LONDON INTERNATIONAL GROUP, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3800. Complaint, April 7, 1998--Decision, April 7, 1998

This consent order prohibits, among other things, the Georgia-based condom manufacturer from making any comparative claims about the strength, efficacy or risk of breakage of any condom in the future, unless the respondent possesses and relies upon competent and reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *Linda Badger, Kerry O'Brien* and *Jeffrey Klurfeld.*

For the respondent: *Wayne H. Matelski, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that London International Group, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent London International Group, Inc. is a New Jersey corporation with its principal office or place of business at 3585 Engineering Drive, Norcross, Georgia.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including "Ramses" brand condoms. Ramses brand condoms are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Ramses brand condoms, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements and depictions:

A. "it won't give you X-ray vision or bionic strength. but it will make you a hero tonight.

Ramses* gives you the sensitivity and natural feeling you want. and because it's 30% stronger than the leading brand, it performs like a champ. so you can too.
Ramses®. a trusted companion.
*Ramses® regular strength condoms."
[The advertisement depicts an individual condom wrapper labeled: "RAMSES CONDOM"] (Exhibit A).

B. "WOMEN PREFER THE STRONG SENSITIVE TYPE.
Ramses provides both strength and sensitivity with that exquisite natural feel. And 30% more strength* than the leading brand. Now all you need to do is learn to cry.
Ramses. A Trusted Companion.
*Ramses regular strength condoms."
[The advertisement depicts an individual condom wrapper labeled: "durex RAMSES 1 *PREMIUM* CONDOM LATEX"] (Exhibit B).

C. "IT'S TRUE. WOMEN WANT WHAT'S IN YOUR WALLET.
It's not the money they're after. It's the sensitivity. The natural feel. All that added strength* (30% more than the leading brand). An empty wallet can be a beautiful thing. **Ramses. A Trusted Companion.**
*Ramses regular strength condoms."
[The advertisement depicts an individual condom wrapper labeled: "durex RAMSES 1 *PREMIUM* CONDOM LATEX"] (Exhibit C).

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Ramses brand condoms are thirty percent stronger than the leading brand.

B. Ramses brand condoms break thirty percent less often than the leading brand.

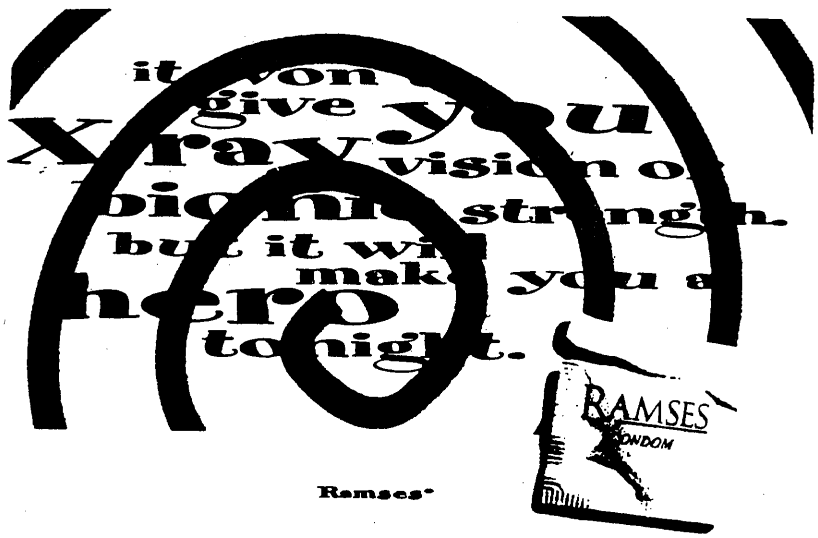
6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made. Respondent submitted inadequate data to substantiate its claim that Ramses brand condoms are thirty percent stronger than other condoms. Respondent also submitted inadequate substantiation for the claim that Ramses brand condoms break thirty percent less often than other condoms. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

EXHIBIT A



Ramses®

gives you the

sensitivity and natural

feeling you want. and because it's 30%

stronger than the leading brand, it performs like a

champ. so you can too. **Ramses®. a trusted companion.**

EXHIBIT B

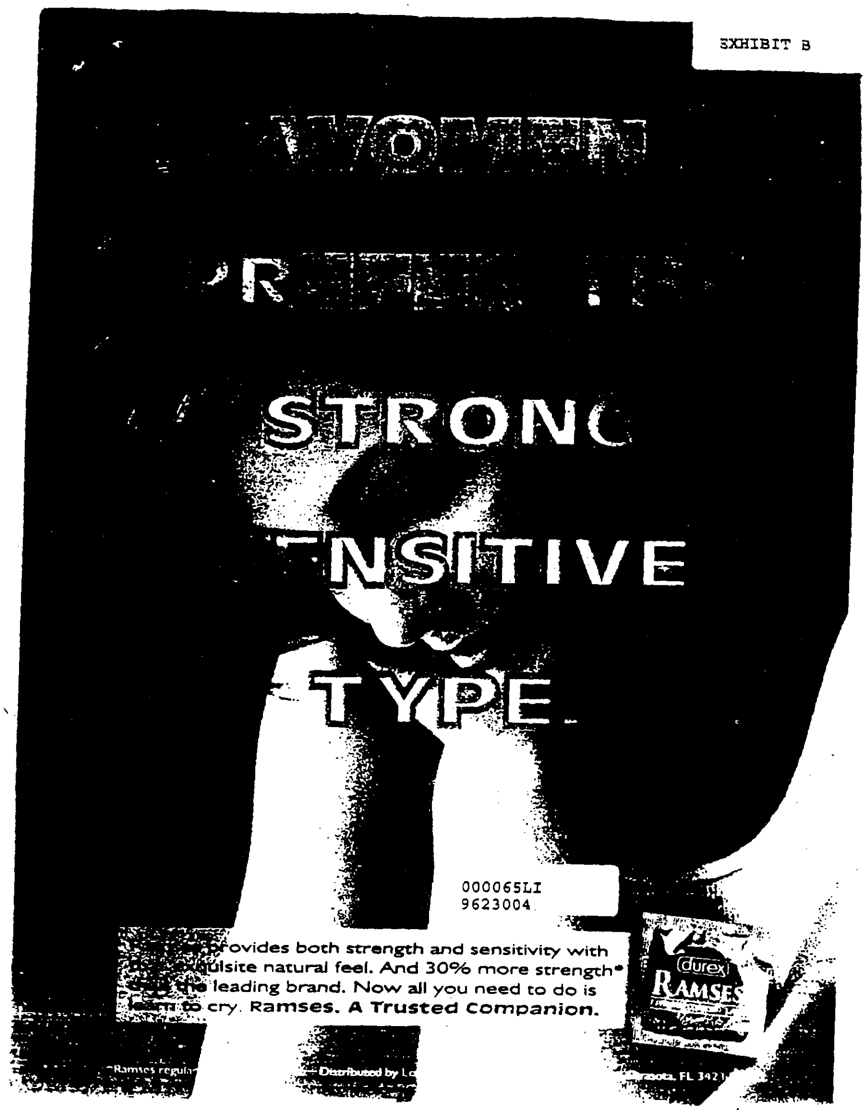


EXHIBIT B
STRON
NSITIVE
TYPE
000065LI
9623004
provides both strength and sensitivity with
quisite natural feel. And 30% more strength*
leading brand. Now all you need to do is
cry. Ramses. A Trusted Companion.
durex
RAMSES

EXHIBIT C


EXHIBIT C
WOMEN
WANT
WHAT'S IN
YOUR WALLET.
It's not the money they're after. It's the sensitivity.
The natural feel. All that added strength* (30% more
than the leading brand). An empty wallet can be a
beautiful thing. Ramses. A Trusted Companion.
durex
RAMSES
000064LI
9623004

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent London International Group, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 3585 Engineering Drive, in the City of Norcross, State of Georgia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean London International Group, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "Ramses" brand condoms or any other condom in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

A. The comparative or quantifiable strength of any condom;
B. The comparative or quantifiable risk of breakage of any condom; or
C. The comparative or quantifiable efficacy of any condom,

unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Provided, that respondent shall not be deemed in violation of Part I of this order for any representation if the Food and Drug Administration has approved such representation pursuant to 21 U.S.C. 352 or 360. Provided, however, that clearance of a report submitted under 21 U.S.C. 360(k) ("pre-market notification") shall not be deemed an approval of a representation under this paragraph unless the Food and Drug Administration clears such representation based on its review and evaluation of substantiation submitted with such report.

II.

It is further ordered, That respondent London International Group, Inc. and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

It is further ordered, That respondent London International Group, Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent London International Group, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

V.

It is further ordered, That respondent London International Group, Inc. and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on April 7, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;
B. This order's application to any respondent that is not named as a defendant in such complaint; and
C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

GUINNESS PLC, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3801. Complaint, April 17, 1998--Decision, April 17, 1998

This consent order requires, among other things, Guinness and Grand Met, producers and sellers of Dewar's Scotch, Bombay Original gin, and Bombay Sapphire gin brands, to divest, within six months of this order, certain assets to Commission approved buyers.

Appearances

For the Commission: *Joseph Brownman, Phillip Broyles* and *William Baer.*

For the respondents: *Ron Rolfe, Cravath, Swaine & Moore*, New York, N.Y. and *Bill Norfolk, Sullivan & Cromwell*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Guinness plc ("Guinness") and Grand Metropolitan plc ("Grand Met") have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that the terms of such agreement, were they to be satisfied, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18, and Guinness and Grand Met, having also merged into a successor corporation known as Diageo plc ("Diageo"), and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT GUINNESS PLC

1. Respondent Guinness was, until on or about December 17, 1997, a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 39 Portman Square, London, England W1H 0EE.

2. Among other things, respondent Guinness, through United Distillers, a wholly-owned subsidiary corporation, produced and sold Scotch from distilleries located in Scotland and gin from distilleries located in England.

3. Respondent Guinness had total sales, for all products, of about $8 billion in 1996. Respondent Guinness' United States sales of all products totaled about $645 million in 1996.

4. Respondent Guinness was, and at all times relevant herein has been, engaged in the sale and distribution of distilled spirits, including "premium Scotch" and "premium gin," in the United States. Respondent Guinness' premium Scotch brands in the United States were Johnnie Walker Red and Dewar's White Label. Respondent Guinness' premium gin brands in the United States were Tanqueray gin and Tanqueray Malacca gin.

5. Respondent Guinness was, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. RESPONDENT GRAND MET

6. Respondent Grand Met was, until on or about December 17, 1997, a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 8 Henrietta Place, London, England W1M 9AG.

7. Among other things, respondent Grand Met, through International Distillers and Vintners, a wholly-owned subsidiary corporation, produced and sold Scotch from distilleries located in Scotland and gin from distilleries located in England.

8. Respondent Grand Met had total sales, for all products, of about $14 billion in 1996. Respondent Grand Met's United States sales of all products totaled about $8 billion in 1996.

9. Respondent Grand Met was, and at all times relevant herein has been, engaged in the sale and distribution of distilled spirits, including "premium Scotch" and "premium gin," in the United States. Respondent Grand Met's premium Scotch brands in the United States included J&B Rare, J&B Select, and The Famous Grouse. Respondent Grand Met's premium gin brands in the United States were Bombay Original and Bombay Sapphire.

10. Respondent Grand Met was, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. RESPONDENT DIAGEO

11. Respondent Diageo is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 8 Henrietta Place, London, England W1M 9AG.

12. Respondent Diageo is the successor corporation to respondents Guinness and Grand Met.

13. Respondent Diageo is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

III. THE MERGER

14. On or about May 11, 1997, respondents Guinness and Grand Met executed an agreement to merge their two companies. The value of the merger, measured by the aggregate market capitalization, was approximately $36 billion.

15. On or about December 17, 1997, respondents Guinness and Grand Met merged their two corporations, creating respondent Diageo.

