MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10078 Filed 4–19–00; 10:32 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0192]

BP Amoco p.l.c., et al.; 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 May 15, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Phillip Broyles, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574 or 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 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 and 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 April 13, 2000), on the World Wide Web, at ''http://www.ftc.gov.ftc.formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views 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 the Proposed Consent Order and Draft Complaint to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from BP Amoco p.l.c. (''BP Amoco'') and Atlantic Richfield Company (''ARCO'') (collectively, ''Proposed Respondents'') an *Agreement Containing Consent Orders* (''Proposed Consent Order''). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The Commission and BP Amoco and ARCO have also agreed to an Order to Hold Separate and Maintain Assets (''Hold Separate Order'') that requires the Proposed Respondents to hold separate and maintain certain divested assets. The Proposed Consent Order is designed to remedy the likely anticompetitive effects arising from BP Amoco's proposed acquisition of ARCO.

II. The Parties and the Transaction

BP Amoco is a United Kingdom corporation with headquarters in London, England. It is the world's third largest oil company, with total worldwide revenues of more than $91 billion in 1999. BP Amoco is engaged in exploration, development, and production of crude oil on the Alaskan North Slope (''ANS crude oil''), which it sells to refineries on the West Coast of the United States, Hawaii, and Alaska, and in markets abroad. It also owns capacity on the Trans-Alaska Pipeline System (''TAPS'') and leasehold interests in Jones Act tankers. These specialized tankers are used by BP Amoco to transport ANS crude oil from the North Slope production fields to its refinery customers.

ARCO is a Delaware corporation with headquarters in Los Angeles, California. In 1999, ARCO had total revenues of more than $12 billion. ARCO is also engaged in the exploration, development, and production of ANS crude. ARCO also owns capacity on TAPS, and it owns its own Jones Act tankers, which it uses to transport ANS crude oil to the West Coast. ARCO also owns and operates two refineries on the West Coast that refine ANS crude oil.

BP Amoco and ARCO were the pioneers in developing the Alaska North Slope, and today are the two most important oil companies doing business there. They account for more than half of all ANS crude oil discovered over the last decade, and currently produce about 74% of all ANS crude oil. BP Amoco and ARCO are the only two operators of ANS crude oil fields, they each own more proven ANS crude oil reserves than any other oil company, they have the largest leaseholds of exploration and production acres, and they have drilled the largest number of exploration wells on the North Slope. Individually, each has won more exploration tracts than any other company in the last decade.

The Alaska North Slope is a major oil-producing region of the United States. ANS crude oil is used to supply refineries in Alaska, Hawaii, the West Coast of the United States, and Asia. Approximately 90% of all ANS crude oil is refined on the United States West Coast, and approximately 45% of all crude oil refined on the United States West Coast is ANS crude oil.

BP Amoco and ARCO entered into an agreement on March 31, 1999, to merge their companies. The size of the transaction, based upon the value of the deal when it was announced, was about $26 billion.

III. The Proposed Complaint and Consent Order

The proposed complaint alleges that merger of BP Amoco and ARCO 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 proposed complaint alleges that the merger will lessen competition in each of the following markets: (1) The production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; (3) the production, sale, and delivery of all crude oil used on the West Coast; (4) the purchase of exploration rights on the Alaskan North Slope; (5) the sale of crude oil transportation on TAPS; (6) the development for commercial sale of natural gas on the Alaskan North Slope; and (7) the supply of crude oil pipeline transportation to, and crude oil storage in, Cushing, Oklahoma. The competitive concerns underlying the allegations in the draft complaint are discussed in Part V of this analysis.

IV. The Proposed Consent Order

To remedy the alleged anticompetitive effects of the merger, the Proposed Consent Order requires Proposed Respondents to divest: (1) All of ARCO's assets and interests related to and primarily used with or in connection with ARCO's Alaska businesses; and (2) all of ARCO's assets related to its Cushing, Oklahoma crude oil business. Proposed Respondents will divest all of ARCO's Alaska assets to Phillips Petroleum Company (''Phillips''), an approved up-front buyer. The vast majority of these assets must be divested to Phillips within 30 days of the signing of the Proposed Consent Order. Some of the ARCO Alaska assets require third-party or governmental approvals and Proposed Respondents have up to six (6) months to divest those particular assets. Proposed Respondents will divest the Cushing assets to an acquirer or acquirers that receive the prior approval of the Commission and in a manner approved by the Commission. They must divest the Cushing assets within four (4) months of signing the Proposed Consent order.

For a period of ten (10) years from the date the Proposed Consent Order becomes final, the Proposed Consent Order prohibits the Proposed Respondents from acquiring, directly or indirectly, any ownership, leasehold or other interests in any of the assets they are required to divest without giving prior notice to the Commission.

The Proposed Consent Order also requires the Proposed Respondents to provide the Commission with a report of compliance with the terms of the Proposed Consent Order within thirty (30) days after the Order becomes final, and every sixty (60) days thereafter, until the Proposed Respondents have fully complied with the divestiture requirements under the Proposed Consent Order. The Proposed Respondents must also file annual compliance reports detailing their compliance with the notice provisions under the Proposed Consent Order.

