COOLEY GODWARD LLP
PAUL A. RENNE (36133)
JAMES DONATO (146140)
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580
Telephone: (415) 693-2000
Facsimile: (415) 951-3699

KIRKLAND & ELLIS
FRANK CICERO, JR. (Admitted *Pro Hac Vice*)
J. ANDREW LANGAN (Admitted *Pro Hac Vice*)
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

Attorneys for Defendant BP AMOCO p.l.c.

HELLER, EHRMAN, WHITE & McAULIFFE
STEPHEN V. BOMSE
333 Bush Street
San Francisco, CA 94104-2878
Telephone: (415) 772-6000
Facsimile: (415)772-6268

ARNOLD & PORTER
MATTHEW HEARTNEY
777 S. Figueroa St., 44th Floor
Los Angeles, CA 90017-5864
Telephone: (213) 243-4150
Facsimile: (213) 243-4199

Attorneys for Defendant ATLANTIC RICHFIELD COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,	)	Case No.: 00-00416 SI
	)	(Related to C 00-00420 SI)
Plaintiff,	)	
vs.	)	**ANSWER OF DEFENDANTS**
	)	**BP AMOCO P.L.C., AND**
BP AMOCO p.l.c.,	)	**ATLANTIC RICHFIELD COMPANY**
	)	**TO COMPLAINT OF**
and	)	**FEDERAL TRADE COMMISSION**
	)	**FOR A PRELIMINARY INJUNCTION**
ATLANTIC RICHFIELD COMPANY,	)	

)
Defendants.)

Defendants BP Amoco p.l.c. and Atlantic Richfield Company ("ARCO") submit this joint Answer to plaintiff's Complaint as set forth below:

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.

Response: Defendants do not contest jurisdiction and admit that the FTC has the authority and discretion to bring this action under the federal laws alleged above. Defendants admit that the FTC authorized this action by a three to two vote of the FTC Commissioners.

2. BP Amoco 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 Amoco 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.

Response: Defendants admit that they are engaged in commerce as defined in the Clayton Act and admit that they are engaged in the production of crude oil in the State of Alaska. Defendant BP Amoco p.l.c., through affiliates, is engaged in the business of selling and delivering Alaskan North Slope ("ANS") crude oil in the states of California, Washington, and Hawaii. Hereafter, "BP Amoco" and "Defendant" shall refer to those affiliates.

Defendant ARCO, on the other hand, is engaged in the business of producing refined products in California and Washington and selling such refined products in, among other states, California, Oregon, and Washington. ARCO is not regularly engaged in the business of selling and delivering ANS crude oil in those states. Defendant ARCO uses its ANS production in its own refineries in California and Washington to make refined products. ARCO has made small, sporadic ANS crude oil sales but ARCO has never made such sales in Oregon. Defendants deny the remaining allegations of this paragraph.

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 Amoco 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.

Response: Defendants do not contest venue in this District. Defendants deny that their proposed merger threatens to diminish competition in the sale of crude oil to any District, let alone to refiners located within this District. Defendant ARCO admits that it owns and operates gasoline service stations in this District, but nothing related to the ownership or the operation of those stations – or any other retail gasoline stations – is put at issue by the FTC's Complaint.

III. INTRA-DISTRICT 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.

Response: Defendants do not contest assignment to the San Francisco Division. Defendants deny that their proposed merger threatens any loss of competition in the sale of crude oil to refiners located within the San Francisco Bay Area. Defendant ARCO admits that it owns and operates gasoline service stations in the counties encompassed by the San Francisco Division, but, again, nothing related to the ownership or the operation of those or any other retail gasoline stations is put at issue by the FTC's Complaint.

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.

Response: Admitted.

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

Response: BP Amoco p.l.c. admits the first sentence of this Paragraph, but states that it does not do business in the United States. Business activities in the United States are those of BP Amoco p.l.c.'s affiliates. The business offices in the United States at the Randolph Drive address in Chicago are those of BP Amoco Corporation.

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.

Response: Admitted.

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. . . .

Response: Defendants admit that Section 13(b) of the FTC Act, 15 U.S.C. §53(b) includes the language excerpted above. Defendants deny that the FTC can meet its burden as established in that Act and other applicable authorities sufficient to obtain the drastic remedy of preliminary injunctive relief in this action and deny all the other allegations of this Paragraph.

