

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission issues its final decision and order resolving allegations that the proposed joint venture of Shell Oil Company with Texaco Inc. and Star Enterprises would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe that the joint venture, if consummated, would affect competition adversely in the refining of asphalt in Northern California and, therefore, support paragraph VII of the order, which provides relief in that market. I do not find reason to believe the other violations of law alleged in the complaint and, therefore, dissent from paragraphs II, III, IV and V of the order, which require divestitures in other markets. Although the allegation relating to refineries in the northwestern United States is arguably valid, on balance, I cannot support it and, therefore, cannot support paragraph II of the order. The complaint allegations that support paragraphs III, IV and V of the order seem to me far removed from our usual analysis under the merger guidelines.

I understand that the parties have negotiated identical relief with various state attorneys general and that the divestitures in the proposed Commission order will be required in any event. My obligation, however, is to apply federal law as I see it.