IV. TRADE AND COMMERCE

A. Relevant Product Markets

16. Relevant product markets in which it is appropriate to assess the effects of the proposed merger include (a) premium Scotch and (b) premium gin. Product markets broader than premium Scotch and premium gin may also exist. Total United States sales for premium Scotch are about 3.2 million 9-liter case equivalents, which represents over $600 million in retail sales. Total United States sales of all premium gin is about 2.2 million 9-liter case equivalents, which represents over $400 million in retail sales.

17. Premium Scotch is blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands.

18. Premium gin is gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands.

B. Relevant Geographic Markets

19. The relevant geographic market in which it is appropriate to assess the effects of the proposed merger is the United States.

C. Conditions of Entry

20. Entry into the relevant markets would not be timely, likely, or sufficient to prevent anticompetitive effects.

V. MARKET STRUCTURE

21. The relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschmann Index (or "HHI") or by two-firm and four-firm concentration ratios. The proposed merger, if consummated, will substantially increase that concentration.

22. In the premium Scotch product market, respondent Guinness was the largest competitor in the United States with about a 68% share and respondent Grand Met was the second largest, with about a 24% share. Together, they would control approximately 92% of all United States premium Scotch sales. The proposed merger would increase the HHI by over 3000 points and produce an industry concentration of over 8000 points.

23. In the premium gin market, respondent Guinness was the largest competitor in the United States with about a 58% share and respondent Grand Met was the third largest, with about a 15% share. Together, they would control approximately 73% of all United States premium gin sales. The proposed merger would increase the HHI by over 1700 points and produce an industry concentration of over 6000 points.

VI. EFFECTS OF THE MERGER

24. The merger may substantially lessen competition in the relevant markets in the following ways, among others:

(a) By eliminating direct competition between Guinness and Grand Met;

(b) By increasing the likelihood that respondents will unilaterally exercise market power; and

(c) By increasing the likelihood of, or facilitating, collusion or coordinated interaction; each of which increases the likelihood that the prices of premium Scotch and premium gin will increase.

VII. VIOLATIONS CHARGED

25. The agreement entered into between respondents Guinness and Grand Met for their merger constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Further, the already consummated merger of Guinness and Grand Met is a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed merger between Guinness plc ("Guinness") and Grand Metropolitan plc ("Grand Met"), and Guinness and Grand Met, having merged into a successor corporation known as Diageo plc ("Diageo"), all sometimes referred to herein as "respondents," and respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act;

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents, for purposes of this proceeding, of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Guinness plc was a corporation organized, existing, and doing business under and by virtue of the laws of the

United Kingdom with its office and principal place of business located at 39 Portman Square, London, England W1H 0EE.

2. Respondent Grand Metropolitan plc was a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 8 Henrietta Place, London, England W1M 9AG.

3. Respondent Diageo plc is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 8 Henrietta Place, London, England W1M 9AG.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Guinness*" means Guinness plc, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Guinness plc, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*Grand Met*" means Grand Metropolitan plc, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Grand Metropolitan plc, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Respondents*" means Guinness and Grand Met, individually and collectively, and their successor, Diageo.

D. "*Commission*" means the Federal Trade Commission.

E. "*Dewar's*" means "Dewar's," "Dewar's White Label," and any other brand of Scotch whisky that uses the name "Dewar's" in connection with Scotch whisky.

F. "*Bombay*" means "Bombay," "Sapphire," "Bombay Original," "Bombay Sapphire" and any other brand that uses the name "Bombay" in connection with gin.

G. "*Assets To Be Divested*" means:

1. All assets, properties, business and goodwill, tangible and intangible, owned or controlled by Guinness, anywhere in the world,

used in the manufacture, distribution, marketing, and sale of Scotch whisky under any trade name or trademark that incorporates the term Dewar's, including, without limitation (except that distilleries, distilling capacity, storage capacity, inventory, and cooperage services, are limited as specified in subparagraphs (i) - (k) below), the following:

a. The trade name or trademark "Dewar's" and all trademarks, trade dress, trade names, and logos associated with the sale of any "Dewar's" Scotch whisky;

b. The Dewar's profit and loss statements, Dewar's contribution statements and Dewar's advertising, promotional, and marketing spend records;

c. All Dewar's customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, blend specifications, formulas;

d. All names of manufacturers and suppliers under contract with respondents who produce for, or supply to, respondents in connection with the manufacture or sale of Dewar's;

e. Copies of all product testing required by any regulatory authority relating to Dewar's;

f. All price lists for Dewar's;

g. Molds currently in use for bottling Dewar's in its various sizes sufficient to produce 3 million 9-liter cases of Dewar's per year;

h. All inventories of finished case goods and packaging relating to Dewar's;

i. Sufficient distilling capacity to produce 3 million 9-liter cases of Dewar's per year, including the distillery located in Aberfeldy, Scotland;

j. Sufficient inventory of aged, distilled malt and grain whisky and storage capacity to produce 3 million 9-liter cases of Dewar's White Label per year for seven (7) years, provided, however, that the acquirer may utilize such stocks solely for the purpose of producing Dewar's or for trading for other stocks to be used in producing Dewar's.

k. Sufficient cooperage services to produce 3 million 9-liter cases of Dewar's per year;

l. To the extent transferable or assignable, all rights, titles, and interests in and to the contracts relating to Dewar's entered into in the ordinary course of business with customers (together with associated bid and performance bonds), other Scotch distillers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

m. All rights under warranties and guarantees, express or implied, relating to Dewar's;

n. All books, records, and files, relating to Dewar's; and

2. All assets, properties, business and goodwill, tangible and intangible, owned or controlled by Grand Met, anywhere in the world, used in the manufacture, distribution, marketing, and sale of gin under any trade name or trademark that incorporates the term "Bombay," including, without limitation, the following:

a. The trade name or trademark "Bombay" and all trademarks, trade dress, trade names, and logos associated with the sale of any "Bombay" gin;

b. The Bombay profit and loss statements, Bombay contribution statements and Bombay advertising, promotional and marketing spend records;

c. All Bombay customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, blend specifications, formulas;

d. All names of manufacturers and suppliers under contract with respondents who produce for, or supply to, respondents in connection with the manufacture or sale of Bombay;

e. Copies of all product testing required by any regulatory authority relating to Bombay;

f. All price lists for Bombay;

g. Molds currently in use for bottling Bombay in its various sizes sufficient to produce 800,000 9-liter cases of Bombay per year;

h. All inventories of finished case goods and packaging relating to Bombay;

i. To the extent transferable or assignable, all rights, titles, and interests in and to the contracts relating to Bombay entered into in the ordinary course of business, including but not limited to the contract between Grand Met and Greenalls Group plc as relating to Bombay, with customers (together with associated bid and performance bonds), other distillers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

j. All rights under warranties and guarantees, express or implied, relating to Bombay; and

k. All books, records, and files, relating to Bombay.

H. "*Merger*" means the proposed merger of Grand Met and Guinness pursuant to the merger agreement dated May 11, 1997, leading to the creation of Diageo.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, within six (6) months from the date the agreement containing consent order is signed by respondents, all of the Assets To Be Divested; with the assets described in paragraphs I.G.1 going to a single acquirer and the assets described in paragraphs I.G.2 also going to a single acquirer (who may be the same acquirer as the acquirer of the assets described in paragraph I.G.1),

1. Provided, however, that if the Commission, in its sole discretion, determines that the acquirer of any of the Assets To Be Divested does not require any or all of the distillery capacity, cooperage services, or inventory of or storage capacity for aged, distilled malt and grain whiskies referred to in paragraphs I.G.1(i) - (k) in order to fulfill the purposes of this order (including as a result of other arrangements made by the acquirer such as supply agreements with respondents or others as approved by the Commission), then respondents shall not be required to divest such assets,

2. Provided further, that to the extent that the Assets To Be Divested include ownership interests in distilled spirits distributors, respondents shall not be required by virtue of anything contained in this order to divest such ownership interests,

3. Provided further, that to the extent that any document or other material included within the Assets To Be Divested contains information concerning a brand other than Dewar's or Bombay, such other information need not be provided, and

4. Provided further, that if any document or other material included within the Assets To Be Divested is required to be retained by respondents by requirements of law, or for tax purposes or for defending products liability lawsuits, respondents may retain a copy of such material for use only for such purposes.

B. Respondents shall make best efforts to ensure the continued and uninterrupted supply of Bombay to the acquirer by its existing supplier, Greenalls Group plc ("Greenalls"), under the terms of the existing contract between Greenalls and Grand Met. In the event Greenalls does not agree to supply the acquirer under terms acceptable to the acquirer, to ensure the acquirer an uninterrupted supply of Bombay at supply levels consistent with the terms of the contract with Greenalls, at the request of the acquirer, respondents shall produce and bottle Bombay in England for the acquirer using the same production methods, type of equipment, and recipe as those used by Greenalls for the production of Bombay, through September 30, 2001, or such shorter or longer time period as respondents and the acquirer may mutually agree. Respondents shall charge the acquirer, for a period of twelve (12) months from the date of the divestiture, no more than the prices for Bombay charged by Greenalls as of the date the agreement containing consent order is signed. Thereafter, through September 30, 2001, respondents may charge the acquirer prices in accordance with the terms in the existing contract between Grand Met and Greenalls.

C. The purposes of the order are to remedy the lessening of competition resulting from the merger as alleged in the Commission's complaint, and to ensure the continued use of the Assets To Be Divested in the same businesses in which the Assets To Be Divested are engaged at the time of the merger.

D. Respondents shall divest the Assets To Be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

E. Pending divestiture of the Assets To Be Divested, respondents shall take such actions as are necessary to maintain the viability and marketability of the Assets To Be Divested and the ability to compete at the same levels of sales, profitability, and market share as prior to the merger, subject to prevailing market conditions, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Assets To Be Divested, except for ordinary wear and tear.

F. Respondents shall comply with all terms of the Asset Maintenance Agreement, attached to this order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as respondents have divested all the Assets To Be Divested as required by this order.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets to be Divested within six (6) months of the date respondents sign the agreement containing consent order, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph

III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Section II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a

commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That respondents shall, for a period of one year from the date of the divestiture pursuant to this order, or for such shorter period as the acquirer shall determine, make available, at no cost to the acquirer, such technical assistance and know-how as the acquirer shall require to enable the acquirer to produce Dewar's Scotch or Bombay gin according to current production processes and formulas.

V.

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

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment, sale resulting in the emergence of a successor entity, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request to counsel, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect any facility and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five days' notice to counsel for respondents and without restraint or interference from respondents, to interview officers, directors, or employees of respondents, who may have counsel present.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement is by and among Guinness plc ("Guinness"), a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 39 Portman Square, London, England W1H 0EE, Grand Metropolitan plc ("Grand Met"), a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 8 Henrietta Place, London, England W1M 9AG, the successor of Guinness and Grand Met, Diageo, and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES FOR AGREEMENT

Whereas, Guinness and Grand Met, pursuant to an agreement dated May 11, 1997, agreed to merge; and

Whereas, the Commission is now investigating the proposed merger to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, the Commission has reason to believe that the agreement would violate Section 5 of the Federal Trade Commission Act, and that the merger contemplated by the agreement, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, statutes enforced by the Commission; and

Whereas, if the parties accept the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the purpose of this agreement and of the consent order is to preserve the Assets To Be Divested pending the divestiture to the acquirer approved by the Commission under the terms of the order, in order to remedy any anticompetitive effects of the merger; and

Whereas, Guinness's and Grand Met's entering into this agreement shall in no way be construed as an admission by Guinness or Grand Met that the proposed merger is illegal; and

Whereas, no act or transaction contemplated by this agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act, by reason of anything contained in this agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will terminate Guinness' obligation to give twenty (20) days' notice to the Commission's staff prior to consummating the merger with Grand Met, the parties agree as follows:

TERMS OF AGREEMENT

1. Guinness and Grand Met agree to execute, and upon acceptance by the Commission of the Agreement Containing Consent

Order for public comment agree to be bound by, the attached Consent Order.

