Trans No.	Acquiring	Acquired	Entities
20021077	J. Joe and Marlene M. Ricketts	Ameritrade Holding Corporation	Ameritrade Holding Corporation.
Transactions Granted Early Termination—08/21/2002			
20021049	Terex Corporation	Robert R. Wilkerson	Genie Holdings, Inc.
Transactions Granted Early Termination—08/22/2002			
20021080	Dr. Michael W. J. Smurfit	Smurfit-Stone Container Corporation	Smurfit-Stone Container Corporation.
Transactions Granted Early Termination—08/23/2002			
20021083	Riverdeep Group plc	Alex E. Gores	Broderbund Properties, LLC.
20021087	Dexia S.A	The PMI Group, Inc	Broderbund, LLC and Fairbanks Capital Holding Corp.
20021088	Bureau Veritas S.A	U.S. Laboratories Inc	U.S. Laboritories Inc.
20021093	Metalurigica Gerdau, S.A	Co-Steel Inc	Co-Steel Inc.
20021095	Questor Partners Bermuda, L.P	Fiat S.p.A	Fonderies du Poitou Aluminum S.A. Founderies Aluminum Cleon S.A. Teksid Aluminum Components Inc. Teksid Aluminum Fondry Inc. Teksid Aluminum SpA. Teksid Aluminumn Poland S.p.Z.o.o. Teksid do Brasil Aluminio Ltda. Teksid France S.A. Teskid Investment Aluminum B.V.
Transactions Granted Early Termination—08/27/2002			
20021091	Japan Airlines Company, Ltd	Japan Air System Co., Ltd	Japan Air System Co., Ltd.
20021092	Japan Air System Co., Ltd	Japan Airlines Company, Ltd	Japan Airlines Company, Ltd.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Hallman, Contact Representative, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–22796 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0040]

Conoco Inc. and Phillips Petroleum Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 2, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Mark Menna, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2722.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 30, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/08/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'' or ''FTC'') has issued a complaint (''Complaint'') alleging that the proposed merger of Phillips Petroleum Company (''Phillips'') and Conoco Inc. (''Conoco'') (collectively ''Respondents'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The Commission and Respondents have entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets and certain other relief (''Proposed Order'') and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (''Hold Separate Order''). The Proposed Order remedies the likely anti-competitive effects arising from Respondents' proposed merger, as alleged in the Complaint. The Order to Hold Separate and Maintain Assets preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Phillips, headquartered in Bartlesville, Oklahoma, is an integrated oil company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; refining, marketing, and transportation of petroleum products; and production and marketing of chemicals. Phillips is the nation's third largest refiner and fourth largest gasoline marketer, with approximately 10 percent of the United States refining capacity and 9 percent of gasoline marketing. In 2001, Phillips had revenues of $47.7 billion. Phillips has significant terminal facilities that it uses to distribute gasoline and other petroleum products to its customers. Phillips owns or licenses several gasoline brands under which gasoline is sold at approximately 11,700 stations throughout the United States. Phillips owns approximately 1,700 outlets in the Mid-Atlantic and Northeastern areas of the United States. These outlets currently sell gasoline under the Exxon and Mobil brands. Of the approximate 10,000 other outlets, primarily located outside the Mid-Atlantic and Northeastern United States, the great majority are owned and operated by independent marketers and dealers. Phillips also owns slightly more than 30 percent of Duke Energy Field Services, LLC (''DEFS''). DEFS is a significant gather of natural gas throughout the United States and has interests in many fractionation facilities throughout the United States.

Conoco, headquartered in Houston, Texas, is a fully integrated petroleum company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; and refining, marketing, and transportation of petroleum products. In 2001, Conoco had revenues and net income of $39.5 billion and $1.6 billion, respectively. Conoco has approximately 3 percent of refining capacity and 3 percent of gasoline sales in the United States, making it approximately the nation's eleventh largest refiner and ninth largest gasoline seller. Conoco owns petroleum product terminals throughout the United States. Conoco brand gasoline is sold through approximately 5,000 stations primarily located in the Southeast, Southwest, Mid-continent, and Rocky Mountain areas of the United States. The great majority of these stations are owned and operated by independent distributors and dealers.

