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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of)	
)	
Chevron Corporation,)	
a corporation,)	Docket No. C-4023
)	
and)	
)	
Texaco Inc.,)	
a corporation.)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger (the “Merger”) of Respondent Chevron Corporation (“Chevron”) and Respondent Texaco Inc. (“Texaco”), and Respondents having been furnished thereafter 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 Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”) containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, 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 Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed

such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Chevron 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 575 Market Street, San Francisco, CA 94105.
2. 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 Ave., White Plains, NY 10650.
3. The Commission has jurisdiction of the subject matter of this proceeding and of 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. “Chevron” means Chevron Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Chevron, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Texaco” means Texaco Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Texaco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Avfuel” means Avfuel Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the state of Michigan, with its office and principal place of business located at 47 West Ellsworth, Ann Arbor, Michigan 48108.
- D. “Aviation Fuel” means Aviation Gasoline and Jet Fuel.
- E. “Aviation Fuel Divestiture Agreement” means all agreements entered into between Respondents and AvFuel relating to the sale of Texaco’s Overlap General Aviation Business Assets, including but not limited to the Purchase and Sale Agreement, the

D1655.

- Y. “JV Agreements” means the Equilon LLC Agreement and the Motiva LLC Agreement.
- Z. “Members Committee” means the “Members Committee” as defined in Section 6.03 of the Equilon LLC Agreement and the Motiva LLC Agreement.
- AA. “Merger” means any merger between Respondents, including the proposed merger contemplated by the Agreement and Plan of Merger dated October 15, 2000, as amended, among Respondents and Keepep Inc.
- BB. “Merger Date” means the date on which the Merger is consummated.
- CC. “Metropolitan Area” means any Metropolitan Area (including Metropolitan Statistical Areas, Consolidated Metropolitan Statistical Areas, or Primary Metropolitan Statistical Areas) as defined by the U.S. Office of Management and Budget.
- DD. “Motiva” means Motiva Enterprises LLC, a joint venture formed pursuant to the Motiva LLC Agreement.
- EE. “Motiva Interest” means all of the ownership interests in Motiva owned directly or indirectly by Texaco, including the interest owned by TRMI East.
- FF. “Motiva LLC Agreement” means the Limited Liability Company Agreement of Motiva Enterprises LLC dated as of July 1, 1998, among Shell, Shell Norco Refining Company, SRI and TRMI East.
- GG. “Non-Public Equilon Or Motiva Information” means any information not in the public domain relating to Equilon or Motiva.
- HH. “Operating Trustee” means each trustee appointed pursuant to Paragraph III.O. of this Order with the obligation to manage TRMI and/or TRMI East pursuant to this Order.
- II. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- JJ. “Relevant OCS Area” means the Grand Isle, Grand Isle South, South Timbalier, and South Timbalier South areas as defined by the Department of Interior Minerals Management Service.

- KK. “Respondents” means Chevron and Texaco, individually and collectively, and any successors.
- LL. “Section of the Country” means a Metropolitan Area in those cases where the retail outlets that Respondents have agreed to supply pursuant to Paragraph IV.F. are located in a Metropolitan Area, or a county in those cases where the retail outlets that Respondents have agreed to supply are located outside of a Metropolitan Area.
- MM. “Shell” means Shell Oil Company, a Delaware corporation, with its principal place of business located at One Shell Plaza, Houston, Texas 77002, its parents, and its subsidiaries controlled by Shell.
- NN. “SRI” means Saudi Refining, Inc., a Delaware corporation, with its principal place of business located at 9009 West Loop South, Houston, TX 77210, its parents, and its subsidiaries controlled by SRI.
- OO. “Substitute Aviation Fuel Divestiture Agreement” means an agreement, other than approved by the Commission.
- PP. “v436x1-Williams Contract” means the Product Sale, Purchase and Exchange Agreement dated February 1, 1997, between Mapco Eutgy L.L.C. and Bridgeline Gas Distribution LLC.
- QQ.