2. Unless the Commission brings an action to seek to enjoin the proposed merger pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed merger, Guinness and Grand Met will be free to close the merger after 11:59 p.m. on the date the Commission accepts the Consent Order for public comment.

3. Guinness and Grand Met agree that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a - 3.b they will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. On the day the divestitures set out in the Consent Order have been completed.

4. From the time Guinness and Grand Met sign this Agreement until the divestitures set out in the Consent Order have been completed, Guinness, Grand Met, and Diageo shall take such actions as are necessary to maintain the viability and marketability of the Assets To Be Divested and the ability to compete at the same levels of sales, profitability, and market share as prior to the merger, subject to prevailing market conditions, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Assets To Be Divested except for ordinary wear and tear.

5. Should the Federal Trade Commission seek in any proceeding to compel Guinness, Grand Met, or Diageo to divest themselves of the Assets To Be Divested or to seek any other injunctive or equitable relief, Guinness, Grand Met, and Diageo shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the merger. Guinness, Grand Met, and Diageo also waive all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel for Guinness, Grand Met, and Diageo, the aforesaid Guinness, Grand Met, and Diageo

shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Guinness or Grand Met or Diageo, in the presence of counsel, to inspect any facility and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Guinness or Grand Met or Diageo relating to compliance with this Agreement; and

b. Upon five (5) days' notice to counsel for Guinness or Grand Met or Diageo and without restraint or interference from them, to interview officers or employees of Guinness, Grand Met, and Diageo, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission accepts a consent order settling allegations that the merger of Guinness PLC and Grand Metropolitan PLC would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges as antitrust product markets: (1) "premium Scotch," which is defined as "blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands," and (2) "premium gin," which is defined as "gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands." I cannot support the complaint as written.

Although at first glance the markets may seem overly creative, if not gerrymandered, the complaint merits our careful attention. For reasons that are not apparent, the proposed product markets exclude brands not marketed throughout the United States, if there are any, that compete head to head with the national brands. By definition, the "premium gin" product market also excludes domestically bottled gin brands, if any, that are sold at prices comparable to Tanqueray and Bombay. I see no reason for these seemingly arbitrary exclusions.

More importantly, the price limitations in the product markets do not seem justifiable. As recognized in Commission precedent, competition occurs along a continuum of prices. In *Heublein, Inc.*, 96 FTC 385 (1980), for example, the Commission dismissed the complaint based on findings in an "all wine" market and the table, dessert and sparkling wine submarkets. As then Commissioner Pitofsky stated in the Heublein opinion, although the competitive offerings of the wine industry were not altogether homogeneous, "those diverse products nevertheless may 'appropriately be designated as a market' for antitrust analysis." 96 FTC at 576 quoting *Coca Cola Bottling Co. of New York, Inc.*, 93 FTC 110 (1979).

Despite my disagreement with the allegations in the complaint, I find reason to believe that the merger of Guinness PLC and Grand Metropolitan PLC would violate the law on the basis of a broader market and that an order to remedy the lessening of competition in the broader market would be appropriate. The divestiture of the Dewar's Scotch and Bombay gin brands will have some remedial effect in the broader market, and for that reason, I have voted to accept the order.

IN THE MATTER OF

S.C. JOHNSON & SON, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3802. Complaint, April 20, 1998--Decision, April 20, 1998

This consent order requires, among other things, S.C. Johnson & Son, Inc., a Wisconsin-based manufacturer and seller of household cleaning products, to divest certain assets relating to stain and soil remover products and glass cleaner products it would gain in the acquisition of DowBrands.

Appearances

For the Commission: *Steven Bernstein, Yolanda Gruendel, Ann Malester* and *William Baer*.

For the respondent: *Mark Kovner, Kirkland & Ellis*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, S.C. Johnson & Son, Inc. ("S.C. Johnson"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire certain assets of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively "DowBrands"), entities subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Soil and stain remover products*" means products that are designed to pretreat soiled and stained clothing prior to washing in order to aid in the cleaning of the soiled or stained area of the clothing.

2. "*Glass cleaner products*" means products that are designed primarily to clean glass and mirrors, but which may also be used to clean other surfaces.

II. RESPONDENT

3. Respondent S.C. Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 1525 Howe Street, Racine, Wisconsin.

4. Respondent is engaged in, among other things, the manufacture and sale of soil and stain remover products and glass cleaner products.

5. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

6. DowBrands Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 9550 Zionsville Road, Indianapolis, Indiana. DowBrands L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2030 Dow Center, Midland, Michigan. DowBrands Canada Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 250 6th Avenue S.W., Suite 2200, Calgary, Alberta T2P 3H7.

7. DowBrands is engaged in, among other things, the manufacture and sale of soil and stain remover products and glass cleaner products.

8. DowBrands is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

9. On October 27, 1997, S.C. Johnson entered into Asset Purchase Agreements with DowBrands to acquire certain assets of DowBrands' home care and home food management businesses for approximately $1.125 billion ("Acquisition").

V. THE RELEVANT MARKETS

10. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

(a) The research, development, manufacture and sale of soil and stain remover products; and

(b) The research, development, manufacture and sale of glass cleaner products.

11. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

12. The market for the research, development, manufacture and sale of soil and stain remover products is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The post-merger HHI is 5,646 points, which is an increase of 2,730 points over the premerger HHI level. S.C. Johnson and DowBrands are the two leading suppliers of soil and stain remover products in the United States.

13. S.C. Johnson and DowBrands are actual competitors in the relevant market for the research, development, manufacture and sale of soil and stain remover products in the United States.

14. The market for the research, development, manufacture and sale of glass cleaner products is highly concentrated as measured by the HHI. The post-merger HHI is 4,920 points, which is an increase of 1,180 points over the premerger HHI level. S.C. Johnson and DowBrands are the two leading suppliers of glass cleaner products in the United States.

15. S.C. Johnson and DowBrands are actual competitors in the relevant market for the research, development, manufacture and sale of glass cleaner products in the United States.

VII. BARRIERS TO ENTRY

16. Entry into either the market for the research, development, manufacture and sale of soil and stain remover products or the market for the research, development, manufacture and sale of glass cleaner products is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph seventeen because of, among other things, the difficulty of developing a new product, gaining brand name recognition and customer acceptance, and establishing a network of retail distributors.

VIII. EFFECTS OF THE ACQUISITION

17. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) By eliminating actual, direct, and substantial competition between S.C. Johnson and DowBrands in the relevant markets;

(b) By increasing the likelihood that S.C. Johnson will unilaterally exercise market power in the relevant markets;

(c) By increasing the likelihood that customers of soil and stain remover products and glass cleaner products would be forced to pay higher prices;

(d) By reducing innovation in the relevant markets; and

(e) By reducing the level of advertising and promotion of soil and stain remover products and glass cleaner products.

IX. VIOLATIONS CHARGED

18. The Acquisition agreement described in paragraph nine constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

19. The Acquisition described in paragraph nine, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Commissioner Azcuenaga not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively "DowBrands"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement containing consent order and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent S.C. Johnson & Son, Inc. ("S.C. Johnson") is a corporation organized, existing, and doing business under and by virtue of the laws of the Stateof Wisconsin, with its principal place of business located at 1525 Howe Street, Racine, Wisconsin.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*S.C. Johnson*" means S.C. Johnson & Son, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by S.C. Johnson & Son, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*DowBrands*" means DowBrands Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9550 Zionsville Road, Indianapolis, Indiana; DowBrands L.P., a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2030 Dow Center, Midland, Michigan; and DowBrands Canada Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 250 6th Avenue, S.W., Suite 2200, Calgary, Alberta T2P 3H7.

C. "*Reckitt & Colman*" means Reckitt & Colman, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1655 Valley Road, Wayne, New Jersey.

D. "*Commission*" means the Federal Trade Commission.

E. "*Acquisition*" means the acquisition of DowBrands' Home Care and Home Food Management Businesses by S.C. Johnson pursuant to Asset Purchase Agreements dated as of October 27, 1997.

F. "*Acquirer*" means Reckitt & Colman or the entity to whom S.C. Johnson shall divest the Divested Assets.

G. "*Soil and stain remover products*" means products designed to pretreat soiled and stained clothing prior to washing, which are applied by aerosol spray, trigger spray, or in liquid, solid, gel, or any other form.

H. "*Glass cleaner products*" means products designed primarily to clean glass and mirrors (but which may also be used to clean other surfaces), which are applied by trigger spray or in liquid or any other form. "Glass cleaner products" shall not include products characterized as all-purpose or multi-purpose cleaners, including, but not limited to, "Fantastik."

I. "*Starch products*" means products designed to starch clothing, which are applied by trigger spray or in any other form.

J. "*Laundry detergent products*" means products designed to be added to water in a washing machine to clean laundry, which are applied in liquid, powder or any other form.

K. "*Oven cleaner products*" means products designed to clean ovens, which are applied in aerosol spray or any other form.

L. "*Urbana facility*" means the facility located in Urbana, Ohio, where DowBrands manufactured, among other things, soil and stain remover products and glass cleaner products.

M. "*Divested Assets*" means the assets required to be divested pursuant to paragraphs II or III of this order.

N. "*Divestiture Agreement*" means the agreement for the sale of the Divested Assets to Reckitt & Colman, dated December 22, 1997; Amendment No. 1 to the agreement for the sale of the Divested

Assets to Reckitt & Colman, dated January 12, 1998; and the contract manufacturing agreement dated January 12, 1998 by and between S.C. Johnson and Reckitt & Colman.

O. "*New Divestiture Agreement*" means any agreement other than the Divestiture Agreement for the sale of the Divested Assets between S.C. Johnson and any Acquirer.

P. "*Supply agreement*" means an agreement between S.C. Johnson and the Acquirer to supply the soil and stain remover products, glass cleaner products, and starch products acquired by S.C. Johnson from DowBrands, under the terms and conditions herein specified.

Q. "*Cost*" means direct cash cost of raw materials, packaging and labor.

R. "*Non-public acquirer information*" means any information not in the public domain obtained by respondent directly or indirectly from the Acquirer prior to the effective date, or during the term, of the supply agreement required by paragraph II of this order. Non-public acquirer information shall not include information that subsequently falls within the public domain through no violation of this order by respondent.

II.

It is further ordered, That:

A. Respondent shall divest absolutely and in good faith, either:

1. Pursuant to the Divestiture Agreement the assets described in Part I of Exhibit A of this order to Reckitt & Colman within ten (10) business days after the date the Commission accepts this agreement containing consent order for public comment, provided, however, that respondent shall not be required to divest any assets pursuant to this paragraph II.A.1 that are not conveyed under the Divestiture Agreement, and provided further, however, that if, at the time it determines to make the order final, the Commission notifies respondent that Reckitt & Colman is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then respondent and Reckitt & Colman shall rescind the Divestiture Agreement, and respondent shall divest the Divested Assets pursuant to paragraph II.A.2 of this order within one hundred twenty (120) days of the date the order becomes final; or

2. The assets described in Part I of Exhibit A of this order and, at the option of the Acquirer, any or all of the assets described in Part II of Exhibit A of this order, to an Acquirer within six (6) months after the date on which respondent signed the agreement containing

consent order in this matter. Respondent shall divest these assets pursuant to paragraph II.A.2 of this order only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. The purpose of the divestiture of the Divested Assets is to ensure the continued use of the Divested Assets in the same businesses in which the Divested Assets are engaged at the time of the Acquisition, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Except for a divestiture pursuant to paragraph II.A.1 of this order, respondent shall divest the Divested Assets pursuant to a New Divestiture Agreement that, at the Acquirer's option, shall include the following and respondent shall commit to satisfy the following:

1. Respondent shall supply and deliver to the Acquirer in a timely manner and under reasonable terms and conditions, up to a twelve (12) month supply of DowBrands' soil and stain remover products, glass cleaner products, and starch products specified in the New Divestiture Agreement, at cost, in quantities not to exceed 110 percent of DowBrands' 1998 production forecast.

