**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT**
In the Matter of Par Petroleum Corporation
File No. 141-0171

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted from Par Petroleum Corporation ("Par"), subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") designed to remedy the anticompetitive effects resulting from Par's proposed acquisition of 100% of the outstanding voting securities of Koko'oha Investments, Inc. ("Koko'oha"), which owns all of the membership interests of Mid Pac Petroleum, LLC ("Mid Pac"). Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, Par must terminate its acquired storage and throughput rights at Aloha Petroleum, Ltd.'s ("Aloha") Barbers Point Terminal ("Barbers Point Terminal").

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

THE PARTIES

Par, a publicly-traded diversified energy company based in Houston, Texas, engages in the refining, bulk supply, transportation, and marketing of petroleum products in Hawaii through its wholly-owned subsidiary, Hawaii Independent Energy, LLC ("HIE"). HIE owns and operates the 94,000 barrel-per-day Kapolei refinery on Oahu and refined product terminals in Hawaii. HIE markets gasoline through its Tesoro-branded retail locations and wholesale and retail sales to third parties.

Koko'oha, through its wholly-owned subsidiary Mid Pac, engages in the bulk supply, marketing, and distribution of petroleum products in Hawaii. Mid Pac owns and operates refined products terminals and is the exclusive licensee of the "76" gasoline brand in Hawaii. Mid Pac markets gasoline through its branded retail locations and wholesale and retail sales to third parties.

THE PROPOSED ACQUISITION

Pursuant to an Agreement and Plan of Merger dated June 2, 2014, Par proposes to acquire Koko'oha for $107 million (the "Acquisition"). The Commission's Complaint alleges that the Acquisition, if consummated, 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, by substantially lessening competition in the market for bulk supply of Hawaii-grade gasoline blendstock ("HIBOB") in the state of Hawaii.

THE RELEVANT MARKET

The relevant product market in which to analyze the competitive effects of the Acquisition is the bulk supply of HIBOB. Refineries produce HIBOB from crude oil. HIBOB is the only gasoline blendstock that, when combined with ethanol, yields gasoline that meets the standards and specifications of Hawaii law. No substitute exists for HIBOB for motor vehicles that must use Hawaii-grade gasoline.

Bulk supply means the provision of larger-than-truckload volumes of petroleum products, which can come from local refineries or via ocean-going vessels. Bulk suppliers need bulk volumes of gasoline blendstock (either through their own refinery operations or through imports) and terminal capacity. Bulk suppliers deliver bulk supply of HIBOB into gasoline terminals for storage and local distribution, or for further pipeline or marine shipment. No alternative exists to the bulk supply of HIBOB.

The relevant geographic market in which to assess the competitive effects of the Acquisition is Hawaii. Bulk suppliers refine HIBOB in, or import it into, Hawaii.

THE STRUCTURE OF THE MARKET

Bulk supply of HIBOB comes from either the two local refineries or imports from out of state via ocean-going vessels. Par and Chevron Corporation ("Chevron") are the only local refiners. Non-refiners Aloha and Mid Pac can supply bulk volumes to Hawaii, for distribution throughout the state, by receiving imported HIBOB cargoes through Barbers Point Terminal. This is the only terminal in Hawaii not owned by a local refiner that can receive full waterborne cargoes of HIBOB from out of state. By virtue of a long-term storage and throughput agreement, Mid Pac holds substantial storage and throughput rights at Barbers Point Terminal, which provides Mid Pac with sufficient terminal access to handle and distribute imported HIBOB cargoes.[1] The four bulk suppliers – Par, Mid Pac, Chevron, and Aloha – own or control access to all of the Hawaii gasoline terminals that handle bulk volumes of HIBOB.

EFFECTS OF THE ACQUISITION

The Acquisition is likely to substantially lessen competition and lead to higher prices for bulk supply of HIBOB in Hawaii. The potential for competitive harm from the Acquisition stems from the importance of imports in establishing HIBOB prices. Although Aloha and Mid Pac typically buy bulk supply of HIBOB from Par and Chevron, Aloha and Mid Pac use their import capabilities to obtain favorable HIBOB bulk supply prices from the local refiners. Aloha and Mid Pac's import capabilities serve to constrain local refiners' bulk supply prices of HIBOB.