Fuel Divestiture Agreement.

- TT. “Texaco’s Overlap General Aviation Business Assets” means all assets, tangible or intangible, relating to Texaco’s Overlap General Aviation Business, including but not limited to all General Aviation Business Agreements used in or relating to Texaco’s Overlap General Aviation Business, but excluding the assets and agreements set forth on Schedule 2.3(c) of the Aviation Fuel Divestiture Agreement.
- UU. “TRMI” means Texaco Refining and Marketing Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and its subsidiary, Texaco Convent Refining Inc., and Texaco’s interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Equilon.
- VV. “TRMI East” means Texaco Refining and Marketing (East) Inc., a Delaware corporation and an indirect wholly owned subsidiary of Texaco, and Texaco’s interest in all other subsidiaries, divisions, groups, joint ventures, or affiliates of Texaco that own or control any ownership interest in Motiva.
- WW. “Trust” means the trust established by the Trust Agreement.
- XX. “Trust Agreement” means the Agreement and Declaration of Trust approved by the Commission and attached hereto and made part hereof as Appendix A to this Order.
- YY. “Venice System” means Venice Energy Services Company, L.L.C., and all of its assets, including but not limited to (i) natural gas processing, fractionation and natural gas liquids storage and terminaling facilities at the Venice Complex (as that term is defined in the Second Amended and Restated Limited Liability Company Agreement of Venice Energy Services Company, L.L.C.), (ii) onshore and offshore natural gas pipelines upstream from the Venice Complex, known as the Venice Gathering System, (iii) compression, separation, dehydration, and residue gas and liquid gas handling facilities at or associated with the Venice Complex (excluding any residue gas pipelines and metering facilities owned by the downstream pipelines), and (iv) natural gas liquids facilities (excluding natural gas liquids pipelines downstream from the Venice Complex) related to such processing, fractionation, storage and termination facilities.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest:

acquire either the Equilon Interest or TRMI and/or the Motiva Interest or TRMI East pursuant to Paragraph III. of this Order.

- C. If the Trust is rescinded, unwound, dissolved, or otherwise terminated at any time after the Merger but before Respondents have complied with Paragraph II.A. of this Order, then Respondents shall immediately upon such rescission, unwinding, dissolution, or termination, hold TRMI and TRMI East separate and apart from Respondents pursuant to the Order to Hold Separate and Maintain Assets issued in this matter.
- D. The purpose of these divestitures is to ensure the continuation of Equilon and Motiva as ongoing, viable businesses engaged in the same businesses as Equilon and Motiva are presently engaged, to ensure the ownership of the Equilon Interest (or TRMI) and the Motiva Interest (or TRMI East) by a person other than Respondents that has been approved by the Commission, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that, if Respondents have not divested the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI pursuant to the requirements of Paragraph II. of this Order on or before the Merger Date:

- A. Texaco shall, on or before the Merger Date: (1) enter into the Trust Agreement, and (2) transfer or cause to be transferred (a) TRMI to the Trust if the Equilon Interest has not been divested to Shell, and/or (b) TRMI East to the Trust if the Motiva Interest has not been divested to Shell and/or SRI. Simultaneously with the Merger, Texaco shall cause its representatives to resign from the Members Committee of Equilon and Motiva.
- B. Respondents shall agree to the appointment of Robert A. Falise as Divestiture Trustee and enter into the Trust Agreement no later than the Merger Date.
- C. No later than the Merger Date, Respondents shall transfer to the Divestiture Trustee the sole and exclusive power and authority to divest TRMI and/or TRMI East or to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, consistent with the terms of Paragraph II. of this Order and subject to the prior approval of the Commission. After such transfer, the Divestiture Trustee shall have the sole and exclusive power and authority to divest such assets or interests, subject to the prior approval of the Commission, and the Divestiture Trustee shall exercise such power and authority and carry out the duties and responsibilities of the Divestiture Trustee in a manner consistent with the purposes of this Order in consultation with the Commission's staff.

