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Via Federal Express (202-326-2805)

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 159
Washington, D.C. 20580

RE: ***Chevron Corp., et al. – Comments of the Petroleum Marketers Association of America on Proposed Consent Order***

Dear Mr. Secretary:

This firm represents the Petroleum Marketers Association of America ("PMAA"). PMAA is a federation of 42 state and regional trade associations representing independent petroleum marketers. Pursuant to the notice at 66 F.R. 48136, these comments are being filed on PMAA's behalf. According to the most recent data, PMAA's federated associations represent approximately 7,500 independent petroleum marketing companies. Throughout the U.S., these companies, in the aggregate, market over 51% of the motor gasoline, 81% of the distillate fuel oil and similar percentages of diesel fuel and lubricating oils, through approximately 80,000 retail outlets (almost 45,000 of which they own), as well as directly to: government, farm, industrial and commercial customers.

I. Interest of the PMAA

PMAA is, of course, interested in the Chevron-Texaco merger as it affects the almost 2,000 marketer members of its federated associations who currently wholesale and/or retail under the Texaco, Shell and Chevron brands. In that regard, PMAA fully endorses the comments of its National Partner, the National Association of Texaco and Shell Marketers ("NATSM") which are also being filed with your office today.

PMAA joins NATSM in applauding the Commission for its recognition of the important role played by independent marketers generally and, Texaco and Shell branded marketers in this matter, in providing competition to the retail motor fuels marketplace. Section IV of the proposed Consent Order contains several measures clearly aimed at protecting the ability of Shell and Texaco marketers to continue to take part in this vital competition. PMAA also supports the few, very targeted suggestions made in the NATSM comments because it agrees that, should these suggestions be implemented, the goals of the Commission and staff in promulgating the requirements in Section IV, would be far more likely of achievement.

PMAA's interest in this matter is, however, broader than the concerns of the marketers who sell under these brands. As the only national representative of the independent companies that collectively are the principal provider of petroleum products to the American public, PMAA is concerned with the impacts the current round of consolidation of its members' suppliers (refiners) will have, on both their own competitive viability and the entire retail-wholesale marketplace for the vital products they distribute.

The speed and comprehensiveness of this most recent upstream consolidation can best be understood by noting that, of the 15 refining companies that accounted for over 91% percent of the US gasoline consumption in 1995, all but one (Sun) will have participated in a major merger by the close of this year. And, of course, the FTC is currently considering yet another industry merger, that between Valero and UDS. This would create the second largest refining company in the country. The combined Valero-UDS would trail only Exxon-Mobil, whose merger created the world's largest integrated petroleum company just two years ago.

These and the earlier mergers between: Tosco and Circle K, then Tosco and 76 Products Company in 1996 and 1997, and Tosco and Phillips just a few weeks ago, follow on the heels of those of Conoco and Kerr McGee in 1995; Ultramar and Diamond Shamrock in 1996 and Total in 1997, the Ashland-Marathon merger and Shell-Texaco-Star joint ventures, PDVSA's (Citgo) purchase of Unocal's interest in Uno-ven in 1997. More recently were BP's merger with Amoco in 1999 and its acquisition of Arco in 2000. Combined, they have drastically altered the American motor fuel marketplace. These mergers have impacted, in important ways, on the competitive posture of PMAA's membership.

II. How Viable Marketer Competition Benefits Consumers

Simply stated, the 7,500 marketer members of PMAA's federated associations are the US refining industry's principal customers. While the majority of PMAA's members market under one or more major oil company brands, the functioning of these independent companies has traditionally been controlled only modestly through contractual arrangements with refiner-suppliers. Their independence has allowed them to serve as aggressive competitors in the consumer market for petroleum products and as a conduit, transmitting downstream competitive marketplace pressures up to their refiner-suppliers.

In the motor fuel arena, for example, PMAA's members, simply by virtue of their aggregate size and market coverage, make up the critical mass of competition for consumers of petroleum and convenience store items. In fact, with the exception of a few high population urban areas, in most markets, these independent marketers comprise approximately three-quarters of the convenience retail and motor fuel sales. Any threat to their ability to aggressively compete for market share (principally against one another) through offers of better goods and services at lower prices, can do nothing but harm the ultimate consumer of these goods and services.

Gasoline pricing presents an excellent example of the salutary effects the competition, fostered by these independent marketers generates for consumers. Since 1993, the average gross retail margin on a gallon of gasoline has been reduced by approximately two percent per year, throughout the United States.