2. After respondent commences delivery of the soil and stain remover products, glass cleaner products, and starch products to the Acquirer, all U.S. and world wide inventory of the soil and stain remover products, glass cleaner products, and starch products acquired by respondent from DowBrands pursuant to the Acquisition may be sold by respondent only to the Acquirer.

3. Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses arising from the manufacture of the soil and stain remover products, glass cleaner products, and starch products supplied to the Acquirer by respondent pursuant to the supply agreement. This obligation shall be contingent upon the Acquirer's giving respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by respondent to the Acquirer.

4. For a period not to exceed eighteen (18) months from the date respondent begins delivery of DowBrands products pursuant to paragraph II.C.1 of this order, upon reasonable notice and request by the Acquirer, respondent shall make available to the Acquirer all records kept in the normal course of business that relate to the cost of manufacturing or supplying the soil and stain remover products, glass cleaner products, and starch products acquired by respondent from DowBrands.

5. Upon reasonable notice and request by the Acquirer, for a period not to exceed six (6) months from the date the New Divestiture Agreement is signed, upon reasonable notice and request by the Acquirer, respondent shall provide at cost: (a) such assistance, personnel and training as are reasonably necessary to enable the Acquirer to manufacture the soil and stain remover products, glass cleaner products, and starch products in substantially the same manner and quality employed or achieved by DowBrands at the time the agreement containing consent order is signed; and (b) such assistance, personnel and training as are reasonably necessary to enable the Acquirer to obtain any necessary Environmental Protection Agency approvals to manufacture and sell soil and stain remover products, glass cleaner products, and starch products in the United States.

D. Respondent shall not provide, disclose or otherwise make available to any of its employees any non-public acquirer information nor shall respondent use any non-public acquirer information obtained or derived by respondent in its capacity as supplier pursuant to the supply agreement, except for the sole purpose of supplying products pursuant to the supply agreement.

E. Pending divestiture of the Divested Assets, respondent shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the Divested Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divested Assets except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondent fails to divest absolutely and in good faith the Divested Assets pursuant to paragraph II.A of this order or fails to enter into a supply agreement (if such supply agreement is requested by the Acquirer), the Commission may appoint a trustee to divest the assets described in Part I of Exhibit A of this order and, at the option of the Acquirer, any or all of the assets described in Part II of Exhibit

A of this order, and enter into a supply agreement. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the divestiture described in paragraph III.A of the order.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan for the divestiture required by this order or believes that the divestiture required by this order can be achieved within a reasonable time, then that divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however,

the Commission may extend the period for the divestiture only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Divested Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in any divestiture caused by respondent shall extend the time for that divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in a manner consistent with the terms of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture required by paragraph III.A of this order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any

claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this paragraph.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee may divest such additional ancillary assets related to the Divested Assets and effect such ancillary arrangements as are necessary to satisfy the requirements or purposes of this order.

12. The trustee shall have no obligation or authority to operate or maintain the Divested Assets.

13. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this order.

IV.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every thirty (30) days thereafter until respondent has completed the divestiture of the Divested Assets and every ninety (90) days thereafter until respondent has fully complied with the provisions of paragraphs II and III of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the requirements of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal documents (except privileged documents), and all reports and recommendations, concerning the divestiture.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

Commissioner Azcuenaga not participating.

EXHIBIT A

Part I

(a) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to:

(1) Soil and stain remover products, including, but not limited to, the brands and trademarks "Spray 'n Wash," "Spray 'n Wash Gel," "Spray 'n Wash for White Laundry," "Spray 'n Wash Stain Stick," and "Thicker More Powerful Spray 'n Wash";

(2) Glass cleaner products, including, but not limited to, the brands and trademarks "Glass Plus" and "New Fresh Scent Glass Plus"; and

(3) Starch products, including, but not limited to, the brand and trademark "Spray 'n Starch."

(b) All of DowBrands' rights, title, and interest, acquired by respondent from DowBrands pursuant to the Acquisition, in the following assets and businesses, relating to the research, development, manufacture, sale, and distribution of soil and stain remover products, glass cleaner products, and starch products

("Exhibit A Part I Products"), including, without limitation, the following:

(1) All customer lists, vendor lists, catalogs, sales and promotion literature, advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, artwork, drawings, processes and quality control data;

(2) Intellectual property rights, patents and patent applications and formulas, copyrights, trademarks, and trade names, but excluding all Universal Product Codes or similar bar codes relating to the Exhibit A Part I Products, provided, however, that respondent may retain for a period not to exceed six (6) months from the date of the Acquisition a non-exclusive royalty free right to the molds used in the production of both Divested Assets and non-divested assets, as well as the patents listed on Exhibit B, and provided further, however, that respondent may retain for perpetuity co-exclusive royalty free rights to use the trademark "We Work Hard So You Don't Have To" in connection with any products owned by respondent;

(3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers, suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, licensors, licensees, consignors, and consignees, but excluding all accounts and notes receivable of respondent;

(4) All rights under warranties and guarantees, express or implied;

(5) All books, records, files, and supporting documents; and

(6) All Environmental Protection Agency ("EPA"), and all other federal and state regulatory agency, registrations and applications, and all documents related thereto, provided, however, that with respect to EPA pesticide registration number 3696-138, respondent need only provide the Acquirer with the information and data on the specific alternative formulation relating to the Divested Assets that is transferred.

Part II

(a) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to the Urbana Facility, including, but not limited to, all machinery, fixtures, equipment, vehicles, furniture, tools and all other tangible personal property.

(b) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to:

(1) Laundry detergent products, including, but not limited to, the brands and trademarks, "Yes," "Ultra Yes," and "Ultra Vivid Color Care"; and

(2) Oven cleaner products, including, but not limited to, the brand and trademark, "Heavy Duty Oven Cleaner."

(c) All of DowBrands' rights, title, and interest, acquired by respondent from DowBrands pursuant to the Acquisition, in the following assets and businesses, relating to the research, development, manufacture, sale, and distribution of laundry detergent products and oven cleaner products ("Exhibit A Part II Products"), including, without limitation, the following:

(1) All customer lists, vendor lists, catalogs, sales and promotion literature, advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, artwork, drawings, processes and quality control data;

(2) Intellectual property rights, patents and patent applications and formulas, copyrights, trademarks, and trade names, but excluding all Universal Product Codes or similar bar codes relating to the Exhibit A Part II Products, provided, however, that respondent may retain for a period not to exceed six (6) months from the date of the Acquisition a non-exclusive royalty free right to the molds used in the production of both Divested Assets and non-divested assets, as well as the patents listed on Exhibit B, and provided further, however, that respondent may retain for perpetuity co-exclusive royalty free rights to use the trademark "We Work Hard So You Don't Have To" in connection with any products owned by respondent;

(3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers, suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, licensors, licensees, consignors, and consignees, but excluding all accounts and notes receivable of respondent;

(4) All rights under warranties and guarantees, express or implied;

(5) All books, records, files, and supporting documents; and

(6) All EPA, and all other federal and state regulatory agency, registrations and applications, and all documents related thereto, provided, however, that with respect to EPA pesticide registration number 3696-138, respondent need only provide the Acquirer with the information and data on the specific alternative formulation relating to the Divested Assets that is transferred.

EXHIBIT B

Country/ Case No.	**Patent No.**	**Issue Date**	**Inventors**	**Title**
United States 41251	352,546	11/15/94	S.A. Silvenis, J.A. Zurcher, J.L. Ghighi	SPRAYER SHROUD
MX 41251	7944	8/30/95	S.A. Silvenis, J.A. Zurcher, J.L. Ghighi	SPRAYER SHROUD
CA 41251	77464	11/2/95	S.A. Silvenis, J.A. Zurcher, J.L. Ghigh	SPRAYER SHROUD
United States 41386	358,990 (design)	6/6/95	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE
CA 41386	79419	11/15/96	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE
MX 41386	7877	7/25/95	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE

IN THE MATTER OF

SHELL OIL COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3803. Complaint, April 21, 1998--Decision, April 21, 1998

This consent order requires, among other things, the two petroleum corporations to divest, to Commission-approved buyers, a package of assets, including a refinery, a terminal and certain retail gasoline stations.

Appearances

For the Commission: *Richard Liebeskind, Frank Lipson, Arthur Nolan, Phillip Broyles* and *William Baer*.

For the respondents: *Steven Newborn, Rogers & Wells*, Washington, D.C. and *Marc Schildkraut* and *Tim Boyle, Howrey & Simon*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Shell Oil Co. ("Shell"), a corporation, and respondent Texaco Inc. ("Texaco"), a corporation, both subject to the jurisdiction of the Commission, have entered into an agreement or agreements (or may enter into an agreement or agreements), with themselves and with others, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, to form a limited liability corporation ("LLC") or LLCs and to transfer to said LLCs the corporations, businesses, and assets that constitute the principal part of the petroleum refining and marketing businesses of Shell, Texaco, and their affiliates in the United States, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

SHELL OIL COMPANY

1. Respondent Shell Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas.

2. Respondent Shell is, and at all times relevant herein has been, engaged in the business of refining, transporting, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Among other places, Shell has refined or marketed petroleum products in the States of Alabama, Arizona, California, Georgia, Hawaii, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas, Virginia, and Washington and in the District of Columbia.

3. Respondent Shell is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

TEXACO INC.

4. Respondent Texaco is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2000 Westchester Avenue, White Plains, New York.

5. Respondent Texaco is, and at all times relevant herein has been, engaged in the business of transporting crude oil and refining, transporting, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Texaco and Saudi Refining Co. ("Saudi Refining") jointly control Star Enterprises, Inc. ("Star"). Star is, and at all times relevant herein has been, engaged in the business of refining and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Among other places, Texaco or Star has refined or marketed petroleum products in the States of Alabama, Arizona, California, Georgia, Hawaii, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas, Virginia, and Washington and in the District of Columbia.

6. Respondent Texaco is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE JOINT VENTURES

7. In October 1996, Shell and Texaco announced that they were considering forming a joint venture or ventures to combine their "downstream," or refining, transportation, and marketing, businesses in the United States. On or about March 18, 1997, Shell and Texaco entered into a Memorandum of Understanding regarding the formation of a joint venture to be known as "Westco." Westco was to be organized as an LLC into which Shell and Texaco would contribute their refining and marketing assets located in the midwestern and western United States (roughly corresponding with Petroleum Administration for Defense Districts ("PADDs") II, IV, and V). Shell and Texaco would also contribute to Westco their pipeline interests and businesses nationwide.

8. On or about July 16, 1997, Shell, Texaco, and Saudi Refining entered into a Memorandum of Understanding regarding the formation of a joint venture to be known as "Eastco." Eastco was to be organized as an LLC into which Shell and Star would contribute their refining and marketing assets located in the Gulf Coast and eastern United States (roughly corresponding with PADDs I and III). The total value of the businesses to be contributed to both Westco and Eastco is more than $10 billion.

9. The Westco and Eastco joint ventures, and any other combination of the petroleum refining, transportation, or marketing businesses, operations, or assets of Shell, Texaco, and Star, are referred to herein as the "Joint Venture."

TRADE AND COMMERCE

10. The relevant lines of commerce (*i.e.*, the product markets) in which to analyze the effects of the Joint Venture are the refining, transportation, terminaling, wholesale sales, and retail sales of conventional unleaded gasoline, CARB-II gasoline ("CARB gasoline") (*i.e.*, gasoline that meets the specifications of "CARB," the California Air Resources Board), diesel fuel, kerosene jet fuel (also known as "kerojet"), and asphalt; and the transportation of undiluted heavy crude oil to the San Francisco, California, area.

