STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND COMMISSIONERS SHEILA F. ANTHONY AND MOZELLE W. THOMPSON

EXXON/MOBIL

The Federal Trade Commission has issued a consent order to settle 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 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 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 were 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 were 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 involved 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 amounted to only about 3 percent of the merged assets.

3. Where there were significant competitive overlaps, the companies consented to substantial restructuring of the deal, including the largest divestiture ever ordered by the Federal Trade Commission. In those areas of principal concern, the restructuring consisted of the following:

<u>Retail Gas Stations</u>: In all of the United States, a total of over 2,400 stations have been 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 formerly branded Exxon and Mobil was required. In California, 360 stations were required to be sold or assigned.

<u>Refining</u>: Exxon's Benicia, California refinery was sold.

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

<u>Basic Paraffinic Motor Oil Ingredient</u>: The consent required the sale of an amount of output equivalent to the amount formerly 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 Exxon-Mobil merger, the top four firms in the United States accounted 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 were more pronounced, but those have been addressed by the consent order.

5. The Commission assured itself not only that restructuring would occur, but that there were companies ready, willing and able to acquire divested assets and to be effective competitors. In approving or disapproving buyers, the Commission has treated as a major concern the effect of divestitures on the welfare of station owners and employees. Also, the Commission has insisted 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. 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 have preferred to limit the pleading to metropolitan areas. As the Analysis to Aid Public Comment indicated, there was 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.

2. Commissioner Swindle would have limited 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

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[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).

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 example that the Commission set in settling its case against British Petroleum's acquisition of Amoco - is justified.

[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).