Proposed Respondents have also agreed to a Hold Separate Order. The purpose of the Hold Separate Order is (a) to preserve the competitive viability of the assets required to be divested under the Proposed Consent Order, pending their actual divestiture, (b) to assure that no material confidential information is exchanged between BP Amoco and the held-separate businesses, and (c) to prevent interim harm to competition pending the divestitures. The Commission may immediately appoint an asset maintenance trustee to monitor both the ARCO Alaska businesses and the ARCO Cushing Assets which are to be divested, and, in the case of the Alaska assets, to monitor whether the necessary waivers and regulatory approvals are being expeditiously pursued.

Under the terms of the Hold Separate Order, if the Proposed Respondents have not completed the divestiture of the ARCO Alaska assets that do not require third party or regulatory approvals within thirty (30) days of consummating the merger of BP Amoco and ARCO, they must maintain the relevant ARCO Alaska businesses as separate, competitively viable businesses, and not combine them with BP Amoco's operations. A trustee may be appointed to oversee the held separate businesses.

Under the terms of Hold Separate Order, until the divestiture of the ARCO Cushing Assets has been completed, Proposed Respondents must maintain the ARCO Pipeline Company as a separate, competitively viable business, and not combine it with BP Amoco's operations. The Proposed Consent Order also requires the Proposed Respondents to maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, to avoid causing their wasting or deterioration. Pending divestiture, Proposed Respondents are prohibited from selling, transferring, or otherwise impairing the marketability or viability of the assets to be divested.

Under the terms of the Proposed Consent Order, in the event that BP Amoco and ARCO do not divest the assets required to be divested under the terms and time constraints of the Proposed Consent Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. Also, in the event the assets requiring third-party or governmental regulatory approvals are not divested within the allowed time, a trustee may be appointed to oversee the divestiture of those assets to Phillips.

V. The Competitive Concerns

The merger of BP Amoco and ARCO gives rise to competitive concerns in seven relevant markets, each of which is discussed below.

A. Production and Sale of ANS Crude Oil

BP Amoco currently has about a 44% share of all ANS crude oil production and ARCO has about 30% share. BP Amoco owns no refineries that it supplies with ANS crude oil. As a consequence, all of its ANS crude oil sales are to third party customers. ARCO, on the other hand, owns two refiners that use ANS crude oil. One is located in the Los Angeles area (at Carson) and the second is in the Seattle area (at Cherry Point). Because ARCO supplies its West Coast refineries with ANS crude oil, ARCO now sells only relatively small amount of ANS crude oil to third parties.

According to the complaint the Commission intends to issue, BP Amoco already exercises market power in the sale of ANS crude oil to refineries on the West Coast. The evidence of this market power is the fact that BP Amoco engages in price discrimination on two fronts: First, BP Amoco sells ANS crude to West Coast refinery customers at different prices, net of transportation (''netbacks''). Second, BP sells ANS crude to the West Coast refineries at higher netbacks than to refineries in the Far East. The Commission's draft complaint alleges the existence of three relevant markets implicated by BP Amoco's ANS crude oil pricing: (1) The production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; and (3) the production, sale, and delivery of all crude oil used by refiners on the West Coast.

According to the Commission's draft complaint, for several reasons, ARCO is the firm most likely to be able to constrain BP Amoco's future exercise of market power. First, with the opening of the Alpine oil field, ARCO has new production that is about to commence. Second, with a new and increased ability to substitute away from ANS crude oil to other types of crude oil at its Los Angeles refinery, ARCO will have incentives to substitute cheaper imports for ANS crude oil if the price of ANS crude oil becomes non-competitive. Third, ARCO is the firm best positioned and most likely to find new sources of ANS crude oil, and bring that oil to market.

Entry into the crude oil markets implicated by this merger is unlikely to occur in a timely or sufficient manner to prevent the merger from reducing competition in the relevant markets. Entry has not constrained BP Amoco's exercise of market power to date. Nor is it likely that producers of other types of crude oils will supply West Coast refineries in a manner that would constrain BP Amoco's ability to exercise market power. The most compelling evidence is that they have not already done so, even as BP Amoco has been exercising market power directed at West Coast refineries for many years.

B. Bidding for ANS Crude Oil Exploration Rights

BP Amoco and ARCO are the two most important competitors in bidding for exploration leases for oil and gas on the Alaska North Slope. They own or control all exploration, development, and production assets and won over 60% of all State of Alaska lease auctions over the last decade. During that same period the top four firms won 75%. In the most recent North Slope lease sale, BP Amoco and ARCO collectively won more than 70% of the tracts bid.

After the merger, no single firm, or combination of firms, will be both large enough and sufficiently well informed with respect to the value of individual tracts, to replace the loss of revenues to the State of Alaska and the Federal Government, from bidding revenues. Moreover, the reduced competition in the bidding for oil and gas leaseholds will eventually result in less exploration and development, and less production of ANS crude oil.

New entry will not be timely, likely or sufficient to undermine the anticompetitive effects of the merger. Firms that lack the information, infrastructure, and interest in North Slope bidding will simply be unable to fill the void created by the loss of ARCO as an independent bidder for exploration and development acreage.

C. TAPS Pipeline Competition

Seven companies jointly own the TAPS pipeline, with BP Amoco and ARCO the two largest owners. BP has about a 50% interest and ARCO has about a 22% interest. Each owner of TAPS has an exclusive right to sell space on its ownership-share of TAPS capacity and to set its own tariff, and to discount those tariffs, for carriage on that capacity. After the merger, BP Amoco would control a 72% interest in TAPS. Alyeska Pipeline Service Company operates TAPS.