---

[1] Aloha entered the storage and throughput agreement with Mid Pac in mid-2005, shortly after the Commission sought to enjoin Aloha's acquisition of Trustreet Properties LLP, Aloha's fifty-percent partner in the Barbers Point Terminal at the time. The Commission subsequently dismissed its complaint in that matter. *See* Press Release, Fed. Trade Comm'n, FTC Resolves Aloha Petroleum Litigation (Sept. 6, 2005), *available at* https://www.ftc.gov/news-events/press-releases/2005/09/ftc-resolves-aloha-petroleum-litigation.

The Acquisition would weaken the threat of imports and relax a competitive constraint on HIBOB bulk supply prices. Although the Acquisition reduces from four to three the number of bulk suppliers of HIBOB, the increase in concentration from the loss of Mid Pac does not give rise to competitive concerns. Mid Pac's ability to command import parity pricing makes it a bulk supply market participant, but the evidence did not show that Mid Pac's participation in bulk supply or downstream markets is competitively significant. However, Par's acquisition of Mid Pac's storage rights at Barbers Point Terminal would result in Par and Aloha sharing access to the terminal. Through these acquired rights, Par could limit Aloha's use of the terminal and hamper Aloha's ability to import bulk supply of HIBOB, thus weakening Aloha's ability to use its import capabilities to obtain better bulk supply prices. With Aloha as a weakened competitor, Par could unilaterally exercise market power post-merger or increase the likelihood and degree of coordination between Par and Chevron. As a result, the Acquisition likely would increase the price of bulk supply of HIBOB, which would ultimately lead to higher gasoline prices for Hawaii consumers.

ENTRY CONDITIONS

Entry into the relevant line of commerce in the relevant section of the country would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. The prospect of new entry through construction of a refinery or import-capable terminal is extremely remote, given the financial, regulatory, and logistical challenges such entry would need to surmount. It is also unlikely that a new entrant would import HIBOB to counteract the competitive harm described above, as current bulk suppliers have no incentive to offer terminal access to create or support entry by a new bulk supply competitor.

THE DECISION AND ORDER

The Order resolves the competitive concerns raised by the Acquisition by preserving flexibility for HIBOB imports at Barbers Point Terminal. The Order requires Par to terminate its rights at Barbers Point Terminal within 5 days after the closing date of the Acquisition. The Order allows Par to retain only those rights necessary to load a limited number of tanker trucks at Barbers Point Terminal truck rack. These rights would not interfere with the storage and handling of full cargoes of imported HIBOB at Barbers Point Terminal. The Commission must approve any modification to Par's rights to load products at Barbers Point Terminal or any new agreement relating to storage or throughput rights at Barbers Point Terminal. Par may renew or extend the agreement that permits the loading of tanker trucks at Barbers Point Terminal truck rack, without prior Commission approval.

In addition, the Order obligates Par to provide the Commission prior written notice of an acquisition of any leasehold, ownership, or any other interest in any assets engaged in the bulk supply of HIBOB in Hawaii. In light of the post-acquisition structure of the HIBOB bulk supply market, Par's future acquisition of any interest enumerated above could raise competitive concerns that may warrant careful investigation by the Commission. However, Par may acquire, without prior written notice, rights or assets not used for bulk supply, which would not result in an increase in concentration in the relevant market. Specifically, the Order excludes from prior written notice the acquisitions of: (i) pipeline throughput rights, (ii) barges or other vessels engaged only in inter-island movement of HIBOB, or (iii) petroleum product terminals or other storage facilities that are unable to receive at least 150,000 barrels of petroleum products in a single delivery from out of state on ocean-going vessels. The acquisition of these rights or assets would not raise competitive concerns in the bulk supply of HIBOB in Hawaii.

To ensure Par's compliance with the Order, Par must submit periodic compliance reports and give the Commission prior notice of certain events that might affect its compliance obligations arising from the Order. Lastly, the Order terminates after 10 years.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Order or to modify its terms in any way.