11. Conventional unleaded gasoline is a motor fuel used in automobiles. Conventional unleaded gasoline is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for gasoline as fuel for automobiles and other vehicles that use gasoline.

12. CARB gasoline is a motor fuel used in automobiles. CARB gasoline is cleaner burning and therefore causes less air pollution than other gasolines. Beginning in June 1996, the State of California

has prohibited the sale or use of any gasoline other than CARB gasoline in that State. CARB gasoline is generally manufactured from crude oil only at refineries in California and at Shell's refinery at Anacortes, Washington. There are no substitutes for gasoline sold in California as fuel for automobiles and other vehicles that use gasoline.

13. Kerosene jet fuel is a motor fuel used in jet airplanes, and is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for kerosene jet fuel as fuel for jet airplanes.

14. Asphalt is a paving material made from crude oil. There are no economic substitutes for asphalt.

15. The Texaco heated pipeline is the only pipeline that supplies undiluted heavy crude oil to the San Francisco Bay area. Shell and a competitor refine asphalt in the San Francisco Bay area. For the competitor, there are no economic substitutes for undiluted heavy crude oil in refining asphalt.

16. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the Joint Venture described herein are the following:

a. The Puget Sound area of Washington State ("Puget Sound"), *i.e.*, the cities of Seattle, Tacoma, Olympia, and Bremerton and surrounding areas, where the Joint Venture will reduce competition in the markets for conventional gasoline and kerosene jet fuel, as alleged below;

b. The Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascades Mountains, where the Joint Venture will reduce competition in the markets for conventional gasoline and kerosene jet fuel, as alleged below;

c. The State of California, where the Joint Venture will reduce competition in the market for CARB gasoline, as alleged below;

d. The northern portion of the State of California, *i.e.*, the State of California approximately north of Fresno, where the Joint Venture will reduce competition in the market for asphalt, as alleged below;

e. The San Francisco Bay area, where the Joint Venture will have the incentive and ability to raise the cost of undiluted heavy crude oil, as alleged below;

f. The inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.*, the portions more than 50 miles from the ports of Savannah, Charleston, Wilmington, and Norfolk) (the "inland Southeast"), where the Joint Venture will reduce competition in the market for transportation of refined light petroleum products, as alleged below;

g. San Diego County, California, where the Joint Venture will reduce competition in the market for CARB gasoline, as alleged below; and

h. The island of Oahu, Hawaii, where the Joint Venture will reduce competition in the market for conventional gasoline and diesel fuel, as alleged below.

MARKET STRUCTURE

17. The refining of conventional gasoline and kerosene jet fuel for Puget Sound and the Pacific Northwest is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in each of these already highly concentrated markets.

18. The refining of CARB gasoline for California is moderately concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in this already moderately concentrated market.

19. Texaco is the only entity that supplies undiluted heavy crude oil by pipeline to refiners in the San Francisco Bay area. Texaco's pipeline from the San Joaquin Valley to the San Francisco Bay area is a heated pipeline. A heated crude oil pipeline can transport heavy crude oils without diluting them with lighter petroleum materials.

20. The transportation of refined light petroleum products, including gasoline, diesel fuel, and jet fuel, to the inland Southeast is highly concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the risk of coordinated behavior between Colonial Pipeline Co. ("Colonial") and Plantation Pipe Line Co. ("Plantation"), as alleged below.

21. The wholesale and retail markets for CARB gasoline in San Diego County, California, are currently moderately concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs and result in highly concentrated markets.

22. The terminaling, wholesale, and retail markets for gasoline and diesel fuel on Oahu, Hawaii, are highly concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in each of these already highly concentrated markets.

ENTRY CONDITIONS

23. Entry into the relevant markets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

FIRST VIOLATION CHARGED

24. Shell and Texaco are actual competitors in the refining of conventional gasoline and kerosene jet fuel in Puget Sound.

25. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of conventional gasoline and kerosene jet fuel in Puget Sound, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in conventional gasoline and kerosene jet fuel between refineries owned or controlled by Shell and Texaco;

b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in Puget Sound;

each of which increases the likelihood that the prices of gasoline and kerosene jet fuel will increase in Puget Sound.

SECOND VIOLATION CHARGED

26. Shell and Texaco are actual competitors in the refining of conventional gasoline and kerosene jet fuel in the Pacific Northwest.

27. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of conventional gasoline and kerosene jet fuel in the Pacific Northwest, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in conventional gasoline and kerosene jet fuel between refineries owned or controlled by Shell and Texaco;

b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in the Pacific Northwest;

each of which increases the likelihood that the prices of gasoline and kerosene jet fuel will increase in the Pacific Northwest.

THIRD VIOLATION CHARGED

28. Shell and Texaco are actual competitors in the refining of CARB gasoline in California.

29. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of CARB gasoline in California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in CARB gasoline between refineries owned or controlled by Shell and Texaco;

b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in California;

each of which increases the likelihood that the price of CARB gasoline will increase in California.

FOURTH VIOLATION CHARGED

30. Shell is the leading refiner of asphalt in northern California. Texaco is the only entity that supplies undiluted heavy crude oil by pipeline to the San Francisco Bay area, the location of all refineries in northern California.

31. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of asphalt in northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By providing the combination of Shell and Texaco with the incentive and ability to raise the cost of undiluted heavy crude oil by pipeline to the competing refiner of asphalt in the San Francisco Bay area; and

b. By reducing competition between Shell and its competitors in the sales of asphalt in northern California;

each of which increases the likelihood that the price of asphalt in northern California will increase.

FIFTH VIOLATION CHARGED

32. Texaco owns approximately 14% of Colonial, and Shell owns approximately 24% of Plantation. Colonial and Plantation are actual competitors in the transportation of refined light petroleum products to the inland Southeast.

33. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the transportation of refined light petroleum products to the inland Southeast, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition between Colonial and Plantation in the transportation of refined light petroleum products to the inland Southeast;

b. By providing Shell and Texaco with access to sensitive competitive information of both Colonial and Plantation; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between Colonial and Plantation, or between the owners of each;

each of which increases the likelihood that the prices of refined light petroleum products (including gasoline, diesel fuel, and kerosene jet fuel) will increase in the inland Southeast.

SIXTH VIOLATION CHARGED

34. Shell and Texaco are actual competitors in the wholesale and retail sales of CARB gasoline in San Diego County, California.

35. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the wholesale and retail sales of CARB gasoline in San Diego County, California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in the wholesale and retail sales of CARB gasoline; and

b. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in San Diego County, California;

each of which increases the likelihood that the price of CARB gasoline will increase in San Diego County, California.

SEVENTH VIOLATION CHARGED

36. Shell and Texaco are actual competitors in the terminaling and wholesale and retail sales of gasoline and diesel fuel on Oahu, Hawaii.

37. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the terminaling and wholesale and retail sales of gasoline and diesel fuel on Oahu, Hawaii, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in the terminaling and wholesale and retail sales of gasoline and diesel fuel; and

b. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors on Oahu, Hawaii;

each of which increases the likelihood that the prices of gasoline and diesel fuel will increase on Oahu, Hawaii.

STATUTES VIOLATED

38. The proposed Joint Venture between Shell and Texaco violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Thompson not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed joint ventures of Shell Oil Co. ("Shell") and Texaco Inc. ("Texaco"), and it now appearing that Shell and Texaco, hereinafter sometimes referred to as "respondents," have been furnished with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and the Federal Trade Commission Act;

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas.

2. Respondent Texaco Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2000 Westchester Ave., White Plains, New York.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Shell*" means Shell Oil Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures (including the Joint Venture), subsidiaries, divisions, groups and affiliates controlled by Shell, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Texaco*" means Texaco Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures (including the Joint Venture), subsidiaries, divisions, groups and affiliates controlled by Texaco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Additional Shell Oahu Retail Assets*" means one or more Retail Sites (including all Retail Assets relating to such Retail Sites) on Oahu owned by Shell having an aggregate 1996 gasoline sales volume and 1996 average gasoline sales volumes per month per station at least equal to the gasoline volume of:

(a) Texaco Historical Oahu Retail Assets that since October 1, 1996, became Shell Oahu Retail Assets; and

(b) Each of Texaco's Oahu Retail Sites that cannot be assigned without landlord approval and for which the necessary approvals could not be obtained after good faith, diligent effort.

D. "*Additional Texaco Oahu Retail Assets*" means one or more Retail Sites (including all Retail Assets relating to such Retail Sites) on Oahu owned by Texaco having an aggregate 1996 gasoline sales volume and 1996 average gasoline sales volumes per month per station at least equal to the gasoline sales volume of:

(a) Shell Historical Oahu Retail Assets that since October 1, 1996, became Texaco Oahu Retail Assets; and

(b) Each of Shell's Oahu Retail Sites that cannot be assigned without landlord approval and for which the necessary approvals could not be obtained after good faith, diligent effort.

E. "*Anacortes Refinery Assets*" means Shell's refinery located in Anacortes, Washington, and all tangible and intangible assets used in operating said refinery. "Anacortes Refinery Assets" shall also include all Assigned Northwest Seller Agreements and, at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output, provided, however, that respondents are not required to divest agreements with Northwest Branded Sellers other than Assigned Northwest Seller Agreements, and provided, further, that "Anacortes Refinery Assets" does not include Shell's proprietary trade names and trademarks. At the acquirer's option, "Anacortes Refinery Assets" shall include all agreements under which Shell receives crude oil or other inputs at or for the Anacortes refinery, and all exchange agreements under which Shell delivers petroleum products refined at the Anacortes refinery. In the event that respondents are unable to satisfy all conditions necessary to divest any intangible asset, subject to Commission approval, respondents shall substitute equivalent assets. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

F. "*Applicable Consent Decree*" means (i) a consent decree in an action commenced by the States of Washington or Oregon, under which decree respondents will divest the Anacortes Refinery Assets; (ii) a consent decree in an action commenced by the State of California, under which decree respondents will divest the San Diego Divestiture Assets; or (iii) a consent decree in an action commenced by the State of Hawaii under which respondents will divest the Oahu Distribution Assets.

G. "*Assigned Northwest Seller Agreements*" means all Replacement Supply Contracts between respondents and any Northwest Branded Seller, which a Northwest Branded Seller has consented to be assigned and respondents have assigned to the acquirer of the Anacortes Refinery Assets.

H. "*Colonial*" means Colonial Pipeline Company.

I. "*Commission*" means the Federal Trade Commission.

J. "*Existing Supply Agreements*" means:

1. Each supply contract and related agreements between Shell and each Northwest Branded Seller that gives such Northwest Branded Seller the right to sell or resell gasoline using Shell's brand name at any Retail Site in Oregon or Washington, including all loan agreements, debts, obligations, promissory notes, and similar agreements with such Northwest Branded Seller; and

2. Each supply contract and related agreements between Texaco and each Former Shell Northwest Branded Seller that gives such Former Shell Northwest Branded Seller the right to sell or resell gasoline using Texaco's brand name at any Retail Site in Oregon or Washington that was a Shell branded Retail Site on or after October 1, 1996, including all loan agreements, debts, obligations, promissory notes, and similar agreements with such Former Shell Northwest Branded Seller.

K. "*Former Shell Northwest Branded Seller*" means any person that was a Shell Northwest Branded Seller as of October 1, 1996, and that, on the date of divestiture of the Anacortes Refinery Assets, has, by virtue of a contract or agreement with Texaco, the right to sell or resell gasoline using Texaco's brand name at Retail Sites in Oregon or Washington, or to resell gasoline to such a person.

L. "*Huntway*" means Huntway Refining Company, with offices located at 1651 Alameda Street, Wilmington, California, and any of its successors or assigns that continue the operation of Huntway's asphalt refinery at Benicia, California.

M. "*Huntway Supply Agreement*" means the agreement or agreements between Huntway and Texaco pursuant to which Texaco will supply heavy crude oil to Huntway from the San Joaquin Valley, dated November 25, 1997, and attached hereto as Confidential Exhibit A. Subject to the provisions of paragraph VII.C of this order, Huntway and Texaco may from time to time amend the Huntway Supply Agreement.