On November 18, 2001, Phillips and Conoco entered into an agreement to merge the two firms into a corporation to be known as ConocoPhillips, the estimated capital value of which, as of the date of the agreement, was approximately $35 billion. ConocoPhillips would be the third-largest integrated U.S. energy company based on market capitalization, and oil and gas reserves and production. Worldwide, it will be the sixth-largest energy company based on hydrocarbon reserves and the fifth-largest global refiner.

III. The Complaint

The Complaint alleges that the proposed merger and its consummation 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. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) The bulk supply of light petroleum products (a) in Eastern Colorado and (b) in Northern Utah; (2) light petroleum product terminaling services in the metropolitan statistical areas (''MSAs'') of Spokane, Washington and Wichita, Kansas; (3) the bulk supply of propane in (a) Southern Missouri, (b) the St. Louis MSA, and (c) Southern Illinois; (4) natural gas gathering in more than 50 sections of the Permian Basin; (5) and fractionation in Mont Belvieu, Texas.

Count I of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Eastern Colorado. Both Phillips and Conoco compete within this market. The Complaint alleges that the merged firm would have more than 30 percent of the market, which will be highly concentrated post-merger. The Complaint further alleges that the proposed merger would lead to higher prices for light petroleum products because the merged firm, in combination with other similarly situated firms, could profitably coordinate to raise prices and reduce output in Eastern Colorado. Successful coordination is likely because: (1) Prices for bulk supplies are transparent; (2) the merged firm and its similarly situated competitors have the ability to inexpensively divert bulk supplies away from Eastern Colorado to other markets; (3) other sources of bulk supply to Eastern Colorado are already largely at capacity (products pipelines and local refineries) or suppliers have no economic incentive to divert light petroleum products from more lucrative areas in the Rockies to Eastern Colorado; and (4) cheating on the coordination could be detected and punished by coordinating firms. Furthermore, there is some evidence that some degree of coordination has been lifting prices in areas of the Rockies outside of Eastern Colorado.

Count II of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Northern Utah. Phillips competes in this market through its ownership of a refinery in Salt Lake City, and Conoco competes in this market through its 50 percent undivided ownership interest in Pioneer Pipeline, the only pipeline bringing bulk supplies of light petroleum products into Northern Utah. The Complaint alleges that the merged firm would own or control about 24 percent of the refining and pipeline capacity serving Northern Utah, and that Northern Utah will be highly concentrated after the merger. The Complaint asserts that in highly concentrated markets, increasing concentration is likely to facilitate and more completely give effect to tacit coordination. With respect to entry into the bulk supply market, the Complaint alleges that in either Eastern Colorado or Northern Utah, entry is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count III of the Proposed Complaint concerns terminaling services in the Spokane, Washington MSA. Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline, and then redeliver these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. There are no economic substitutes for petroleum terminals. The Complaint alleges that Conoco and Phillips are two of the only three providers of terminal services in Spokane. The Complaint further alleges that the merged firm would be able to unilaterally, or in concert with others, raise prices of terminaling services in Spokane. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IV of the Proposed Complaint concerns terminaling services in the Wichita, Kansas MSA. There are five firms currently providing terminaling services in the Wichita market. Some of these competitors are unlikely to restrain a price increase in the future. The Complaint charges that the terminaling of light petroleum products in Wichita is highly concentrated, and would become significantly more concentrated as a result of the merger. The Complaint alleges that the merged firm would be able to coordinate or raise prices unilaterally in Wichita. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count V of the Proposed Complaint concerns the bulk supply of propane in Southern Missouri. Propane is a versatile fuel used by residential, industrial and agricultural consumers. It is produced as part of the crude refining process or extracted from natural gas. Bulk supply of propane is the provision of large quantities of propane to an area for distribution by wholesale distributors. In most of its applications, propane is used where natural gas is not available. The Complaint charges that Phillips and Conoco are two of four bulk suppliers of propane in Southern Missouri. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. In Southern Missouri, the merged firm would control the vast majority of the propane market. The Complaint alleges that the merger likely would enable ConocoPhillips to unilaterally raise prices (or reduce output) or to coordinate with other suppliers in the bulk supply of propane in Southern Missouri. Entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Counts VI and VII of the Proposed Complaint concern the bulk supply of propane in the St. Louis MSA and Southern Illinois areas, respectively. There are four bulk suppliers in St. Louis and Southern Illinois. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. The Complaint alleges that ConocoPhillips could raise prices unilaterally or in concert with others. The Complaint further alleges that entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count VIII of the Proposed Complaint concerns natural gas gathering in several areas of the Permian Basin. The Permian Basin is an oil and gas rich area of western Texas and southeastern New Mexico. The relevant markets are limited to many small areas within Eddy, Chavez and Lea counties in New Mexico and Schleicher County, Texas. The likely production rates of the natural gas fields in the overlap areas and cost of building gathering lines in the Permian Basin limit the markets to areas with a radius of no more than three miles. Phillips owns about 30 percent of DEFS. Conoco is a substantial competitor in providing gathering services in the Permian Basin. The Complaint alleges that DEFS and Conoco are the only competitors in the areas identified by the Commission. The Complaint alleges that after the merger, ConocoPhillips' complete or partial ownership of the only two gathering systems would likely reduce competition. The Complaint alleges that there are substantial costs to entering the gathering business such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IX of the Proposed Complaint concerns fractionation of raw mix into specification products, such as butane and ethane. The Complaint alleges that there is no alternative to fractionation services. Many pipelines deliver raw mix and transport fractionated specification products from Mont Belvieu, Texas. There are four fractionators in Mont Belvieu. Mont Belvieu is an active trading hub for each specification product. DEFS owns an interest in two fractionators and Conoco has an interest in a third fractionator. The Complaint alleges that the combined firm would have access to competitively sensitive information of Mont Belvieu fractionators accounting for more than 70 percent of the market capacity and would have veto rights over significant expansion decisions. The Complaint further alleges the merger would reduce competition by allowing fractionation competitors to share information and exercise veto rights over expansion decisions. The Complaint charges that there are substantial entry barriers in fractionation in Mont Belvieu such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

