UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of proposed joint ventures between Shell Oil Company ("Shell"), and Texaco Inc. ("Texaco"), and it now appearing that Shell and Texaco, hereinafter sometimes referred to as "proposed respondents," are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed 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 77002.

2. Proposed 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 10650.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed respondents waive:

    a. any further procedural steps;

    b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

    c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement;

and

d. any claim under the Equal Access to Justice Act.

5. Proposed respondents shall submit, within thirty (30) days of the date this agreement is signed by proposed respondents, an initial report, pursuant to § 2.33 of the Commission’s Rules, signed by the proposed respondents setting forth in detail the manner in which the proposed respondents will comply with Paragraphs II through VIII and X of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to order to proposed respondents’ addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation

not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. By signing this agreement containing consent order, proposed respondents represent that they can accomplish the full relief contemplated by this agreement, and that all parents, subsidiaries, and affiliates necessary to effectuate the full relief contemplated by this agreement are parties to the agreement and are bound thereby as if they had signed this agreement and were made parties to this proceeding and to the order. Respondents warrant that Shell Oil Company or Texaco Inc., as the case may be, has good title to the Anacortes Refinery Assets, Texaco Oahu Distribution Assets, Shell Oahu Distribution Assets, all of Texaco's interest in Colonial Pipeline Company, and all of Shell's interest in Plantation Pipe Line Company. The terms "Anacortes Refinery Assets," "Texaco Oahu Distribution Assets," and "Shell Oahu Distribution Assets" have the same meaning in this Paragraph as they do in the Order.

10. Proposed respondents have read the proposed Complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents agree to comply with Paragraphs III.D., IV.D., V.D., VII.C., VIII. and X. of the proposed order from the date they sign this agreement. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

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 90744, 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 § 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 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.

Signed this __th day of December, 1997

SHELL OIL COMPANY

By: ________________________
James M. Morgan
Senior Vice President

____
Steven A. Newborn
Rogers & Wells
Counsel for Shell Oil Company

TEXACO INC.

By: ________________________
Glenn F. Tilton
Senior Vice President

____
Marc G. Schildkraut
Howrey & Simon
Counsel for Texaco Inc.

FEDERAL TRADE COMMISSION

By: ________________________
Richard Liebeskind
Deputy Assistant Director
Bureau of Competition

APPROVED:

____
Phillip L. Broyles
Assistant Director
Bureau of Competition

____

George S. Cary
Senior Deputy Director
Bureau of Competition

____
William J. Baer
Director
Bureau of Competition

[Public attachments to the Agreement Containing Consent Order, including the public portions of the Agreement to Hold Separate, are attached to paper copies of the Agreement Containing Consent Order, but are not available in electronic form.]

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
SHELL OIL COMPANY,	)	
a corporation;	)	
	)	DOCKET NO. C-
- and -	)	
	)	
TEXACO INC.,	)	
a corporation.	)	

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 Co.

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 77002.

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 10650.

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-Hirschman 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of , 199 , issues its complaint against said respondents.

By the Commission.

SEAL:

Donald S. Clark
Secretary

ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Shell Oil Co. ("Shell") and Texaco Inc. ("Texaco") (collectively "Proposed Respondents") an Agreement Containing Consent Order ("Proposed Consent Order"). The Commission has also entered into a Hold Separate Agreement that requires Proposed Respondents to hold separate and maintain certain divested assets. The Proposed Consent Order remedies the likely anticompetitive effects, in seven geographic markets, arising from certain aspects of Proposed Respondents' joint venture.

II. Description of the Parties and the Transaction

Shell, which is headquartered in Houston, Texas, is one of the world's largest integrated oil companies. Among its other businesses, Shell operates petroleum refineries that make various grades of gasoline, diesel fuel, and kerosene jet fuel, among other petroleum products, and Shell sells these products to intermediaries, retailers and consumers. It owns or leases approximately 3,400 gasoline stations nationally and sells gasoline to jobbers or gasoline dealers that operate another 5,000 retail outlets throughout the United States. During fiscal year 1996, Shell sold about $8.66 billion of gasoline nationally and had revenues from downstream operations (refining, transportation, and marketing of petroleum products) of approximately $22.7 billion.

