

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

In the Matter of)
)
 Valero Energy Corporation,)
 a corporation,)
)
 and)
)
 Ultramar Diamond Shamrock)
 Corporation,)
 a corporation.)
_____)

Public Record Version

Docket No. C-4031
DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger involving Respondents Valero Energy Corporation (“Valero”) and Ultramar Diamond Shamrock Corporation (“Ultramar”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if

stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and accepted the executed Consent Agreement and placed such Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Valero Energy Corporation 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 Valero Place, San Antonio, Texas 78212.
2. Respondent Ultramar Diamond Shamrock Corporation 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 6000 N. Loop 1604 West, San Antonio, Texas 78249.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Valero” means Valero Energy Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Valero, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Ultramar” or “UDS” means Ultramar Diamond Shamrock Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Ultramar, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “California CARB Refining and Marketing Assets” means the following assets: (1) Ultramar’s Golden Eagle refinery located at Avon, California and all of Ultramar’s interest in all tangible assets used in the operation of the refinery, including but not limited to docks, associated tanks, and pipelines; all licenses, agreements, contracts,

and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; all agreements, contracts, and understandings listed in Schedule A, attached as a confidential attachment; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Schedule A) relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements (other than those listed in Schedule A) under which Ultramar receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all

other intellectual property used by Ultramar in the operation of the refinery; all agreements, contracts and understandings listed in Schedule A; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Schedule A) relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output to the extent they relate to the refinery's petroleum product output; at the acquirer's option, all agreements (other than those listed in Schedule A) under

- M. “Ultramar’s California Retail Assets” means all of Ultramar’s Retail Assets relating to all Retail Sites in California that Ultramar operates.
- N. “Ultramar’s Divestiture Retail Assets” means all of Ultramar’s Retail Assets relating to the Retail Sites that are listed in Schedule B.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Golden Eagle CARB Refining and Marketing Assets 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, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents execute the Consent Agreement.
- B. Respondents shall offer the acquirer of the Golden Eagle CARB Refining and Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Golden Eagle CARB Refining and Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Golden Eagle refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.
- C. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer’s efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents), substitute equivalent assets, subject to Commission approval. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or lower cost.
- D. With respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the acquirer’s option, Respondents need not divest such assets or enter into such agreements only if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- E. The purpose of the divestiture of the Golden Eagle CARB Refining and Marketing Assets, and of the other provisions of this Paragraph, is to ensure the continued use of the Golden Eagle CARB Refining and Marketing Assets as viable, on-going businesses, in the same businesses in which they were engaged at the time of the announcement of the Merger, including the refining and bulk supply of CARB Gasoline and other petroleum products, by a firm that has a sufficient ability and an equivalent incentive to invest and compete in the assets and businesses as Ultramar had before the Merger, and to remedy the lessening of competition in the refining and bulk supply of CARB Gasoline and other petroleum products resulting from the proposed Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not, within the time periods required, complied with the requirements of Paragraph II, absolutely and in good faith, the Commission may appoint a trustee to effectuate the divestiture required by Paragraph II; provided, however, that the trustee may, subject to the approval of the Commission, substitute the California CARB Refining and Marketing Assets for the Golden Eagle CARB Refining and Marketing Assets.
- B. In the event that the Commission or the United States 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 United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.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 select the trustee or trustees, 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 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, assign the agreements required to be assigned, and enter into the required agreements, thereby binding Respondents, all on such terms and conditions as are necessary to comply with the requirements of the applicable paragraph, to comply with all applicable laws, and to effectuate the remedial purposes of this Order. Subject to the prior approval of the Commission, the trustee shall have the sole authority to divest the assets described in Paragraph III.A in smaller packages as the trustee deems necessary to effectuate divestiture of the assets and to effectuate the remedial purposes of this Order.
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 III.C.3. to accomplish the divestiture to an acquirer that receives the prior approval of the Commission and in a manner that receives 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.
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

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 approved by the Commission, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity for

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 III.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.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all 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, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that if (1) within the time period required for divestiture pursuant to Paragraph II of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

SEAL

ISSUED: February 19, 2002

[Redacted From Public Record Version]

