

Statement of the Federal Trade Commission

In the Matter of Union Oil Company of California, Dkt. No. 9305 and Chevron/Unocal, File No. 051-0125

The Federal Trade Commission has voted unanimously (4-0-1, with Chairman Majoras recused) to accept two linked consent agreements that resolve both the Commission's monopolization case against Unocal Corporation's subsidiary Union Oil Company of California and any antitrust concerns arising from Chevron Corporation's pending acquisition of Unocal. The key element in the settlements, which will become effective when the acquisition is completed, is Chevron's agreement not to enforce certain Union Oil patents that potentially could have increased gasoline prices in California by over \$500 million a year (or almost six cents per gallon). This agreement provides the full relief that the Commission sought in its administrative litigation with Union Oil and also addresses the only possible objection to the Chevron/Unocal acquisition.

On April 4, 2005, Chevron agreed to acquire Unocal in a transaction valued at approximately \$18 billion. Chevron and Unocal both have extensive oil and gas operations. However, nearly all of Unocal's operations are in the so-called "upstream" segment of the business – namely, the exploration and production of crude oil and natural gas. Unocal has no refineries or gasoline stations in the United States or anywhere else in the world, and has few other "downstream" operations. As a result, virtually all of the competitive overlaps between the two firms are in unconcentrated upstream markets, and the merger thus creates no competitive risk. For example, Chevron and Unocal combined have only 2.7 percent of world crude oil

production, 0.77 percent of world crude oil reserves, 11.3 percent of U.S. crude oil production, and 11.4 percent of U.S. crude oil reserves.¹ *We want to emphasize that the merger will have no impact whatsoever on concentration at the retail or refinery levels.* It is clear from all we have seen that Chevron's primary motivation is to gain access to Unocal's upstream oil reserves.

The only potential competitive concern with Chevron's proposed acquisition of Unocal involved patents held by Union Oil – the same group of patents involved in the Commission's monopolization case against Union Oil. In order to explain why this is so, it is necessary first to discuss the issues in this monopolization case.

The Commission's administrative complaint against Union Oil charged that the firm had illegally acquired monopoly power in the technology market for producing certain low-emission gasoline mandated by the California Air Resources Board (CARB) for sale and use in California for up to eight months of the year. According to the complaint, Union Oil misrepresented to CARB that certain gasoline research was non-proprietary and in the public domain, while at the same time it pursued a patent that would enable it to charge substantial royalties if the research results were used by CARB in the development of regulations. The complaint further asserted that Union Oil similarly misled its fellow members of private industry groups, which were also

¹ Sources for the underlying data include the Energy Information Administration, U.S. Department of Energy, U.S. Crude Oil, Natural Gas, and Liquids Table 2003 Annual Report, Table B5, *available at* <<http://www.eia.doe.gov>>, the FTC Bureau of Economics Staff Study, "The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement," August 2004, Table 5-3, *available at* <<http://www.ftc.gov/os/2004/08/040813/mergersinpetrolberpt.pdf>>, and the Oil and Gas Journal.

participating in the CARB rulemaking process. As a result, if Union Oil were permitted to enforce its patent rights, companies producing this low-emission CARB gasoline would be required to pay royalties to Union Oil, the bulk of which would be passed on to California consumers in the form of higher gasoline prices. The Commission estimated that Union Oil's enforcement of these patents could potentially result in over \$500 million of additional consumer costs each year. The complaint sought an order requiring Union Oil to cease and desist from all efforts to assert these patents against those manufacturing, selling, distributing, or otherwise using motor gasoline to be sold in California. In the settlement announced today, Unocal and Chevron have agreed to all of this requested relief.

The consent orders also resolve any possible antitrust objections to the merger. Although Unocal does not engage in any refining or retailing itself, it had claimed the right to collect patent royalties from companies that did so (including Chevron). If Chevron had unconditionally inherited these patents by acquisition, it would have been in a position to obtain sensitive information and to claim royalties from its own horizontal downstream competitors. We have reason to believe that this scenario would likely have an adverse effect on competition and, in any event, would inevitably have required an extensive inquiry and possible litigation.

For example, Union Oil regularly collects detailed reports from licensees about their production of CARB gasoline and other refinery operations. If Chevron had continued these license agreements after inheriting Union Oil's patents, it would have received information not otherwise available to members of the industry. Chevron could have used this information to

facilitate coordinated interaction and detect any deviations. Chevron might also have been able to use the patents to discourage maverick behavior. Our present knowledge suggests that the likely competitive harm from this potential coordination and discipline would outweigh any likely efficiency gains from the vertical integration of a merged Chevron-Unocal. Now, a further inquiry into that belief is not necessary.

The settlement of these two matters is thus a double victory for California consumers. The Commission's monopolization case against Unocal was complex and, with possible appeals, could have taken years to resolve. The stakes were high, and substantial royalties could have been paid in the meantime – with an immediate impact on consumers. If the Commission lost the case, the dollar costs to consumers ultimately would have been immense. At the same time, a challenge against the acquisition of Unocal by Chevron would itself be a complex case, with high stakes and an uncertain outcome. The settlement provides the full relief sought in the monopolization case and resolves the only competitive issue with the proposed merger. With the settlement, consumers will benefit immediately from the elimination of royalty payments on the Union Oil patents, and potential merger efficiencies could result in additional savings at the pump.