The owners of TAPS are entitled to capacity on the pipeline in proportion to their ownership interests. Because not all oil producers have an interest in TAPS, or an interest in TAPS in proportion to their oil production, TAPS owners can and do discount their tariffs in an effort to attract additional shippers. According to the Commission's draft complaint, the increase in concentration in TAPS ownership may cause the TAPS tariffs to increase.

D. Natural Gas Commercialization

BP Amoco and ARCO are the two largest holders of natural gas reserves on the Alaska North Slope. ExxonMobil is the only other company that holds sufficiently large volumes of natural gas reserves to have the potential to develop those reserves for significant commercial use. The merger of BP Amoco and ARCO would reduce the potential for future competition in the sale of North Slope natural gas from three firms to two firms.

Although it is unclear at this time when the North Slope gas fields will be commercialized, it is likely that this will eventually occur. To date, over $1 billion has been spent by various firms in an effort to commercialize the North Slope's natural gas reserves. When gas commercialization does become a reality, the benefit of three firms competing for this business, rather than a market characterized by a duopoly, will result in increased competition and lower prices.

E. Crude Transportation and Storage Services in Cushing, Oklahoma

Efficient functioning of the pipeline and oil storage facilities leading into, and in, Cushing, Oklahoma, is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. The restriction of pipeline or storage capacity can affect the deliverable supply of crude oil in Cushing, and consequently affect both WTI crude oil cash prices and NYMEX futures prices.

The proposed merger would concentrate control of over 43% of Cushing storage capacity, 49% of Cushing pipeline delivery capacity, and 95% of the trading services provided at Cushing. A firm that controls substantial crude oil storage capacity in Cushing, and crude oil pipeline capacity leading into Cushing, would be able to manipulate NYMEX futures trading markets. This threat of manipulation will cause prices to rise and, because WTI crude oil is a benchmark crude oil, have ripple effects throughout the oil industry.

VI. Resolution of the Competitive Concerns

The Proposed Consent Order alleviates the competitive concerns arising from the merger as discussed below.

A. The Proposed Order Resolves Competitive Concerns in Alaska by Requiring That All of ARCO's Alaska Assets Be Divested to Phillips

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, BP Amoco has agreed to divest to Phillips all of the assets, properties, businesses, and goodwill, tangible and intangible, that as of March 15, 2000, were related to and primarily used with or in connection with ARCO's Alaska businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest to Phillips include the following: (a) ARCO Alaska, Inc.; (b) ARCO Transportation Alaska, Inc., (including any interest in Alyeska Pipeline Service Company and Prince William Sound Oil Spill Response Company; (c) ARCO Marine, Inc.; (d) ARCO Marine Spill Response Company; (e) Union Texas Alaska assets of Union Texas Petroleum Holdings, Inc.; (f) Union Texas Alaska, LLC; (g) Kuparuk Pipeline Company, (including any interests in Kuparuk Transportation Company and Kuparuk Transportation Capital Corporation); (h) Oliktok Pipeline Company; (i) Alpine Pipeline Company; (j) Cook Inlet Pipeline Company; (k) All Alaska oil and gas leases; (l) AMI Leasing Inc.; (m) ARCO Beluga, Inc. (a wholly-owned subsidiary of CH-Twenty, Inc.); (n) ARCO's office complex in Anchorage; (o) intellectual property; (p) Patents; (q) seismic data; (r) ship construction contracts; (s) customer and vendor lists; (t) ARCO records; and (u) long-term supply agreements entered between BP Amoco and several West Coast refiners.

To ensure that key ARCO employees remain with the company, and become available to work for Phillips, the Proposed Consent order also provides that (a) BP Amoco not solicit for employment any ARCO employee unless that employee was terminated by Phillips; (b) vest all current and future pension benefits; and (c) pay a bonus of not less than 35% of the base salary for certain key ARCO employees.

Phillips is headquartered in Bartlesville, Oklahoma and is the sixth largest United States oil company. In 1999 it had total revenues of about $14 billion. Phillips currently has about a one percent interest in ANS crude oil production and about a 1.4% interest in TAPS. Phillips also owns oil and gas leases in the National Petroleum Reserve area of the North Slope.

The divestiture of ARCO's Alaska Businesses is intended to preserve the level of competition that existed before the merger in the production, sale and delivery of crude oil to the West Coast, bidding for exploration rights on the Alaskan North Slope, and in pipeline transportation services for ANS crude oil.

1. The Proposed Respondents Have Thirty (30) Days To Divest Most of the ARCO Alaska Assets to Phillips

Except for those ARCO Alaska assets that require consents, waivers, or approvals by regulatory authorities or other third parties before they may be transferred to Phillips (e.g., pipelines, oil and gas leases, rights of way), the Proposed Respondents must complete the required divestitures of the Alaska assets within thirty (30) days of the acquisition. The Proposed Respondents must cooperate with Phillips and use reasonable best efforts to assist Phillips in securing the consent and waivers that may be required from private entities. The Proposed Respondents must complete all other divestitures within six (6) months of consummating their merger.

2. Transition Services

The Proposed Consent Order requires that the Proposed Respondents enter into a transition services agreement with Phillips. Under this agreement, the Proposed Respondents must provide Phillips with the transition services it may need in order to conduct the ARCO businesses as they are currently being conducted.