VI. THE PROPOSED MERGER AND THE COMMISSION'S RESPONSE

9. On March 31, 1999, ARCO, BP Amoco and Prairie Holdings, Inc., a wholly-owned subsidiary of BP Amoco, 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 Amoco. At the time the proposed merger was announced on April 1, 1999, the transaction was valued at about $26 billion.

Response: Defendants admit that the merger was announced on April 1, 1999, as described above.

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.*

Response: Defendants admit that on February 2, 2000, ten months after announcement of the proposed merger, three of the five Commissioners of the FTC voted in favor of instituting this action and two Commissioners dissented.

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

Response: Defendants admit that on January 14, 2000, after months of negotiation resulted in impasse with the FTC, Defendants initiated the 20 day waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 prior to closing the transaction. Defendants advised the FTC that, notwithstanding the expiration of the waiting period, they will not consummate the proposed merger until after this Court renders its decision on the FTC's motion for a preliminary injunction.

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.

Response: Defendants are without sufficient information to form a belief as to why the Commission decided to attempt to stop this proposed merger through litigation, as the meetings at which those decisions were reached were non-public proceedings. Defendants deny that an injunction will be in the public interest and state, to the contrary, that it is in the public interest to deny the requested injunction and permit the merger to close. Defendants deny the remainder of the allegations in this Paragraph.

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.

<u>Response</u>: Defendants admit that the State of the Alaska is a major oil-producing region that competes with other oil producing regions located throughout the world and that, along with other domestic oil and imported oil, refineries in California and Washington use ANS crude oil. The percentage of ANS crude oil that is refined in California, Hawaii, and Washington has fluctuated since the start of ANS production in 1977. Defendant admits that at present the vast majority of ANS crude oil is refined on the West Coast. All of the refineries on the West Coast existed well before the first production of ANS; thus, prior to 1977, those refineries processed other domestic and imported crude oils. In recent years, imported oil has accounted for an increasing percentage of the crude oil used by refiners in California and Washington. In 1999, approximately 25% of the crude oil processed in West Coast refineries was imported. That percentage is increasing and will increase in the foreseeable future. Defendants deny the remaining allegations of this Paragraph.

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.*

<u>Response</u>: Defendants deny that competitive bidding is the only means by which companies acquire oil and gas leases and associated rights. Defendants deny that only a small amount of ANS crude oil is used within the State of Alaska, as there are several in-state refineries that use ANS production. Defendants deny that refineries that are not owned by integrated ANS producers are without crude oil production; many of these refineries have California or foreign crude oil production. Defendants further deny that West Coast refiners that purchase ANS crude oil run only ANS and California crude oil; these refineries also run significant and ever increasing amounts of imported crude oil purchased from all over the world. Defendants admit the remainder of the allegations in this Paragraph.

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 oil purchased in Valdez. The principal fleet operators are BP Amoco, 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.

<u>Response</u>: Defendants admit that sales of imported oil to West Coast refiners and sales of crude oil in other areas of the world are generally sold "free-on-board" or "F.O.B.," while other crude oils such as ANS are sold on a delivered basis. ANS crude oil is ordinarily sold on a "delivered" basis because of unique state and federal liability standards and Jones Act ship requirements; ANS crude oil customers are generally unwilling to take on these heightened shipping costs and risks, resulting in delivered sales by producers. If they wish, West Coast refiners can arrange to purchase ANS crude oil on a F.O.B. basis at the port of Valdez, Alaska, and arrange for transportation in their own or chartered vessels. Defendants admit that ARCO and Exxon presently operate proprietary fleets for shipping ANS crude oil, but other integrated companies also have large fleets employed in shipping oil across the globe. Defendants admit that producers that do not own marine transportation have numerous options for selling their oil, including chartering vessels alone or with others, selling their oil to other companies that have tankers, and selling to in-state refineries. Defendants deny the remainder of the allegations in this Paragraph.