IV. The Proposed Consent Order

The Proposed Order is designed to remedy the alleged anti-competitive effects of the proposed merger. Under the terms of the Proposed Order, the merged firm must: (1) Divest the Phillips refinery located at Woods Cross, Utah, and all of Phillips' related marketing assets served by that refinery; (2) divest Conoco's Denver refinery located at Commerce City, Colorado, and all of Phillips' marketing assets in Eastern Colorado; (3) divest Phillips light petroleum products terminal in Spokane, Washington; (4) enter into a petroleum products throughput agreement that includes an option to buy a 50 percent undivided interest in Phillips' Wichita, Kansas, light petroleum products terminal; (5)(a) divest Phillips' propane terminal assets in Jefferson City, Missouri, and East St. Louis, Illinois; and (b) provide a long-term propane supply agreement; (6) divest certain Conoco natural gas gathering assets in New Mexico and Texas, including Conoco's Maljamar processing facility and enter into a long-term agreement to process natural gas gathered in Texas; and (7) create firewalls that prevent the transfer of competitively sensitive information among Mont Belvieu fractionators.

A. Phillips Woods Cross Assets

Paragraph II of the Proposed Order requires the divestiture of the Phillips Woods Cross assets to restore competition in the bulk supply of light petroleum products in Northern Utah. The assets to be divested include Phillips' refinery located in Woods Cross, Utah, and substantially all of the related distribution, marketing and retail operations. This includes the refinery, crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery. The assets to be divested also include all gasoline retail stations currently owned by Phillips and served by the Woods Cross refinery and, by assignment, all Phillips' agreements with marketers served by the Woods Cross refinery. Respondents will also be required to provide to the buyer of the assets Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

The Proposed Order will require Respondents to grant to the acquirer an exclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell gasoline, kerosene, diesel fuel and any other product typically sold at a gasoline station through the gasoline outlet channel of distribution and a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell those products typically sold in gasoline stations (*e.g.*, motor oil) outside of the gasoline outlet channel of distribution.

The assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

B. Colorado Assets

Paragraph III of the Proposed Order requires the divestiture of refinery and marketing assets to restore competition in the bulk supply of light petroleum products in Eastern Colorado. The assets to be divested include Conoco's refinery located in Commerce City, Colorado, and all of the related distribution assets, including crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery, and pipelines assets ensuring the distribution of jet fuel.