3. Licensing Agreements

The Proposed Consent Order requires that the Proposed Respondents enter into various licensing agreements with Phillips for intellectual property necessary or related to the ARCO Alaska Assets. These agreements are in addition to the absolute transfer of other intellectual property.

B. The Proposed Order Resolves Competitive Concerns in Cushing by Requiring That All of ARCO's Cushing Assets Be Sold Within 120 Days to an Acquirer Approved by the Commission

Under the terms of the Proposed Consent Order, BP Amoco agreed to divest ARCO's assets related to its Cushing, Oklahoma crude oil business to an acquirer to be approved by the Commission and in a manner approved by the Commission. Those assets include all of ARCO's assets, properties, businesses and goodwill, tangible and intangible, in the Seaway Crude Oil Pipeline and the Mid-Continent Crude Oil Logistics Services Businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest include the following: (a) ARCO's crude oil interest in Seaway Pipeline Company, a partnership with subsidiaries of Phillips; (b) ARCO's crude oil terminal facilities in Cushing, Oklahoma and Midland, Texas, including the line transfer and pumpover business at each location; (c) ARCO's undivided ownership interest in the Rancho Pipeline, a 400-mile, 24-inch diameter crude oil pipeline from West Texas to Houston; (d) ARCO's undivided ownership interest in the Basin Pipeline, a 416-mile crude oil pipeline running from Jal, NM, to Wichita Falls, Texas and then on to Cushing, Oklahoma; and (e) the ARCO West Texas Trunk System of receipt and delivery pipelines, which is centered around Midland.

BP Amoco and ARCO must complete the required divestitures of the Cushing assets, within 120 days of their singing the Proposed Consent Order, to an acquirer or acquirers that receive the prior approval of the Commission.

VII. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days fro receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent 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 Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioner Mozelle W. Thompson, Concurring in Part and Dissenting in Part

The Commission accepts for public comment today a consent order that requires BP Amoco plc (''BP''), as a condition of its acquisition of Atlantic Richfield Company (''ARCO''), to divest all of ARCO's crude oil exploration and production assets in Alaska and related pipeline rights, maritime assets, seismic data and technical information. In effect, BP agrees to divest ''all of ARCO'' in Alaska. In addition, the consent order requires BP to divest all ARCO pipeline and storage facilities in and around the crude oil marketing and trading hub at Cushing, Oklahoma to a buyer to be approved by the Commission within 120 days of the date on which BP and ARCO sign the consent order.

The consent order provides that the divested Alaska assets will be acquired by Phillips Petroleum Co. (''Phillips''). Phillips is an integrated petroleum company with oil and gas exploration and production interests in several countries and (as of 1999) assets of about $15 billion and annual revenues of about $13.9 billion. Phillips currently has some Alaska oil and gas exploration and production interests of its own, but these are tiny relative to those of BP and ARCO. Phillips is engaged in refining and gasoline marketing in several of the United States, but not on the West Coast. BP selected Phillips as the buyer of ARCO's Alaska assets, and Commission today unanimously approves Phillips as the buyer, subject to public comment.

In most respects, this consent order achieves all the Commission sought, and all the relief that would likely have been achieved if the Commission prevailed in litigation. We write separately, however, to express our concern with the majority's decision not to include in the consent order a provision prohibiting BP and Phillips from exporting ANS crude oil at a loss for the purpose of maintaining oil prices on the West Coast of the United States.[1]

[1] The provision that we would favor is explained, and its terms defined, further below.

BP currently has the largest share—about 40%—of all crude oil produced on the Alaska North Slope (''ANS''); has the largest interest—about 50%—in the Trans-Alaska Pipeline System (''TAPS'') that is used to transport crude oil to port at Valdez, Alaska; and has the largest fleet that is available for transporting ANS crude oil from Alaska to refineries in the rest of the United States. ARCO is its largest rival in each of these respects, with a share of over 30% of ANS crude production; a 22% stake in TAPS; and the second largest available fleet. BP and ARCO's dominance of the market is even greater when measured in terms of exploration assets and operatorships in Alaska. BP, which does not own any West Coast refineries, currently sells all of its ANS crude in the merchant market. ARCO, which owns two of the largest refineries on the West Coast, consumers the bulk of its ANS production internally. However, ARCO also sells on the merchant market, thereby according to the Commission's complaint, serving as ''the firm most likely to constrain BP's exercise of monopoly power,'' a constraint that ''likely would increase'' over time but for the merger.[2]

Because Phillips will acquire all of ARCO's assets in Alaska, the consent order is likely to restore competition on the Alaska North Slope. In the market for the supply of ANS crude oil to targeted refineries on the West Coast, Phillips will be in a different position from ARCO because, unlike ARCO, Phillips is neither a refiner nor a gasoline marketer on the West Coast. This difference should leave Phillips with more crude oil to sell on the open market than ARCO currently has after supplying its own refineries, and, if not undermined by private conduct, may actually improve upon the level of competition in that market. In Cushing, a clean sweep of ARCO's pipeline and storage assets to a buyer to be approved by the Commission should also suffice to restore competition.

Negotiations leading to this settlement have been extensive and complicated. Nevertheless, once the outline of a settlement was agreed upon—that is, divestiture of ''all of ARCO'' in Alaska and in and around Cushing—BP, ARCO and Commission staff worked out the details with dispatch.

