CT-00/

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for a consent order pursuant to sections 92 and 105 of the *Competition Act,* R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Ultramar Ltd. of a petroleum product terminal facility and wholesale supply business located in Ottawa currently owned by Coastal Canada Petroleum Inc.;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ULTRAMAR LTD.

Respondent

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. INTRODUCTION

1. The Commissioner of Competition (the "Commissioner") brings this application for a consent order on the grounds that the proposed acquisition by Ultramar Ltd. ("Ultramar") of the petroleum product terminal facility ("the Coastal facility" or the "facility") located at 300 Hunt Club Road West, Nepean, Ontario, Canada, which is currently owned by Coastal Canada Petroleum, Inc. ("Coastal") and Coastal's wholesale supply business (together "the proposed transaction"), would, in the absence of the draft consent order (the "DCO"), likely lessen and prevent competition substantially in the markets for the provision of terminal facilities and the wholesale supply of refined petroleum product in the Ottawa region which refers to the area

surrounding the city of Ottawa southeast to Hawkesbury and Cornwall, south to Kingston and west and north to Pembroke and Maniwaki (the “Ottawa region”).

2. “Refined petroleum product” includes gasoline and low vapour pressure blendstock gasoline, fuel ethanol and distillates such as furnace oil, stove oil and diesel. Fuel ethanol is sold by Coastal as a blend with regular unleaded gasoline or, in the summer, low vapour pressure blendstock gasoline, which is then sold to the consumer as ethanol blend gasoline. The “independent marketers” consist of wholesaler/retailers and retailers which purchase refined petroleum product in the Ottawa region and which neither own nor are affiliated, as defined in the *Competition Act*, with any person who owns a refinery.

3. The Commissioner, with the consent of Ultramar, respectfully submits for approval a DCO that, if implemented, will eliminate the likely substantial lessening and prevention of competition arising from the proposed transaction.

4. The statement of grounds and material facts herein forms the basis of the application brought by the Commissioner with the consent of Ultramar. The Commissioner has alleged certain material facts, and Ultramar does not necessarily agree with all of the facts alleged, but does not contest the statement of grounds and material facts for the purposes of this application and any proceeding initiated by the Commissioner relating to the DCO, including an application to vary or rescind.

II. THE PARTIES

THE COMMISSIONER

5. The applicant is the Commissioner of Competition, appointed pursuant to s.7 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) and, as such, is the person authorized to make this application.

ULTRAMAR LTD.

6. The respondent is Ultramar Ltd. ("Ultramar"), which is a subsidiary of Ultramar Diamond Shamrock Corporation ("UDS"). UDS is a refiner, wholesaler and retailer of refined petroleum product in the United States and Canada. Its operations consist of refineries, distribution networks, including terminal facilities and bulk plants, retail gas stations, pipelines and retail home heating operations.

7. In Canada, Ultramar currently owns and operates a 160,000 barrels per day (25.5 million litres ("ML")) refinery located at St-Romuald, Quebec. Ultramar plans to increase the capacity of the refinery to 190,000 barrels (30.2 ML) per day **#**. It also owns petroleum product storage and distribution facilities in Quebec, the Atlantic provinces and Ontario. In these provinces, Ultramar markets gasoline and diesel fuel through a network of approximately 1,280 outlets and provides home heating oil to over 170,000 households, as well as its wholesale, industrial and commercial business.

8. In the Ottawa region, Ultramar owns an inactive refined petroleum product terminal located at 111 Bentley Road, Nepean ("the Ultramar facility"), which is located adjacent to the Coastal facility. The Ultramar facility was originally built in 1972 and linked with the Trans-Northern Pipeline ("the TNPL"); it has a storage capacity of approximately 232,000 barrels (36.9 ML). No other terminal has been built in the Ottawa region since that time. Ultramar discontinued the operation of this facility in 1995. At that time, the link with the TNPL was disconnected and other equipment, such as loading arms, were relocated. Tanks, pumps and piping were either de-activated or mothballed to limit deterioration.