- D. The Divestiture Trustee shall have eight (8) months from the Merger Date to accomplish the divestitures required by Paragraph II. of this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the eight-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the Divestiture Trustee's divestiture period may be extended by the Commission. An extension of time by the Commission under this subparagraph shall not preclude the Commission from seeking any relief available to it for any failure by Respondents to divest the Equilon Interest or TRMI and/or the Motiva Interest or TRMI East consistent with the requirements of Paragraph II. of this Order.
- E. If, on or prior to the Merger Date, Texaco has executed but has not consummated an agreement or agreements to divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, and the Commission has approved such agreement or agreements, then Texaco shall, no later than the Merger Date, assign such agreement or agreements to the Trust and grant sole and exclusive authority to the Divestiture Trustee to consummate any divestiture contemplated thereby.
- F. The Divestiture Trustee shall divest the Equilon Interest to Shell and/or the Motiva Interest to Shell and/or SRI, in a manner that receives the prior approval of the Commission, pursuant to the terms of the applicable agreement or agreements approved by the Commission, if either (1) Texaco has executed an agreement or agreements with Shell and/or SRI with respect to such divestiture or divestitures prior to the Merger Date, and such agreement or agreements have been approved by the Commission and have not been breached by Shell and/or SRI; or (2) Shell has exercised its right to acquire the Equilon Interest pursuant to the Equilon LLC Agreement and/or Shell and/or SRI have exercised their rights to acquire the Motiva Interest pursuant to the Motiva LLC Agreement.
- G. Subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price, the Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of (1) TRMI if the Divestiture Trustee has not divested the Equilon Interest pursuant to subparagraph F. of this Paragraph and/or (2) TRMI East if the Divestiture Trustee has not divested all or part of the Motiva Interest pursuant to subparagraph F. of this Paragraph. Each divestiture shall be made only in a manner that receives the prior approval of the Commission, and, unless the acquirers are Shell and/or SRI, the divestiture shall be made only to an acquirer or acquirers that receive the prior approval of the Commission; provided, however, if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided further, however, that Respondents

shall select such entity within five (5) days of receiving notification of the Commission's approval.

H. The Divestiture Trustee shall have full and complete access to all personnel, books,

- M. If, for any reason, Robert A. Falise cannot serve or cannot continue to serve as Divestiture Trustee, or fails to act diligently, the Commission shall select a replacement Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any replacement Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed replacement Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed replacement Divestiture Trustee. The replacement Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures.
- N. The Commission may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- O. Respondents shall agree to the appointment of Joe B. Foster as Operating Trustee of TRMI (with respect to the Equilon Interest) and John Linehan as Operating Trustee of TRMI East (with respect to the Motiva Interest) and enter into the Trust Agreement no later than the Merger Date.
- P. The Operating Trustees shall have sole and exclusive power and authority to manage TRMI and/or TRMI East (as the case may be), as set forth in the Trust Agreement and specifically to cause TRMI and TRMI East respectively to exercise the rights of TRMI and TRMI East under the Equilon and Motiva LLC Agreements. Each Operating Trustee may engage in any other activity such Operating Trustee may deem reasonably necessary, advisable, convenient or incidental in connection therewith and shall exercise such power and authority and carry out the duties and responsibilities of the Operating Trustee in a manner consistent with the purposes of this Order in consultation with the Commission's staff.
- Q. Each Operating Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of TRMI and/or TRMI East as needed to fulfill such Operating Trustee's obligations, or to any other relevant information, as such Operating Trustees may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under this Order. Respondents shall develop such financial or other information as such Operating Trustees may reasonably request and shall cooperate with the Operating Trustees. Respondents shall take no action to interfere with or impede the Operating Trustees' ability to perform his or her responsibilities.
- R. The Operating Trustees 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 may set. Each Operating Trustee shall have the authority to employ,

at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out such Operating Trustee's duties and responsibilities.