In one respect, however, the Commission's action in this matter is disappointing. In its original complaint and in its memorandum supporting the complaint, the Commission alleged that BP systematically and over an extended period of time exported ANS crude at a loss in Asia and to other regions in the United States in order to curtail or tighten supply to refiners on the U.S. West Coast and to maintain crude oil prices in that market.[3] The Commission was prepared to substantiate its charge with a series of documents, cited in its memorandum supporting the complaint but currently under seal in the United States District Court.[4] The Commission alleged that the pattern of exports reflected BP's market power, and that such market power would increase as a result of the proposed merger.

When litigation was suspended for settlement negotiations, the issue of exports designed to raise price was addressed. BP and Phillips reportedly stated publicly that they would not export U.S. crude resources out of PADD V (the technical term for the U.S. West Coast market, specifically, the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington).[5]

We believe that the Commission should follow the logic of its own complaint and require BP and Phillips to affirm their public statements in our consent agreement in this matter. That would require the following provision in the order:

> BP and Phillips shall not knowingly and intentionally Sell for Export[6] ANS crude oil for the purpose of increasing the Spot Price[7] of ANS crude oil in PADD V, PROVIDED, however, that a Sale for Export at a price reasonably anticipated to produce a higher profit than a contemporaneous sale in PADD V shall be presumed not to violate this Order.

This provision is narrower than the parties' public statements, thereby assuring that it would in no way affect normal, competitive business conduct, such as exporting oil abroad when the price offered abroad (net of transportation and other costs) is higher than on the West Coast. Instead, it would target the systematic export of United States' crude oil to Asia or elsewhere at a loss (relative to the profit that could have been obtained on the same crude oil within PADD V) for the purpose of raising U.S. West Coast Prices—a practice that we consider an extraordinary exercise of market power. If engaged in through coordinated action—and the Commission's memorandum alleges that BP ''mop[ped] up 'excess' supplies of ANS'' crude from others[8]—such conduct would be illegal *per se. See United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 190–91, 216, 218–28 (1940)(holding illegal *per se* agreements to purchase ''distress gasoline'' in order to raise prices or prevent price decreases). Regardless of its legality, exporting at a loss in order to raise West Coast prices plainly threatens competition in a market where this agency has a duty to ensure that competition is fully restored. *see, e.g., Ford Motor Co.* v. *United States,* 405 U.S. 562, 573 (1972); *United States* v. *E.I. du Point de Nemours & Co.,* 366 U.S. 316, 326 (1961).

Because the Commission was prepared to prove that intentional manipulation of supply on the West Coast occurred in the past, and could occur again in the future, the provision would be appropriate relief for the Commission to require. *See, e.g., FTC* v. *National Lead Co.,* 352 U.S. 419, 429, 430 (1957)(a remedy is proper if it bears a ''reasonable relation to the unlawful practices found to exist'' and ''decrees often suppress a lawful device when it is used to carry out an unlawful purpose'') (citations omitted); *cf. FTC* v. *Ruberoid Co.,* 343 U.S. 470, 473 (1952) (''[I]f the Commission is to obtain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.'')

Notwithstanding the substantial evidence of manipulation supporting the allegations in the complaint and memorandum, a majority of the Commission declines to require this

[2] *See FTC* v. *BP Amoco plc,* Civ. No. 00–0416–SI (N.D. Cal. filed Feb. 4, 2000), Compl. ¶ 18.

[3] *See FTC* v. *BP Amoco plc,* Compl. ¶¶ 18, 23; Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 7, 9–11.

[4] *See id.* at 7, n.13, 9–10 & nn. 16–18. (The public version of the FTC's Points and Authorities, with the parties' confidential information redacted, is available at /http://www.ftc.gov/os/bpamoco/index.htm. All references in this concurrence to the memorandum supporting the complaint are to that version.)

[5] *See, e.g.,* H. Josef Hebert, ''Company ties offer to halt exporting Alaska crude to merger'' (Associated Press, March 24, 2000) (citing a letter from BP to U.S. Representative Don Young of Alaska); Associated Press, ''BP Amoco Would End Alaska Exports'' (March 24, 2000); Reuters, ''BP Amoco, Phillips to halt Alaskan oil exports'' (March 24, 2000) (citing a letter from BP to U.S. Representative George Miller of California).

[6] ''Sell for Export'' and ''Sale for Export'' would be defined terms, referring to the sale, exchange, delivery or transfer of ANS crude oil for refining at a refinery located outside of PADD V, PROVIDED, however, that they would not include any sale, exchange, delivery or transfer of ANS crude oil in return for which ANS crude oil from another person is tendered or delivered to Respondents at a location in PADD V.

[7] ''Spot Price'' would be a defined term, referring to the amount paid for a single delivery of crude oil as part of an arms-length transaction as reported by Reuters, Telerate or Platts.

[8] *FTC* v. *BP Amoco plc,* Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 10.

provision. In omitting any provision concerning exports, we do not understand our fellow Commissioners to condone the practices that we identified in our complaint. But we see no good reason for the omission.

