

Competitive Impact Statement do not provide all of the background facts necessary to understand High Plains' role in the matter and may harm High Plains by incorrectly suggesting that it willingly participated in an agreement to violate the antitrust laws, High Plains is making this Tunney Act submission. See 15 U.S.C. § 16(b)–(h). High Plains respectfully requests that the Department amend its Complaint, and make corresponding modifications in its Competitive Impact Statement, to reflect accurately High Plains' role in this matter.

High Plains is concerned that the Complaint and the Competitive Impact Statement filed by the Department of Justice neglect to explain fully the relevant circumstances. The Complaint alleges that Mercury and High Plains reached an agreement to refrain from bidding against one another for PCS licenses in certain markets in violation of Section 1 of the Sherman Act. See Complaint ¶¶ 3, 19, 20, 21. Similarly, the Competitive Impact Statement filed with the Court alleges that High Plains reached an agreement with Mercury to cease bidding on particular PCS licenses. See Competitive Impact Statement at 1–2, 6–8. Although it is accurate that Mercury threatened, through bid-signaling, to outbid High Plains for the Amarillo F block license, and that in order to confirm Mercury's intention, High Plains ceased bidding on the Lubbock F block license, the Complaint and Competitive Impact Statement fail to explain that High Plains (1) was the object of Mercury's improper conduct, (2) immediately reported Mercury's wrongdoing to the FCC, and (3) did not benefit from Mercury's misconduct. The Complaint and Competitive Impact Statement thus incorrectly suggest that High Plains was a willing participant in a violation of the antitrust laws of the United States.

Relevant Facts

From August 26, 1996 to January 14, 1997, both Mercury and High Plains participated in an auction conducted by the Federal Communications Commission ("FCC") of licenses to use certain broadband radio spectrum in the operation of personal communications services ("PCS"). The auction comprised numerous rounds of bidding. As stated in the Competitive Impact Statement, High Plains had been the high bidder for the Amarillo F Block license since Round 68 and continuing through round 120. High Plains was also bidding for the Lubbock F block license. Mercury, on the other hand, had shown no interest in the Amarillo market, but

was an active participant in the bidding for the Lubbock F block license.

In round 117 of the auction, when only Mercury and High Plains were bidding, Mercury made the last three digits of its bid match the "BTA code" assigned to the Amarillo market ("013"), for which High Plains was then the high bidder. High Plains did not then understand that there was any connection between the Amarillo market and Mercury's bid amount for the Lubbock market containing the BTA code for Amarillo. High Plains continued bidding for the Lubbock F block license over the next three rounds. In round 121, Mercury for the first time placed a bid for the Amarillo F block license; its bid ended in the three digits that served as the BTA code for the Lubbock market ("264"). Still not understanding Mercury's intent, High Plains continued to bid for the Lubbock F block license. Mercury responded by making the message clearer—it placed bids ending in "013" in the Lubbock market in round 123, "264" in the Amarillo market in round 125, and "013" in the Lubbock market in round 127.

After the conclusion of round 127, High Plains realized that Mercury was signalling High Plains to stop its bidding in Lubbock. In order to test its theory that Mercury was signaling it through the use of BTA code numbers, High Plains stopped bidding for the F block license in Lubbock. The theory was confirmed when Mercury immediately ceased bidding for the F block license in Amarillo. As soon as High Plains' fears were confirmed, it immediately contacted the FCC by telephone on November 22 and 25, 1996 and followed up on November 26, 1996 by filing an Emergency Motion for Disqualification. That notification led to an investigation of Mercury's conduct by the FCC and to the FCC's referral of the matter to the Department of Justice.

Summary and Request for Amendment

In light of this history, we believe it is both inaccurate and unfair to describe the conduct of High Plains as if that conduct were no different than that of Mercury. High Plains respectfully requests that the Complaint and Competitive Impact Statement be amended to reflect that the conduct and actions of Mercury and High Plains were significantly different. High Plains was the party that first brought this matter to the attention of the FCC. Because High Plains promptly reported and later filed a formal complaint with the FCC identifying the illegal conduct of Mercury, Mercury's misconduct was exposed. If the only facts about High

Plains were those alleged in the Complaint, then presumably the United States would have pursued the same judicial course of action against High Plains that it followed against Mercury. Unfortunately, the *only* facts in the record are those alleged in the complaint; High Plains, the good citizen that observed and reported the crime, is condemned by association.