The assets to be divested also include: (1) All gasoline retail stations that are currently owned by Phillips located in Colorado and, by assignment, all Phillips' agreements with marketers served by Phillips' Eastern Colorado bulk supply assets; (2) an exclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell gasoline, kerosene, diesel fuel and any other product typically sold at a gasoline station through the gasoline outlet channel of distribution; (3) a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell products typically sold at gasoline stations (*e.g.*, motor oil) through channels outside of gasoline outlets; and (4) provision of Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

These refinery and marketing assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

C. Phillips' Propane Assets

Paragraph IV of the Proposed Order restores competition in bulk supplies of propane by requiring Respondents to divest the Phillips propane business and associated assets to a buyer receiving prior approval of the Commission by January 15, 2003. Respondents must divest all the physical assets (storage, truck racks, pipelines connecting the storage tanks to common carrier pipelines and truck racks) related to Phillips' propane terminal operations in Jefferson City, Missouri, and East St. Louis, Illinois. Phillips must also assign all propane supply agreements between Phillips and its customers from those terminals. The acquirer will have the unqualified ability to expand the propane terminal assets. The Proposed Order also imposes restriction on Respondents to ensure that the buyer of the propane business obtains nondiscriminatory access to the Blue and Shocker Lines. With access to the Blue Line and Shocker Line common carrier pipelines, the acquirer will be able to ship propane to the Jefferson City or East St. Louis terminals from the propane markets in Conway, Kansas. Until the propane assets are divested, Respondents must maintain the viability and the marketability of those assets.

Paragraph IV.D requires Respondents to, by the date of divesting the Propane Business, enter into a propane supply contract with the acquirer of the divested propane business. The contract must give the acquirer the ability to purchase propane at a price equal to the price at Conway, Kansas, plus the Blue Line and Shocker Line tariffs from Conway to the applicable terminal.

Respondents must also enter into a terminal operating agreement with the buyer of the propane business. The agreement must provide for the maintenance, upkeep, repair, security, and operation of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals at Respondents' actual costs.

In the event that Respondents are unable to divest the propane business by January 15, 2003, to a buyer receiving prior approval of the Commission and in a manner approved by the Commission, Respondents must divest: (1) A 50 percent undivided interest in the Blue Line between Borger, Texas, and the connection to the Shocker Line (near Wichita, Kansas); (2) the Shocker Line; (3) Respondents' entire interest in the Blue Line from the connection with the Shocker Line to the East St. Louis, Illinois terminal; (4) the East St. Louis terminal; (5) the Jefferson City, Missouri terminal, and (5) the Ringer, Kansas terminal.

D. Phillips' Spokane Terminal

Paragraph V of the Proposed Order requires the Respondents to divest the Phillips terminal in Spokane, Washington, no later than six months after the date Respondents execute the Agreement Containing Consent Orders. The acquirer of the Phillips Spokane Terminal must have the prior approval of the Commission. Until Phillips Spokane Terminal is effectively divested, Respondents will be required to maintain the viability and the marketability of the terminal. The purpose of the sale of Phillips Spokane Terminal is to maintain the existing level of competition.

E. Phillips' Wichita Terminal

Paragraph VI of the Proposed Order requires the parties to enter into a 10-year products throughout agreement with Williams Pipe Line Company, LLC (''Williams''), or another firm, receiving the prior approval of the Commission, within nine months of Respondents' execution of the Agreement Containing Consent Orders. Williams owns and operates common carrier refined products pipelines and terminals serving, among others, the Mid-continent areas of the United States. The throughput agreement must provide for at least 8,500 barrels per day and cannot specify a minimum volume. The agreement must also provide for the acquisition of additive and information technology services, and provide an option to purchase a 50 percent undivided interest in Phillips terminal assets in Wichita, Kansas.

F. Natural Gas Gathering

Paragraph VII of the Proposed Order requires the Respondents to divest all of Conoco's natural gas gathering, compression, processing and transportation assets within specified areas of Chavez, Lea and Eddy Counties in New Mexico, within nine months from the date Respondents execute the Agreement Containing Consent Orders. These assets include Conoco's Maljamar Processing Plant, and all necessary agreements or contracts related to the operation of that plant. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and Maintain Assets.