First, the majority suggests that the divestitures ordered today eliminate the competitive overlap that was the central competitive concern raised by the proposed merger. While we believe that the divestiture to Phillips is effective and appropriate relief, and may even improve competition, we would also address directly the competitive concerns raised by past and potentially future exporting practices aimed at exploiting precisely the market power that the BP–ARCO merger places at issue. Today's consent permits both a realignment of operatorship interests on the Alaska North Slope and a vertical realignment, whereby BP's crude supply will now be aligned with what were ARCO's downstream assets, and ARCO's successor, Phillips, will likely replace BP as the principal supplier to the merchant (*i.e.,* non-vertically-integrated) market on the West Coast. How those realignments will affect the incentives and opportunities of BP and Phillips to continue BP's past practice of exporting to maintain West Coast prices is uncertain, as are future fluctuations in their production and reserves on the Alaska North Slope and their likely effects on those incentives and opportunities.

The majority believes that it is unnecessary to impose any restriction on exports [9] because ''BP likely will need to use most of its ANS crude oil production'' in the ARCO refineries it is acquiring on the West Coast, and because ''Phillips will have a much smaller share of ANS crude oil production than did BP.'' (We understand that Phillips' initial share of ANS crude oil production will be between 30 and 35%.) Even if true today, there is no assurance that in the future either company, in an uncertain and evolving marketplace, will not find itself in a position to engage in the same conduct BP engaged in previously. Any such risk should not be borne by the consumer.

Second, as noted above, precedent establishes that conduct relief ancillary to structural relief may be appropriate in a merger case to address related competitive concerns, even when the conduct restriction may, in doing so, restrain some lawful conduct.[10] Such relief is especially appropriate where, as in this case, the merger creates uncertainties in a market already characterized by exercises of market power that may harm consumers and where the relief imposed will increase the likelihood that competition will be fully restored. *See, e.g., Ford Motor Co.*, 405 U.S. at 578 (approving district court relief aimed at ''nurtur[ing]'' lost competition over an objection that the forces in the marketplace might suffice to restore it).[11]

Third, we believe that a narrow export-at-a-loss restriction like the one set forth above would effectively protect, and would in no way inhibit, free and vigorous competition.[12] We recognize that in 1995, Congress repealed an export ban on ANS crude oil, and we have no intention of undermining that repeal. However, as we have noted above, a consent agreement provision that narrowly prohibits exports (1) reasonably anticipated to be at a loss and (2) made ''knowingly and intentionally * * * for the purpose increasing the Spot Price of ANS crude oil in PADD V'' is far removed from a general export ban, and would leave firms entirely free to engage in normal, competitive export activities both within PADD V and elsewhere. Further, although the provision that we propose would be narrow, we believe that it would be effective. The proviso requiring that sales be reasonably anticipated to be at a loss to be suspect would give both the parties and FTC enforcement staff an objective benchmark, while the intent and purpose requirements—requirements familiar to antitrust law, *see, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602 (1985)—would ensure that normal competitive conduct would be unaffected.

Under normal circumstances we favor structural rather than behavioral remedies. That approach underlies the substantial structural relief that the Commission unanimously requires in this case. However, we believe that in addition, the above-described export restriction is appropriate and warranted by the facts and circumstances of this case. Accordingly, we dissent from the majority decision not to include in the consent order a provision restraining in the future the manipulation of ANS crude supply to the West Coast that we believe occurred in the past.

Statement of Commissioners Anthony, Swindle, and Leary

Alaska's North Slope is one of the largest sources of crude oil in the world. Crude oil extracted from Alaska's North Slope (''ANS crude oil'') is transported through the Trans-Alaska Pipeline System (''TAPS'') to the warm water port of Valdez, Alaska. From Valdez, large oil tankers transport ANS crude oil to refineries, most of which are located on the West Coast of the United States. The West Coast refineries process ANS crude oil and other crude oils to produce gasoline that ultimately is sold to consumers located on the West Coast.

The three main producers of ANS crude oil are British Petroleum/Amoco Oil Co., Inc. (''BP''), Atlantic Richfield Corporation (''ARCO''), and ExxonMobil Corporation (''Exxon''). BP produces about 45% of ANS crude oil, ARCO about 30% and Exxon about 22%. Each of these producers owns interests in TAPS and the oil tanker fleet that are roughly proportionate to its share of ANS crude oil production. Because BP currently does not own any refineries on the West Coast, it sells most of its ANS crude oil to other West Coast refiners. In contract, ARCO and Exxon use most of

[9] The provision that we advocate is not, of course, an export ban. It is, rather, a narrow restriction, targeted at exports that entail an extraordinary exercise of market power.

[10] It is well established that the Commission has a broad remedial discretion that would, where appropriate, permit substantial further relief against conduct that does not independently violate the antitrust laws. *See, e.g., Ford Motor Co.*, 405 U.S. at 575; *E.I. du Pont de Nemours*, 366 U.S. at 344. Courts have approved a variety of remedies against potentially lawful conduct as ancillary to structural relief, including future lawful participation in a market previously entered by means of unlawful merger, *Ford Motor Co.*, 405 U.S. at 575–76, an injunction against further acquisitions, *United States* v. *Grinnell Corp.*, 384 U.S. 563, 580 (1966), requirements of prior Commission approval for future joint ventures, mergers or acquisitions, *Yamaha Motor Co.* v. *FTC*, 657 F.2d 971, 984–85 (8th Cir. 1981); *Luria Bros. & Co.* v. *FTC*, 389 F.2d 847, 865–66 (3d Cir. 1968), and prohibitions of sales between joint venture partners, *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619 (W.D. Ky. 1985).

