

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 Corporation,)
 a corporation,)
)
 and)
)
 Ultramar Diamond Shamrock)
 Corporation,)
 a corporation.)

Public Record Version

Docket No. C-
DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger involving Respondents Valero Energy Corporation (“Valero”) and Ultramar Diamond Shamrock Corporation (“Ultramar”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of 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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and accepted the executed Consent Agreement and

placed such Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Valero Energy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Valero Place, San Antonio, Texas 78212.
2. Respondent Ultramar Diamond Shamrock Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6000 N. Loop 1604 West, San Antonio, Texas 78249.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Valero” means Valero Energy Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Valero, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Ultramar” or “UDS” means Ultramar Diamond Shamrock Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Ultramar, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “California CARB Refining and Marketing Assets” means the following assets: (1) Ultramar’s Golden Eagle refinery located at Avon, California and all of Ultramar’s interest in all tangible assets used in the operation of the refinery, including but not limited to docks, associated tanks, and pipelines; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; all agreements, contracts, and

understandings listed in Schedule A, attached as a confidential attachment; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Schedule A) relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements (other than those listed in Schedule A) under which Ultramar receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery; all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Golden Eagle refinery; (2) Ultramar's refinery located at Wilmington, California, and all of Ultramar's interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery, including but not limited to docks, associated tanks, and pipelines; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements under which Ultramar receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery; all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Wilmington refinery; and (3) Ultramar's California Retail Assets.

- D. "CARB Gasoline" means motor fuel used in automobiles that meets the specifications of the California Air Resources Board.
- E. "Commission" means the Federal Trade Commission.
- F. "Effective Date of Divestiture" means the date on which the applicable divestiture is consummated.
- G. "Golden Eagle CARB Refining and Marketing Assets" means: (1) Ultramar's Golden Eagle refinery located at Avon, California and all of Ultramar's interest in all tangible assets used in the operation of the refinery, including but not limited to docks, associated tanks, and pipelines; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; all agreements, contracts and understandings listed in Schedule A; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Schedule A) relating to the transportation, terminaling,

storage or sale of the refinery's petroleum product output to the extent they relate to the refinery's petroleum product output; at the acquirer's option, all agreements (other than those listed in Schedule A) under which Ultramar receives crude oil or other inputs at or for the refinery; and all exchange agreements involving the refinery (but only to the extent the exchange agreements involve output of the refinery); all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Golden Eagle refinery; and (2) Ultramar's Divestiture Retail Assets.

- H. "Merger" means the proposed merger involving Valero and Ultramar.
- I. "New Valero" means Valero Energy Corporation, or any other entity resulting from the merger involving Valero and Ultramar, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by New Valero.
- J. "Respondents" means Valero and Ultramar, individually and collectively, and New Valero.
- K. "Retail Assets" means, for each Retail Site, all fee or leasehold interests of Respondents in the Retail Site, and all of Respondents' interest in all assets, tangible or intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses, consents, contracts, and agreements used in the operation of the Retail Site, and the non-exclusive right to use all patents, know-how, and other intellectual property used by Respondents in the operation of the Retail Sites. "Retail Assets" also includes all of Respondents' interest in all assets relating to all ancillary businesses (including, but not limited to, automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site, including all permits, licenses, consents, contracts, and agreements used in the operation of the ancillary businesses, and the non-exclusive right to use all know-how, patents, and other intellectual property used in the operation of the ancillary businesses. "Retail Assets" does not include Respondents' proprietary trademarks, trade names, logos, trade dress, and system-wide software and databases.
- L. "Retail Site" means a business establishment from which gasoline is sold to the general public.
- M. "Ultramar's California Retail Assets" means all of Ultramar's Retail Assets relating to all Retail Sites in California that Ultramar operates.
- N. "Ultramar's Divestiture Retail Assets" means all of Ultramar's Retail Assets

