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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, OREGON, AND) Case No.: 00-00420 SI
WASHINGTON,) (Related to C 00-00416 SI)
)
Plaintiffs,) **ANSWER OF DEFENDANTS BP AMOCO P.L.C.**
vs.) **AND ATLANTIC RICHFIELD COMPANY TO THE**
) **STATES' COMPLAINT FOR**
BP AMOCO p.l.c.,) **INJUNCTIVE AND OTHER RELIEF**
)
and)
)
ATLANTIC RICHFIELD COMPANY,)
_____)

Defendants _____)

Defendants BP Amoco p.l.c. and Atlantic Richfield Company (“ARCO”) submit this joint Answer to plaintiffs’ Complaint as set forth below:

I. JURISDICTION AND VENUE

1. *This Complaint is filed and the jurisdiction and venue of the Court are invoked under the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).*

Response: Defendants do not contest jurisdiction or venue.

2. *The state Attorneys General have authority to bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26.*

Response: Defendants admit that the Clayton Act, under certain circumstances -- all absent here -- authorizes actions by private individuals and States. Defendants deny that California, Oregon and Washington, hereinafter the “Western States,” have standing under the Clayton Act to bring these antitrust claims. The Western States do not have antitrust standing and they have not alleged any injury that is cognizable under Section 16 of the Clayton Act. In addition, the Western States do not have standing under Article III to sue as *parens patriae*.

3. *Venue is proper because the violations committed herein have been and are being committed in whole or in part in the Northern District of California.*

_____ **Response:** Defendants do not contest venue in this District, but deny that any antitrust violations have been or would be caused by the proposed merger and deny the remainder of the allegations in this Paragraph.

4. *The violations alleged herein have a substantial effect on interstate commerce.*

_____ **Response:** Defendants admit that they are engaged in interstate commerce and deny that any antitrust violations affecting such commerce have been or would be caused by the proposed merger. 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. INTRA DISTRICT ASSIGNMENT

5. *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 service stations located throughout California, including those located within the counties encompassed by the San Francisco Division. Furthermore, plaintiff State of California has Antitrust Section offices located in San Francisco.*

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 no antitrust allegations related to the ownership or the operation of those stations – or any other retail gasoline stations – are put at issue by the Western States’ Complaint.

III. PLAINTIFFS

6. *The Attorneys General of the States of California, Oregon and Washington are the chief law enforcement officers of their states and as such are empowered to bring this suit on behalf of the states and on behalf of their general economies.*

Response: Defendants admit that the Attorneys General of the Western States have authority to bring suits on behalf of their general economies, in certain circumstances. However, defendants deny that the Attorneys General of the Western States have standing under the Clayton Act to bring the antitrust claims they have alleged here. The Western States do not have antitrust standing and they have not alleged any injury that is cognizable under Section 16 of the Clayton Act. In addition, the Western States do not have standing under Article III to sue as *parens patriae*.

IV. DEFENDANT BP AMOCO p.l.c.

7. *Defendant BP AMOCO p.l.c. (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. BP Amoco is engaged in the exploration, production and marketing of crude oil for sale to refiners in California and Washington and licenses its BP Amoco trademark for use by retail gasoline stations in California, Oregon and Washington.*

Response: Defendant 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. Defendant BP Amoco admits that it is engaged in the exploration for and production of crude oil in the State of Alaska, and engaged in the business of selling and delivering Alaskan North Slope ("ANS") crude oil to refineries in the states of California, Washington, and Hawaii. BP Amoco admits that, in the past, it has licensed its trademark for use by retail gasoline stations in California, Oregon and Washington, but no antitrust allegations related to the ownership or the operation of those stations – or any other retail gasoline stations – are put at issue by the Western State's Complaint.

Because this paragraph makes no allegation about Defendant ARCO, it without sufficient information to form a belief as to the allegations in this paragraph.

V. DEFENDANT ATLANTIC RICHFIELD COMPANY

8. *Defendant Atlantic Richfield Company ("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. ARCO is engaged in the exploration, production and marketing of crude oil for sale to refiners located in California and Washington.*

Response: Defendant ARCO admits the first sentence of this Paragraph. Defendant ARCO denies that it is regularly engaged in the business of marketing and delivering ANS crude oil for sale to refiners located in California and Washington. ARCO is engaged in the exploration and production of crude oil in the State of Alaska, but it uses its ANS production in its own refineries in California and Washington to make refined products. ARCO 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 states further that it has made small, sporadic ANS crude oil sales but ARCO has never made such sales in Oregon. Defendant ARCO denies the remainder of the allegations in this Paragraph.

Because this paragraph makes no allegation about Defendant BP Amoco, it without sufficient information to form a belief as to the allegations in this paragraph.