- S. Respondents shall indemnify each Operating Trustee and hold each Operating Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of such Operating 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 such Operating Trustee.
- T. The Operating Trustees shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
- U. Each Operating Trustee shall report in writing to the Commission thirty (30) days after the Merger Date and every thirty (30) days thereafter concerning the Operating Trustee's performance of his or her duties under this Order and the Trust Agreement. The Operating Trustees shall serve until such time as Respondents have complied with their obligation to divest TRMI and/or TRMI East as required by this Order and Respondents have notified the Commission that the divestitures have been accomplished.
- V.

- Y. Respondents may require the Divestiture Trustee or Operating Trustees to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his or her role as Divestiture Trustee or Operating Trustee to anyone other than the Commission.
- Z. The purpose of this Paragraph III. is to effectuate the divestitures required by Paragraph II. of this Order and to maintain operation of TRMI, TRMI East, Equilon and Motiva separate and apart from Respondents' operations pending the required divestitures.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall offer to extend the license provided to Equilon and Motiva, on terms and conditions comparable to those in existence as of the date the Consent Agreement is executed by Respondents, for the use of the Texaco brand for the marketing of motor fuels until June 30, 2002 for Equilon and until June 30, 2003, for Motiva (the "Brand License Date"). Provided however, the license for the marketing of motor fuels shall be provided on an exclusive basis in those areas of the United States where Equilon and Motiva respectively are currently licensed to market motor fuels.
- B. For the purposes of this Paragraph IV., "Waives and Releases" shall mean to waive and release: (1) all amounts any Texaco branded dealer or wholesale marketer may be required to pay under any Facility Development Incentive Program Agreement (or any other agreement requiring that such dealer or marketer reimburse Equilon or Motiva) in existence as of the date the Commission accepts this Order for public comment, which amounts become due (or which Equilon or Motiva contends become due) as a result of the loss of the Texaco brand at any retail outlet; and (2) all deed restrictions prohibiting or restricting the sale of motor fuel not sold by Equilon or Motiva at any Texaco retail outlet for which Equilon or Motiva has not executed an agreement for the sale of Shell branded gasoline on or before the Brand License Date.
- C. If Equilon Waives and Releases the amounts and deed restrictions set forth in Paragraph IV.B., Texaco shall further offer (1) to extend the license set forth in Paragraph IV.A. to Equilon on an exclusive basis until June 30, 2003 (which shall then become the new "Brand License Date" for Equilon), and (2) to extend the license on a nonexclusive basis for up to an additional three (3) years, until June 30, 2006, on terms and conditions comparable to those in existence as of the date the Consent Agreement is executed by Respondents, for all retail

outlets for which Equilon has executed agreements with such retail outlets on or before the Brand License Date for the conversion of such retail outlets to the Shell brand.

D. If Motiva Waives and Releases the amounts and deed restrictions set forth in Paragraph

- C. Respondents shall, prior to divestiture of Texaco's interest in the Discovery System and subject to the prior approval of the Commission, enter into an agreement with the acquirer of Texaco's interest in the Discovery System for the purchase, sale or exchange of natural gas liquids that is no less favorable for the acquirer than the terms of the Texaco-Williams Contract; provided, however, that the volumes of natural gas liquids to be transported or exchanged under such agreement may be limited to volumes attributable to natural gas production transported by the Discovery System from natural gas producing wells originating from the Relevant OCS Area. The purpose of this agreement is to prevent Respondents from imposing rates or terms for pipeline transportation to markets from the Discovery System's fractionating plant that would impede the ability of the Discovery System to compete for natural gas transportation from the Relevant OCS Area, and to fully preserve the viability of the Discovery System.
- D. Respondents shall waive and not enforce Texaco's right to terminate the Texaco-Williams Contract pursuant to Section 1.1 of the Texaco-Williams Contract if Texaco owns less than a twenty percent (20%) interest in the Discovery System.
- E. No later than five (5) business days following the Merger Date, Respondents shall, pursuant to the Agreement for the Operation and Management of the Larose Gas Processing Plant & Paradis Fractionation Facility dated February 1, 1997, and any other applicable agreements, give notice to the other ciliblc