16. BP Amoco 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").

Response: Defendants admit that they have interests in federally regulated, common carrier pipelines that reach Cushing, Oklahoma, and interests in storage facilities in that location but ARCO denies that it is engaged in providing oil storage services into and in Cushing. Defendants admit that Cushing is a distribution center for refineries located in the central part of the United States. Defendants admit that the New York Mercantile Exchange ("NYMEX") uses trading in West Texas Intermediate crude oil ("WTI") for crude oil futures contract trading and that NYMEX contracts list "Cushing, Oklahoma" as the nominal delivery point. Actual wet barrel physical transactions take place at locations all over the country through swaps and other similar transactions among buyers and sellers, and are not exclusive or limited to physical oil quantities in Cushing. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Denied. Defendants incorporate herein their responses to 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 Amoco currently exercises monopoly power in various markets for the sale of crude oil to refineries on the West Coast. BP Amoco exercises that monopoly power through price discrimination, including efforts to reduce the supply of crude oil to the West Coast by selling ANS crude oil to Asia, the United States Gulf Coast, or the United States Mid-continent. ARCO is the firm most likely to constrain BP Amoco'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).

Response: Denied. Defendant BP Amoco is not a monopoly, does not have and has not exercised monopoly power in the sale of crude oil in the past through price discrimination, in any effort to reduce the supply of crude oil to the West Coast, or in any other manner. The proposed merger with ARCO will not create such power. Defendant BP Amoco denies that ARCO is or likely will be a constraint on BP Amoco's pricing of ANS crude oil. ARCO is not in and is not likely to enter into the business of selling ANS crude oil to West Coast refiners. BP Amoco states further that its sales of ANS crude oil to West Coast refiners are part of the worldwide market and imported crude oils to such refiners are the primary constraint on BP Amoco's pricing. Defendants further deny that the proposed merger will reduce exploration and production activities in Alaska. To the contrary, a purpose of the proposed merger is to reduce costs to facilitate increased exploration, development and production activities and make those activities more financially attractive and obtainable in Alaska, resulting in higher ANS production. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Defendants do not have knowledge concerning what plaintiff's term "targeted West Coast refiners" means or to whom it refers and deny that there are such refiners or that crude oil used by such refiners is a relevant product market. The market for crude oil is global and prices of crude oil supplied to refineries on the West Coast, whether from Alaska or elsewhere, are determined in a single, worldwide crude oil market. The State of California is integrated into the world oil market and world crude oil supply, and California has so admitted. There is no special West Coast market for ANS crude oil that functions independently of the world crude oil market. ANS trades in the world crude oil market and the prices of ANS track world crude oil prices. Defendants admit that petroleum refiners use crude oil from whatever source – be it ANS, California, or imported crude oil – to make refined petroleum products, including gasoline, diesel fuel, kerosene, jet fuel, asphalt and coke, and state further that there are readily available crude oils from around the world that refineries can and do use as substitutes for other crude oils. The State of California has itself concluded that California refineries would be able to obtain alternative crude supplies relatively quickly even if all ANS supplies were suddenly and completely cut off. Defendants deny the remainder of the allegations in this Paragraph.

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 oil substitution.

Response: Defendants admit that Alaska and California are the source of a majority of the crude oil used by California and Washington refiners; however, imported crude oil -- including crude oil from Latin America, Asia and the Middle East -- is a substantial and increasing source of crude oil used by and available to such refiners. Defendants admit that crude oils from around the world have different physical characteristics, differences that are well known and accounted for by refineries. Refineries can run many different types of crude oil, and produce a variety of products from those crude oils. Defendants deny that refiners cannot freely substitute one crude oil for another; refiners have the capability readily to switch among crude oil types, as several West Coast refineries have demonstrated in recent years by substituting more and more imported crude oil. Indeed, the State of California concluded that California refineries would be able to obtain alternative crude supplies relatively quickly even if all ANS supplies were suddenly and completely cut off. Defendants deny the remainder of the allegations in this Paragraph.

21. BP Amoco 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.

Response: Defendant BP Amoco denies the allegation that its marketing of ANS crude oil constitutes price discrimination, and denies that the FTC has alleged a proper market upon which it bases its "discrimination" allegation. Defendant BP Amoco denies the remainder of the allegations in this Paragraph.

Because this paragraph makes no allegation about ARCO, or about Section 7 Clayton Act anti-competitive effects resulting from the merger of ARCO and BP Amoco, ARCO is without sufficient information to form a belief as to the allegations in this paragraph.