VI. THE PROPOSED MERGER

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 becoming a wholly owned subsidiary of BP Amoco. At the time the proposed merger was announced, the companies valued the transaction at about \$26 billion.*

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

VII. TRADE AND COMMERCE

10. *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 ("West Coast refineries"). The vast majority of the crude oil produced on the North Slope is refined on the West Coast of the United States and Hawaii.*

Response: 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 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 remainder of the allegations in this Paragraph.

11. *Refineries in California consume a substantial portion of the Alaskan North Slope crude oil shipped to the West Coast.*

Response: Defendants admit Alaska and California are the source of a majority of the crude oil used by refiners in California and Washington; 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. The State of California is integrated into the world oil market and world crude oil supply, and California has so admitted. The State of California has also 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.

12. The five refineries located in the Puget Sound region, which produce the majority of gasoline consumed in Washington, primarily refine ANS crude oil.

Response: Defendants deny the allegation, and state further that there are six refineries in the Puget Sound region, and not all of them primarily refine ANS crude oil.

Defendants admit that these refineries use a variety of crude oils, including ANS and imported crude oils. In addition, ARCO's Cherry Point refinery (near Ferndale, Washington) uses ARCO's own ANS production. Further, nothing related to the consumption of gasoline or the retail gasoline market is put at issue by the Western States' Complaint or the FTC's related case, and Defendants deny that the consumption of gasoline in Washington is a relevant consideration.

13. The majority of gasoline consumed in Oregon is produced by refiners in Washington and transported to Oregon via the Olympic pipeline. At least one northern California refiner produces gasoline which is transported to Portland and other parts of Oregon.

Response: Defendants deny that the use of gasoline in Oregon is at all relevant to the antitrust claims alleged by the Western States, or the FTC in the related case. Nothing related to the ownership or the operation of gasoline service stations in Oregon – or any other retail gasoline stations – is put at issue by the Western States' or FTC's Complaints. Defendants further state that the State of Oregon does not have a single refinery that processes ANS crude oil, yet another reason why the State of Oregon does not have standing to bring the antitrust claims it has alleged. Defendants deny the remainder of the allegations in 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 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 to the port of Valdez on Alaska's Prince William Sound, for tanker shipment to West Coast refineries 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 reaches Valdez. Some of the West Coast refineries are owned by integrated ANS producers such as ARCO, ExxonMobil and Chevron. Others are independent refiners without ANS production. ANS crude oil is sold on the spot market and pursuant to term contracts to both independent and integrated refiners.*

Response: 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. *The trade in ANS crude is unique in that it is sold only on a delivered basis by an integrated producer with its own tanker fleet. West Coast refineries do not have a practical option of hiring a tanker to carry ANS crude purchased in Valdez. The principal fleet operators are BP Amoco, ARCO and Exxon, either through affiliates or subsidiaries. Independent producers without a tanker fleet either sell their oil to an integrated producer with a tanker fleet or to one of the small refineries in Alaska.*

Response: 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 does not currently own a refinery on the West Coast and thus is an actual or potential supplier to all of the refineries using ANS crude oil on the West Coast, including those owned by Equiva (Shell/Texaco joint venture), U.S. Oil, Tosco and others.*

Response: Defendant BP Amoco admits that it does not own or operate any refineries on the West Coast, and through affiliates, is engaged in the business of selling and delivering ANS crude oil to refineries with operations in the states of California, Washington, and Hawaii. BP Amoco does not supply ANS crude oil to the State of Oregon, because, as stated in the response to Paragraph 13, the State of Oregon does not have any refineries that use ANS.

Because this paragraph makes no allegation about Defendant ARCO, it without sufficient information to form a belief as to the allegations in this paragraph.

17. *ARCO owns refineries and gas stations in California, Oregon and Washington and thus is a consumer as well as a producer of crude oil. Although it usually consumes the oil it produces, it sells crude oil to other refiners on the spot market when it has extra barrels available.*

Response: Defendant ARCO admits that it is engaged in the business of producing refined products in California and Washington, and that it that it owns and operates gasoline service stations in California, Oregon and Washington, but nothing related to the ownership or the operation of those stations – or any other retail gasoline stations – is put at issue by the Western States’ Complaint. ARCO denies that it is regularly engaged in the business of selling and delivering ANS crude oil to the Western States. Defendant ARCO admits that it usually consumes all of its ANS production in its own refineries in California and Washington to make refined products. 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. ARCO has made small, sporadic ANS crude oil sales but ARCO has never made such sales in Oregon. Defendant ARCO denies the remainder of the allegations in this Paragraph.

Because this paragraph makes no allegation about Defendant BP Amoco, it without sufficient information to form a belief as to the allegations in this paragraph.

VIII. LOSS OF COMPETITION IN THE PRODUCTION SALE AND DELIVERY OF ANS CRUDE OIL

18. *As alleged below, BP Amoco currently exercises monopoly power in various markets for the sale of crude oil to targeted refiners 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 to areas outside the West Coast. 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 the refiners.*

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 plaintiffs' 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 overall products yields and the yield of particular products. Therefore, refiners cannot freely substitute one crude oil for another, but must make complex decisions, typically assisted by extensive computer linear programs that solve many equations simultaneously, to evaluate the economics of crude substitution.