9. The TNPL is a petroleum product pipeline owned in equal proportions by Imperial Oil ("Imperial"), Petro-Canada and Shell Canada Products Limited ("Shell"). It runs from Montreal to Farran's Point, Ontario and from Toronto to Farran's Point with a separate spur line running from Farran's Point to Ottawa. The portion of the TNPL that runs from Montreal to Ottawa has a throughput capacity of approximately 46,000 barrels (7.15

ML) per day. As an interprovincial pipeline, it comes under the jurisdiction of the National Energy Board. One of the essential conditions for shipping refined petroleum product through a pipeline is that the shipper must have approved facilities, such as a terminal or refinery, at originating and destination points on the pipeline.

10. Ultramar is not currently an active participant in the Ottawa region for the provision of terminal facilities as it does not operate its terminal. Ultramar is, however, an active participant in the wholesale supply market of refined petroleum product in this market. In the Ottawa region, Ultramar throughputs its refined petroleum product at a terminal owned and operated by Imperial. **#**

11. In the Ottawa region, Ultramar operates a retail gasoline network of approximately 63 outlets and sells refined petroleum product to industrial, commercial and residential customers. Approximately **#** of Ultramar's 1998 sales in the Ottawa region were made to the independent marketers. Of its remaining 1998 sales in this region, approximately **#** went to its own retail network, **#** to its own retail home heating oil customers and **#** to **#.**

12. Ultramar does not currently sell fuel ethanol or provide the equipment required for the blending of fuel ethanol and gasoline.

III. THE VENDOR

COASTAL CANADA PETROLEUM, INC.

13. Coastal is a wholly owned subsidiary of Cosbel Petroleum Corporation ("Cosbel"), which is a wholly owned subsidiary of The Coastal Corporation ("Coastal Corp."). Cosbel and Coastal Corp. are both incorporated in the state of Delaware, United States.

14. Coastal Corp. is an energy holding company with subsidiary operations in natural gas gathering, marketing, processing, storage and transmission, petroleum refining,

marketing and distribution, chemicals, gas and oil exploration and production and coal mining.

15. Coastal is a corporation incorporated under the laws of the province of New Brunswick, with operations in Canada in the terminal business, crude oil and refined product marketing and petrochemical production.

16. The Coastal facility is Coastal's only operational terminal in Canada. The facility was built by Texaco Canada Inc. ("Texaco") in 1952. Coastal purchased this facility in 1991 from Imperial as a result of a Consent Order divestiture directed by the Competition Tribunal dated January 29, 1990, which set out the conditions by which Imperial was to purchase Texaco. Coastal does not own a refinery or a retail network in Canada and can, therefore, be categorized as a "non-integrated" wholesale supplier and terminal operator in Canada.

17. The Coastal facility has a product storage capacity of 240,000 barrels (38.2 ML) of refined petroleum product as well as support marketing operations and a "cardlock operation", which is a card-activated fuelling facility for commercial trucking fleets. At the Coastal facility, refined petroleum product is loaded for shipment by tank truck at three bottom loading racks and one top loading rack. Coastal's racks are equipped with three top loading arms for distillates, ten bottom loading arms for gasoline and distillates, and two bottom loading arms dedicated to the blending of fuel ethanol and gasoline. Top loading arms are important to some independent marketers which currently operate tank trucks designed to receive distillates at the top of the truck trailer.

18. Due to its age and current condition, the facility requires investment. Additionally, new safety and environmental standards will come into force December 31, 2000 under the *Gasoline Handling Code*, O. Reg. 521/93. Therefore, significant capital expenditure will be required in order to keep the facility in a condition of complete compliance.

19. As a wholesaler, Coastal sold approximately **#** of refined petroleum product in the Ottawa region in 1998. Coastal is the largest wholesale supplier to independent marketers in the Ottawa region, accounting for approximately **#** of the gasoline sales and **#** of the total refined petroleum product sales to the independent marketers.

20. **#**. The product is delivered to Coastal's terminal via the TNPL. Coastal has no direct access to a TNPL link in Montreal and as such is largely dependent on receiving product from a supplier with a link to the TNPL

21. The remainder of Coastal's product is obtained via tank truck from **#** In 1998, Coastal purchased approximately **#** of low vapour pressure blendstock and premium grade gasoline as well as distillate from **#**. This amounted to **#** of Coastal's total annual requirement in that year.

