QUESTIONS POSED BY CHAIRMAN SPECTER

QUESTIONS FOR JOSEPH ALIOTO:

QUESTION:

1. You testified that you possess notes and other documents indicating that oil industry executives have discussed merging in order to impact the price of petroleum products. Please identify and describe the specific cases in which you obtained or used such notes or other documents. To the extent possible, please provide any such notes or other documents to the Committee. You also indicated that you deposed oil and gas company executives in these cases; to the extent possible, please provide the transcripts to the Committee.

RESPONSE BY JOSEPH M. ALIOTO:

Attached as Exhibit A is a copy of the handwritten notes by Archie Dunham, then Chief Executive Officer of Conoco, reflecting his conversations with James Mulva, Chief Executive Officer of Phillips Petroleum Company at their multiple secret meetings. These notes were produced in a private anti-merger case brought by my client entitled Amertrans, et al. v. Conoco, Inc. and Phillips Petroleum in the United States District Court in Tulsa, Oklahoma before Judge Sven Holmes, who later left the bench for private practice. I have redacted certain portions of the document because it was under a protective order. The non-redacted portions were read into the record and therefore are public. (The document was also produced to the FTC, which approved the merger.)

"Agreement" Between Exxon and BP to Control Operations in Alaska

On the third page of the document Mr. Dunham records a plainly unlawful secret agreement between Exxon and BP which was related to him by Mulva who apparently received the information from Mr. John Brown, then CEO of BP:

> "Alaska was costly ($7 Billion), but a good Acquisition. ... Exxon had an 'agreement' with BP that there would only be two operators in Alaska. Jim was worried that Exxon would drag the approval process so long that John Brown would back out of the Arco Acq. Thus Phillips yielded & asked BP to 'operate' Prudoe."

This quote also relates to question Number 5 by Senator Kohl with regard to the case by Mr. Boies in Alaska. The "agreement" between Exxon and BP and apparently acknowledged by the other major oil companies is direct evidence of a conspiracy to monopolize operations in Alaska.

Interest in Merger Because of Worry over "Falling Oil and Gas Prices"

On page 4 of the document Mr. Dunham records statements by Mr. Mulva with regard to his reasons for wanting to continue discussions toward a merger. The following appears:

> "He's worried about falling oil & gas prices & economy in this high expenditure time period and doesn't want to sell E&P (future growth properties) thus his interest in talking again.
>
> Together, we guar. longevity and best preserve our joint heritage & culture."

Before these statements the uncontroverted evidence was that Conoco and Phillips were "fierce competitors" but were making records profits.

Prediction of Only 6 to 7 Remaining Energy Companies

On page 4 the following appears:

> "Jim believes strongly in Integration. He believes it help (sic) Phillips secure E&P opportunities (CVI) and purchase crude oil. He believes there will only be 6-7 Energy Companies surviving long term and few independents. He believes you should <u>own</u> Downstream, not JV it. He always believed Phillips & Conoco should merge so in all of his JV deals he made sure none of Phillips' flexibility was restrained."

At the time Exxon (Standard of New Jersey) had acquired Mobil (Standard of New York); British Petroleum had acquired Soho (Standard of Ohio) and then as a combine acquired Amoco (Standard of Indiana) and then as a combine acquired Arco; Shell entered joint venture with Texaco and Saudi Refining; and Chevron (Standard of California) acquired Texaco from Shell.

At the Conoco Phillips preliminary injunction motion even the economist for the oil companies, Joseph Kalt, agreed that if you got to 6 you start to see "collusion, cooperation among them for purposes of doing something like exercising market power." He testified as follows:

> Q. Okay. Here you state, quote: "The general thrust of the DOJ/FTC Guidelines is consistent with economic analysis which finds that collusive coordination breaks down quickly as the number of firms rises above a handful."
>
> A. Yes.
>
> Q. Okay. Now, above a handful meaning five, six, is that what you mean?

A. Well, what our research indicates is that as you get the number of firms up in the range of four, five, six, you start to see cooperation among them, collusion, cooperation among them for purposes of doing something like exercising market power. It tends to breakdown quickly as you start to get above that level.