- B. Respondents shall divest all of Texaco's interest in the Enterprise Fractionating Plant 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 Texaco's interest in the Enterprise Fractionating Plant is to eliminate an overlap of ownership between the Enterprise Fractionating Plant and other fractionating plants at Mont Belvieu, Texas, in which Respondents or their affiliates own interests, and to remedy the lessening of competition resulting from the proposed Merger as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

- A. No later than ten (10) days after the Merger Date, Respondents shall divest, absolutely and in good faith, Texaco's Overlap General Aviation Business Assets to Avfuel, pursuant to and in accordance with the Aviation Fuel Divestiture Agreement. Any failure by Respondents to comply with any provision of the Aviation Fuel Divestiture Agreement shall constitute a failure to comply with this Order; provided, however, that if Respondents fail to divest Texaco's Overlap General Aviation Business Assets to Avfuel pursuant to and in accordance with the Aviation Fuel Divestiture Agreement within ten (10) days after the Merger Date, Respondents shall divest Texaco's Domestic General Aviation Business Assets, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission in a manner that receives the prior approval of the Commission pursuant to a Substitute Aviation Fuel Divestiture Agreement. Divestiture of Texaco's Domestic General Aviation Business Assets to an acquirer or acquirers that receive the prior approval of the Commission in a manner that receives the prior approval of the Commission pursuant to a Substitute Aviation Fuel Divestiture Agreement shall not preclude the Commission or the Attorney General from seeking civil penalties or any other relief available pursuant to § 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 their obligation to divest Texaco's Overlap General Aviation Business Assets to Avfuel pursuant to the Aviation Fuel Divestiture Agreement.
- B. If Respondents have divested Texaco's Overlap General Aviation Business Assets to Avfuel pursuant to the Aviation Fuel Divestiture Agreement, and at the time the Commission makes this Order final, it determines that Avfuel is not acceptable as the acquirer of Texaco's Overlap General Aviation Business Assets or that the Aviation Fuel Divestiture Agreement is not an acceptable manner of divestiture, and the Commission so notifies Respondents, Respondents shall within ten (10) days of such notification rescind the Aviation Fuel Divestiture Agreement with Avfuel.

- C. If the Aviation Fuel Divestiture Agreement with Avfuel is rescinded pursuant to Paragraph VII.B. of this Order, then Respondents shall, within four (4) months of the Merger Date, divest Texaco's Domestic General Aviation Business Assets, at no minimum price, to an acquirer or acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission, pursuant to a Substitute Aviation Fuel Divestiture Agreement.
- D. On or before the date of consummation of the Substitute Aviation Fuel Divestiture Agreement, Respondents shall assign to the acquirer all General Aviation Business Agreements used in or relating to Texaco's Domestic General Aviation Business; provided, however, should Respondents fail to obtain any such assignments, Respondents shall, subject to the prior approval of the Commission, substitute alternative agreements or arrangements sufficient to enable the acquirer approved by the Commission to operate Texaco's Domestic General Aviation Business in the same manner and at the same level and quality as Texaco operated it at the time of the announcement of the Merger.
- E. Respondents shall include in the Substitute Aviation Fuel Divestiture Agreement, at the option of the acquirer, a license for a period of up to ten (10) years from the date of such Agreement to use the Texaco brand in connection with the acquirer's operation of Texaco's Domestic General Aviation Business Assets. The license shall be royalty free for five (5) years from the date of consummation of such Substitute Aviation Fuel Divestiture Agreement, but subject to Commission approval may provide for payments beginning five (5) years after the date of the Agreement and escalating each year until the end of the ten-year term.
- F. For a period of six (6) months after the date of consummation of any Substitute Aviation Fuel Divestiture Agreement, Respondents shall not solicit, engage in discussions concerning, participate in, offer to enter into, or enter into, any contract or agreement for the direct supply of branded Aviation Fuel to any fixed base operator or distributor that had a Marketing Agreement for the sale of Texaco-branded Aviation Fuel in the United States.
- G. For a period of twelve (12) months after the acquirer pursuant to any Substitute Aviation Fuel Divestiture Agreement stops supplying Texaco-branded Aviation Fuel to a fixed base operator or distributor, Respondents shall not (1) enter into any contract or agreement for the direct or indirect supply of Texaco-branded Aviation Fuel to such fixed base operator or distributor, or (2) approve the branding of such fixed base operator or distributor with the Texaco brand.
- H. The purpose of the divestiture of Texaco's Overlap General Aviation Business Assets, or of Texaco's Domestic General Aviation Business Assets, is to ensure the continuation of such assets in the same business in which the assets were engaged at