22. BP Amoco exercises monopoly power by selling ANS crude oil to individual customers at different prices according to their "trigger points." Refiners with the least ability to substitute away from ANS crude oil 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.

Response: Defendant BP Amoco denies that it is a monopoly or exercises monopoly power in the sale of crude oil. In selling its ANS crude oil, BP Amoco acts and has acted as a rational profit maximizing competitor in a competitive worldwide crude oil market. The vast majority of BP Amoco's ANS crude oil is and has been sold under long term contracts to customers with whom BP Amoco has negotiated prices and other terms. These refinery customers are sophisticated buyers, know what market conditions are, know what alternate crude oils are available, and know what competitive prices are for those crude oils. These alternate crude oils include ANS crude oils produced by other suppliers, California crude oils, and imported crude oils. A small proportion of BP Amoco's ANS crude oil is sold to spot market customers in the West Coast. These refinery customers are also sophisticated buyers. Some of them, such as ARCO, Exxon-Mobil, and Chevron, also have their own production of ANS crude oil which they supply to their refineries. As part of its own internal calculation in preparation for negotiations with refiners for term contracts or for spot sales, BP Amoco takes many factors into consideration, including prices for competitive crude oils -- whether ANS, California, or imported crude oils -- refiners' flexibility, shipping costs, market conditions, predictions of its own ANS supply and other ANS supply and supply of California and imported crude oils, and numerous other factors. Like any rational competitor, BP Amoco considers these matters in deciding what prices it will seek to negotiate with refinery customers. So-called "trigger points" are factors taken into consideration with respect to asking prices on the spot market; BP Amoco does not sell to individual customers at such prices but instead at whatever prices can be negotiated with customers. BP Amoco denies that refiners with the least ability to substitute away from ANS crude oil are targeted for the highest prices while those with more flexibility are charged lower prices. BP Amoco is without knowledge or information to know what plaintiff means by "targeted customers" and denies that it uses such terminology in crude oil marketing. BP Amoco denies that the difference between prices charged to its ANS customers -- whether so-called targeted customers or so-called most favored customers -- is significant. Term contracts with customers are negotiated; the pricing is determined by formulas which vary from contract to contract. Depending on market conditions, the formulas may result in lower prices to some refiners than others and favor other customers at other times. BP Amoco denies that it sets ANS prices in the manner alleged in Paragraph 22, denies that the FTC's incorrect characterization of BP Amoco's pricing practices demonstrates monopoly power, and denies all other allegations of Paragraph 22.

Because this paragraph makes no allegation about ARCO, or about Section 7 Clayton Act anti-competitive effects resulting from the merger of ARCO and BP Amoco, ARCO is without sufficient information to form a belief as to the allegations in this paragraph.

23. BP Amoco also exercises monopoly power by charging targeted West Coast refiners higher prices than it charges foreign customers. BP Amoco exports ANS crude oil to Asia at a lower price, net of transportation cost, than it could obtain by selling the same cargo on the West Coast. BP Amoco 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.

Response: BP Amoco does not have knowledge concerning what the Plaintiff's term "targeted West Coast refiners" means and to whom it refers, and denies that there are such refiners or that the term is used by it in its pricing. BP Amoco denies the allegations of Paragraph 23 with respect to exports and states further that BP Amoco acts, and for many years has acted, as a rational profit maximizing competitor in a competitive worldwide crude oil market. As such, BP Amoco for many years has sold a substantial portion of its ANS crude oil to refineries in the West Coast States but also for many years has shipped and sold ANS crude oil to other places. Before Congress lifted the ban on exporting ANS crude oil in 1996, BP Amoco shipped ANS crude oils that it did not choose to sell on the West Coast to the United States Gulf

Coast and mid-continent and to the Virgin Islands. After the United States Congress removed the export ban, it became more profitable to ship ANS crude oil that BP Amoco did not sell in the West Coast to Asia because transportation costs to Asia were less than shipping that crude oil to the Gulf Coast, mid-continent or the Virgin Islands. BP Amoco has always acted as a rational profit maximizing competitor in allocating its ANS crude oil production among various locations to maximize its netbacks or profits. The prices BP Amoco receives, net of transportation costs, from export sales to Asia are higher than it obtains in some sales on the West Coast and lower than others. The average price per barrel received, net of transportation costs, from export sales to Asia is higher than the average price received on all West Coast sales. In carrying out its rational profit maximizing strategy, BP Amoco is not exercising monopoly power in the sale of crude oil but simply is participating in a competitive worldwide crude oil market. BP Amoco denies all other allegations of Paragraph 23.

