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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Jon Leibowitz, Chairman** **William E. Kovacic** **J. Thomas Rosch** **Edith Ramirez** **Julie Brill**

In the Matter of **Irving Oil Limited**, **a Canadian corporation,** **and** **Irving Oil Terminals Inc.,** **a corporation.**	)	**Docket No. C-**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Irving Oil Limited and Irving Oil Terminals Inc. (collectively "Irving") and ExxonMobil Oil Corporation and Mobil Pipe Line Company (collectively "ExxonMobil") have entered into an acquisition agreement which, if consummated, would 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, and it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. RESPONDENTS

1. Respondent Irving Oil Limited is a privately-held energy processing, transporting, and marketing company organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 10 Sydney Street, Saint John, New Brunswick, Canada E2L 4K1. Irving Oil Limited is the ultimate parent entity of Irving Oil Terminals Inc.

2. Respondent Irving Oil Terminals 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 190 Commerce Way, Portsmouth, New Hampshire 03801.

3. Respondent Irving Oil Terminals Inc. supplies branded and unbranded petroleum products throughout New England to third-party distributors, retailers, various other re-sellers, and governmental and commercial end-users. Irving, through other subsidiaries, also owns retail travel plazas that sell gasoline and diesel petroleum products. In Maine, Irving Oil Terminals Inc. owns a petroleum products terminal in Searsport and co-owns a petroleum products terminal with CITGO in South Portland.

II. JURISDICTION

4. Respondents Irving Oil Limited and Irving Oil Terminals Inc. are, and at all relevant times have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are companies whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. PROPOSED ACQUISITIONS

5. On November 3, 2009, Irving announced it would acquire ExxonMobil's petroleum products terminals located in Bangor and South Portland, Maine and pipeline connecting the two terminals (collectively "Proposed Acquisitions").

IV. TRADE AND COMMERCE

Relevant Product Markets

6. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Proposed Acquisitions are gasoline terminaling services and distillates terminaling services.

7. Terminals generally consist of several storage tanks and loading racks that pump fuels into tanker trucks for further delivery. Terminals are specialized facilities connected to one or more fuel supply sources, have the capacity to store fuel shipments, and must be configured properly to distribute the fuel to customers. Light petroleum products terminals are specialized facilities that receive gasoline, diesel fuel, heating oil, kerosene, and jet fuel, among other products, by pipeline, by water, by rail, or directly from refinery production. These products are stored or redistributed by pipeline, water, rail, or truck. Terminals are critical to the sale and distribution of transportation fuels.

8. Terminaling services consist of a cluster of services related to the bulk receipt, storage, and throughput of petroleum products. Terminals also perform value-added services,

such as handling and injection of motor fuel additives (including ethanol) as petroleum products are redelivered across the truck rack.

9. Only terminals with vapor recovery equipment, internal floating roofs, and specialized environmental and safety permits can store gasoline. However, tanks configured and permitted to store gasoline can always store distillates. Thus terminals that store gasoline compete in both the gasoline terminaling services and distillates terminaling services markets. Terminals that store only distillates compete only in the distillates terminaling services market.

Relevant Geographic Markets

10. For purposes of this complaint, the relevant geographic areas in which to analyze the effects of the Proposed Acquisitions on terminaling services are the Bangor/Penobscot Bay and the South Portland areas of Maine.

11. The Bangor/Penobscot Bay area encompasses the state of Maine north of Waterville, including Bangor, Searsport, and Bucksport.

12. The South Portland area encompasses the state of Maine south of Waterville, including South Portland.

V. AFFECTED MARKETS

Gasoline Terminaling Services in the Bangor/Penobscot Bay Area

13. Irving's terminal in Searsport and ExxonMobil's terminal in Bangor are two of three terminals in the Bangor/Penobscot Bay area capable of independently offering gasoline terminaling services. Only ExxonMobil and Irving independently offer gasoline terminaling services today.

14. If the Proposed Acquisitions are consummated, Irving will control the infrastructure that delivers bulk gasoline to the Bangor/Penobscot Bay area. This control would allow Irving unilaterally to raise the price for or restrict the availability of gasoline terminaling services in the Bangor/Penobscot Bay area and raise gasoline prices to customers served from Bangor/Penobscot Bay area terminals.