22. Coastal is the only Ottawa-based wholesale supplier which makes available to independent marketers the equipment and blend stock necessary to blend fuel ethanol with gasoline. Coastal sold approximately **#** of fuel ethanol in 1998 in the Ottawa region. The current supply of fuel ethanol to the Coastal facility is via rail car **#.**

23. In the market for the provision of terminal facilities, Coastal is the only non-integrated terminal operator in the Ottawa region. Coastal has engaged in storage arrangements with the independent marketers whereby the latter store product at the Coastal terminal.

IV. THE PROPOSED TRANSACTION

24. On July 29, 1999, Ultramar publicly announced that it had signed an agreement with Coastal. Pursuant to this agreement, Ultramar proposes to acquire the Coastal facility and Coastal's refined petroleum product wholesale supply business in the Ottawa region.

25. Included in the assets that would be purchased are the land, the terminal facility, the customer list and goodwill of the business and the refined petroleum product inventories on hand at the closing of the proposed transaction.

26. On closing of the proposed transaction, Ultramar would assume all of the environmental liabilities associated with the terminal as well as the existing supply agreement between Coastal and **#**, as set out in paragraph 20.

V. COMPETITIVE ANALYSIS

PRODUCT MARKETS

27. There are two relevant product markets for the purpose of assessing the impact on competition of the proposed transaction. The first consists of the provision of terminal facilities for persons who want to store refined petroleum product and/or to wholesale refined petroleum product without operating a terminal themselves. This market is referred to as the terminal facilities market. The second product market is the wholesale supply of refined petroleum product to independent third-party purchasers.

Terminal Facilities

28. Terminals are an essential part of an efficient petroleum product distribution system. Terminals are used to provide temporary storage of refined petroleum product received by pipeline, rail or marine vessel. Once the product is in a central location, it is cost efficient for trucks to pick up at the terminal and make multiple deliveries. Providing storage capacity at the terminal either directly or by way of a throughput agreement brings in revenue for the terminal operator. The use of storage facilities permits a person to purchase product when the cost is low and to sell the product at a more beneficial time. Additionally, refiners can use other terminals to throughput product by way of an exchange or throughput agreement with other refiners. In this way, refiners reap the benefits of having access to a terminal without the overhead of owning and operating one themselves.

29. Integrated terminal operators do not currently provide storage to independent marketers. However, over the last five years there have been **#** storage agreements and several spot arrangements between Coastal and independent marketers.

30. The principal users of the Ottawa region terminals for throughput purposes are the refiners that own them and other integrated petroleum firms such as national and regional refiners via exchange or terminalling agreements.

31. The Coastal facility receives its product supply by pipeline and occasionally by tank truck. Refined petroleum product is redelivered from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers.

32. At the present time in the Ottawa region there is some excess capacity in the terminal facilities market, with Imperial, Petro-Canada and Shell each operating a terminal.

Wholesale Supply

33. The wholesale supply of refined petroleum product is the business of selling refined petroleum product to independent third-party purchasers for resale.

34. At the wholesale level the independent marketers are the only purchasers which are not vertically integrated or affiliated with a refinery and therefore they are the only non-captive purchasers of refined petroleum product at the wholesale level. Integrated marketers receive product either from their own refinery or from a terminal operator designated by their refinery and hence do not purchase in the open market. For these reasons, the non-captive, independent marketers are the relevant market purchasers of refined petroleum product at the wholesale level.

35. There are four distinct types of wholesale suppliers currently in operation in the refined petroleum product industry in the Ottawa region:

(a) integrated refiners, such as Imperial, Petro Canada and Shell, which utilize their own terminal facilities to supply their own branded retail networks and which also may supply to the independent marketers within the constraints of the available capacity remaining after the transfer of refined petroleum product to their own branded marketers;

(b) integrated refiners, such as Ultramar and Sunoco, which currently utilize other integrated refiners' terminal facilities to supply their own branded retail networks and which also may supply to the independent marketers within the constraints of the available capacity remaining after the transfer of petroleum product to their own branded marketers;

(c) Coastal, which has no branded retail networks in the Ottawa region, supplies petroleum product to independent marketers via its own terminal facility; and

(d) independent wholesaler-retailers, such as the larger independent marketers, MacEwen Petroleum Inc., Mr. Gas Ltd., Drummond Fuels Ltd. and W.O. Stinson & Sons Ltd., that deliver petroleum product directly to destination accounts without the use of terminal facilities or with the use of third-party terminal facilities. In the Ottawa region, these wholesalers form a very small portion of the wholesale supply market (1%) and have limited competitive impact in that market for the reasons set out in paragraph 63.