N. "*Joint Venture*" means the joint venture between Shell and Texaco known as "Westco" (publicly announced on March 18, 1997, and described in a Memorandum of Understanding of the same date); the joint venture among Shell, Texaco and Saudi Refining, Inc. known as "Eastco" (publicly announced July 16, 1997, and described in a Memorandum of Understanding of the same date); and any other combination of the United States petroleum refining, product transportation, or marketing assets or operations of respondents, and all of their directors, officers, employees, agents and representatives, successors, and assigns; subsidiaries, divisions, groups and affiliates, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

O. "*Long-term lease*" means a lease the terms of which allow respondents to divest to the acquirer of Retail Assets a right to occupy the Retail Assets for ten (10) years or longer from the date on which the order becomes final, and where such divestiture is not subject to a landlord approval or, if subject to such approval, respondents have obtained the necessary approval prior to the divestiture. "Long-term lease" does not include a leasehold interest in which any respondent is a lessor.

P. "*Northwest Branded Seller*" means Shell Northwest Branded Sellers and Former Shell Northwest Branded Sellers.

Q. "*Oahu Distribution Assets*" means either the Shell Oahu Distribution Assets or the Texaco Oahu Distribution Assets.

R. "*Person*" means any individual, partnership, association, company or corporation.

S. "*Plantation*" means Plantation Pipe Line Company.

T. "*Replacement Supply Contract*" means a supply contract and related agreements identical to Existing Supply Agreements between respondents and any Northwest Branded Seller, except for terms relating to respondents' trademarks, trade names, logos, trade dress, identification signs, additized product inventory, credit card agreements, satellite-based or centralized credit card processing equipment not incorporated in gasoline dispensers, or system-wide software and databases, which Replacement Supply Contract with the Northwest Branded Seller's consent shall be assigned to the acquirer of the Anacortes Refinery Assets.

U. "*Respondents*" means Shell and Texaco, individually and collectively, and the Joint Venture.

V. "*Retail Assets*" means, for each Retail Site, all assets, tangible or intangible, that are used at that Retail Site, including but not limited to all related permits and contracts, and all assets relating to all ancillary businesses (such as automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site. Respondents shall make good faith, diligent efforts to obtain all third-party approvals necessary to convey all licenses, permits, consents and ancillary businesses with each Retail Site. "Retail Assets" do not include respondents' proprietary trademarks, trade names, logos, trade dress, identification signs, additized product inventory, petroleum franchise agreements, petroleum product supply agreements, credit card agreements, satellite-based or centralized credit card processing equipment not incorporated in gasoline dispensers, or system-wide software and databases. Upon divestiture, respondents shall cancel all dealer leases, dealer loans, building incentive agreements, and related dealer agreements between respondents and their lessee dealers applicable to divested Retail Sites.

W. "*Retail Site*" means a business establishment from which gasoline is sold to the general public.

X. "*San Diego Divestiture Assets*" means a package of San Diego Retail Assets, to be identified by respondents but approved by the Commission, that (i) includes individual Retail Sites each of which sold an average of at least 85,000 gallons of gasoline per month during 1996; (ii) each of which complies with all 1998 environmental requirements for underground storage tanks; (iii) for each of which respondents can convey fee ownership or a long-term lease; and (iv) in the aggregate had retail gasoline sales from Retail Sites of at least 43,200,000 gallons during calendar year 1996.

Y. "*San Diego Retail Assets*" means all Retail Assets in San Diego County, California, that are owned by respondents or leased by respondents from another person.

Z. "*Shell Historical Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, that were owned by Shell on or after October 1, 1996, or leased by Shell from another person on or after October 1, 1996.

AA. "*Shell Northwest Branded Seller*" means any person (other than Shell) who has, by virtue of a contract or agreement with Shell, the right to sell gasoline using Shell's brand name at Retail Sites in Oregon or Washington, or the right to resell gasoline to any such person.

BB. "*Shell Oahu Distribution Assets*" means Shell's Oahu Terminal, Shell Oahu Retail Assets, and Additional Texaco Oahu Retail Assets.

CC. "*Shell Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, owned by Shell or leased by Shell from another person.

DD. "*Shell's Oahu Terminal*" means all of Shell's interest in its petroleum storage and distribution terminal on the island of Oahu, Hawaii, including all tangible or intangible assets that are used to operate the terminal for the storage and distribution of petroleum products, including but not limited to all real estate, storage tanks, loading and unloading facilities, permits and contracts pertaining to the terminal facilities. "Shell's Oahu Terminal" does not include respondents' proprietary additive packages, trademarks, trade names and identification signs; respondents' proprietary equipment, computer hardware and software used to monitor and verify product specifications; and system-wide software, databases and respondents' proprietary equipment used to control, operate and manage the terminal.

EE. "*Texaco's Oahu Terminal*" means all of Texaco's interest in its petroleum storage and distribution terminal on the island of Oahu, Hawaii, including all tangible or intangible assets that are used to operate the terminal for the storage and distribution of petroleum products, including but not limited to all real estate, storage tanks, loading and unloading facilities, permits and contracts pertaining to the terminal facilities. "Texaco's Oahu Terminal" does not include respondents' proprietary additive packages, trademarks, trade names and identification signs; respondents' proprietary equipment, computer hardware and software used to monitor and verify product specifications; and system-wide software, databases and respondents' proprietary equipment used to control, operate and manage the terminal.

FF. "*Texaco Historical Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, that were owned by Texaco on or after October 1, 1996, or leased by Texaco from another person on or after October 1, 1996.

GG. "*Texaco Oahu Distribution Assets*" means Texaco's Oahu Terminal, Texaco Oahu Retail Assets, and Additional Shell Oahu Retail Assets.

HH. "*Texaco Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, owned by Texaco or leased by Texaco from another person.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, the Anacortes Refinery Assets.

B. Respondents shall divest the Anacortes Refinery Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Anacortes Refinery Assets is to ensure the continued use of the Anacortes Refinery Assets in the same businesses in which the Anacortes Refinery Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition in the refining of conventional gasoline, CARB gasoline and jet fuel resulting from the proposed Joint Venture as alleged in the Commission's complaint.

D. Respondents shall offer each Northwest Branded Seller a Replacement Supply Contract. Within five (5) days of final approval of this order by the Commission, respondents shall send a notice, in the form of Exhibit B to this order, to each Northwest Branded Seller, offering each Northwest Branded Seller a Replacement Supply Contract that would give the Northwest Branded Seller the option of affiliating with the acquirer of the Anacortes Refinery Assets upon divestiture of the Anacortes Refinery Assets. Within two (2) days after respondents sign a letter of intent with a prospective acquirer of the Anacortes Refinery Assets, respondents shall send a notice, in the form of Exhibit B to this order, to each Northwest Branded Seller, again offering each Northwest Branded Seller a Replacement Supply Contract, identifying the prospective acquirer, and stating the deadline for accepting the Replacement Supply Contract and consenting to the assignment of that Contract to the acquirer. Respondents shall not attempt in any way to discourage any Northwest Branded Seller from accepting a Replacement Supply Contract. Respondents shall identify each Northwest Branded Seller to each prospective acquirer of the Anacortes Refinery Assets that has received other confidential information of respondents in connection with its inquiry. Respondents shall allow any Northwest Branded Seller to consent to the assignment of the Replacement Supply Contract for at least thirty (30) days after the second notice is mailed.

E. Until the divestiture required by paragraph II.A has been completed, respondents shall not permit or approve any branding application by any of their jobbers to supply any Shell Northwest Branded Seller, under which such Shell Northwest Branded Seller would sell or resell Texaco branded gasoline, except to the extent respondents have the right to assign or release that Shell Northwest Branded Seller without the jobber's consent or approval.

F. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Exhibit C. The Agreement to Hold Separate shall continue in effect until such time as respondents have divested all the Anacortes Refinery Assets as required by this paragraph II, or until such other time as provided in the Agreement to Hold Separate.

III.

It is further ordered, That:

A. Respondents shall divest to a single acquirer, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, the San Diego Divestiture Assets.

B. Respondents shall divest the San Diego Divestiture Assets to a single acquirer that receives the prior approval of the Commission, only in a manner that receives the prior approval of the Commission, and in a package of specific Retail Sites that receives the prior approval of the Commission.

C. The purpose of the divestiture of the San Diego Divestiture Assets is to ensure the continued use of the San Diego Divestiture Assets in the same business in which the San Diego Divestiture Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition in the wholesale and retail sale of gasoline in San Diego County, California, resulting from the proposed Joint Venture, as alleged in the Commission's complaint.

D. Pending divestiture of the San Diego Divestiture Assets, respondents shall take such actions as are necessary to maintain the viability and marketability of the San Diego Retail Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the San Diego Retail Assets except for ordinary wear and tear. Respondents shall continue at least at their scheduled pace all capital projects involving the San Diego Retail Assets that were ongoing, planned, or approved as of or after October 1, 1997, and otherwise maintain the San Diego Retail Assets to at least the same standards and on the same schedule as respondents have been maintaining the San Diego Retail Assets until the date of divestiture. Respondents shall not remove or degrade the brand identification at the San Diego Retail Assets, until the San Diego Divestiture Assets are divested.

IV.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, either the Texaco Oahu Distribution Assets or the Shell Oahu Distribution Assets.

B. Respondents shall divest the Texaco Oahu Distribution Assets or the Shell Oahu Distribution Assets only to a single acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Oahu Distribution Assets is to ensure the continued use of the Oahu Distribution Assets in the same business in which the Oahu Distribution Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition resulting from the proposed Joint Venture in the terminaling of gasoline and diesel fuel on Oahu and the wholesale and retail sale of gasoline and diesel fuel on Oahu, as alleged in the Commission's complaint.

D. Pending divestiture of the Oahu Distribution Assets, respondents shall take such actions as are necessary to maintain the viability and marketability of the Oahu Distribution Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Oahu Distribution Assets except for ordinary wear and tear. Respondents shall continue at least at their scheduled pace all capital projects involving the Oahu Distribution Assets that were ongoing, planned, or approved as of or after October 1, 1997, and otherwise maintain the Oahu Distribution Assets to at least the same standards and on the same schedule as respondents have been maintaining the Oahu Distribution Assets, until the date of divestiture. Respondents shall not remove or degrade the brand identification at the Oahu Distribution Assets, until the Oahu Distribution Assets are divested.

V.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, either all of Texaco's interest in Colonial or all of Shell's interest in Plantation.

B. Respondents shall divest the Colonial or Plantation interest identified in subparagraph V.A only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of either Texaco's interest in Colonial or Shell's interest in Plantation is to prevent an interlock or common owner in both of these pipeline systems and to remedy the lessening of competition resulting from the proposed Joint Venture as alleged in the Commission's complaint.

D. Pending divestiture of either Texaco's interest in Colonial or Shell's interest in Plantation, respondents shall not serve on Colonial's board of directors or any committee thereof, attend meetings of Colonial's board of directors or any committee thereof, vote any of Texaco's stock in Colonial, or receive any information from Colonial not made available to all shippers or to the public at large, except that a Texaco representative may observe meetings of the Colonial board of directors and may receive and use nonpublic information of Colonial solely for the purpose of effectuating the divestiture of Texaco's interest in Colonial pursuant to this order. Said Texaco representative shall be identified to the Commission, shall not divulge any nonpublic Colonial information to respondents (other than employees of respondents whose sole responsibility relating to the Joint Venture is to effectuate the divestiture, and agents of respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

VI.