Texaco, which is headquartered in White Plains, New York, is another of the world's largest integrated oil companies. Among its other businesses, Texaco operates petroleum refineries in the United States that make gasoline, diesel fuel, kerosene jet fuel, and other petroleum products, and sells those products throughout the midwestern and western United States. Texaco owns one-half of Star Enterprises, Inc., a joint venture between Texaco and Saudi Refining, Inc. Star also operates refineries and markets gasoline and other petroleum products, under the Texaco name, in the southeastern and eastern United States. About 14,000 retail outlets sell Texaco-branded gasoline throughout the United States. In fiscal year 1996, Texaco and Star earned about $207 million in profits from their downstream operations; in 1996, Texaco had worldwide revenues of approximately $45.5 billion.

On or about March 18, 1997, Shell and Texaco entered into a memorandum of understanding to form a limited liability corporation ("LLC"), to be known as "Westco," into which Shell and Texaco would transfer their refining and marketing businesses and assets in the midwestern and western United States, together with their pipeline and other transportation interests throughout the United States. On or about July 16, 1997, Shell, Texaco and Saudi Refining entered into a memorandum of understanding to form a second LLC, to be known as

"Eastco," into which Shell and Star would transfer their refining and marketing businesses and assets in the southeastern and eastern United States. (Eastco and Westco are referred to jointly or separately as "Joint Venture.")

III. The Proposed Complaint and Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Shell and Texaco in settlement of a proposed complaint. The proposed complaint alleges that the proposed Joint Venture violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and that consummation of the Joint Venture would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act. The proposed complaint alleges that the Joint Venture will lessen competition in each of the following markets: (1) conventional gasoline and kerosene jet fuel in the Puget Sound area of Washington State (*i.e.*, the cities of Seattle, Tacoma, Olympia, Bremerton and surrounding areas); (2) conventional gasoline and kerosene jet fuel in the Pacific Northwest (*i.e.*, the States of Washington and Oregon west of the Cascade mountains); (3) CARB gasoline (specially formulated gasoline required in California) in the State of California; (4) asphalt in the northern portion of the State of California (approximately north of Fresno); (5) transportation of refined light petroleum products to 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 ports such as Savannah, Charleston, Wilmington and Norfolk) ("inland Southeast"); (6) CARB gasoline in San Diego County, California; and (7) conventional gasoline and diesel fuel on the island of Oahu, Hawaii.

To remedy the alleged anticompetitive effects of the Joint Venture, the Proposed Consent Order requires Proposed Respondents: (1) to divest Shell's refinery located in Anacortes, Washington ("Anacortes Refinery"), and to allow all of Shell's branded dealers and jobbers in Washington and Oregon to enter into supply contracts with the acquirer of that refinery, notwithstanding the existence of any long-term contracts or termination penalties; (2) to divest either Texaco's interest in the Colonial pipeline or Shell's interest in the Plantation pipeline; (3) to divest gasoline stations in San Diego County representing a sufficient volume to establish a viable wholesale competitor; and (4) to divest the terminal and retail operations of either Shell or Texaco on Oahu. Each divestiture must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within six months of the Commission's final issuance of the consent order. Proposed Respondents must also enter into and maintain a ten-year agreement to supply Huntway Refining Company with undiluted heavy crude oil. The Proposed Consent Order provides that no amendment to the Huntway supply agreement relating to price, volume or termination will be effective until approved by the Commission.

For ten (10) years after the consent order becomes final, the Proposed Respondents are prohibited from entering into a joint venture or other affiliation involving or acquiring petroleum refining or marketing assets in Alaska, California, Oregon and Washington valued at $100 million or more, without giving prior notice to the Commission, where such venture would not be subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a.

Proposed Respondents are required to provide the Commission with a report of compliance with the consent order within sixty (60) days following the date that the consent order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten (10) years.

Proposed Respondents also have entered into a Hold Separate Agreement. Under the terms of this Agreement, until the divestiture of the Shell Anacortes Refinery has been completed, Proposed Respondents must maintain the Shell Anacortes Refinery as a separate, competitively viable business, and not combine it with the operations of the Joint Venture. Under the terms of the Proposed Consent Order, Proposed Respondents must also maintain the other assets to be divested in a manner that will preserve their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair the marketability or viability of the assets to be divested. The Proposed Consent Order and the Hold Separate Agreement specify these obligations in detail.