36. Of the total refined petroleum product purchased by the independent marketers in the Ottawa region, approximately **#** is purchased from Coastal and the remainder is purchased from the integrated wholesalers.

37. Integrated wholesalers primarily supply their own branded dealers and may secondarily supply independent marketers. Conversely, non-integrated wholesalers, such as Coastal, typically sell the bulk of their inventory to independent marketers. In 1998**, <u>#</u>** of Coastal's sales in the Ottawa region, except those from its cardlock operations, were to independent marketers.

38. Two integrated wholesalers/refiners participate in the Ottawa region wholesale supply market by engaging in medium and long term agreements for terminal facilities (“throughput agreements”) with other integrated refiners which operate a terminal in the Ottawa region. For example, **<u>#.</u>**

39. The wholesale supply of refined petroleum product in the Ottawa region is generally characterized by: a) homogeneity of refined petroleum product; b) repeated and frequent interaction among suppliers; c) a small number of firms engaged in wholesale supply; d) posted price transparency; e) multi-market contact among integrated wholesalers; and f) common vertically integrated structure. Each wholesaler with a terminal facility publishes wholesale or a “rack price” from time to time.

<u>GEOGRAPHIC MARKET</u>

<u>Terminal Facilities</u>

40. The relevant geographic market for the provision of terminal facilities is generally co-extensive with the market for wholesale supply. Terminals are typically situated either in areas where there is a concentrated customer base for distribution efficiency or at the conjunction of product transportation or production facilities. The Ottawa region is an area where there is a concentrated customer base. For example, the fact that all of the integrated refiners have, or use, a terminal in both Montreal and Ottawa indicates that Montreal and Ottawa are separate markets for

terminal facilities. For these reasons, the relevant geographic market for the provision of terminal facilities is the Ottawa region.

Wholesale Supply

41. As indicated in paragraph 1, the Ottawa region refers to a significant area surrounding the city of Ottawa. However, the exact boundaries of the geographic market for the wholesale supply of refined petroleum product to independent third party purchasers are subject to some fluctuation at any given time depending on transportation costs and wholesale prices within that market and also in contiguous markets. It is clear however, that wholesale supply is primarily conducted by distribution from a centralized terminal. The wholesale suppliers using terminals located in the Ottawa region serve most of their customers within a finite radius of those terminals. For example, the independent marketers operating in the Ottawa region generally have the bulk of their customers within 100 km of the terminal they are using. The relevant geographic market for the wholesale supply of refined petroleum product is therefore generally co-extensive with the geographic market for terminal facilities.

42. Refined petroleum product in the Ottawa region comes mostly from Montreal. Ottawa region wholesalers are somewhat constrained by Montreal area wholesalers with respect to the price they can charge independent marketers, but only to the extent to which the independent marketers can competitively acquire product from other refiners or terminal operators in Montreal and transport it themselves to Ottawa. Trucking is currently the only alternative mode of transportation available to the independent marketers and involves a significantly higher cost than the pipeline.

43. The current most cost efficient means of transporting refined petroleum product into the Ottawa region terminals from Montreal is through the TNPL at a cost of 0.35 cents per litre (“cpl”).

44. For an Ottawa region purchaser at the wholesale level, the Ottawa region gasoline rack prices have historically been 0.57 cpl higher than those in Montreal, based on a monthly average between January 1992 and July 1999. In addition, there is an average cost of delivery to a retail station from an Ottawa region terminal of 0.25 cpl. As a result, the total average delivered cost of obtaining gasoline via an Ottawa region terminal operator, with access to the TNPL, to retail stations in the Ottawa region is 0.82 cpl above the Montreal rack price based on the same historical average. This compares to a cost of between 0.80 and 1.1 cpl above the Montreal rack price when the trucking option is exercised.