It is further ordered, That:

A. If respondents have not divested the assets required to be divested pursuant to paragraphs II, III, IV, or V, absolutely and in good faith and with the Commission's prior approval within the time periods required, the Commission may appoint either David Prend or another person or persons to act as trustee (or trustees) to divest those assets that respondents have failed to divest as required by this order. If respondents have failed to divest the San Diego Divestiture Assets as required by paragraph III above, the trustee may select Retail Assets from those San Diego Retail Assets that respondents own in fee or can divest a long-term lease, in accordance with the requirements of paragraph III. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph VI.A of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall either (i) select David Prend to be the trustee; or (ii) select another person or persons as trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee, other than David Prend, within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph VI. B. 3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or

believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraphs II, III, IV, or V of this order, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses

arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VI. A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

VII.

It is further ordered, That:

A. Respondents shall provide heavy crude oil to Huntway pursuant to the Huntway Supply Agreement for a period of ten (10) years from the effective starting date of the Huntway Supply Agreement. The Huntway Supply Agreement shall be fully assignable to any successor of Huntway that continues to operate the asphalt refinery now operated by Huntway, and may be canceled by respondents only if Huntway's asphalt refinery ceases operations "permanently," as such "permanent" cessation is defined in the Huntway Supply Agreement.

B. The purpose of the requirements of this paragraph VII is to ensure that Texaco's volumes and prices of undiluted heavy crude oil supplied to Huntway are unaffected by changes in Texaco's incentives as a result of combining with Shell, so as to prevent (1) the raising of costs for undiluted heavy crude oil to Shell's asphalt competitor, and (2) the raising of prices for asphalt in northern California, as alleged in the Commission's complaint.

C. For a period of ten (10) years from the date this order becomes final, respondents shall not, without the prior approval of the Commission, directly or indirectly, reduce the volumes offered to Huntway, increase the price for crude oil supplied to Huntway, or terminate the Huntway Supply Agreement, except according to the terms of the Huntway Supply Agreement. Any amendment to the Huntway Supply Agreement relating to an increase in price, a decrease in volume, or termination shall not be effective until approved by the Commission, provided, however, that any such amendment shall be deemed approved unless the Commission notifies respondents, within ninety (90) days of the Commission's receiving actual notice of the amendment, of the Commission's intention to consider the amendment further.

VIII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, joint ventures, or otherwise:

A. Acquire any stock, share capital, equity, partnership, membership or other interest valued at $100 million or more in any concern, corporate or non-corporate, engaged, at the time of such acquisition or within the year preceding such acquisition, in the refining of petroleum products in the States of Alaska, Washington, Oregon or California; or

B. Acquire any assets, valued at $100 million or more and used, or used within the preceding year (and still suitable for use), in the refining of petroleum products in the States of Alaska, Washington, Oregon or California.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondents shall not consummate the transaction until twenty (20) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

IX.

It is further ordered, That:

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

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with each provision of this order.

X.

It is further ordered, That:

A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

B. Upon formation of the Joint Venture, respondents shall cause the Joint Venture to be bound by the terms of this order.

XI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of each respondent relating to any matters contained in this order; and

B. Upon five days' notice to each respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

XII.

If (i) respondents have fully complied with all terms of this order; (ii) respondents within four (4) months after final approval of this order by the Commission have submitted a complete application in support of the divestiture of the assets and businesses to be divested pursuant to paragraphs II, III, IV or V of this order, as the case may be (including the buyer, manner of divestiture and all other matters subject to Commission approval); and (iii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iv) respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that a State, notwithstanding timely and complete application by respondents to the State, has failed to approve the divestiture under an Applicable Consent Decree of the particular assets or businesses whose divestiture is also required under this order, then, with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this order to be complete shall be extended for sixty (60) days. During such sixty (60) day period, respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

Commissioner Thompson not participating.

EXHIBIT A

[Confidential Exhibit A to Decision & Order
Redacted From Public Record Version]

EXHIBIT B

Exhibit B
to
AGREEMENT CONTAINING CONSENT ORDER

Notification Letter

To be given within five (5) days of Order becoming final

The Federal Trade Commission has entered into a consent order with Shell and Texaco, in connection with their announced joint venture, that requires Shell to sell its refinery and related assets in Anacortes, Washington ("Shell Anacortes Refinery") to an acquirer approved by the Commission by __________, 1998. The States of Washington and Oregon have also entered into a consent decree with Shell and Texaco. Pursuant to the consent order of the Federal Trade Commission, Shell is required to give certain retail sellers of Shell branded gasoline in the States of Washington and Oregon the option to replace their existing supply agreements, together with all ancillary agreements (*i.e.*, all leases, contracts, debts, loans and understandings), with a supply agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. If you elect to replace your existing agreements with such a Replacement Supply Contract, your Shell station will *not* be assigned to the acquirer *unless you choose to become affiliated with the acquirer*. This option will also be made available to Shell jobbers in Washington and Oregon, and to Texaco jobbers and retail dealers that have a direct contractual relationship with Texaco, and that operated or supplied Shell branded gasoline stations on or after October 1, 1996. This option for Texaco jobbers and dealers concerns only those stations that were selling Shell branded gasoline on or after October 1, 1996.

Please review the enclosed agreements. Signing these agreements gives you the option of electing to affiliate with the acquirer of the Shell Anacortes Refinery once the acquirer has been identified. The agreements are for the same term that remains on your current agreements, for the same volume, and require you to meet the same obligations, including performance on debt obligations. *You do not need to do anything now.* You will receive a second notice identifying the prospective acquirer of the Shell Anacortes Refinery and giving you the opportunity to affiliate with that acquirer. If you have any questions regarding this option, please write to the Federal Trade Commission, Bureau of Competition, Compliance Division, Washington, D.C. 20580.

Second Notice – to be mailed withing two (2) days of the signing of a letter of intent to divest the Anacortes Refinery Assets

The Federal Trade Commission has entered into a consent order with Shell and Texaco, in connection with their announced joint venture, that requires Shell to sell its refinery and related assets in Anacortes, Washington ("Shell Anacortes Refinery") to an acquirer approved by the Commission by __________, 1998. The States of Washington and Oregon have also entered into a consent decree with Shell and Texaco. Pursuant to the consent order of the Federal Trade Commission, Shell is required to give certain retail sellers of Shell branded gasoline in the States of Washington and Oregon the option to replace their existing supply agreements, together with all ancillary agreements (i.e., all leases, contracts, debts, loans and understandings), with a supply

EXHIBIT B

agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. This option is also being made available to Shell jobbers in Washington and Oregon, and to Texaco jobbers and retail dealers that have a direct contractual relationship with Texaco, and that operated or supplied Shell branded gasoline stations on or after October 1, 1996. This option for Texaco jobbers and dealers concerns only those stations that were selling Shell branded gasoline on or after October 1, 1996.

You were sent a notice on ________, 1998, that enclosed agreements for you to review. A second copy of these agreements is enclosed. These agreements give you the option to replace your existing supply agreements, together with all ancillary agreements (*i.e.*, all leases, contracts, debts, loans and understandings), with a supply agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. Please review the enclosed agreements. The agreements are for the same term that remains on your current agreements, for the same volume, and require you to meet the same obligations, including performance on debt obligations.

Shell and Texaco intend to apply to the Federal Trade Commission, and to the Attorneys General of the States of Washington and Oregon, for approval to divest the Shell Anacortes Refinery to ____________. If the governmental entities approve the propose divestiture, you will have an opportunity to affiliate with ______________. You have thirty (30) days from the date of this notice, or until _________, 1998, to affiliate with __________. If you elect to affiliate with __________, please sign the enclosed agreements and return them to the address set forth on the enclosed instruction sheet. Your affiliation with ___________ will begin on the the day ___________ consummates the acquisition of the Shell Anacortes Refinery.

The Federal Trade Commission has retained the right to disapprove the sale of the Shell Anacortes Refinery to an acquirer identified by Shell and Texaco. If the Commission determines not to approve this divestiture, the divestiture will not occur and you will not become affiliated with _________ pursuant to the enclosed agreements. In that event, Shell and Texaco will send you new agreements when a new acquirer is identified. If you have any questions regarding this option, please write to the Federal Trade Commission, Bureau of Competition, Compliance Division, Washington, D.C. 20580.

EXHIBIT C

Exhibit C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the matter of Shell Oil Company, a corporation, and Texaco Inc., a corporation.	File No. 971-0026

AGREEMENT TO HOLD SEPARATE THE ANACORTES REFINERY ASSETS

This Agreement to Hold Separate the Anacortes Refinery Assets ("Hold Separate") is by and between Shell Oil Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Shell Plaza, Houston, Texas 77002 ("Shell"); Texaco Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 2000 Westchester Avenue, White Plains, N.Y. 10650 ("Texaco"); and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* Shell and Texaco may be referred to herein collectively as "Respondents."

EXHIBIT C

PREMISES

WHEREAS, Shell and Texaco intend to enter into the Joint Venture, as defined in Paragraph I of the Agreement Containing Consent Order (attached hereto and subsequently referred to herein as "Consent Order;" each capitalized term used in this Hold Separate shall have the same definition as contained in the Consent Order) and Shell and Texaco intend to contribute to said Joint Venture certain of their petroleum refining and marketing assets and operations in the United States, including their petroleum refining and marketing assets and operations in the States of Washington, Oregon and California; and

WHEREAS, Shell and Texaco each owns and operates, among other things, a petroleum refinery at Anacortes, Washington; and

WHEREAS, the Commission is now investigating the formation of the proposed Joint Venture to determine if it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the attached Consent Order, which would require among other things, the divestiture of the Anacortes Refinery Assets, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Anacortes Refinery Assets during the period prior to the divestiture of said assets, the divestiture required by the Consent Order or resulting from any proceeding challenging the legality of the proposed Joint Venture might not be possible, or might be less than an effective remedy; and

EXHIBIT C

WHEREAS, the Commission is concerned that if the proposed Joint Venture is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Anacortes Refinery Assets, and the Commission's right to have the Anacortes Refinery Assets continue as a viable petroleum refining business independent of the Respondents and the Joint Venture; and

WHEREAS, the purposes of this Hold Separate and the Consent Order are to:

(i) preserve the Anacortes Refinery Assets as a viable, competitive, and ongoing petroleum refining business, independent of the Respondents and the Joint Venture, until divestiture is achieved;

(ii) prevent interim harm to competition pending divestiture and other relief; and

(iii) remedy any anticompetitive effects of the proposed Joint Venture;

WHEREAS, Respondents, entering into this Hold Separate shall in no way be construed as an admission by Respondents that the proposed Joint Venture is illegal; and

WHEREAS, Respondents understand that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

NOW, THEREFORE, upon the understanding that the Commission has not yet determined whether it will challenge the proposed Joint Venture, and in consideration of the Commission's agreement that the Commission will accept the Consent Order for public comment and will excuse Respondents from their obligation to comply with all outstanding data requests and their obligation not to consummate the proposed Joint Venture until 21 days after their compliance with said data requests, the parties agree as follows:

EXHIBIT C

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that from the date the Consent Order is accepted by the Commission for public comment until the earlier of the dates listed in subparagraphs 2.a. or 2.b. ("Hold Separate Period"), they will comply with the provisions, with the exception of subparagraph 3.s., of this Hold Separate:

   a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

   b. the day after the divestiture of the Anacortes Refinery Assets, as required by the Consent Order, is completed.

Respondents agree to comply with subparagraph 3.s. until one (1) year after the Anacortes Refinery Assets are divested.