The FTC staff conducted the investigation leading to the Proposed Consent Order in collaboration with the Attorneys General of the States of California, Hawaii, Oregon and Washington. As part of this joint effort, Proposed Respondents have entered into agreements with these States settling charges that the Joint Venture would violate both state and federal antitrust laws. To avoid conflicts between the Proposed Consent Order and the State consent decrees, the Commission has agreed to extend the time for divesting particular assets if all of the following conditions are satisfied: (1) Proposed Respondents have fully complied with the Proposed Consent Order; (2) Proposed Respondents submit a complete application in support of the divestiture of the assets and businesses to be divested within four months after the Commission's final approval of the consent order (two months before the required divestitures must be completed); (3) the Commission has in fact approved a divestiture; but (4) Proposed Respondents have certified to the Commission within ten days after the Commission's approval of a divestiture that a State has not approved that divestiture. If these conditions are satisfied, the Commission will not appoint a trustee or seek civil penalties for an additional sixty days, in order to allow Proposed Respondents either to satisfy the State's concerns or to produce an acquirer acceptable to the Commission and the State. If the State remains unsatisfied at the end of that additional period, the Commission may appoint a trustee and seek penalties.

IV. Resolution of the Competitive Concerns

The Proposed Consent Order alleviates the alleged competitive concerns arising from the Joint Venture in seven geographic markets, which are discussed below.

A. Refining of Conventional Gasoline, Kerosene Jet Fuel, and CARB Gasoline

Four companies operate refineries in and around Seattle, Washington, and one company operates a small refinery in Tacoma, Washington. Shell and Texaco operate refineries in Anacortes, Washington, and produce conventional gasoline and kerosene jet fuel, among other products. Shell also produces CARB gasoline. Conventional gasoline and kerosene jet fuel are each product markets, because operators of gasoline-fueled automobiles and of jet aircraft are unlikely to switch to other fuels in response to a small but significant and nontransitory increase in the price of gasoline or kerosene jet fuel, respectively.

Puget Sound is a relevant antitrust geographic market for conventional gasoline because the refiners in this market can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. The five Seattle refineries supply virtually all of the conventional gasoline consumed in the Puget Sound market. The nearest refineries, located in California, Alaska, and Canada, are unlikely to divert gasoline from their current markets into Puget Sound in response to a small but significant and nontransitory increase in price because of transportation costs and limited access to a sufficient number of independent retail outlets. A Puget Sound price increase likely would not be defeated even if Puget Sound refiners were unable to raise price in Portland, Oregon, since Puget Sound refiners could price discriminate between Puget Sound and Portland.

The Joint Venture may also adversely affect competition in the broader geographic market of the Pacific Northwest. This market is supplied by the refiners in Washington, one refinery in San Francisco, and one refinery in Alaska. Other refiners are unlikely to enter this market. Customers in the Pacific Northwest will not practicably turn outside the market to obtain supplies for a small but significant and nontransitory increase in price. After the Joint Venture, the Puget Sound refiners could coordinate their prices. As measured by refinery capacity, the Joint Venture will increase the Herfindahl-Hirschman Index ("HHI") for conventional gasoline in Puget Sound by 1318 points to 3812, and increase the HHI in the Pacific Northwest by 561 points to 2896.

The refiners in Puget Sound also supply all of the jet fuel used by airlines at the Seattle-Tacoma International Airport. Three refiners bid to supply the airlines flying into that airport, which receives all of its jet fuel supplies by the Olympic Pipeline. Only four refiners, including Shell and Texaco, practicably can send jet fuel through that pipeline. These refiners thus have a cost advantage over more distant refineries. The Joint Venture will eliminate one of these firms as an independent bidder, raising the likelihood that the incumbents could raise prices by a small but significant and nontransitory amount before alternative supplies flow into the market. The Joint Venture will raise the HHI in this market by 481 points to 5248.