relating to the Retail Sites that are listed in Schedule B.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Golden Eagle CARB Refining and Marketing Assets to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents execute the Consent Agreement.
- B. Respondents shall offer the acquirer of the Golden Eagle CARB Refining and Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Golden Eagle CARB Refining and Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Golden Eagle refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.
- C. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or lower cost.
- D. With respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- E. The purpose of the divestiture of the Golden Eagle CARB Refining and Marketing Assets, and of the other provisions of this Paragraph, is to ensure the continued use of the Golden Eagle CARB Refining and Marketing Assets as viable, on-going businesses, in the same businesses in which they were engaged at the time of the announcement of the Merger, including the refining and bulk supply of CARB Gasoline and other petroleum products, by a firm that has a

sufficient ability and an equivalent incentive to invest and compete in the assets and businesses as Ultramar had before the Merger, and to remedy the lessening of competition in the refining and bulk supply of CARB Gasoline and other petroleum products resulting from the proposed Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not, within the time periods required, complied with the requirements of Paragraph II, absolutely and in good faith, the Commission may appoint a trustee to effectuate the divestiture required by Paragraph II; provided, however, that the trustee may, subject to the approval of the Commission, substitute the California CARB Refining and Marketing Assets for the Golden Eagle CARB Refining and Marketing Assets.
- B. In the event that the Commission or the United States Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select the trustee or trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested, assign the agreements required to be assigned, and enter

into the required agreements, thereby binding Respondents, all on such terms and conditions as are necessary to comply with the requirements of the applicable paragraph, to comply with all applicable laws, and to effectuate the remedial purposes of this Order. Subject to the prior approval of the Commission, the trustee shall have the sole authority to divest the assets described in Paragraph III.A in smaller packages as the trustee deems necessary to effectuate divestiture of the assets and to effectuate the remedial purposes of this Order.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.C.3. to accomplish the divestiture to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and

to the acquirer or acquirers as approved by the Commission, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity for any package of assets, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission, provided further, however, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.
8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or

appropriate to accomplish the divestitures required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

IV.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with these Paragraphs. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.
- B. Upon consummation of the Merger, Respondents shall cause New Valero to be bound by the terms of this Order.

VI.

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

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts,

correspondence, memoranda and all other records and documents in the possession or under the control of each Respondent relating to any matters contained in this Order; and

- B. Upon five days' notice to each Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that if (1) within the time period required for divestiture pursuant to Paragraph II of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

[redacted]