3. To assure the complete independence and viability of the Anacortes Refinery Assets, and to assure that no Material Confidential Information ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.) is exchanged between the Respondents, the Joint Venture and the Anacortes Refinery Assets, Respondents shall hold the Anacortes Refinery Assets separate and apart on the following terms and conditions:

   a. The Anacortes Refinery Assets shall be held separate and apart and shall be managed and operated independently of Respondents (meaning here and

EXHIBIT C

hereinafter, Shell, Texaco and the Joint Venture excluding the Anacortes Refinery Assets), except to the extent that Respondent must exercise direction and control over such assets to assure compliance with this Hold Separate or the Consent Order, and except as otherwise provided in this Hold Separate.

b. Shell shall appoint Robert C. Harrell as Independent Auditor, at least three (3) days prior to the formation of NEWCO. Respondents shall give the Independent Auditor all powers and authority necessary to effectuate his/her responsibilities pursuant to this Hold Separate.

c. Within five (5) business days of the Commission's acceptance of the Consent Order for public comment, Respondents shall (1) organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("NEWCO") to be composed of the Anacortes Refinery Assets; provided, however, that Respondents may designate as NEWCO under this Hold Separate, Shell Anacortes Refinery Company ("SARC"), an existing Delaware corporation; (2) cause NEWCO to adopt constituent documents that are consistent with the provisions of the Hold Separate and the Consent Order; and (3) transfer all ownership and control of all Anacortes Refinery Assets to NEWCO.

d. NEWCO shall be staffed with sufficient employees to maintain the viability and competitiveness of the Anacortes Refinery Assets. The NEWCO employees shall include (i) all personnel employed by SARC as of the date the Commission accepts the Consent Order for public comment; (ii) those

EXHIBIT C

persons employed by Shell, but transferred to NEWCO by Respondents pursuant to this Hold Separate for the duration of the Hold Separate Period, including employees working in refinery management, production, supply and trading, sales, marketing, and finance areas, who are listed on Confidential Attachment B ("Transferred Employees"); and (iii) those persons hired from other sources. The Management Team, with the approval of the Independent Auditor, shall have the authority to replace employees who were transferred to Shell Oil Products Company or have otherwise left their positions with SARC since March 18, 1997. To the extent that NEWCO employees leave NEWCO prior to the divestiture of the Anacortes Refinery Assets, the Management Team may replace the departing NEWCO employees, subject to the approval of the Independent Auditor, with persons who have similar experience and expertise.

e. The Independent Auditor shall monitor the organization of NEWCO and shall have responsibility for managing NEWCO (including the Anacortes Refinery Assets) consistent with the terms of Hold Separate; for maintaining the independence of NEWCO (including the Anacortes Refinery Assets) consistent with the terms of this Hold Separate and Consent Order; and assuring Respondent's compliance with its obligations pursuant to the Hold Separate.

f. Simultaneous with the organization of NEWCO, Shell shall appoint, subject to the approval of the Independent Auditor, four individuals from among the current employees of SARC or Shell Oil Products Company

EXHIBIT C

working in refinery management, production, supply and trading, sales, marketing, or financial operations to manage and maintain NEWCO. The Management Team, in its capacity as such, shall report directly and exclusively to the Independent Auditor and shall manage NEWCO independently of the management of the Respondents and the Joint Venture. The Management Team shall not be involved, in any way, in the operations of the businesses of the Respondents or the Joint Venture during the Hold Separate Period.

g. Respondents shall not change the composition of the Management Team unless the Independent Auditor consents. Respondents shall not change the composition of the management of NEWCO, except that the Management Team shall be permitted to remove management employees for cause subject to approval of the Independent Auditor. The Independent Auditor shall have the power to remove members of the Management Team for cause and to require Respondents to appoint replacement members to the Management Team in the same manner as provided in subparagraph 3.f. of this Hold Separate.

h. The Independent Auditor, each member of the Management Team, each NEWCO employee, and each Transferred Employee shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate. These individuals must retain and maintain all confidential information relating to the held separate business on a confidential basis and, except as is permitted by this Hold Separate, such

EXHIBIT C

persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' or the Joint Venture's business. These persons shall not be involved in any way in the refinery management, production, supply and trading, sales, marketing, and financial operations of the competing products of Respondents or the Joint Venture.

i. Respondents shall establish written procedures to be approved by the Independent Auditor, covering the management, maintenance, and independence of the Anacortes Refinery Assets consistent with the provisions of the Hold Separate.

j. Respondents shall circulate, to NEWCO employees and to Respondents' employees who are responsible for the operation of petroleum refineries or the refining or marketing of petroleum products in the United States, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.

k. The Independent Auditor shall have full and complete access to all personnel, books, records, documents and facilities of NEWCO and Shell Oil Products Company or to any other relevant information, as the Independent Auditor may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to the Anacortes Refinery Assets. Respondent shall develop such financial or other information as such Independent Auditor may request and shall

EXHIBIT C

cooperate with the Independent Auditor. Respondent shall take no action to interfere with or impede the Independent Auditor's ability to perform his/her responsibilities consistent with the terms of the Hold Separate or to monitor Respondent's compliance with the Hold Separate and the Consent Order.

l. Respondents may require the Independent Auditor to sign a confidentiality agreement prohibiting the disclosure of any material information gained as a result of his or her role as Independent Auditor to anyone other than the Commission.

m. The Independent Auditor shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are necessary to carry out the Independent Auditor's duties and responsibilities.

n. The Independent Auditor and the Management Team shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondents shall indemnify the Independent Auditor and the Management Team and hold the Independent Auditor and the Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Independent Auditor's or the Management Team's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or

EXHIBIT C

not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Independent Auditor or the Management Team.

o. Respondents shall provide NEWCO with sufficient working capital to operate the Anacortes Refinery Assets at least at current rates of operation, to meet all capital calls in respect of the Anacortes Refinery Assets, and to carry on, at least at their scheduled pace, all capital projects for the Anacortes Refinery Assets ongoing, planned, or approved as of or after October 1, 1997. During the period this Hold Separate is effective, Respondents shall make available for use by NEWCO funds sufficient to perform all necessary routine maintenance to, and replacements of, the Anacortes Refinery Assets. Respondents shall provide NEWCO with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Anacortes Refinery Assets until the date of divestiture is completed.

p. All NEWCO transactions valued at $1,000,000 or more that are out of the ordinary course of business shall be subject to a majority vote of the Management Team. In case of a tie, the Independent Auditor shall cast the deciding vote.

q. Respondents shall continue to provide the same support services (except for those services being provided by the Transferred Employees) to the Anacortes Refinery Assets as are being provided to such assets by

EXHIBIT C

Respondents as of the date this Hold Separate is signed by Respondents. Respondents may charge NEWCO the same fees, if any, charged by Shell for such support services as of the date this Hold Separate is signed by Respondents. Respondents' personnel providing such support services must retain and maintain all Material Confidential Information of the Anacortes Refinery Assets on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Anacortes Refinery Assets.

r. Except as provided in this Hold Separate, Respondents shall not employ or make offers of employment to NEWCO employees, during the Hold Separate Period. The acquirer of the Anacortes Refinery Assets shall have the option of offering employment to the NEWCO employees. After the Hold Separate Period, Respondents may offer employment to NEWCO employees who have not accepted employment with the acquirer of the Anacortes Refinery Assets. Respondents shall not interfere with the employment of such NEWCO employees by the acquirer of the Anacortes Refinery Assets; shall not offer any incentive to such NEWCO employees to decline employment with the acquirer of the Anacortes Refinery Assets or accept other employment with the Respondents or the Joint Venture.

EXHIBIT C

and shall remove any impediments that may deter such NEWCO employees from accepting employment with the acquirer of the Anacortes Refinery Assets, including but not limited to the payment, or the transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents or the Joint Venture.

s. For a period of one (1) year from the date the Anacortes Refinery Assets are divested, Respondents shall not employ or make offers of employment to NEWCO employees who have accepted offers of employment with the acquirer of the Anacortes Refinery Assets.

t. Notwithstanding the preceding subparagraph 3.r., Respondents may offer a bonus or severance to those NEWCO employees that continue their employment with NEWCO until the date that the Anacortes Refinery Assets are divested.

u. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Anacortes Refinery Assets, the Independent Auditor, the Management Team, or NEWCO or any of its operations; provided, however, that Respondents may exercise only such direction and control over NEWCO as is necessary to assure compliance with this Hold Separate or the Consent Order, or with all applicable laws.

EXHIBIT C

v. Except for the Management Team and except to the extent provided in subparagraph 3.q., Respondents or the Joint Venture shall not permit any other of their employees, officers, or directors to be involved in the operations of NEWCO.

w. Respondents shall maintain the viability, competitiveness, and marketability of the Anacortes Refinery Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Anacortes Refinery Assets.

x. If the Independent Auditor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, Respondents shall appoint a substitute Independent Auditor, subject to Commission approval.

y. Respondents shall continue to pay to the Transferred Employees, until divestiture of the Anacortes Refinery Assets is accomplished, their salaries, all accrued bonuses, pensions and other accrued benefits to which the Transferred Employees would otherwise have been entitled had they remained in the employment of Shell during the Hold Separate period.

z. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Joint Venture, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the

EXHIBIT C

Consent Order, or complying with this Hold Separate or the Consent Order, Respondents shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about NEWCO or the Anacortes Refinery Assets. Nor shall NEWCO or the Management Team receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' business. Respondents may receive, on a regular basis, aggregate financial information relating to NEWCO necessary to allow Respondents to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

aa. Within thirty (30) days after the date this Hold Separate is accepted by the Commission and every thirty (30) days thereafter until this Hold Separate terminates, the Independent Auditor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Independent Auditor's assessment of the extent to which NEWCO is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

4 Should the Commission seek in any proceeding to compel Respondents to divest any of the Anacortes Refinery Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Hold

EXHIBIT C

Separate, or in any way relating to the Joint Venture, as defined in the draft complaint, Respondents shall not raise any objection based upon the fact that the Commission has permitted the formation of the Joint Venture. Respondents also waive all rights to contest the validity of this Hold Separate.

5. To the extent that this Hold Separate requires Respondents to take, or prohibits Respondents from taking, certain actions that otherwise may be required or prohibited by contract, Respondents shall abide by the terms of this Hold Separate or the Consent Order and shall not assert as a defense such contract requirements in a civil action brought by the Commission to enforce the terms of this Hold Separate or Consent Order.

6. For the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to its principal office, Respondents shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of Respondents and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Hold Separate; and

b. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

7. This Hold Separate Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Shell Oil Company and Texaco Inc. have entered into a Consent Order and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term "Anacortes Refinery Assets" means all assets as defined in paragraph I.E of the Consent Order. Under the terms of the Consent Order, Shell and Texaco must divest the Anacortes Refinery Assets within six (6) months from the date the FTC's Order becomes final.

The term "Joint Venture" means the joint venture between Shell and Texaco known as "Westco" (publicly announced on March 18, 1997, and described in a Memorandum of Understanding of the same date), and any other combination of the United States petroleum refining or marketing assets or operation of Shell and Texaco.

Until after the FTC's Order becomes final and Anacortes Refinery Assets are divested, the Anacortes Refinery Assets must be managed and maintained as separate, ongoing businesses, independent of all other Shell, Texaco, or Joint Venture businesses. All competitive information relating to the Anacortes Refinery Assets must be retained and maintained by the persons involved in the operation of the Anacortes Refinery Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Shell Anacortes Refinery.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Shell, Texaco, and Joint Venture to civil penalties and other relief as provided by law.

APPENDIX B

[Confidential Appendix B to Agreement to Hold Separate
Redacted From Public Record Version]

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission issues its final decision and order resolving allegations that the proposed joint venture of Shell Oil Company with Texaco Inc. and Star Enterprises would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe that the joint venture, if consummated, would affect competition adversely in the refining of asphalt in Northern California and, therefore, support paragraph VII of the order, which provides relief in that market. I do not find reason to believe the other violations of law alleged in the complaint and, therefore, dissent from paragraphs II, III, IV and V of the order, which require divestitures in other markets. Although the allegation relating to refineries in the northwestern United States is arguably valid, on balance, I cannot support it and, therefore, cannot support paragraph II of the order. The complaint allegations that support paragraphs III, IV and V of the order seem to me far removed from our usual analysis under the merger guidelines.

I understand that the parties have negotiated identical relief with various state attorneys general and that the divestitures in the proposed Commission order will be required in any event. My obligation, however, is to apply federal law as I see it.