

## Statement of the Federal Trade Commission

### *In the Matter of Tesoro Corporation / BP p.l.c. FTC File No. 121-0190*

The Federal Trade Commission has closed its investigation of Tesoro Corporation's proposed acquisition of BP p.l.c.'s southern California refining and marketing business. The qualitative and quantitative evidence collected during this nine-month investigation demonstrates that the proposed acquisition is not likely to lessen competition substantially in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act.

Our experience from prior investigations in this market, and our continuing scrutiny of gasoline pricing issues on the West Coast, led us to examine Tesoro's acquisition carefully for its potential to create or enhance market power or facilitate its exercise. On several occasions in the late 1990s and early 2000s, the Commission challenged acquisitions in the market for California-grade "CARB" gasoline. These transactions occurred at a time when West Coast refineries operated near capacity, which severely restricted their individual and collective ability to increase CARB production in response to a strategic reduction in CARB supply that would have caused prices to rise.<sup>1</sup>

However, the current investigation revealed that the market dynamics for CARB gasoline have changed in important ways since the early 2000s. CARB gasoline demand has declined over the last decade, and is projected to continue to decline,<sup>2</sup> driven in part by improving vehicle fuel efficiency and the increasing use of renewable transportation fuels. This decline in gasoline demand has created excess refinery capacity marketwide that will constrain Tesoro's ability to raise CARB gasoline prices profitably post-transaction.<sup>3</sup> These broad trends, along with a detailed analysis of other evidence probative of current and likely future supply and demand conditions, left the Commission without a reason to believe this transaction is likely to substantially lessen competition.

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<sup>1</sup> See, e.g., Valero Energy Corp., FTC Dkt. No. C-4031 (Dec. 18, 2001) (Analysis of Proposed Consent Order to Aid Public Comment), available at <http://www.ftc.gov/os/2001/12/valeroanalysis.htm>; Exxon Corp., No. C-3907 (Nov. 30, 1999) (Analysis of Proposed Consent Order to Aid Public Comment), available at <http://www.ftc.gov/os/1999/11/exxonmobilana.pdf>.

<sup>2</sup> California Energy Commission Draft Staff Report, *Transportation Energy Forecasts and Analyses for the 2011 Integrated Energy Policy Report* (Aug. 2011) (predicting an annual change in California gasoline demand between 0.16% to -1.12%, from 2009-2030), available at <http://www.energy.ca.gov/2011publications/CEC-600-2011-007/CEC-600-2011-007-SD.pdf>; see also U.S. Energy Info. Admin., Dep't of Energy, Annual Energy Outlook 2013 with Projections to 2040 (April 2013) at 80 ("Motor gasoline consumption drops by approximately 1.6 million barrels per day from 2011 to 2040 in the [base] case, while diesel fuel consumption increases from 3.5 million barrels per day in 2011 to 4.3 million in 2040, primarily for use in heavy-duty vehicles."), available at [http://www.eia.gov/forecasts/aeo/pdf/0383\(2013\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2013).pdf).

<sup>3</sup> EIA, *Refinery Utilization Rates React to Economics in 2011*, Today in Energy (Mar. 20, 2012), available at [http://www.eia.gov/todayinenergy/detail.cfm?id=5470#tabs\\_RefineryUtil-1](http://www.eia.gov/todayinenergy/detail.cfm?id=5470#tabs_RefineryUtil-1).

In addition, the acquisition does not change the number of gasoline refiners on the West Coast – seven major refiners supply the West Coast today and will continue to do so after the acquisition.<sup>4</sup> While the transaction does increase concentration modestly by shifting capacity from BP to Tesoro, it does not reduce the number of refiners with the ability and incentive to use their excess capacity to respond to any effort by Tesoro or any other market participant to exercise market power. There is also evidence that the combination of Tesoro’s southern California refinery and the adjacent BP refinery is likely to reduce the cost of manufacturing CARB gasoline. Consequently, the Commission lacks reason to believe that the acquisition will result in higher gasoline prices for California consumers.

Although the specific facts associated with this transaction do not warrant Commission action at this time, the Commission is fully committed to using all the tools at its disposal to protect competition and consumers in this important economic sector.

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<sup>4</sup> BP’s Cherry Point refinery in the state of Washington is not included in the transaction with Tesoro.