Airlines in Portland can and do obtain fuel supplies from the refiners that use the Olympic Pipeline as well as from a refinery in the San Francisco area. The Joint Venture will eliminate one of these firms as an independent bidder, thus, allowing the remaining bidders to raise prices above competitive levels. Accordingly, for airlines in Portland, the relevant geographic market is the Pacific Northwest. The Joint Venture will raise the HHI in this market by 258 points to 2503.

California requires a special formulation of gasoline, known as "CARB gasoline," which is more expensive to produce than conventional gasoline. The product market in California is therefore CARB gasoline because, by law, consumers in that state have no alternative. Most refiners in California, as well as Shell's refinery at Anacortes, can make CARB gasoline. Shell and Texaco both market CARB gasoline in California. Prices would have to rise by more than a small but significant amount over current and projected levels to induce refiners outside the West Coast to make CARB gasoline and transport it to California by tanker. The market is moderately concentrated and will be moderately concentrated after the Joint Venture. The proposed transaction will raise the HHI by 154 points to 1635.

For all three fuels in all the geographic markets, the products are homogeneous, and wholesale prices are publicly available and widely reported to the industry. Refiners therefore readily can identify firms that deviate from a coordinated or collusive price. Existing exchange agreements likely will facilitate identifying and punishing those deviating from a coordinated or collusive price. Industry members have raised prices in the past by selling products outside the market, sometimes at a loss, in order to remove supplies that had been exerting downward pressure on prices. Entry by a refiner is unlikely to be timely, likely, and sufficient to defeat an anticompetitive price increase because of environmental constraints and because new refining capacity requires substantial sunk costs. The transaction could raise the costs of conventional and CARB gasoline and kerosene jet fuel in these markets by more than $150 million.

To remedy the harm, Section II of the Proposed Consent Order requires the Proposed Respondents to divest Shell's Anacortes refinery, which refines all of the products at issue (including CARB gasoline) and sells into all of the relevant markets (including California). This divestiture will eliminate the refining overlap in the Puget Sound and Pacific Northwest markets, and reduce the increase in concentration (HHI) in the California CARB gasoline market to less than 100 points. The Proposed Consent Order also requires Shell to allow its dealers and jobbers in Washington and Oregon the opportunity to become affiliated with the acquirer. This will increase the likelihood that a viable competitor has access to gasoline and retail outlets from which it can sell the gasoline.

B. Transportation of Undiluted Heavy Crude Oil to the San Francisco Bay Area

Texaco owns a heated pipeline ("THPL") that carries undiluted heavy crude oil from the San Joaquin Valley of California to refineries in the San Francisco Bay area. THPL is the only source of undiluted heavy crude into that area. Huntway Refining Company is an asphalt refiner in the Bay area, and Shell is the only other refiner of asphalt in northern California. Shell and

Huntway together make about 85 percent of the asphalt used in northern California. Both Shell and Huntway buy undiluted heavy crude from Texaco, transported by the THPL, and refine that oil into asphalt (among other products). Northern California (north of Fresno) is the relevant geographic market for asphalt because asphalt refineries outside the region are not competitive alternatives for most customers. The transaction would allow the Joint Venture to raise Huntway's costs by increasing prices of undiluted heavy crude to Huntway relative to the price charged to Shell. (Huntway's costs would increase if it were required to purchase more expensive lighter crudes or diluted heavy crudes.) Shell could therefore raise prices of asphalt to consumers or prevent Huntway from cutting its price. Entry is unlikely to defeat this price increase. In the absence of the Proposed Consent Order, the Joint Venture could raise costs to asphalt buyers in northern California by more than three-quarters of a million dollars.

Section VII of the Proposed Consent Order eliminates this risk by requiring the Proposed Respondents to enter into a 10-year supply agreement with Huntway, the terms of which must be approved by the Commission. The parties have in fact entered into such an agreement, which constitutes a confidential exhibit to the Proposed Consent Order. The Proposed Consent Order prohibits the Joint Venture from increasing the price or reducing the volume of crude oil supplied to Huntway, and also prohibits Proposed Respondents from terminating the supply agreement (except on terms identified in that agreement). The Proposed Consent Order also provides that any amendment relating to an increase in price, a decrease in volume, or termination is ineffective until approved by the Commission.