This direct result of the innovation and competition by and among independent marketers is, however, not the only price or non-price benefit received by consumers as a result of their strong and vibrant role in the marketplace. Their continuing ability to switch refiner-suppliers, a phenomena often cited by the Commission as "fuel switching," transmits retail market pressures to their major oil company suppliers, forcing them in turn, to keep their wholesale prices and other corporate offerings to their distributors, in a competitive mode. Even though, industry consolidation has cut down on this phenomena somewhat, this firm's own experience in representing marketers of every brand in every state, allows us to incontrovertibly assure the Commission that fuel switching still remains a very real check on refiner-suppliers' ability to remain aloof from competitive realities in the retail marketplace.

This results in lower prices to the distributor which, being caused by retail competition, are virtually always passed on to the end user consumer. These savings are magnified, as shown above, by the increasingly lower gross profit margin added by independent marketers to this lowered wholesale price. In addition, the ability of marketers to force their suppliers to meet competitive offers of others, hastens the spread of consumer desired services. One good example is the recent (post 1997) introduction of convenient credit card readers in gasoline dispensers, at no extra cost.

III. <u>Upstream Merger Impact on Competition in Petroleum Marketing</u>

The industry mergers that have recently occurred and are currently under consideration should result in a more cost efficient petroleum industry. Whether these cost savings are passed on to the consuming public or retained by the refining corporations, however, depends on competitive pressures at retail being transmitted to the distant, global, Fortune 500 companies that are the providers of the fuel sold to consumers. As has been shown above, industry consolidation helps insulate these corporate headquarters denizens from such competitive pressures. Industry consolidation has had this impact because it diminished the opportunity of a marketer customer of one company to abandon a non-competitive supplier for a more competitive one. The fact that "fuel switching" by distributors has not disappeared, however, is further attested to by the actions of refiner-suppliers over the last several years in taking additional steps to thwart it. Through contractual measures such as liquidated damages clauses, longer term contracts and amortization schedules, they have attempted to further reduce their marketers' freedom to move by vastly increasing the economic costs of such a step.

The Commission's proposed remedies in Section IV of the Consent Order recognize this dangerous trend. The proposal to incentivise Shell (the probable purchaser of the Motiva and Equilon wholesale and retail assets) to waive such penalties or alternatively order Chevron-Texaco to indemnify marketers from them, should Shell not choose to do so, would eliminate these contractual fetters to marketplace indicated movement. Thus, the proposed Consent Order is clearly attempting to free up the hundreds of currently Texaco branded marketers to respond to market forces and to continue as active market participant-competitors in their respective geography under other brands. The provisions aimed at keeping the Texaco brand viable for a longer period of time likewise recognize the competitive value of a premier brand. The Commission has made similar, situationally appropriate, attempts to maintain the competitive role independent marketers play in both the BP-Amoco and Exxon-Mobil consent orders.

This recognition of the value of there being many competitors in each individual petroleum marketplace embraces Cournot's maxim that, generally speaking, where there are more competitors, there is more competition.

IV. Specific Recommendations

PMAA, as stated above, believes that the NATSM proposals on: (i) the Equilon-Motiva use of the Texaco brand, (ii) the loosening of the qualification requirements for the Chevron indemnity and (iii) the broadening of the time period under which a marketer might qualify for these alternative avenues of relief from payment of unamortized incentive funds, should be adopted in the final Consent Order.

As a general matter, PMAA urges the Commission take additional steps, whether in this, other merger, investigative or rulemaking proceedings or by other means, to proscribe petroleum franchisors from placing uncompetitive restraints on the ability of their franchisees to provide the maximum competitive force in their respective markets. Thus, PMAA recommends that the Commission, through policy or regulation, take the following action.

1. Proscribe refiner "redlining". This practice, which allows a refiner to exclude a marketer from a geographic area in which it has traditionally marketed, restricts the number of competitors in such a market and weakens the ability of affected marketers to be viable competitors in any market in which they participate.

2. Preserve marketers' ability to "fuel switch" by proscribing contract clauses whose clear goal is to tie the marketer to it beyond the period of time necessary for it to receive a fair return on the refiner's investments in its image or trade dress.

3. Require, in all future merger proceedings, that there be no diminution in the percentage contribution of the respondents' pre-merger finished product production offered to the unbranded market on competitive terms.

4. Work with other federal and state agencies such as the Environmental Protection Agency to diminish anti-consumer affects of environmental and other regulations.

V. Conclusion

PMAA is gratified that over the last several years, the Commission and its staff have gained a far greater understanding of the petroleum industry, including petroleum marketing. It trusts that this greater understanding and awareness, of both the vital nature of the industry to the US economy and the threats to competition that industry faces today, will result in more innovative and effective commission actions to preserve that competition.

Respectfully Submitted,

For: Petroleum Marketers Association of America

By: Robert S. Bassman
Bassman, Mitchell & Alfano, Chartered

RSB:bdw
cc: Dan Gilligan, President, PMAA (via fax)