the time of the announcement of the Merger by a Person other than Respondents, and to remedy the lessening of competition alleged in the Commission's Complaint.

VIII.

IT IS FURTHER ORDERED that:

- A. If Respondents have divested neither: (1) Texaco's Overlap General Aviation Business Assets as required by Paragraph VII. of this Order, nor (2) Texaco's Domestic General Aviation Business Assets as required by Paragraph VII. of this Order within four (4) months of the Merger Date, the Commission may appoint a trustee to divest Texaco's Domestic General Aviation Business Assets. In the event that the Commission or the Attorney General brings an action pursuant to § 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 § 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 VIII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 0.1 The Commission shall select a 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 the 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.

 - 0.2 Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Texaco Domestic General Aviation Business Assets.

 - 0.3 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.

- 0.4 The trustee shall have four (4) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the four-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. The decision by the Commission to extend the time during which the trustee may accomplish the divestiture shall not 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 § 5(I) 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.
- 0.5 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.
- 0.6 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 Paragraph VII. 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.
- 0.7 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.

- 0.8 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.
- 0.9 If the trustee ceases to act or fails to act diligently, a substitute trustee shall be

businesses specified in this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

X.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to its principal office, Respondents shall permit any duly authorized representatives of the Commission:

- A. During office hours and in the presence of counsel, access 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 Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers or employees of Respondents who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that within five (5) business days after the date on which the Commission accepts this Order for public comment, but in no event less than thirty (30) days before the Merger Date, Respondents shall notify Shell and SRI of the projected Merger Date and shall serve on Shell and SRI, by overnight delivery, copies of the Agreement Containing Consent Orders and all documents attached thereto, including the Trust Agreement, omitting or redacting from such service any information contained therein or attached thereto that is confidential business information. Any omissions or redactions to such agreements or documents attached thereto shall be subject to the prior approval of the Commission.

XII.

IT IS FURTHER ORDERED that 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.

XIII.

IT IS FURTHER ORDERED that:

- A. If (i) the Divestiture Trustee or Respondents have submitted a complete application in support of the divestiture of the assets, interests or businesses to be divested pursuant to Paragraph II. of this Order (including the buyer, manner of divestiture and all other matters subject to Commission approval) at least one month before the deadline for such divestiture; and (ii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iii) the Divestiture Trustee or 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 a consent decree in an action commenced by any State requiring such divestiture, then, with respect to that divestiture, 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 or the Divestiture Trustee shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.
- B. If any Trustee or Respondents are unable to comply with any obligation of this Order, with the exception of the obligations of Paragraph II. of this Order, because of any failure to act or any action by any State or any court pursuant to a consent decree in an action commenced by any State in connection with the Merger, the time in which such obligation of this Order must be completed shall be extended for sixty (60) days. During such sixty (60) day period, Respondents or the applicable Trustee shall exercise utmost good faith and best efforts to resolve the concerns of the particular State or court.

By the Commission, Chairman Muris recused.

Donald S. Clark
Secretary

Issued: January 2, 2002