hard work in this matter. Staff has worked diligently to collect and analyze evidence related to numerous product markets within the Hawaiian gasoline industry. Indeed, Staff's thorough investigation has narrowed the scope of potential competitive concerns arising from the proposed transaction to the single theory of harm alleged in the Complaint. Based upon the evidence, I concluded there is no reason to believe the proposed transaction is likely to lessen competition in any relevant market. It follows, in my view, that the Commission should close the investigation and allow the parties to complete the merger without imposing a remedy.

The Complaint articulates a theory of competitive harm arising from the proposed transaction based upon the possibility that Par, a bulk supplier of HIBOB, will foreclose a potential downstream customer, Aloha Petroleum, Ltd. (''Aloha''), from its ability to import to discipline the prices of bulk-supplied HIBOB. Par's acquisition of Mid Pac includes the latter's storage rights at Barbers Point Terminal. Mid Pac and Aloha each currently have storage rights at Barbers Point Terminal sufficient to allow them to import HIBOB. After the merger, Par and Aloha would share access to the terminal. The theory of harm articulated in the Complaint is that Par would have the incentive and ability to use its newly acquired Mid Pac storage rights to ''park'' petroleum products at Barbers Point Terminal, and that this strategy would reduce or eliminate Aloha's ability to discipline bulk supply prices by threatening to import HIBOB, thus resulting in higher HIBOB prices which would ultimately be passed on to Hawaii consumers.

The theory that Par might exclude Aloha in this way is certainly a plausible basis for further investigation. Indeed, competitive concerns involving the potential for exclusion are commonly invoked in transactions with vertical dimensions, though empirical evidence demonstrates vertical transactions are generally, but not always, procompetitive or competitively benign.[2] The question, however, is whether the record evidence supports the theory. In short, the answer is no. For Par to have the incentive and ability to engage in this strategy, it must be profitable for it to do so. Neither economic analysis nor record evidence gives me reason to believe this is so. The evidence strongly suggests such an exclusionary strategy would not be profitable without Chevron Corporation's (''Chevron's'') cooperation. Chevron is the only other Hawaiian refiner aside from Par capable of selling bulk supplies of HIBOB to Aloha. Such tacit or explicit coordination to exclude Aloha is highly unlikely in the HIBOB market. Furthermore, the record evidence also indicates Aloha, the potential victim of the strategy, does not have any reason to believe Par would adopt this potentially anticompetitive strategy. Thus, I have no reason to believe that post-acquisition, Par will have the incentive and ability to raise prices of the bulk supply of HIBOB.

Prior to entering into a consent agreement with the merging parties, the Commission must first find reason to believe that a merger likely will substantially lessen competition under Section 7 of the Clayton Act. The fact that the Commission believes the proposed consent order is costless is not relevant to this determination. A plausible theory may be sufficient to establish the mere possibility of competitive harm, but that theory must be supported by record evidence to establish reason to believe its likelihood. Modern economic analysis supplies a variety of tools to assess rigorously the likelihood of competitive harm. These tools are particularly important where, as here, the conduct underlying the theory of harm—that is, vertical integration—is empirically established to be procompetitive more often than not. Here, to the extent those tools were used, they uncovered evidence that, consistent with the record as a whole, is insufficient to support a reason to believe the proposed transaction is likely to harm competition. Thus, I respectfully dissent and believe the Commission should close the investigation and allow the parties to complete the merger without imposing a remedy.

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Aloha are classified as bulk suppliers. Nor does the theory of harm articulated in the Complaint depend upon a reduction in the number of competitors in the bulk-supplied HIBOB market. I assume, *arguendo,* that the market definition articulated in the Complaint is correct and use it throughout this statement without loss of generality.

[2] *See generally* James C. Cooper, et al., *Vertical Antitrust Policy as a Problem of Inference,* 23 Int'l J. Indus. Org. 639 (2005); Francine Lafontaine & Margaret Slade, *Exclusive Contracts and Vertical Restraints: Empirical Evidence and Public Policy, in* Handbook of Antitrust Economics (Paolo Buccirossi, ed., 2008).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: April 27–28, 2015.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Marriott Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert S. Balaban, Ph.D., Scientific Director, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 10, 10 Center Drive, CRC, 4th Floor, Room 1581, Bethesda, MD 20892, 301–496–2116, *balabanr@nhlbi.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/about/committees/nhlbsc,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06595 Filed 3–23–15; 8:45 am]

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