Because this Paragraph makes no allegations about ARCO, or about Section 7 Clayton Act anti-competitive effects resulting from the merger of ARCO and BP Amoco, ARCO is without sufficient information to form a belief as to the allegations in this paragraph.

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.

Response: Defendants deny that the production, sale and delivery of all crude oil used by all refiners on the West Coast is a relevant product market. The market for crude oil is global. The world crude oil market is the only relevant product market within which to assess the likely effects of the proposed merger. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Defendants deny that the production, sale, and delivery of ANS crude oil is a relevant product market. The market for crude oil is global. There is no market for ANS crude oil that functions independently of world crude oil prices in the world crude oil market. The world market is the only relevant product market within which to assess the likely effects of the proposed merger. Defendants deny the remainder of the allegations in this Paragraph.

B. Relevant Geographic Market

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.

Response: Defendants deny that the West Coast or smaller areas therein are relevant geographic markets. Defendants further deny that the inability of refineries to move their physical facilities is a relevant consideration. The relevant consideration is the fact that worldwide sources of supply are available to the refineries. Defendants deny the remainder of the allegations in this Paragraph.

C. Concentration

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

Response: Defendants deny that the FTC has identified a relevant market. The world crude oil market is the only relevant product market within which to assess the likely effects of the proposed merger. Moreover, Defendants state that the proposed merger will not substantially increase concentration in any relevant product market nor would the proposed merger increase concentration in the three market definitions alleged by the FTC if those were relevant markets. Defendants deny the remainder of the allegations in this Paragraph.

D. Effects of the Proposed Merger in Production and Delivery of Crude Oil

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 Amoco and ARCO, eliminating the likelihood of even greater competition between BP Amoco and ARCO in the future, and increasing the market power that BP Amoco already is exercising in the sale of crude oil to targeted West Coast refiners.

Response: Defendants deny that the proposed merger as described in Paragraph 9 may substantially lessen competition in any relevant market and further deny that the merger may substantially lessen competition in the West Coast market claimed by plaintiff. BP Amoco and ARCO are not competitors engaged in the same business in relevant markets. BP Amoco is in the business of selling crude oil to refiners in the West Coast. ARCO is in the business of selling refined products on the West Coast, not ANS crude oil. ARCO uses its crude oil produced in the State of Alaska in ARCO's own refineries. ARCO is not a present or likely future competitor of BP Amoco in selling crude oil on the West Coast. ARCO is in fact a net buyer of crude oil produced from Alaska; that is, ARCO buys more ANS crude oil than it sells to third parties. There is no competition between BP Amoco and ARCO for the sale of ANS crude oil that the proposed merger would eliminate.

Defendants state further that the proposed merger as it will be implemented by the Defendants will not substantially lessen competition in the production and sale of crude oil, even under the FTC's theory of anti-competitive effects associated with the merger. As the plaintiff knows but ignores, the Defendants have in place contractual commitments and obligations, and prior to the hearing will have in place further commitments and obligations that are more than adequate to address the concerns raised by the FTC in its Complaint. As of the date of filing this Answer, the Defendants are obligated by a binding contract with the State of Alaska, the **Charter for Development of the Alaskan North Slope,** which requires BP Amoco, immediately following consummation of the merger described in Paragraph 9, to make substantial divestitures that materially change the assets and businesses acquired in the transaction and provide for a new competitive environment in Alaska. Among other things, BP Amoco will:

- Divest production interests representing 175,000 barrels per day of production;
- Divest 620,000 acres of exploration acreage;
- Make BP Amoco and ARCO proprietary seismic data publicly available to stimulate participation in future lease sales;
- Provide access to North Slope facilities and infrastructure;
- Purchase 30,000 barrels per day of crude oil from smaller ANS producers at State of Alaska established prices.