[11] The majority emphasizes that ''it is not the Commission's mandate to use merger enforcement as a vehicle for imposing its own notions of how competition may be 'improved.' '' We of course agree that merger enforcement is not an appropriate vehicle for ''improving'' markets in ways unrelated to the merger. But as the precedents cited in footnote 10, above, exemplify, it is equally fundamental that mergers must be viewed, and the competitive concerns that they raise addressed, in the practical and dynamic context of the markets in which they occur. *See, e.g., Brown Shoe Co.* v. *United States*, 370 U.S. 294, 321–23 (1962).

[12] The majority expresses concern that our provision would not ''apply equally to all producers'' of ANS crude oil. It is true that our provision would place restrictions on the two parties before us, who will also be the two largest producers of ANS crude oil, that would not apply to smaller competitors. But our narrow restriction would not prevent them from competing vigorously—only from engaging in a practice that the Commission's complaint identified as an exercise of market power that distorted competition. Because the mandate of this agency is to protect competition, not the individual interests of particular competitors, we are not concerned about inhibiting BP and Phillips' ability to exercise market power by manipulating West Coast prices.

their ANS crude oil in their own West Coast refineries.

BP's proposed merger with ARCO would give the merged firm about a 75% share of exploration, production, and transportation of ANS crude oil. The complaint alleges that the proposed merger is likely substantially to lessen competition in the market for the sale of ANS crude oil to West Coast refineries. The basic theory is that prior to the merger BP has been able to exercise market power in sales of ANS crude oil to West Coast refineries, *i.e.,* BP has been able to profitably maintain prices above competitive levels for a significant period of time. BP's acquisition of ARCO would increase BP's ability to exercise market power, which could cause West Coast refineries to pay more for ANS crude oil. While the case raises complex market definition and other issues, we have reason to believe that the proposed merger, absent the contemplated relief, is likely substantially to lessen competition as alleged in the complaint.

Traditionally, if a merger raises competitive concerns, the Commission requires the merging parties to divest assets to eliminate the competitive overlap before allowing the merger to be consummated. Consistent with this approach, in this case the Commission has accepted a proposed order requiring BP and ARCO to divest all of ARCO's assets in Alaska to Phillips Petroleum Company (''Phillips''). We believe that this divestiture will remedy the antitrust concerns raised by the proposed merger. In fact, as the concurring statement of Chairman Pitofsky and Commissioner Thompson points out, the consent agreement has the potential to ''actually improve upon the level of competition'' in the West Coast market. As a result of the planned divestiture, Phillips will have about a 30% share of ANS crude oil exploration, production, and transportation, and Phillips will have even more crude oil to sell on the open market than ARCO has today. Phillips appears to have the financial resources and experience to be a vigorous competitor in the exploration, production, and transportation of ANS crude oil.

In addition to this structural relief, Chairman Pitofsky and Commissioner Thompson would favor ''behavioral'' relief that would require the Commission to engage in extensive monitoring of ANS crude oil exports and prices for the next decade. Specifically, they support a provision that would prohibit BP and Phillips, for 10 years, from ''knowingly and intentionally'' exporting ANS crude oil outside the West Coast of the United States ''for the purpose of increasing the Spot Price of ANS crude oil'' on the West Coast. The proposed export restriction also would include a presumptive safe harbor if an export sale were made at a ''price reasonably anticipated to produce of higher profit than a contemporaneous sale'' on the West Coast. We believe that this over-regulatory exportation restriction would be unnecessary, unenforceable, and otherwise inappropriate.[1]

It is unnecessary to impose the proposed export restriction on BP because BP is highly unlikely to engage in exports following the merger. There is some evidence that, prior to the merger, BP occasionally exported ANS crude oil to the Far East in order to increase spot prices for ANS crude oil on the West Coast. It is important to emphasize that BP's unilateral actions were not illegal under the antitrust laws—and, indeed, the complaint makes no allegation that the exports were illegal.[2] In any event, however, BP's incentives to export will change as a result of the proposed divestitures. Before the merger, BP sold most of its ANS crude oil to other West Coast refiners because it did not own refineries on the West Coast. BP benefitted from higher spot prices because of its status as a merchant marketer, and also because Alaska's royalty scheme for ANS production was tied to ANS spot prices on the West Coast. After the merger, BP will acquire two West Coast oil refineries that were part of ARCO, and BP likely will need to use most of its ANS crude oil production to operate these two refineries. Since BP will be consuming most of its ANS production internally, BP will now benefit from lower royalty payments to the extent that the ANS spot price drops. Therefore, as a result of the new market structure created by the proposed divestitures, BP is extremely unlikely to resume exporting ANS crude oil to the Far East (or elsewhere) to increase spot prices for ANS crude oil on the West Coast.

Nor is it necessary to impose the export restriction on Phillips. Phillips is purchasing ARCO's assets in Alaska lock-stock-and-barrel, *i.e.,* Phillips is assuming ARCO's position as an explorer, producer, and transporter of ANS crude oil. There is no evidence that ARCO ever engaged in strategic ANS exports for the purpose of increasing West Coast spot prices. Granted, it might appear that Phillips will have a greater incentive than ARCO did to increase spot prices for ANS crude oil, because Phillips, like the pre-merger BP, will sell its ANS crude oil to West Coast refineries on the merchant market (whereas ARCO consumed most of its production in its own West Coast refineries). However, Phillips will have a much smaller share of ANS crude oil production than did BP—approximately 30% for Phillips versus 45% for BP—which makes it quite unlikely that Phillips could successfully engage in exports to increase spot prices for ANS crude oil on the West Coast.