Having observed what it believed to be a violation of the FCC's rules and an apparent violation of Section 1 of the Sherman Act, High Plains was in the difficult position of no longer being completely free to pursue its own best interests and High Plains could not just ignore Mercury's misconduct. High Plains immediately reported Mercury's conduct to the FAA—the only thing it could have done in the circumstances to bring the improper conduct to a halt and to avoid being wrongly implicated in Mercury's scheme. Thus, we respectfully request that the Complaint and Competitive Impact Statement be amended to reflect that High Plains was a victim of Mercury's scheme, that High Plains promptly brought the scheme to the attention of the proper authorities, and that High Plains did not willingly participate in any agreement that violated the antitrust laws.

Respectfully submitted,
Williams & Connolly

Steven R. Kuney
Jonathan P. Graham
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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Atlantic Richfield Company ("ARCO"): LPG Blends Evaluation Test Program

Notice is hereby given that, on January 15, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Atlantic Richfield Company ("ARCO"): LPG Blends Evaluation Test has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to

Section 6(b) of the Act, the identities of the parties are Atlantic Richfield Company, Anaheim, CA; California Air Resources Board, Sacramento, CA; Engine Manufacturer's Association, Chicago, IL; Ford Motor Company, Dearborn, MI; National Propane Gas Association, Scottsdale, AZ; Natural Resources Canada—Canmet Energy Technology Centre, Ottawa, Ontario, CANADA; Propane Gas Association of Canada, Calgary, CANADA; Railroad Commission of Texas—Alternative Fuels Research & Education Division, Austin, TX; Shell Martinez Refining Company, Martinez, CA; The Adept Group, Inc., Los Angeles, CA; Tosco Refining Company, Martinez, CA; and Western Propane Gas Association, Sacramento, CA.

The California Air Resources Board ("ARB") approved a delay for a 5 percent propene limit on liquefied petroleum gases ("LPG") used as a motor vehicle fuel and directed ARB staff to investigate the feasibility of alternative specification of in-use motor vehicle LPG. An alternative may be adopted to the present ARB standard (based on equivalence of emissions, performance, and durability). ARB formed an LPG Task Group to direct the organization and implementation of the investigations. (LPG Task Group members are the parties identified above.) The Adept Group, Inc. serves as Project Manager.

The LPG Task Group and test program will determine if alternative specifications to proposed ARB standards for motor vehicle grade LPG will provide equivalent or better emissions, performance, and durability in existing engines. The task group and program will evaluate various LPG blends to determine if there are equivalent specifications that would address supply and distribution concerns for users and suppliers of LPG motor vehicles. The Blends Evaluation Test Program will include emissions testing, performance, combustion testing, and durability testing.

The parties plan to perform acts allowed by the National Cooperative Research and Production Act that would advance these goals.

Information regarding participation in the LPG Blends Evaluation Test Program may be obtained from Mr. Alex Sparatu, President, The Adept Group, Inc., 1575 Westwood Blvd., Suite 200, Los Angeles, CA 90024-5620.

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on December 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oracle Corporation, Redwood Shores, CA; and Cisco Systems, San Jose, CA joined the Consortium as Executive Sponsor members. Engage Technologies, Andover, MA; and American Express, New York, NY joined the Consortium as Portfolio members. FASTXchange, Inc., Marina del Rey, CA; SITI, Kista, SWEDEN; McCutchen, Doyle, Brown, and Enersen LLP, Palo Alto, CA; Inference Corporation, Novato, CA; and The Gap Inc., San Bruno, CA joined the Consortium as Core members. Also, AMP, Inc., Harrisburg, PA; NeoMedia Technologies, Inc., Fort Myers, FL; BAX Global Logistics/Logistics Advantage, Atlanta, GA; National Housewares Mfg. Assoc. NHMA, Rosemont, IL; SpaceWorks, Inc., Rockville, MD; WorldPoint, Honolulu, HI; SupplyWorks, Lexington, MA; Digital Island, San Francisco, CA; and GEIS, Rockville, MD have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on October 29, 1998. A

notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on October 29, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, France Telecom, New York, NY; and Satcom Electronic Commerce Service, Osborne Park, WA have joined the Consortium as Portfolio members. American Century, Kansas City, MO has joined the Consortium as an Executive Sponsor member. American Management Systems, Inc., Fairfax, VA; and Ascend Communications, Inc., Alameda, CA has joined the Consortium as Corporate Sponsor members. ChannelPoint, Inc., Colorado Springs, CO; Electric Press, Inc., Reston, VA; Extol, Inc., Pottsville, PA; GlobeID, Paris, FRANCE; and Texas Dept. of Information Resources, Austin, TX have joined the Consortium as Core members. Also, First Chicago NBD, Chicago, IL; InterTrust Technologies Corp., Sunnyvale, CA; NetGrocer, New York, NY; and The Vision Factory, Scotts Valley, CA; and Internet Mall, Sausalito, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

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