



DEPARTMENT OF JUSTICE

Antitrust Division

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April 23, 1997

Rufus W. Oliver III, Esquire
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Dear Mr. Oliver:

This is in response to your request on behalf of the Petroleum E&P Research Cooperative ("the Cooperative") a proposed nonprofit research and development joint venture, for the issuance of a business review letter pursuant to the Department of Justice's Business Review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to the formation of a joint research and development venture involving a number of petroleum exploration and production companies and Texas A&M University.

The initial members of the Cooperative will be six major oil companies -- Amoco, Arco, Exxon, Mobil, Shell, and Texaco -- and Texas A&M University. The latter will establish an entity -- the Global Petroleum Research Institute ("GPRI") -- that will plan and coordinate the research activities of the Cooperative and furnish a full-time support staff to carry out the research work undertaken. The principal purpose of the Cooperative will be to perform exploration and production research of a nature that is not attractive for individual firm research.

Membership in the Cooperative will be available to any entity that receives significant revenues from petroleum exploration and production activities, other than firms that receive substantial revenues from oil field service activities. It is contemplated that individual petroleum service firms will act as cost-sharing participants in specific research projects of the Cooperative. GPRI will comply with the requirements of the

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National Cooperative Research and Production Act (notification to DOJ and FTC of the joint venture's membership and proposed activities) not only with respect to the formation of the Cooperative and changes in its membership, but also for individual research projects undertaken by the Cooperative.

The Cooperative will not be the exclusive research and development vehicle for its members. On the contrary, each member will remain free to do its own research work alone, or with others. Indeed you assert that "a majority of the members will make contributions to the cooperative that do not, in the aggregate over any three year period for a given participant, exceed ten percent of each Member's total research and development budget for that period."

It is contemplated that the Cooperative's initial annual budget will be less than five million dollars. This research will take place in a context in which you assert that in 1996 there were at least sixty one other entities, with research funding of over one billion dollars, engaged in petroleum exploration and production research.

All project technology resulting from work of the Cooperative will be owned by GPRI. GPRI, in turn, will grant each member that contributes to the support of the particular project a perpetual, non-exclusive royalty-free world-wide license to use the technology in its own business and to sublicense that technology to non-members. GPRI will also have the right to grant royalty-bearing licenses to others.

On the basis of the information and assurances that you have provided us, the Department of Justice has no current intention of instituting antitrust enforcement action against the formation of the Cooperative. The proposed Cooperative Agreement doesn't contain any provisions that appear to be designed to restrict price, output or research competition amongst its members. All members will retain their right to engage in independent research, and you have indicated that after formation of the Cooperative the members' independent research will continue to far exceed that done by the Cooperative. Moreover, the existence of a large number of other entities engaged in petroleum exploration and production research indicates that the formation and operation of the Cooperative is not likely to reduce the amount or variety of such research.

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Moreover, the information provided to us indicates that the intellectual property provisions of the Cooperative Agreement are not designed to reduce individual member incentives to innovate.

Members will retain all intellectual property rights derived from their efforts outside of the Cooperative. The Cooperative will own the intellectual property rights that are derived from its specific joint venture research projects, but all members who contribute to the cost of developing such specific technology will be entitled to a royalty-free, non-exclusive license to use the technology and to sublicense it to others. Under these circumstances, the Cooperative Agreement doesn't appear to be designed to dilute individual member incentives to innovate or to unduly limit the utilization of jointly-developed technology.

On the information provided to us, it doesn't appear that the fact that oil field service firms are ineligible for membership in the Cooperative would raise a threat to competition. In view of the relatively small size of the Cooperative's research activities, the large number of other entities currently engaged in similar research, and the lack of substantial barriers to entry into individual or joint research, membership in the Cooperative would not appear to be essential or even important to success in any oil field service business.

In sum, the proposed joint research and development venture appears to be structured in a manner that will not create any risks to competition. Moreover, to the extent that the Cooperative in fact engages in research efforts that would not be undertaken by individual firms, the joint venture may have the procompetitive effect of promoting innovation.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against the formation of the Cooperative. This letter, however, expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed joint research and development program proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its

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terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter unless you request that part of the material be withheld in accordance with Paragraph 10© of the Business Review Procedure.

Sincerely,

Joel I. Klein
Acting Assistant Attorney General