45. Therefore, the available wholesale pricing information indicates that the Ottawa region wholesale suppliers are pricing close to the lowest cost of obtaining refined petroleum product from Montreal terminals by truck. The more efficient pipeline transportation option is not similarly constraining wholesale prices. This indicates, in the Commissioner's view, that the total cost savings of the most efficient mode of transportation (net of any additional terminalling costs) are not being passed on to the independent marketers. As such, the Montreal-area wholesalers are only constraining Ottawa region wholesalers' prices to the extent that the Montreal supply is able to enter the Ottawa region by truck, and not by pipeline. Thus, the Montreal supply option has had a limited constraining effect on the Ottawa region wholesale supply market.

46. In addition, transporting refined petroleum product by truck from Montreal area wholesalers is generally less profitable for the independent marketers because of the additional costs they must incur for the multiple and low-volume delivery stops which characterize their activities in the Ottawa region. This limits the substitutability of the Montreal area wholesalers for Ottawa region wholesale supply.

47. As a result of the wholesale pricing information and the transportation inefficiencies described in paragraphs 44 to 46, the Commissioner is of the view that Montreal does not form part of the relevant geographic market for the wholesale supply of refined petroleum product.

RELEVANT MARKETS

48. The markets, as defined in paragraphs 27 to 47, in the Ottawa region for the provision of terminal facilities and the wholesale supply of refined petroleum product to independent third party purchasers will hereafter be referred to as "the terminal facilities market" and "the wholesale supply market", respectively, or, in combination, as "the relevant markets".

MARKET SHARES

Terminal Facilities

49. Post transaction, all four terminal operators will be integrated refiners. Ultramar, an integrated refiner, will control the Coastal facility which has represented the storage capacity utilized by the independent marketers.

Wholesale Supply

50. Because the independent marketers purchased approximately **#** of their product from Coastal in the Ottawa region, post transaction the combined share of the sales of the integrated wholesalers to the independent marketers would rise from 53% to 99% as measured by sales to the independent marketers in 1998. After the proposed transaction, in the Ottawa region, the independent marketers would only have integrated refiners as possible sources of supply. Furthermore, after the transaction, each wholesaler would have, to a greater or lesser extent, their own captive network market, diminishing the incentive to supply to independent marketers.

SECTION 93 FACTORS

Removal of a Vigorous and Effective Competitor

Terminal Facilities

51. In the terminal facilities market, the proposed transaction would replace the only non-integrated terminal operator in the Ottawa region with an integrated operator in the provision of a scarce and valuable refined petroleum product storage facility.

52. Furthermore, because of the high fixed costs associated with the operation of terminals, and having regard to the age and condition of the Coastal facility, Ultramar has an incentive to close the Coastal facility and operate only its currently mothballed facility. In addition, as indicated above, the Coastal facility will require capital investment in order to meet the requirements of provincial regulations. The closure of the Coastal facility would permanently eliminate a scarce and valuable strategic asset from the terminal facilities and wholesale supply markets in the Ottawa region.

53. Removal of the Coastal terminal from the market would also substantially reduce or eliminate the availability of equipment required to service some of the trucks of the independent marketers. Specifically, independent marketers require top loading arms for distillates; however, the integrated industry participants generally use bottom loading trucks. Coastal currently has three top loading arms. The removal of the top loading arms could limit the ability of the independent marketers to get adequate supply without investment.

Wholesale Supply

54. In the wholesale supply market, if the proposed transaction proceeds, the independent marketers will lose their principal supplier. Coastal has proven itself to be an effective competitor by offering expansive credit terms, stable supply and personalized service to independent marketers.

55. The presence of Coastal, a vigorous non-integrated competitor, in the wholesale market, provides the independent marketers with a significant source of supply as an alternative to integrated wholesalers. The vast majority of Coastal's refined petroleum product sales are to the independent marketers. Independent marketers, however, do not like to be dependent on a single source of supply and do, on an *ad hoc* basis, also pick up refined petroleum product from integrated wholesalers in the Ottawa region. The presence of a non-integrated wholesaler gives the independent marketers some negotiating leverage with their second suppliers, the integrated wholesalers.