SCHEDULE B

<u>Store</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Zone Number</u>
3674	851 N. Highway 49	Jackson	CA	95642	351
3609	1021 South St	Orland	CA	95963-1640	351
3621	18475 N Highway 1	Fort Bragg	CA	95437-8774	351
3622	1250 S Main St	Willits	CA	95490-4306	351
3623	1105 S State St	Ukiah	CA	95482-6410	351
3628	812 Main Street	Weaverville	CA	96093	351
3678	585 E Perkins St	Ukiah	CA	95482-4508	351
3679	440 S Main St	Red Bluff	CA	96080-4316	351
3680	506 6th St	Orland	CA	95963-1229	351
3692	975 S Main St	Lakeport	CA	95453-5512	351
3693	15010 Lakeshore Dr	Clearlake	CA	95422	351
3544	7920 Brentwood Blvd	Brentwood	CA	94513-1004	351
3558	42245 Fremont Blvd	Fremont	CA	94538-4143	351
3594	40500 Fremont Blvd	Fremont	CA	94538-4304	351
3604	1619 1st St	Livermore	CA	94550-4303	351
3712	4321 Clayton Rd	Concord	CA	94521-2842	351
3713	2501 Pacheco Blvd	Martinez	CA	94553-2043	351
3714	3767 Alhambra Ave	Martinez	CA	94553-3803	351
3715	1616 Oak Park Blvd	Pleasant Hill	CA	94523-4410	351
3716	1990 San Ramon Valley Blvd	San Ramon	CA	94583-1204	351
3717	2098 Mt Diablo Blvd	Walnut Creek	CA	94596-4302	351
3720	1088 Marina Blvd	San Leandro	CA	94577-3437	351
3721	44 Lewelling Blvd	San Lorenzo	CA	94580-1628	351
3520	2998 Churn Creek Rd	Redding	CA	96002-1130	351
3521	2071 North St	Anderson	CA	96007-3456	351
3549	3212 S Market St	Redding	CA	96001-3530	351
3572	2700 Gateway Dr	Anderson	CA	96007-3531	351
3630	37303 State Highway 299 E	Burney	CA	96013-4371	351
3088	I-5 & Road 8	Dunnigan	CA	95937	351
3428	5040 El Camino Ave	Carmichael	CA	95608-4650	351
3447	3 Main St	Woodland	CA	95695-3123	351
3527	601 Sunrise Ave	Roseville	CA	95661-4109	351
3542	4250 Madison Ave	North Highlands	CA	95660-5403	351
3601	8070 N. Lake Blvd	Kings Beach	CA	95719	351
3603	10299 Folsom Blvd	Rancho Cordova	CA	95670-3516	351
3642	6990 Douglas Blvd	Granite Bay	CA	95746-6214	351
3683	8651 Folsom Blvd	Sacramento	CA	95826-3708	351
3684	1312 Broadway	Placerville	CA	95667-5902	351
3685	9301 Greenback Ln	Orangevale	CA	95662-4901	351
3686	3430 Taylor Rd	Loomis	CA	95650-9583	351
3687	1110 High St	Auburn	CA	95603-5110	351
3688	2304 Lake Tahoe Blvd	S. Lake Tahoe	CA	96150-7107	351
3694	1001 Sacramento Ave	Broderick	CA	95605-1902	351
3783	7550 Watt Ave	North Highlands	CA	95660-2609	351
3420	1370 Camden Ave	Campbell	CA	95008-6702	351
3586	929 Fremont Ave	Los Altos Hills	CA	94024-6013	351
3602	1885 N Milpitas Blvd	Milpitas	CA	95035-2505	351
3723	2790 Story Rd	San Jose	CA	95127-3922	351
3724	1365 Kooser Rd	San Jose	CA	95118-3814	351
3725	1598 Alum Rock Ave	San Jose	CA	95116-2425	351

3786	921 W Hamilton Ave	Campbell	CA	95008-0405	351
3489	921 Sebastopol Rd	Santa Rosa	CA	95407-6830	351
3645	300 College Ave	Santa Rosa	CA	95401-5118	351
3700	7898 Old Redwood Hwy	Cotati	CA	94931-5107	351
3701	219 Healdsburg Ave	Healdsburg	CA	95448-4103	351
3702	8850 Sonoma Hwy	Kenwood	CA	95452-9024	351
3703	2601 Lakeville Hwy	Petaluma	CA	94954-5654	351
3704	1080 Gravenstein	Sebastopol	CA	95472	351
3502	35 N Cherokee Ln	Lodi	CA	95240-2411	351
3513	401 W Kettleman Ln	Lodi	CA	95240-5741	351
3696	2448 W Kettleman Ln	Lodi	CA	95242-4123	351
3756	13975 E Highway 88	Lockeford	CA	95237-9549	351
3378	1800 W Imola Ave	Napa	CA	94559-4619	351
3416	1300 Trancas St	Napa	CA	94558-2912	351
3522	800 Merchant St	Vacaville	CA	95688-6912	351
3682	1105 N 1st St	Dixon	CA	95620-2404	351
3706	385 Silverado Trl	Napa	CA	94559-4013	351
3707	800 St. Helena Hwy	Saint Helena	CA	94574	351
3710	3438 Broadway St	Amer. Canyon	CA	94589-1254	351
3711	1295 Marine World Pkwy	Vallejo	CA	94589-3104	351