Paragraph VIII of the Proposed Order requires the Respondents to divest all of Conoco's assets related to the gathering, compression, transportation or sale of natural gas within Schleicher County, Texas, within nine months from the date Respondents execute the Agreement Containing Consent Orders. This includes all gathering pipelines and any related contracts or agreements. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and Maintain Assets. In addition, Respondents must enter into a processing agreement with the buyer of the divested assets. The processing agreement must allow the buyer to process at least the same volume of natural gas that is currently gathered on the system at Conoco's cost. This cost includes all direct costs, including raw materials, labor, utilities and third-party contract services actually used to provide services to the acquirer of the gathering assets. In addition, cost may include the *pro rata* share of the cost of the capital employed in the processing plant and indirect costs related to operating the processing plant, including taxes, depreciation, overhead and third-party contracts.

G. Fractionation

Paragraph IX of the Proposed Order contains four ensuring that Respondents cannot transfer competitively sensitive information among fractionators or exercise voting rights to thwart expansion. First, beginning at the date of execution of the Agreement Containing Consent Orders, the Proposed Order prohibits Respondents from sharing competitively sensitive fractionation information with DEFS, Duke (owner of approximately 70 percent of DEFS), or any DEFS Board Member. Second, Respondents may not receive from Duke, DEFS, or any DEFS Board Member any competitively sensitive fractionation information of DEFS. Third, ConocoPhillips DEFS Board Members may not participate in any discussions with DEFS or Duke relating to the three fracitonators in which Respondents and DEFS own an interest. Fourth, ConocoPhillips DEFS Board Members may not participate in any vote of the DEFS board, unless such a vote is necessary and, if such a vote is necessary, then the ConocoPhillips DEFS Board Members must vote is the same way as the majority of the Duke DEFS Board Members.

H. Other Terms

Paragraph X sets the guidelines for the appointment and powers of a Divestiture Trustee should the Respondents fail to complete one or more of the divestitures discussed above. Paragraph XI requires the Respondents to provide the Commission with a report of compliance with the Proposed Order every sixty days until the divestitures are completed. Paragraph XII provides for notification to the Commission in the even of any changes in the Respondents. Paragraph XIII requires the Respondents to provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Paragraph XIV provides, among other things, that if a State fails to approve any of the divestitures contemplated in the Proposed Order, then the period of time required under the Proposed Order for such divestiture will be extended for ninety days. Finally, Paragraph XV provides that the Proposed Order will terminate ten years after the date the Order becomes final.

V. Gasoline Retail and Marketing Assets

In this instance, the Commission is not seeking gasoline marketing relief outside the bulk supply areas discussed above (Eastern Colorado and Northern Utah). After a thorough investigation, the Commission concluded that the proposed merger of Phillips and Conoco is not likely to have any anticompetitive effect on gasoline marketing the Mid-continent, Southeastern, or Southwestern United States. The Commission considered several factors in reaching its decision not to seek relief in those areas. First, Phillips and Conoco own and/or operate few retail outlets. With the exception of a small number of cities, Phillips and Conoco gasoline distribution relies significantly on independent gasoline marketers. Further, Conoco and Phillips, unlike the other major refiners, have not imposed significant costs of switching brands or de-branding on the predominant share of their marketers. Neither Phillips nor Conoco engage in redlining or zone pricing in areas investigated in this merger. Thus, the degree of vertical control over jobbers by Conoco and Phillips in these regions is significantly less than that exercised by other refiners in other parts of the country. Further, the Commission has found significant growth of low-priced gasoline retailing by supermarkets, club stores and mass merchandisers. The entry of these gasoline distribution competitors likely will prevent the merging firm from raising prices in the Mid-continent, Southeast and Southwest. In addition, entry by these low-priced competitors has induced jobbers to switch branch and de-brand. Entry and growth by low-priced formats are likely to continue in these areas, in part, because of a plentiful supply of gasoline and diesel fuel. Areas under investigation in this merger have common carrier pipelines and terminals delivering and storing gasoline to both branded and unbranded jobbers. For these and other reasons, the Commission does not have reason to believe that the merger of Conoco and Phillips would lessen competition substantially in the Mid-continent, Southeast and Southwest.

VI. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make it final. By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the Proposed Order final. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–22795 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Zhenhai Yao, M.D., Ph.D., The University of North Carolina at Chapel