56. Ultramar has an incentive to lower its average cost. There are a number of ways to do this after the proposed transaction. Ultramar could close both terminals and enter into a throughput agreement with a third party. Secondly, Ultramar could refurbish its own facility, close the Coastal facility and, since fixed costs associated with terminal operations are high, maximize throughput at its own terminal. Finally, Ultramar could also operate both terminals and maximize throughput in those facilities. The most efficient course of action for Ultramar would be to close both terminals and operate in the Ottawa market via a throughput agreement with a third party. The next most efficient course of action would be for Ultramar to close the Coastal facility, due to its age and condition, once Ultramar has refurbished its own facility. Either of those options would reduce the negotiating leverage and security of supply for the independent marketers.

57. As indicated in paragraph 45, the Ottawa region wholesale suppliers are currently pricing close to the lowest cost of obtaining refined petroleum product from Montreal terminals by truck. As described in paragraphs 51 to 56, the proposed transaction will likely remove two competitive elements which currently inhibit the exercise of market power: ownership of the facility, and capacity controlled, by a non-integrated competitor. The Commissioner considers that this could cause a wholesale price increase of as much as 0.28 cpl. This is the difference between

the maximum cost of obtaining refined petroleum product from Montreal by truck (1.1 cpl) and the sum of the historical average of the wholesale price differential between Ottawa and Montreal (0.57 cpl) and the average local delivery cost of 0.25 cpl.

PREVENTION OF ENTRY OF A VIGOROUS AND EFFECTIVE COMPETITOR

58. The proposed transaction will preclude non-integrated ownership of the terminal. Without a terminal in the Ottawa region, the independent marketers cannot have direct access to the TNPL and therefore cannot participate in the terminal facilities or wholesale supply markets.

59. The proposed transaction will also prevent the possibility of independent marketers storing and distributing refined petroleum product, brought by them from Montreal when favorable opportunities occur, at a terminal located in Ottawa. They would have been assured of independent storage capacity if they had been able to purchase the Coastal facility thereby providing them with the opportunity to store refined petroleum product. Moreover, in the Commissioner's view, independent ownership of the terminal would have enhanced the pro-competitive impact of supply from Montreal by providing independent marketers with direct access in Ottawa to the TNPL. If the independent marketers could secure a link with the TNPL in Montreal, that would have allowed them to transport product by pipeline from Montreal at a lower cost than trucking product from Montreal. The purchase of the Coastal facility by independent marketers together with a link to the TNPL in Montreal, if that could be secured, would have eliminated the ability of the Ottawa region wholesale suppliers to charge a wholesale price limited only by the Montreal trucking option. However, as previously mentioned, no independent marketer currently has access to a terminal with a link to the TNPL.

60. Based on Ultramar's planned increase in its refinery capacity, its re-entry into the terminal facilities market and its expansion in the wholesale supply market in the

Ottawa region are likely to have some positive effects on competition. However, this must be weighed against the adverse impact of the withdrawal of a non-integrated wholesaler, Coastal, as a participant in the wholesale supply business and the possible removal of its facility from the market. Also, as an integrated refiner, Ultramar has different incentives from Coastal.

61. Having weighed the factors in paragraphs 51 to 60, the Commissioner is of the view that Ultramar would not be as vigorous or effective a competitor as independent ownership or Coastal ownership of the facility and wholesale supply business.

EFFECTIVE REMAINING COMPETITION

Terminal Facilities

62. If Ultramar acquires the facility, the only other terminal facilities operating in Ottawa will be owned by Imperial, Petro Canada and Shell. In recent years, none of these integrated terminal operators has engaged in storage arrangements with independent marketers.