These commitments were structured with the State of Alaska to ensure that acquirers of these assets would be fully integrated producers of ANS from production through transportation with significant exploration holdings to ensure further development and production in the future.

BP Amoco has also entered into long-term contractual commitments to sell ANS crude oil to West Coast refineries that use substantial amounts of that oil. The new long-term contracts are an obligation by BP Amoco, effective upon consummation of the merger with ARCO, to sell approximately 140,000 barrels of ANS oil per day to the refineries. The contracts contain pricing terms based on crude oil "marker" prices other than ANS spot market prices about which the FTC complains. The combined effect of the Alaskan Charter and the long-term contracts assures that the merger as it will be implemented will not substantially affect competition in relevant markets and will not substantially lessen competition in the production and sale of crude oil.

Defendants deny the remainder the allegations of this Paragraph.

29. BP Amoco and ARCO are substantial actual and potential competitors in the production of crude oil for West Coast refineries, specifically, ANS crude oil. BP Amoco and ARCO are the two largest explorers, developers and producers of ANS crude oil. As alleged below, BP Amoco 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.

Response: Defendants admit that they produce more ANS crude oil than other companies, but deny that they are competitors in the production of that oil, which is not a relevant market. Defendants deny that they have been, or in the future would be, substantial competitors in the sale of ANS crude oil anywhere, let alone in the three purported relevant markets alleged by the FTC. The merger as set forth in Paragraph 9 above, and even more as it will be implemented as described in the response to Paragraph 28 above which is incorporated herein, will not have any effect on competition for exploration rights, the development, production, and the marketing of ANS crude oil. Defendants deny that the merger will reduce the amount of ANS crude oil reserves found and developed and state, to the contrary, that as implemented it will likely increase the amount of crude oil produced. Defendants deny the remainder of the allegations in this Paragraph.

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

Response: Defendants deny that they have been, or in the future would be, substantial competitors in the sale of ANS crude oil anywhere, let alone in the three purported relevant markets alleged by the FTC. Defendants deny the remainder of the allegations in this Paragraph.

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

Response: Defendants deny the allegations of this Paragraph and state further that the transactions described in the response to Paragraph 28 and incorporated herein assure effective entry of at least one substantial new competitor into relevant markets and assure that there will be no anti-competitive effects of the proposed merger as it will be implemented.

COUNT II:

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

32. BP Amoco 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.

<u>Response</u>: Defendants admit that they, among others, are presently competitors in bidding for exploration leases offered in Alaska by the United States Government and the State of Alaska, and that historically they have been the largest bidders in terms of number of tracts bid upon and won. Defendants further state that there are numerous other effective competitors for exploration acreage on the North Slope.

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.

<u>Response</u>: Defendants admit that the sale of exploration rights is a relevant market, but deny that revenues derived from lease sales are the only or even a significant measure of the likely effects of the proposed merger in that market. Defendants deny that there will be any negative effect on revenues derived from such lease sales and state further that the likely effects of the merger will be to increase production activities on State and Federal lands, thereby increasing overall State and Federal revenues derived from the sale of exploration rights. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Defendants admit that the State of Alaska and the US government own lands that may be appropriate for exploration, development and production of crude oil on the Alaska North Slope, and that those lands are a relevant geographic market with respect to the sale of exploration rights. Defendants deny, however, that the proposed merger's likely effects can be measured only by reference to this geographic market. Defendants deny the remainder of the allegations in this Paragraph.

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 Amoco would be the dominant bidder and alone would control a dominant share of exploration and development assets.

Response: Defendants deny that the proposed merger as described in paragraph 9 of the Complaint will substantially lessen competition in the alleged market for bidding on exploration rights for "new ANS fields" or new tracts of land offered in state and federal leases in Alaska. Defendants deny that the merged entity would be the dominant bidder in lease offerings or control a dominant share of exploration and development assets post-merger. There is today and will continue to be competition from a number of other companies and individuals in lease offerings and virtually all exploration and development of oil production subsequent to the initial lease sale is done cooperatively with partners and pursuant to unitization agreements. Moreover, Defendants deny that the market for bidding can be combined with exploration and development, since there is no relevant product or geographic market for "exploration and development." Defendants deny the remainder of the allegations in this Paragraph.