SCHEDULE B

<u>Store</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Zone Number</u>	
3674	851 N. Highway 49	Jackson	CA	95642	351	
3609	1021 South St	Orland	CA	95963-1640	351	
3621	18475 N Highway 1	Fort Bragg	CA	95437-8774	351	
3622	1250 S Main St	Willits	CA	95490-4306	351	
3623	1105 S State St	Ukiah	CA	95482-6410	351	
3628	812 Main Street	Weaverville	CA	96093	351	
3678	585 E Perkins St	Ukiah	CA	95482-4508	351	
3679	440 S Main St	Red Bluff	CA	96080-4316	351	
3680	506 6th St	Orland	CA	95963-1229	351	
3692	975 S Main St	Lakeport	CA	95453-5512	351	
3693	15010 Lakeshore Dr	Clearlake	CA	95422	351	
3544	7920 Brentwood Blvd	Brentwood	CA	94513-1004	351	
3558	42245 Fremont Blvd	Fremont	CA	94538-4143	351	
3594	40500 Fremont Blvd	Fremont	CA	94538-4304	351	
3604	1619 1st St	Livermore	CA	94550-4303	351	
3712	4321 Clayton Rd	Concord	CA	94521-2842	351	
3713	2501 Pacheco Blvd	Martinez	CA	94553-2043	351	
3714	3767 Alhambra Ave	Martinez	CA	94553-3803	351	
3715	1616 Oak Park Blvd	Pleasant Hill	CA	94523-4410	351	
3716	1990 San Ramon Valley Blvd	San Ramon	CA	94583-1204	351	
3717	2098 Mt Diablo Blvd	Walnut Creek	CA	94596-4302	351	
3720	1088 Marina Blvd	San Leandro	CA	94577-3437	351	
3721	44 Lewelling Blvd	San Lorenzo	CA	94580-1628	351	
3520	2998 Churn Creek Rd	Redding	CA	96002-1130	351	
3521	2071 North St	Anderson	CA	96007-3456	351	
3549	3212 S Market St	Redding	CA	96001-3530	351	
3572	2700 Gateway Dr	Anderson	CA	96007-3531	351	
3630	37303 State Highway 299 E	Burney	CA	96013-4371	351	
3088	I-5 & Road 8	Dunnigan	CA	95937	351	
3428	5040 El Camino Ave	Carmichael	CA	95608-4650	351	
3447	3 Main St	Woodland	CA	95695-3123	351	
3527	601 Sunrise Ave	Roseville	CA	95661-4109	351	
3542	4250 Madison Ave	North Highlands	CA	95660-5403	351	
3601	8070 N. Lake Blvd	Kings Beach	CA	95719	351	
3603	95608-4650					
		3520	North Highlands	CA	95660-5403	351
					3542	9566

3725	1598 Alum Rock Ave	San Jose	CA	95116-2425	351
3786	921 W Hamilton Ave	Campbell	CA	95008-0405	351
3489	921 Sebastopol Rd	Santa Rosa	CA	95407-6830	351
3645	300 College Ave	Santa Rosa	CA	95401-5118	351
3700	7898 Old Redwood Hwy	Cotati	CA	94931-5107	351
3701	219 Healdsburg Ave	Healdsburg	CA	95448-4103	351
3702	8850 Sonoma Hwy	Kenwood	CA	95452-9024	351
3703	2601 Lakeville Hwy	Petaluma	CA	94954-5654	351
3704	1080 Gravenstein	Sebastopol	CA	95472	351
3502	35 N Cherokee Ln	Lodi	CA	95240-2411	351
3513	401 W Kettleman Ln	Lodi	CA	95240-5741	351
3696	2448 W Kettleman Ln	Lodi	CA	95242-4123	351
3756	13975 E Highway 88	Lockeford	CA	95237-9549	351
3378	1800 W Imola Ave	Napa	CA	94559-4619	351
3416	1300 Trancas St	Napa	CA	94558-2912	351
3522	800 Merchant St	Vacaville	CA	95688-6912	351
3682	1105 N 1st St	Dixon	CA	95620-2404	351
3706	385 Silverado Trl	Napa	CA	94559-4013	351
3707	800 St. Helena Hwy	Saint Helena	CA	94574	351
3710	3438 Broadway St	Amer. Canyon	CA	94589-1254	351
3711	1295 Marine World Pkwy	Vallejo	CA	94589-3104	351