Wholesale Supply

63. If Ultramar were to acquire the facility there would be three distinct types of wholesalers remaining in the Ottawa region. First, there would be the four large integrated terminal operators which operate their own terminals: Ultramar, Petro Canada, Imperial and Shell. Each of the latter three have tended to supply their own branded retail networks and only supply the independent marketers if they have excess capacity remaining after the transfer of refined petroleum product to their own branded marketers. Second, there would be Sunoco, an integrated wholesaler which uses the terminals of other integrated operators and has limited capacity or incentive to supply beyond its own needs. The third group of wholesalers consists of the larger independent resellers which purchase in bulk from the main suppliers and re-sell to small accounts. This type of reseller does

not set or publish a wholesale price and has limited ability to affect prices at the wholesale level.

64. With respect to the wholesale supply of fuel ethanol, there is currently no alternative to Coastal, as a source of supply, among the Ottawa region terminal operators. **#.** The ethanol blend gasoline market is very small in comparison to the markets for other petroleum products and there is little or no financial incentive for integrated refiners to pursue this business. However, ethanol blend gasoline is an element of the product and service differentiation of the independent marketers' retail operations.

65. The integrated wholesalers and terminal operators which will remain in the Ottawa region post merger have a common structure. They all have refineries, terminals, wholesale and retail networks. Generally speaking, and with the exception of Ultramar, they have supplied independent marketers only to a limited extent taking into account their available terminal capacity after their own supply requirements. Their common economic interests may therefore be inimical to continued long term supply to the independent marketers. Due to these factors, the ability of the independent marketers to make long range competitive business plans without a secure and competitive source of supply may be threatened.

66. As a result of the considerations set out in paragraphs 62-65, it is unlikely that the remaining competitors in the relevant markets will be effective in mitigating the likely anti-competitive effects of the proposed transaction.

BARRIERS TO ENTRY

Terminal Market

67. There are significant barriers to timely, effective and sustainable entry in the terminal market, other than by acquisition of a terminal. These barriers include the high cost of constructing a terminal, the high risk environmental liability insurance

and the high cost of such insurance, significant zoning and environmental regulatory requirements and the need for a large customer base. For example, the cost of constructing a terminal similar to the Coastal facility is, at a minimum, fifteen million dollars, most of which represents sunk costs. Furthermore, a new entrant would have to acquire a link and access to the TNPL in Ottawa.

68. Because the costs of operating a terminal are largely fixed, a terminal operator requires high volumes in order to achieve a low average cost. A customer base must be sufficiently large and stable that the operator can achieve economies of scale in order to be competitive. Any prospective terminal operator which does not have a captive retail network would face an additional barrier to entry because most purchases by independent marketers are made on a spot basis which means that the customer base is unstable and this in turn heightens the risk of entry.

69. Moreover, the transaction would raise the barriers to entry by acquisition, by taking the Coastal facility off the market and removing one of the links to the TNPL.

70. For these reasons, the Commissioner does not consider it likely that there would be timely, effective and sustainable entry in the terminal market in response to any attempt to exercise market power as a result of the proposed transaction.

Wholesale Supply

71. The Commissioner also believes that timely, effective and sustainable entry in the wholesale supply market would require entry by a non-integrated wholesaler and that such entry in response to the potential exercise of market power after the proposed transaction, is unlikely. A non-integrated wholesaler would face the barrier of constructing or acquiring a terminal and obtaining access to the TNPL. Furthermore, an entrant would require a sufficient, stable volume of business to be able to price competitively.

CHANGE AND INNOVATION

72. There will be changes in the relevant regulatory and environmental controls which will subject participants in the market, as well as any new entrant, to additional costs in upgrading an existing facility or building a new one.

CONCLUSION

73. The proposed transaction would remove the only non-integrated terminal operator and the largest non-integrated wholesale supplier of refined petroleum product in the Ottawa region. It will remove Coastal's pro-competitive impact on the relevant markets and prevent the pro-competitive effects which would have stemmed from Coastal's sale to a non-integrated purchaser.

74. These effects will be felt most strongly by independent marketers which play an important role in providing competition in markets for refined petroleum product and ethanol blend gasoline in the Ottawa region.

75. If a significant non-transitory price increase occurs at the wholesale level, it would likely be passed on to the consumer.

76. In light of these likely effects, the high barriers to entry into the relevant markets and the other Section 93 factors set out above, the Commissioner has concluded that this proposed transaction would likely result in a substantial lessening and prevention of competition in the relevant markets.