D. Effect of the Proposed Merger on Leasing, Exploration and Development Activities

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 Amoco to reduce the pace of exploration and development, and ultimately, the amount of crude oil produced.

Response: Defendants deny that the proposed merger as described in paragraph 9 of the Complaint will substantially lessen competition in bidding for leases offered in future state and federal lease auctions; there is today and will continue to be competition from a number of other companies and individuals in lease auctions. Moreover, the State of Alaska and the federal government already have the means to modify the bidding process to allay any concerns. Defendants further deny that their merger will raise barriers to entry for bidding on leases or barriers to acquiring access to land for exploration, development and production of crude oil on the North Slope.

Defendants deny that the proposed merger as described in paragraph 9 of the Complaint will create or enhance any alleged incentive to reduce the pace of exploration and development and the amount of crude oil produced. Defendants have no incentive to reduce their own or others production of oil on the North Slope. A key purpose of the merger is to reduce the costs inherent to the exploration and production process, so as to increase production in the mature and new North Slope oil fields, which is necessary to keep the TAPS pipeline and other fixed assets on the North Slope operating efficiently.

Defendants state further that with the divestitures of leased exploration acreage required by Alaskan state law and the additional provisions of the Charter, the proposed merger will enhance the North Slope's attractiveness to existing and new entrants, which will lead to increased production and further ensure that there will be no anti-competitive effects of the merger as it will be implemented. Defendants deny the remainder of the allegations in this Paragraph.

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

Response: Defendants deny that the proposed merger as described in paragraph 9 of the Complaint will create anti-competitive effects, or raise barriers to entry to bidding on state and federal leases. Moreover, the state requirement of divestiture of lands in excess of 500,000 acres and the provisions of the Charter as set forth in Paragraph 28 ensure that there will be several entities with the incentive, interest and ability to compete aggressively in future lease offerings, and ensure that there will be no anti-competitive effects of the proposed merger as it will be implemented. Defendants deny the remainder of the allegations in this Paragraph.

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 oil which arrives from pipelines originating in Texas, and imported crude oil 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.

Response: Admitted, but Defendants state that the pipelines that reach Cushing, Oklahoma from the Gulf Coast and elsewhere are federally regulated common carrier pipelines.

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

Response: Defendants admit that the New York Mercantile Exchange ("NYMEX") uses trading in West Texas Intermediate crude oil ("WTI") for crude oil futures contract trading and that NYMEX contracts list "Cushing, Oklahoma" as the nominal delivery point for WTI. Defendants further admit that WTI is used as a reference price in transactions in other areas of the country and world. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Defendants admit that the New York Mercantile Exchange ("NYMEX") uses trading in West Texas Intermediate crude oil ("WTI") for crude oil futures contract trading and that NYMEX contracts list "Cushing, Oklahoma" as the nominal delivery point. Defendants admit that the vast majority of NYMEX contracts are closed out or exchanged. Defendants deny the remainder of the allegations in this Paragraph.

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.

Response: Defendants admit that efficient functioning of pipeline and storage facilities is important to all pipeline owners and users, including the Defendants. Federal regulations under FERC already ensure that pipelines are operated in a prudent fashion, and provide for penalties for noncompliance. In addition, both the Commodities Futures Exchange Commission ("CFTC") and NYMEX have rules and regulations that prohibit manipulation of NYMEX futures prices, and the CFTC and NYMEX actively monitor the trading markets to prevent any such manipulation from occurring. Defendants deny that restriction of pipeline or storage capacity in Cushing can materially affect both WTI cash and NYMEX futures prices. Defendants deny the remainder of the allegations in this Paragraph.

A. The Relevant Product Market

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.

Response: Defendants deny that oil pipeline and storage services into and around Cushing are an appropriate or relevant product market. Defendants deny that there are no substitutes for delivery of oil into Cushing or for storage facilities at Cushing. Defendants deny the remainder of the allegations in this Paragraph.

B. The Relevant Geographic Market

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.

Response: Defendants deny that oil pipeline and storage services located in other regions cannot serve the crude oil trading activities in Cushing. Defendants deny the remainder of the allegations in this Paragraph.

C. Concentration

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 Amoco would control over 40% of the pipeline and storage capacity serving Cushing.