Q. Now, when you say there's four, five or six firms, that that effect begins to at least become a probability. Are you aware in this case that in conversations between Mr. Mulva and Mr. Dunham they were expecting that the firm numbers, that the firms in the industry, the oil industry, would get down to six or seven?

A. You read a quote of something like that.

Q. Yes.

A. I can't remember who it was from. You would presumably ascribe that quote to that quote to that individual.

Q. Have you heard that before from these individuals?

A. No.

Q. Or from Phillips or Conoco?

A. No.

Reporters Transcript, September 17, 2002, Hearing on Motion for Preliminary Injunction, Volume 1, pages 99 to 100.

QUESTION:

2. You testified that the oil and gas companies use each other's facilities, refineries and tankers, as well as swapping gas stations. Do these practices result in increased prices to consumers? If so, how?

RESPONSE BY JOSEPH M. ALIOTO:

In the Hilo trial the Chairman and Chief Executive Officer of Chevron, testified at the trial. Like the testimony of the CEO's of the other major oil companies, Mr. Kenneth Derr was forced to admit that the major integrated oil companies cooperate with each other at every level of the industry from exploration and production to the retail station. They joint venture on exploration and production. They are co-owners of the major pipelines. They use each other's tankers for the transport of crude oil. They exchange supply at their terminals. They exchange gasoline from their refineries. They market under each other's tradenames and they swap, exchange and eliminate gasoline retail

service stations. The Vice Chairman of Chevron characterized his competitors as "associates," because of their multiple cooperations. In addition, it was admitted that the CEO's and the other Senior Executive Officers including Chairmen, Executive Vice Presidents of Marketing meet on the average of once a month at social functions as well as trade association meetings.

EXHIBIT A

Conoco Inc
Documentary Attachment 4(c)-34
December 17, 2001

10-16-01
w/ Jim Mulva
918 333 8486 (H)

Spring, 1999

REDACTED

- July 99 - Mulva called Browne (BP) on Arco Alaska. Jim also initiated contact with Dave O'Reilly as we wanted to JV chemicals with Chevron to generate cash for E&P (subsequently, Jim told me that Phillips generated $1.0 Billion in cash from the transaction). The Chemicals JV is currently loosing $60 MM/qtr gross, but will generate $ 1.2 - 1.4 MM/yr gross at the top of the cycle. There are no provisions

PLAINTIFF'S EXHIBIT 79

in the Chemicals JV that prevent or restrict Phillips on a merger. The JV does have the "right" to make chemical investments on behalf of Phillips and Chevron, but not the obligation. JV

REDACTED

- Jim then approached Duke about JV Gas Processing to raise cash for Arco Alaska - Phillips retaining 30% of JV and generated $1.2 Billion cash.

CONFIDENTIAL
COC 008903

REDACTED

Alaska was costly ($7 Billion), but a good Acquisition. Phillips' Debt to Capitalization Ratio 43% after Acquisition. Used Chemicals and Gas Processing Cash ($2.2B) to reduce Debt %. Exxon had an "agreement" with BP that there would only be two operators in Alaska. Jim was worried that Exxon would drag the approval process so long that John Brown would back out of the ARCO Acq. Thus Phillips yielded & asked BP to "Operate" Prudhoe.

- Jim believes strongly in Integration. He believes it helps Phillips secure E&P opportunities (CVI) and purchase crude oil. He believes there will only be 6-7 Energy Companies surviving long term and few independents. He believes you should own Downstream, not JV it. He always believed Phillips / Conoco should merge so in all of his JV deals he made sure none of Phillips' flexibility was restricted.

REDACTED

He's worried about falling oil & gas prices, economy in this high expenditure time period & doesn't want to sell E&P (future growth properties) then has interest in talking again.

Together, we guess longevity and best preserve our joint heritage / culture.

REDACTED

CONFIDENTIAL
COC 008906

REDACTED

REDACTED

- Mulva worried that the State & Englewood will view him as "cashing out Z Okla", moving HQ - will get nasty in press ✓

REDACTED

REDACTED