C. Transportation of Refined Light Petroleum Products to the Inland Southeast

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines basically run parallel to each other from Louisiana to Washington, D.C., and directly compete to provide petroleum product transportation services in the inland Southeast. Texaco owns approximately 14 percent of Colonial and has representation on the Colonial board of directors. Shell owns approximately 24 percent of Plantation and has representation on Plantation's board.

The proposed transaction would put the Joint Venture in a position to influence the decisions of both pipelines. The Proposed Respondents would also be privy to confidential competitive information of each pipeline. The effect of the Joint Venture might be substantially to lessen competition, including price and service competition, between the two pipelines. The Commission has previously recognized that control of overlapping interests in these two pipelines might substantially reduce competition in the market for transportation of light petroleum products to this section of the country. *Chevron Corp.*, 104 F.T.C. 597, 601, 603 (1984). To prevent the competitive harm from the Joint Venture, Section V of the Proposed Consent Order requires the Proposed Respondents to divest to one or more third parties either Texaco's interest in Colonial or Shell's interest in Plantation.

D. Local Gasoline Distribution in Oahu, Hawaii

Gasoline and diesel fuel are supplied to Hawaii either by two refineries on Oahu (owned by Chevron and BHP) or by tanker. Most of the gasoline consumed on Oahu is produced in the two Oahu refineries. Shell, Texaco, Tosco, and the two refinery owners buy gasoline from the refineries and sell gasoline and diesel fuel at wholesale on Oahu. Terminal capacity on Oahu is essential to wholesale operations on that island: it is not economically feasible to sell directly from a refinery or a tanker or from a terminal on another island. Also, consumers of gasoline on Oahu have no alternative but to buy gasoline there. Accordingly, the relevant market in which to analyze the transaction is the wholesale sale (including terminal operations) and the retail sale of gasoline on Oahu. The markets are highly concentrated. As measured by gasoline sales from the terminal, the Joint Venture will raise the HHI by 267 points to 2160.

The market is susceptible to collusion or coordination. The Joint Venture will reduce the six competitors to five; the product at wholesale is homogeneous; and product exchanges enable the oil companies to share cost information and facilitate detection and punishment of any deviations from prices that might be coordinated. New entry is unlikely to defeat an anticompetitive price increase. An entrant would require sufficient terminal capacity and enough retail outlets to be able to buy gasoline at the tanker-load level, or 225,000 barrels (about 9.5 million gallons). Terminal capacity of this scale is unavailable in Oahu, and less than 2 percent of existing retail gasoline stations are available to affiliate with a new entrant at the wholesale level.

Section IV of the Proposed Consent Order restores competition by requiring Proposed Respondents to divest either Shell's or Texaco's terminal and retail assets on Oahu to a third party. In the absence of such relief, consumers in Hawaii are likely to pay over $2 million more for gasoline and diesel fuel.

E. Local Gasoline Distribution in San Diego County

Six vertically integrated oil companies control approximately 90 percent of the gasoline sold at both wholesale and retail in San Diego County. These oil companies require their branded retailers to buy gasoline at San Diego terminals, where these companies set the wholesale price. On average, San Diego wholesale prices exceed those in Los Angeles by more than the cost of pipeline transportation from Los Angeles to San Diego. There is no bottleneck at the pipeline preventing additional gasoline from flowing into the market to reduce the price difference between San Diego County and Los Angeles, suggesting that prices in San Diego can be and have been affected by the firms in that market. The wholesale and retail markets in San Diego County will be highly concentrated as a result of the Joint Venture, which will raise the HHI by 250 points to 1815.

There are barriers to entry at the retail level because of slow population growth, limited availability of adequate retail sites, permitting requirements, and the need to obtain a "critical mass" of stations to compete in the market. Furthermore, the extensive degree of vertical control, combined with barriers at the retail level, raises entry barriers at the wholesale level. The Joint Venture likely will enhance the prospects of collusion and tacit coordination, which could raise prices to consumers by $10 million or more.

Section III of the Proposed Consent Order restores competition by requiring the Proposed Respondents to divest to a single entity gasoline stations representing enough volume to create a viable competitor at the wholesale level and reduce concentration levels to within the thresholds of the Merger Guidelines.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the agreement's consent order.

The Commission anticipates that the Proposed Consent Order will cure the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether to make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.