Response: Defendants deny that the proposed merger will have any effect on market concentration for pipeline and storage services into and in Cushing, and deny that any change in ownership of federally regulated, common carrier pipelines is a relevant to the Section 7 analysis in this action.

D. Effect of the Proposed Merger on Pipeline and Storage Services in Cushing

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 Amoco and ARCO, and creating or enhancing market power.

Response: Defendants deny that the proposed merger as described in Paragraph 9 will have any effect on competition in pipeline and storage services into and in

Cushing, because the merger will neither create nor enhance market power. Defendants further state that BP Amoco is negotiating with purchasers to sell the interests ARCO owns in the following: the Seaway Pipeline Partnership, the physical crude oil storage tank assets at Cushing and Midland and related pipelines, the line-transfer business serving Cushing and Midland, the West Texas Trunkline, the Basin Pipeline and the Rancho Pipeline. BP Amoco expects to have in place prior to the beginning of the preliminary injunction hearing contractual obligations to sell those assets in and around Cushing. Thus, all of the ARCO assets in and around Cushing about which the FTC has expressed concern will be disposed of by BP Amoco upon consummation of the merger.

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

Response: Defendants deny that the proposed merger as described in Paragraph 9 will create or enhance market power, or enable any manipulation of NYMEX oil futures, as the merger will not change existing regulations that prevent the kind of manipulation alleged by the FTC and state further that the divestitures of the assets described in response to Paragraph 45 mean that the merger as implemented will have no effect on competition into and in Cushing.

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

Response: Defendants deny the allegations of this Paragraph and state further that the merger as described in Paragraph 9 and as implemented by the divestiture described in Paragraph 45 will neither cause nor create any anti-competitive effects in Cushing, Oklahoma.

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 Amoco 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 Amoco. Finally, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

Response: Defendants deny that the proposed merger as described in Paragraph 9, and as implemented as described in the response to Paragraphs 28 and 45, will have anti-competitive effects, let alone effects sufficient under Section 7 of the Clayton Act that would justify the drastic remedy of stopping this transaction and the pro-competitive benefits that will result therefrom.

Defendants further deny that the allegations of this paragraph, even if true, would justify injunctive relief because the FTC challenges only two aspects of this transaction -- ARCO's ANS and Cushing assets -- both of which are discrete parts of ARCO's business that readily could be divested.

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

Response: Defendants deny that enjoining of the proposed merger will be in the public interest. To the contrary, the proposed merger as described in Paragraph 9, and as implemented as described in the response to Paragraphs 28 and 45, will be in the public interest.

AFFIRMATIVE DEFENSES 1. The proposed merger would create significant, verifiable and merger-specific efficiencies that would be passed through to, and directly benefit, consumers. These pro-competitive efficiencies will permit better utilization of existing assets, enable the combined firm to achieve lower costs than either BP Amoco or ARCO could achieve without the proposed transaction, and are likely to be accomplished only with the proposed merger. As such, these efficiencies should be taken into account in evaluating the ultimate issue of the proposed transaction's overall effect on competition.

///

///

///

///

///

///

///

DATED: March 1, 2000 Respectfully Submitted,

BY: ______________________________

One of the Attorneys for Defendants BP Amoco p.l.c. and Atlantic Richfield Company

KIRKLAND & ELLIS
FRANK CICERO, JR. (Admitted Pro Hac Vice)
J. ANDREW LANGAN (Admitted Pro Hac Vice)
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

COOLEY GODWARD LLP
PAUL A. RENNE (36133)
JAMES DONATO (146140)
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580
Telephone: (415) 693-2000
Facsimile: (415) 951-3699

Attorneys for Defendant BP AMOCO p.l.c.

HELLER, EHRMAN, WHITE & McAULIFFE
STEPHEN V. BOMSE
333 Bush Street
San Francisco, CA 94104-2878
Telephone: (415) 772-6000
Facsimile: (415)772-6268

ARNOLD & PORTER
MATTHEW HEARTNEY
777 S. Figueroa St., 44th Floor
Los Angeles, CA 90017-5864
Telephone: (213) 243-4150
Facsimile: (213) 243-4199

Attorneys for Defendant
ATLANTIC RICHFIELD COMPANY