifications of the California Air Resources Board. CARB 3 gasoline is cleaner burning and causes less air pollution than CARB 2 gasoline. After December 31, 2002, the use of any gasoline other than CARB 3 gasoline will be prohibited in California. CARB 3 gasoline will be manufactured primarily at refineries on the West Coast of the United States. There will be no substitutes for CARB 3 gasoline as fuel for automobiles and other vehicles that use gasoline in California.

*B. Relevant Geographic Markets*

12. Relevant sections of the country in which to analyze the proposed merger are the following:
- a. Northern California, consisting of California counties north of, but not including, San Luis Obispo, Kern and San Bernardino counties, where the merger would reduce competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline, as alleged below; and
  - b. the State of California, where the merger would reduce competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline, as alleged below.

### **Market Structure**

13. The market for the refining and bulk supply of CARB 2 gasoline for Northern California would be highly concentrated following the proposed merger. Refineries supplying Northern California are primarily located in the Bakersfield and San Francisco Bay Area, California, and Anacortes, Washington. The proposed merger would increase concentration in this market by more than 750 points to an HHI level above 2,700.
14. The market for the refining and bulk supply of CARB 2 gasoline for the State of California would be at the upper end of the moderately concentrated range following the proposed merger. Refineries supplying California are primarily located in California and Anacortes, Washington. The proposed merger would increase concentration in this market by more than 325 points to an HHI level above 1,750.
15. The market for the refining and bulk supply of CARB 3 gasoline for Northern California would be highly concentrated following the proposed merger. Refineries supplying Northern California are primarily located in the Bakersfield and San Francisco Bay Area, California, and Anacortes, Washington. The proposed merger would increase concentration in this market by more than 1,050 points to an HHI level above 3,050.
16. The market for the refining and bulk supply of CARB 3 gasoline for the State of California would be highly concentrated following the proposed merger. Refineries supplying California are primarily located in California and Anacortes, Washington. The proposed merger would increase concentration in this market by more than 390 points to an HHI level above 1,850.

### **Entry Conditions**

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

## **IV. VIOLATIONS CHARGED**

### **First Violation Charged**

18. Valero and Ultramar are or will be competitors in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in Northern California.
19. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in

Northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between Valero and Ultramar in the refining and bulk supply of CARB 2 and CARB 3 gasoline;
- b. by increasing the likelihood that the combination of Valero and Ultramar will unilaterally exercise market power; and
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Valero and Ultramar and their competitors in Northern California;

each of which increases the likelihood that the price of CARB 2 and CARB 3 gasoline will increase in the relevant section of the country.

#### **Second Violation Charged**

20. Valero and Ultramar are or will be competitors in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in the State of California.

21. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in the State of California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between Valero and Ultramar in the refining and bulk supply of CARB 2 and CARB 3 gasoline; and
- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Valero and Ultramar and their competitors in California;

each of which increases the likelihood that the price of CARB 2 and CARB 3 gasoline will increase in the relevant section of the country.

#### **Statutes Violated**

22. The proposed merger between Valero and Ultramar violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, violate

Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eighteenth day of December, 2001, issues its complaint against said Respondents.

By the Commission, Chairman Muris not participating.

SEAL:

Donald S. Clark  
Secretary