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 Western States have alleged a proper market upon which they base their “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 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 plaintiffs mean 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 to

Asia at a lower price, net of transportation costs, 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 Plaintiffs' 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 crude oil used by West Coast refiners 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 relevant markets.*

Response: Defendants deny that the Western States have 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 Western States if those were relevant markets. Defendants deny the remainder of the allegations in this Paragraph.

D. Effects of the Proposed Merger in the 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 plaintiffs. 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 Western States' theory of anti-competitive effects associated with the merger. As the plaintiffs know 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 Western States in their 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 Western States complain. 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 Western States. 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 each 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 Western States. 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 anticompetitive 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.

32. *Marine transportation serves as a crucial link in the supply chain because the only way to get ANS crude to West Coast refiners is via tanker. All ships currently in ANS trade are controlled by just four companies: BP Amoco, ARCO, Exxon and Chevron. The proposed merger would concentrate under BP Amoco's control 16 of the 22 tankers, and over 79 percent of the total tonnage, devoted to the ANS trade.*

Response: Defendants admit that several ANS producers currently own or charter marine transportation assets to deliver ANS to West Coast refineries. Defendants deny that the plaintiffs have defined a relevant market for ANS marine transportation and deny that the proposed merger would cause any “concentration” in ANS marine transportation; there is no such “ANS marine transportation” relevant market. Defendants further state that small producers and potential new entrants to the North Slope that do not have marine transportation have options including sale of their ANS to one of Alaska’s in-state refiners, obviating the need for such transportation. Moreover, the proposed merger as it will be implemented by the Defendants (described in the response to Paragraph 28 above) will give purchasers of the divested production assets the option to purchase ships from BP Amoco /Arco for their use in transporting oil out of Alaska. Defendants deny the remainder of the allegations in this Paragraph.

33. *There are significant financial, regulatory and practical barriers to entry into the marine transportation business.*

Response: Defendants deny that plaintiffs have defined a relevant market for ANS marine transportation and deny that an analysis of alleged barriers to entry into ANS marine transportation is a relevant consideration; there is no such “ANS marine transportation” relevant market. Defendants further state that small producers and potential new entrants to the North Slope that do not have marine transportation have options including sale of their ANS to one of Alaska’s in-state refiners, obviating the need for such transportation. Moreover, the proposed merger as it will be implemented by the Defendants (described in the response to Paragraph 28 above) will give purchasers of the divested production assets the option to purchase ships from

BP Amoco for their use in transporting oil out of Alaska. Defendants deny the remainder of the allegations in this Paragraph.

34. *The merger of BP Amoco and ARCO as alleged violates Section 7 of the Clayton Act (15 U.S.C. § 18).*

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 raised in this Count give California, Oregon and Washington standing under the Clayton Act to bring these antitrust claims. Defendants deny the remainder of the allegations in this Paragraph.

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

35. *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.*

_____ **Response:** 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

36. *There are no substitutes for exploration activities for sellers of exploration rights. 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.*

Response: 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

37. *The State of Alaska and the United States own land which may be appropriate for exploration, development and production of crude oil on the Alaska North Slope. Accordingly, the Alaskan 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 of new ANS fields.*

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

38. The proposed merger would substantially increase market concentration in an already highly concentrated market for bidding on exploration, development and production rights for new ANS fields. In recent years BP Amoco and ARCO were successful in over 60% to 70% of the bid competitions for new leases to engage in exploration and development on state and federal lands on the Alaskan North Slope. After its merger with ARCO, BP Amoco alone would be the dominant bidder and 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

39. *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 previously alleged 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.

40. Substantial, timely, and effective entry into the relevant markets, sufficient to deter or counteract the anticompetitive 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.

41. The merger of BP Amoco and ARCO as alleged violates section 7 of the Clayton Act (15. U.S.C. section 18).

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 raised in this Count give California, Oregon and Washington standing under the Clayton Act to bring these antitrust claims. Defendants deny the remainder of the allegations in this Paragraph.

AFFIRMATIVE DEFENSES

1. The plaintiff Western States' Complaint fails to state a claim, right or cause of action upon which relief can be granted.

2. The plaintiff Western States do not have standing under the Clayton Act to bring these antitrust claims. The Western States do not have antitrust standing and they have not alleged any cognizable injury under Section 16 of the Clayton Act. In addition, the Western States do not have standing under Article III to sue as *parens patriae*.

3. The State of Oregon does not have standing to bring the antitrust complaints it alleges. The State of Oregon does not have a single refinery that processes ANS crude oil, and nothing related to the ownership or the operation of gasoline service stations in Oregon – or any other retail gasoline stations – is put at issue by the Western States' or FTC's Complaints.

4. 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.

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DATED: March 1, 2000 Respectfully Submitted,

BY: _____

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

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