Not only is the export restriction unnecessary, it also would be extremely difficult to enforce because it would require proof of BP's or Phillips's knowledge and intent. We cannot rely on the companies to create an unambiguously inculpating ''paper trail,'' and in the face of ambiguous evidence, the Commission's burden of proof would be very high indeed. We do not think that the public interest would be well served by including an order provision that is so obviously difficult to enforce that it would have little or no practical effect. Moreover, the proposed safe harbor would complicate enforcement proceedings even further by introducing additional factual issues that would be difficult to resolve.

We do not believe the export restriction is an appropriate measure for the Commission to impose in the context of a merger settlement, especially when the proposed structural relief fully restores, and may even improve upon, the *status quo ante.* The export restriction would address a pre-existing market condition, under which BP allegedly, unilaterally, and sporadically exported ANS crude oil with some slight effect on West Coast prices.[3] We acknowledge the public

[1] It bears noting that in 1995, Congress explicitly repealed the then-existing ban on ANS exports. If Congress were to determine that the ban should be reinstated, it could so act. In addition, the 1995 legislation lifting the export ban granted the President, in consultation with the Secretary of Energy, the power to reimpose the export ban upon a determination by the Secretary of Commerce that ''exporting oil * * * has caused sustained oil prices significantly above world market levels * * *.'' (30 U.S.C. 185(s)(5)). Such a ban would apply equally to all producers, and would not leave some producers under the restrictions of the Commission's order while permitting other producers to export without inhibition.

[2] Rather, the exports are cited as evidence that pre-merger BP had existing market power with respect to ANS sales on the West Coast. (Complaint ¶¶ 24–26) Therefore, the Commission alleges, it would be unlawful for BP to acquire its closest competitor in this market, and thereby enhance its market power.

Of course, if two or more producers appeared to engage in such exports through coordinated or other illegal action, the Commission could initiate an investigation of such unlawful conduct and take appropriate enforcement measures.

[3] We have reason to believe that the upward price effects of these sporadic sales amounted to no more than one-half cent per gallon at the pump.

concern over the relatively high price of gasoline on the West Coast, but people will be cruelly disappointed if they are led to believe that the export restriction would have a detectable effect on the situation. Moreover, it is not the Commission's mandate to use merger enforcement as a vehicle for imposing its own notions of how competition may be ''improved.'' Instead, Congress has directed the Commission only to prevent any harm to competition that is likely to flow from a merger. We believe that the planned divestitures already accomplish that goal.

We acknowledge that the parties are willing to sign an order with an export restriction. We need not speculate about whether they were induced to do so because of a compelling need to strike a deal promptly, or because they believe the restriction in unnecessary or unenforceable. Whatever the reason, in light of the structural relief the proposed order achieves, we see no need to bind the parties to an unnecessary behavioral provision.

For the reasons set forth above, we do not believe that the export restriction should be included in the proposed order.

[FR Doc. 00–10008 Filed 4–20–00; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981 0124]

Texas Surgeons, P.A., et al.; 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 May 15, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Feinstein or Alan Friedman, FTC/S–3115, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3688 or 326–2742.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 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 and 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 April 13, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comment or views 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 Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by the Texas Surgeons, P.A. (''Texas Surgeons IPA'') and six medical practice groups comprised of Texas Surgeons IPA members—Austin Surgeons, P.L.L.C.; Austin Surgical Clinic Association, P.A.; Bruce McDonald & Associates, P.L.L.C.; Capital Surgeons Group, P.L.L.C.; Central Texas Surgical Associates, P.A.; and Surgical Associates of Austin, P.A. The agreement settles charges by the Federal Trade Commission that the Texas Surgeons IPA and the six medical practice groups (the ''respondents'') violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by fixing prices and other terms of dealing with third-party payers; collectively refusing to deal with third-party payers or threatening to do so; and agreeing to deal with third-party payers only on collectively determined terms. The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make it and the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a complaint will be issued by the Commission along with the proposed consent order. The allegations in the Commission's proposed complaint are summarized below.

Respondent Texas Surgeons IPA is an association of general surgeons who practice in the Austin, Texas area. Members of the Texas Surgeons IPA are, and at all times relevant to the complaint have been, the majority of general surgeon private practitioners serving the adult population in the Austin area.

Nearly all of the members of the Texas Surgeons IPA belong to one of six general surgery practice groups, which are also respondents in this matter. At all times relevant to the complaint, the Texas Surgeons IPA has been governed by a board of directors composed of representatives from each of the respondent medical practice groups.

The Texas Surgeons IPA has served as a vehicle for the six respondent medical practice groups (and the few solo practitioner members) to engage in actual or threatened concerted refusals to deal, and to negotiate collectively, in order to obtain higher prices from Blue Cross Blue Shield of Texas (''Blue Cross'') and United HealthCare of Texas (''United''). The six respondent medical practice groups actively furthered the unlawful conduct through their collective control of the Texas Surgeons IPA board of directors, and through their direct participation in collective fee negotiations between United and the Texas Surgeons IPA.

In April 1997, Blue Cross changed its reimbursement system from one based on historical charges to one based on a