Distillates Terminaling Services in the Bangor/Penobscot Bay Area

15. There are five petroleum products terminals in the Bangor/Penobscot Bay area, owned by Irving (Searsport), ExxonMobil (Bangor), Coldbrook (Bangor), Webber (Bucksport), and Sprague (Searsport).

16. Four terminals in the Bangor/Penobscot Bay area independently provide, or could provide, distillates terminaling services. The Proposed Acquisitions reduce the number of

independent distillates terminaling services competitors from four to three in the Bangor/Penobscot Bay market.

17. Post-acquisition, without competition from ExxonMobil, the remaining three independent firms would be substantially more likely to coordinate in raising fees or reducing the quality and availability of distillates terminaling services in the Bangor/Penobscot Bay market.

Gasoline Terminaling Services in the South Portland Area

18. Six firms own five terminals in the South Portland area, with Irving and CITGO sharing ownership of one of these terminals. Only three of these terminals are capable of storing gasoline. These terminals are owned by Irving and CITGO (sharing ownership of one terminal), ExxonMobil, and Gulf Oil LP ("Gulf"). The terminals owned by Sprague Energy Corporation and Global Partners LP terminals in South Portland do not store gasoline.

19. The Proposed Acquisitions reduce the number of participants in the South Portland gasoline terminaling services market from four to three and enhance the ability and incentive of the remaining participants to coordinate to increase gasoline terminaling services fees.

20. Maine receives gasoline virtually exclusively via marine vessels. Importing gasoline from Europe on large cargo vessels is less costly than the alternative of shipping it from domestic ports on smaller barges. Therefore, most Maine gasoline is imported from outside the United States. Post-acquisition, Irving will control sufficient terminal capacity in Maine to constrain the ability of others to import gasoline into South Portland terminals at current prices.

21. Because the Bangor terminals receive gasoline via the ExxonMobil pipeline from South Portland, Irving's control of this pipeline, its Searsport terminal, and the ExxonMobil South Portland terminal gives Irving the unfettered ability to raise the cost of gasoline supplied from Bangor/Penobscot Bay area terminals to retail stations and other consumers.

Distillates Terminaling Services in the South Portland Area

22. There are five petroleum products terminals in the South Portland area. Each of the five terminals in the South Portland area participates in the distillates terminaling services market. Irving and CITGO share ownership of one of these terminals. ExxonMobil, Global, Gulf, and Sprague each own one of the remaining four terminals.

23. The acquisition reduces the number of participants in the South Portland distillates terminaling services market from six to five. Post-acquisition, without competition from ExxonMobil, the remaining five firms would be substantially more likely to coordinate in raising fees for and reducing the quality and availability of distillates terminaling services in the South Portland area.

VI. ENTRY CONDITIONS

24. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the Proposed Acquisitions.

25. Entry into the relevant markets is costly, difficult, and unlikely because of, among other things, the difficulty of obtaining regulatory approvals and the presence of excess terminal capacity in both markets. A new entrant would be unlikely to invest in a new terminal, with substantial sunk costs, in these markets which already have sufficient capacity.

26. A terminal that cannot currently store gasoline is unlikely to reconfigure its tanks to store gasoline in response to an anticompetitive price increase in gasoline terminaling due to the significant cost and limited ability to attract large customer volumes.

VII. EFFECTS OF THE PROPOSED ACQUISITIONS

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

a. by eliminating actual, direct, and substantial competition between Respondents and ExxonMobil;

b. by increasing the likelihood that Respondents would unilaterally exercise market power in the relevant markets; and

c. by enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant markets.

IX. VIOLATIONS CHARGED

Count I – Illegal Acquisition

28. The allegations of Paragraphs 1 through 27 above are incorporated by reference as though fully set forth here.

29. The transactions described in Paragraph 5 above, if consummated, would substantially lessen competition in the affected markets 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.

Count II – Illegal Agreement

30. The allegations of Paragraphs 1 through 27 above are incorporated by reference as though fully set forth.

31. Respondent Irving, through the agreements described in Paragraph 5 above, has engaged in unfair methods of competition in or affecting competition in violation of 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 ________________, ____, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: