

Complaint

IN THE MATTER OF

MAGELLAN MIDSTREAM PARTNERS, L.P., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4122; File No. 0410164

Complaint, September 28, 2004--Decision, November 23, 2004

This consent order, among other things, requires Respondent Magellan Midstream Partners, L.P. -- a partnership primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia -- to divest an Oklahoma City refined petroleum products terminal it acquired from Respondent Shell Oil Company to a Commission-approved buyer, at no minimum price and within six months. The order also requires Respondent Shell Oil Company -- a diversified energy company engaged in manufacturing, refining, distributing, transporting, terminaling, and marketing numerous petroleum products -- to ensure the interim viability of the subject terminal by, among other things, using the terminal for all its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after the terminal is divested. An accompanying Order to Hold Separate and Maintain Assets requires the respondents to take steps designed to ensure that the terminal will be maintained separately and apart from Magellan pending divestiture.

Participants

For the Commission: *Dennis F. Johnson, Mary N. Lehner, Phillip L. Broyles, Elizabeth A. Piotrowski, John D. Simpson, Louis Silvia, Jr., and Mark Frankena.*

For the Respondents: *Tom D. Smith, Jones Day and Charles W. Corddry III.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Respondents Magellan Midstream Partners, L.P. ("Magellan") and Shell Oil

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Company (“Shell”) (collectively “Respondents”) have entered into an agreement pursuant to which Magellan proposes to acquire certain refined petroleum product assets from Shell, that such agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such agreement and 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. THE PARTIES***Magellan Midstream Partners, L.P.***

1. Respondent Magellan is a partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Magellan GP, LLC, P.O. Box 22186, Tulsa, Oklahoma 74121.
2. Respondent Magellan is, and at all times relevant herein has been, engaged in the storage, terminaling, distribution and pipeline transportation of refined petroleum products, including gasoline, diesel fuel, and other light petroleum products.
3. Respondent Magellan is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a partnership as that term is used in Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Shell Oil Company

4. Respondent Shell is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.

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5. Respondent Shell is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the business of manufacturing, refining, distributing, transporting, terminaling, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, base oil, motor oil, lubricants, petrochemicals, and other petroleum products.
6. Respondent Shell is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

7. Pursuant to a purchase and sale agreement dated June 23, 2004, Magellan plans to acquire from Shell certain refined petroleum products pipelines, tankage and terminal assets in the Midwest United States, including a refined petroleum product terminal that serves the Oklahoma City, Oklahoma Metropolitan Area.

III. TRADE AND COMMERCE

A. Relevant Product Market

8. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. Terminals receive deliveries typically from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for petroleum product terminals for providing such terminaling services.

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9. A relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products.

B. Relevant Geographic Market

10. Magellan and Shell each own a petroleum product terminal that supplies gasoline, diesel fuel, and other light petroleum products to buyers in the Oklahoma City Metropolitan Area. Buyers of gasoline, diesel fuel and other light petroleum products in the Oklahoma City Metropolitan Area, such as gasoline marketers and others, have no effective alternative to terminals located within the Oklahoma City Metropolitan Area. Because of costs and delivery logistics, terminals located outside the Oklahoma City Metropolitan Area are too far away to supply buyers in that area.
11. A relevant section of the country in which to evaluate the effects of this acquisition is the Oklahoma City Metropolitan Area.

C. Market Structure

12. The market for terminaling services in the Oklahoma City Metropolitan Area is highly concentrated and would become significantly more highly concentrated as a result of this acquisition. The pre-merger Herfindahl-Hirschman Index is more than 3,100, and would increase by more than 1,200 points to a level exceeding 4,300.

D. Entry Conditions

13. Entry into the market for terminaling services in the Oklahoma City Metropolitan Area is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed acquisition. Constructing a new terminal is subject to significant regulatory and supply constraints, and would

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require substantial time to accomplish. As a result, new entry would not be sufficient to constrain the anticompetitive effects that are likely to result from this acquisition.

IV. ANTICOMPETITIVE EFFECTS

14. Magellan and Shell are actual competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area.
15. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area in violation of 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, in the following ways, among others:
 - a. by eliminating direct competition between Magellan and Shell in the supply of terminaling services in the Oklahoma City Metropolitan Area; and
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant market;

each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

V. STATUTES VIOLATED

16. Magellan's proposed acquisition of terminaling assets from Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, violate Section 7 of the Clayton Act, as

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amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-eighth day of September, 2004, issues its complaint against said Respondents.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Magellan Midstream Partners, L.P. (“Magellan”) of certain refined product pipeline and terminaling assets from Respondent Shell Oil Company (“Shell”) (collectively “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate”) and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the

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Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Magellan Midstream Partners, L.P., is a publicly-traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at Magellan GP, LLC, P.O. Box 22186, Tulsa, Oklahoma 74121.
2. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Magellan” means Magellan Midstream Partners, L.P., its partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns (including but not limited to Magellan GP, LLC); its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Magellan, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Shell” means Shell Oil Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell; and the

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respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Acquirer” means a Person that receives the prior approval of the Commission to acquire the Oklahoma City Terminal pursuant to Paragraph II. of this Order.
- D. “Acquisition” means the proposed acquisition by Magellan of certain refined petroleum assets from Shell pursuant to a Purchase and Sale Agreement dated June 23, 2004, including but not limited to the Oklahoma City Terminal.
- E. “Closing Date” means the date on which Magellan (or a trustee) and an Acquirer close on a transaction to divest the Oklahoma City Terminal as required by Paragraph II. of this Order.
- F. “Commission” means the Federal Trade Commission.
- G. “Oklahoma City Metropolitan Area” means the Oklahoma City Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget as of the date Respondents execute the Consent Agreement in this matter.
- H. “Oklahoma City Terminal” means all assets relating to Shell’s refined petroleum product storage and distribution terminal located in Oklahoma City (Del City), Oklahoma, including but not limited to:
 - 1. All of Shell’s rights, title, and interest in and to all tangible or intangible assets that are located at, or used in connection with Terminating at, the Oklahoma City Terminal, including but not limited to:
 - a. real estate, including existing rights of way and easements;
 - b. storage tanks;

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- c. local connector pipelines;
 - d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts; and
 - f. offices, buildings, and warehouses;
- 2. An exclusive right to all intellectual property used solely in the operation of the terminal, and a non-exclusive license to all other intellectual property acquired by or transferred to Magellan as part of the Acquisition and necessary for the operation of the terminal;
 - 3. All governmental licenses and permits used in the operation of the terminal and transferred to Magellan as part of the Acquisition;
 - 4. All storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminal or its operation; and
 - 5. All books, records, and files.
- I. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
 - J. "Respondents" means Magellan and Shell, individually and collectively.
 - K. "Terminaling" means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of refined

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petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Magellan shall divest the Oklahoma City Terminal absolutely and in good faith, at no minimum price, within six (6) months from the date Magellan executed the Consent Agreement.
- B. Respondent Magellan shall divest the Oklahoma City Terminal only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondent Shell shall cooperate with and shall not interfere with Respondent Magellan's efforts to divest the Oklahoma City Terminal.
- D. For a period of not less than three (3) months after the Closing Date, Respondent Shell shall utilize the Oklahoma City Terminal for Terminaling services for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area.
- E. Prior to three (3) months after the Closing Date, Respondents shall not enter into or maintain, or attempt to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell's refined petroleum products volume from the Oklahoma City Terminal to any other Terminaling facility owned, leased or operated by Magellan, and shall not discuss or negotiate with each other any potential agreement or understanding relating to such movement or transfer.

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- F. In the event that Respondent Magellan is unable to satisfy all conditions necessary to divest any intangible asset, Respondent Magellan shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.
- G. The purpose of this Paragraph II is to ensure the continued use of the Oklahoma City Terminal in the same business in which it was engaged at the time of the announcement of the proposed Acquisition, to ensure that the Acquirer of the Oklahoma City Terminal has an opportunity to enter into a Terminaling agreement with Shell for the volumes at the Oklahoma City Terminal, and to remedy the lessening of competition in the Terminaling of gasoline, diesel fuel, and other refined petroleum products resulting from the proposed Acquisition, as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. If Respondent Magellan has not divested the Oklahoma City Terminal, absolutely and in good faith, as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest the Oklahoma City Terminal in a manner that satisfies the requirements of Paragraph II. of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute

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enforced by the Commission, Respondent Magellan shall consent to the appointment of a trustee in such action to divest the Oklahoma City Terminal in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Magellan to comply with this Order.

- B. The Commission shall select the trustee, subject to the consent of Respondent Magellan, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Magellan has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent Magellan of the identity of any proposed trustee, Respondent Magellan shall be deemed to have consented to the selection of the proposed trustee.
- C. Within ten (10) days after appointment of a trustee, Respondent Magellan shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
- D. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to

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divest the Oklahoma City Terminal as required by this Order.

2. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a divestiture plan or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period for no more than two (2) additional periods of twelve (12) months each.
3. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Oklahoma City Terminal and to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Respondents shall cooperate with the efforts of the trustee to divest the Oklahoma City Terminal. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission.
4. The trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Magellan's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made only in a manner that receives the prior approval of the Commission and only to an Acquirer that receives the

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prior approval of the Commission; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondent Magellan from among those approved by the Commission; *provided further, however*, that Respondent Magellan shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent Magellan, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have the authority to employ, at the cost and expense of Respondent Magellan, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission, of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid at the direction of Respondent Magellan, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the Oklahoma City Terminal as required by this Order.
6. Respondent Magellan shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any

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liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

7. The trustee shall have no obligation or authority to operate or maintain the Oklahoma City Terminal.
 8. The trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
 10. Respondent Magellan may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the trustee from providing any information to the Commission.
- E. If the Commission determines that a trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph III.
- F. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the initial report is required to be filed pursuant to the Agreement Containing Consent Orders in this matter, and every sixty (60) days thereafter until Respondents have fully complied

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with Paragraph II. of this Order, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Each Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Each Respondent shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning its obligations under this Order.

V.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to (1) any proposed dissolution of that Respondent, (2) any proposed acquisition, merger or consolidation of that Respondent, or (3) any other change in that Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in that Respondent.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to either Respondent, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the

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possession or under the control of that Respondent related to compliance with this Order; and

- B. Upon five (5) days' notice to that Respondent and without restraint or interference from that Respondent, to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

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ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Magellan Midstream Partners, L.P. (“Magellan”) of certain refined product pipeline and terminaling assets from Respondent Shell Oil Company (“Shell”) (collectively “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Magellan Midstream Partners, L.P., is a publicly-traded limited partnership organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at Magellan GP, LLC, P.O. Box 22186, Tulsa, Oklahoma 74121.

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2. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Hold Separate and Maintain Assets, the following definitions shall apply:

- A. “Magellan” means Magellan Midstream Partners, L.P., its partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns (including but not limited to Magellan GP, LLC); its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Magellan; and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Shell” means Shell Oil Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell; and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means a Person that receives the prior approval of the Commission to acquire the Oklahoma City Terminal pursuant to Paragraph II. of the Decision and Order.
- D. “Acquisition” means the proposed acquisition by Magellan of certain refined petroleum assets from Shell pursuant to a Purchase and Sale Agreement dated June 23, 2004, including but not limited to the Oklahoma City Terminal.
- E. “Closing Date” means the date on which Magellan (or a trustee) and an Acquirer close on a transaction to divest the

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Oklahoma City Terminal as required by Paragraph II. of the Decision and Order in this matter.

- F. "Commission" means the Federal Trade Commission.
- G. "Confidential Business Information" means all information that is not in the public domain, including but not limited to information relating to marketing, transportation, terminaling, distribution, plans, costs, pricing, supply, sales, or sales support.
- H. "Decision and Order" means:
1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and
 2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- I. "Held Separate Business" means the Oklahoma City Terminal and all Held Separate Employees.
- J. "Held Separate Employees" means all full-time, part-time, or contract employees whose duties relate primarily to the Oklahoma City Terminal.
- K. "Hold Separate Period" means the time period during which the Hold Separate is in effect, which shall begin as of the date the Acquisition occurs and terminate pursuant to Paragraph VI. hereof.
- L. "Hold Separate Trustee" means the Person appointed to act as the Hold Separate Trustee pursuant to Paragraph II. hereof.
- M. "Oklahoma City Metropolitan Area" means the Oklahoma City Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget as of the date Respondents execute the Consent Agreement in this matter.
- N. "Oklahoma City Terminal" means all assets relating to Shell's refined petroleum product storage and distribution

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terminal located in Oklahoma City (Del City), Oklahoma, including but not limited to:

1. All of Shell's rights, title, and interest in and to all tangible or intangible assets that are located at, or used in connection with Terminaling at, the Oklahoma City Terminal, including but not limited to:
 - a. real estate, including existing rights of way and easements;
 - b. storage tanks;
 - c. local connector pipelines;
 - d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts; and
 - f. offices, buildings, and warehouses;
 2. An exclusive right to all intellectual property used solely in the operation of the terminal, and a non-exclusive license to all other intellectual property acquired by or transferred to Magellan as part of the Acquisition and necessary for the operation of the terminal;
 3. All governmental licenses and permits used in the operation of the terminal and transferred to Magellan as part of the Acquisition;
 4. All storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminal or its operation; and
 5. All books, records, and files.
- O. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- P. "Respondents" means Magellan and Shell, individually and collectively.

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- Q. “Terminaling” means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of refined petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

II.

IT IS FURTHER ORDERED that:

- A. Until the Closing Date, Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business, and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of the Held Separate Business or assets related thereto, except for ordinary wear and tear.
- B. During the Hold Separate Period, Respondent Magellan shall:
1. hold the Held Separate Business separate, apart, and independent as required by this Hold Separate, and vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business;
 2. maintain all insurance necessary for the Held Separate Business, including but not limited to general and product liability insurance and property and casualty insurance; and
 3. not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent Magellan must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Decision and Order, and all applicable laws.
- C. Respondent Magellan shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:

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1. Immediately upon consummation of the Acquisition, Respondent Magellan shall enter into a management agreement with Shell in the form attached hereto as Appendix A whereby Shell will manage the Held Separate Business for the duration of the Hold Separate Period, and Magellan will transfer to Shell all rights, powers, and authorities necessary to manage and maintain the Held Separate Business.
 - a. Respondent Shell shall report directly and exclusively to the Hold Separate Trustee relating to the operation of the Held Separate Business and shall manage the Held Separate Business independently from Respondent Magellan's other operations.
 - b. Respondent Shell shall continue to provide or contract to provide, or offer to provide or contract to provide, the same services to the Held Separate Business as are being provided to the Held Separate Business by Respondent Shell or other persons as of the date the Consent Agreement is signed by Respondents.
 - c. The services that Respondent Shell shall offer the Held Separate Business shall include, but shall not be limited to, the following:
 - (1)federal and state regulatory policy development and compliance;
 - (2)human resources and administrative services, including but not limited to procurement and administration of employee benefits;
 - (3)environmental, health and safety services, including but not limited to services to develop policies and insure compliance with federal and state regulations and corporate policies;
 - (4)financial accounting services;
 - (5)preparation of tax returns;
 - (6)audit services;
 - (7)technical support and engineering services;

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- (8) information technology support services;
- (9) processing of accounts payable and accounts receivable;
- (10) billing and collection services;
- (11) payroll processing;
- (12) security clearance services;
- (13) compliance with import and export controls; and
- (14) legal services.

Provided, however, that Respondent Shell's personnel providing such services must retain and maintain all Confidential Business Information of the Held Separate Business on a confidential basis, and, except as permitted by this Hold Separate, such Persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any Person employed by Magellan or whose employment relates to any of Magellan's businesses, other than the Held Separate Business. Such personnel who have or may have access to Confidential Business Information shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.

- d. The Held Separate Business shall have, at the option of the Hold Separate Trustee, the ability to acquire services, including but not limited to those listed in Paragraph II.C.1.c. above, from third parties unaffiliated with Respondents.
2. David Ownby of FTI Consulting shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondent Magellan and attached as Confidential Appendix B to this Hold Separate ("Trustee Agreement").

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- a. The Trustee Agreement shall require that, no later than five (5) days after this Hold Separate becomes final, Respondent Magellan shall transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
- b. No later than five (5) days after this Hold Separate becomes final, Respondent Magellan shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
- c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order, for monitoring (i) the management of the Held Separate Business by Shell, (ii) the maintenance of the independence of the Held Separate Business, and (iii) Respondents' compliance with their obligations pursuant to this Hold Separate and the Decision and Order.
- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business and to any other relevant information as the Hold Separate Trustee may reasonably request, including but not limited to all documents and records kept by Respondents in the ordinary course of business that relate to the Held Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate and the Decision and Order or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.

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- e. The Hold Separate Trustee shall have the authority to employ, at Magellan's cost and expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Hold Separate Trustee shall serve, without bond or other security, at Magellan's cost and expense, on reasonable and customary terms commensurate with the Hold Separate Trustee's experience and responsibilities.
- g. Respondent Magellan shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts or omissions, or bad faith by the Hold Separate Trustee, or the respective agents.
- h. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
- i. Respondents may require the Hold Separate Trustee to sign an appropriate confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his/her role as Hold Separate Trustee to anyone other than the Commission.
- j. The Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.
- k. Thirty (30) days after the Hold Separate becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee

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shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate.

1. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent Magellan, which consent shall not be unreasonably withheld. If Respondent Magellan has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Magellan of the identity of any substitute Hold Separate Trustee, Magellan shall be deemed to have consented to the selection of the proposed substitute trustee. Magellan and the substitute Hold Separate Trustee shall execute a trustee agreement, subject to the approval of the Commission, consistent with this paragraph.
3. Respondents shall staff the Held Separate Business with sufficient employees to maintain the viability, marketability, and competitiveness of the Held Separate Business, including but not limited to the Held Separate Employees. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Closing Date, Respondent Shell – in consultation with the Hold Separate Trustee – may replace departing or departed employees with Persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. Respondents shall:
 - a. not later than forty-five (45) days before the Closing Date, (i) provide to the Acquirer a list of all Held Separate Employees; (ii) allow the Acquirer to interview any Held Separate Employee; and (iii) in compliance with all laws, allow the Acquirer to inspect the personnel files and other documentation relating to such Held Separate Employees;

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- b. not later than thirty (30) days before the Closing Date, provide an opportunity for the Acquirer, (i) to meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any one or more of the Held Separate Employees; and (ii) to make offers of employment to any one or more of the Held Separate Employees;
 - c. not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Held Separate Employees, not directly or indirectly attempt to persuade any one or more of the Held Separate Employees to decline any offer of employment from the Acquirer, and not offer any incentive to any Held Separate Employee to decline employment with the Acquirer;
 - d. irrevocably waive any legal or equitable right to deter any Held Separate Employee from accepting employment with the Acquirer, including but not limited to waiving any non-compete or confidentiality provisions of employment or other contracts with Respondents that relate to the Oklahoma City Terminal;
 - e. not interfere with the employment by the Acquirer of any Held Separate Employee; and
 - f. continue employee benefits to Held Separate Employees until the Closing Date, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of all pension benefits, and reimbursement of relocation expenses.
5. For a period of one (1) year from the Closing Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Held Separate Employees who have accepted offers of employment with the Acquirer to terminate their employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not

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targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph.

6. For a period of six (6) months from the Closing Date, Respondents shall not employ or make offers of employment to any Held Separate Employee who has accepted offers of employment with the Acquirer unless any such individual's employment has been terminated by the Acquirer.
7. Except for Held Separate Employees and employees involved in the provision of services to the Held Separate Business pursuant to Paragraph II.C.1.c., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
8. Respondents shall cause the Hold Separate Trustee and each employee of the Held Separate Business having access to Confidential Business Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Confidential Business Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such individuals shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing, directly or indirectly, any such information to or with any other Person whose employment relates to any of Respondent Magellan's businesses other than the Held Separate Business. These individuals shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products or services of Respondent Magellan.
9. No later than five (5) days after the date this Hold Separate becomes final, Respondents shall circulate to employees of the Held Separate Business and to Respondent Magellan's employees who are responsible for the provision of Terminating services in the

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Oklahoma City Metropolitan Area, a notice of this Hold Separate and Consent Agreement, in the form attached hereto as Appendix C.

10. Magellan's employees (excluding the Held Separate Employees and employees involved in the provision of services to the Held Separate Business pursuant to Paragraph II.C.1.c.) shall not receive, have access to, or use or continue to use any Confidential Business Information of the Held Separate Business except:
 - a. as required by law; and
 - b. to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - (3) in complying with the Hold Separate or the Consent Agreement;
 - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
 - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
 - (6) in obtaining legal advice.

Nor shall the Held Separate Employees receive, have access to, or use or continue to use, any Confidential Business Information about Respondent Magellan and relating to Respondent Magellan's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Magellan may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Magellan to prepare consolidated financial reports, tax

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returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this paragraph shall be used only for the purposes set forth in this paragraph.

11. Respondents and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business.
12. During the Hold Separate Period, Respondent Magellan shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of Respondent Shell, subject to the approval of the Hold Separate Trustee, to operate the Held Separate Business at no less than current rates of operation;
 - b. to perform all reasonable maintenance to, and replacements of, the assets of the Held Separate Business;
 - c. to carry on existing and planned capital projects and business plans for the Held Separate Business; and
 - d. to maintain the viability, marketability, and competitiveness of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Hold Separate Trustee may substitute any capital or research and development project for another of the same cost.

- D. Notwithstanding the requirements of Paragraph II.C.1. above, if the Commission appoints a trustee to divest the Oklahoma City Terminal pursuant to Paragraph III. of the Decision and Order, Shell may terminate the management

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agreement required by Paragraph II.C.1. of this Order. If Shell determines to terminate the management agreement required by paragraph II.C.1. above:

1. Shell shall give ninety (90) days' prior written notice to the Commission of its intention to terminate the management agreement.
2. Magellan shall, prior to Shell's termination of the management agreement, enter into a substitute management agreement with a substitute manager, subject to the prior approval of the Hold Separate Trustee, whereby such substitute manager will manage the Held Separate Business for the duration of the Hold Separate Period, and Magellan shall transfer to the substitute manager all rights, powers, and authorities necessary to manage and maintain the Held Separate Business.
 - a. The substitute manager shall report directly and exclusively to the Hold Separate Trustee relating to the operation of the Held Separate Business and shall manage the Held Separate Business independently from Respondent Magellan's other operations.
 - b. Magellan shall provide or contract to provide, or offer to provide or contract to provide, the same services to the Held Separate Business as are being provided to the Held Separate Business by Respondent Shell or other persons as of the date the Consent Agreement is signed by Respondents.
 - c. The services that Magellan shall offer the Held Separate Business shall include, but shall not be limited to, the following:
 - (1)federal and state regulatory policy development and compliance;
 - (2)human resources and administrative services, including but not limited to procurement and administration of employee benefits;
 - (3)environmental, health and safety services, including but not limited to services to develop policies and

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insure compliance with federal and state regulations and corporate policies;

- (4) financial accounting services;
- (5) preparation of tax returns;
- (6) audit services;
- (7) technical support and engineering services;
- (8) information technology support services;
- (9) processing of accounts payable and accounts receivable;
- (10) billing and collection services;
- (11) payroll processing;
- (12) security clearance services;
- (13) compliance with import and export controls; and
- (14) legal services.

Provided, however, Respondent Magellan's personnel providing such services must retain and maintain all Confidential Business Information of the Held Separate Business on a confidential basis, and, except as permitted by this Hold Separate, such Persons shall be prohibited from using such Confidential Business Information in connection with their responsibilities to Magellan, and from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person employed by Magellan or whose employment relates to any of Magellan's businesses, other than the Held Separate Business. Such personnel who have or may have access to Confidential Business Information shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.

- d. Respondent Shell's personnel involved in providing services to the Held Separate Business who may have

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or may have had access to Confidential Business Information of the Held Separate Business must continue to maintain all Confidential Business Information of the Held Separate Business on a confidential basis, and, except as permitted by this Hold Separate, such Persons shall be prohibited from using such Confidential Business Information in any way inconsistent with the requirements of this Hold Separate.

- e. The Held Separate Business shall have, at the option of the Hold Separate Trustee, the ability to acquire services, including but not limited to those listed in Paragraph II.D.2.c. above, from third parties unaffiliated with Respondents.
- E. The purposes of this Hold Separate are to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent Magellan until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent Magellan and the Held Separate Business, except in accordance with the provisions of this Hold Separate; and (3) prevent interim harm to competition pending the divestiture of the Held Separate Business.

III.

IT IS FURTHER ORDERED that, beginning thirty (30) days after the initial report is required to be filed pursuant to the Agreement Containing Consent Orders in this matter, and every sixty (60) days thereafter until Respondents have fully complied with their obligations pursuant to this Hold Separate, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II. of this Hold Separate. Each Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate, including copies of all written and electronic communications to and from the parties, all internal memoranda, and all reports and recommendations concerning its obligations under this Hold Separate.

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IV.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to (1) any proposed dissolution of that Respondent, (2) any proposed acquisition, merger or consolidation of that Respondent, or (3) any other change in that Respondent that may affect compliance obligations arising out of this Hold Separate, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in that Respondent.

V.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to either Respondent, each Respondent shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of that Respondent relating to compliance with this Hold Separate; and
- B. Upon five (5) days' notice to that Respondent and without restraint or interference from that Respondent, to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Hold Separate shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of the Oklahoma City Terminal, as described in and required by the Decision and Order, is completed.

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Confidential Appendix B: Trustee Agreement
[Redacted From Public Record Version But Incorporated By
Reference]

Analysis

**Analysis of Proposed Agreement Containing Consent Orders
to Aid Public Comment**

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (“Agreement”) with Magellan Midstream Partners, L.P. (“Magellan”) and Shell Oil Company (“Shell”) to resolve the anticompetitive effects alleged in the Complaint issued by the Commission concerning Magellan’s acquisition of certain pipeline and terminal assets from Shell.

By purchase and sale agreement dated June 23, 2004, Magellan plans to acquire a package of Midwest pipelines and terminals from Shell. Included in the assets being acquired is a refined petroleum products terminal in Oklahoma City, Oklahoma, that supplies light petroleum products, including gasoline and diesel fuel. Magellan already owns and operates another refined petroleum products terminal in Oklahoma City, and the proposed acquisition would substantially increase concentration in the terminaling of light petroleum products in the Oklahoma City Metropolitan Area. The Agreement requires that Magellan divest the terminal acquired from Shell to a Commission-approved buyer.

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

I. The Parties

Magellan is a publicly traded limited partnership that is owned 64% by public shareholders, and 36% by Magellan Midstream Holdings, L.P. (which in turn is owned 50% by Madison Dearborn Partners and 50% by Carlyle Group/Riverstone Holdings). Magellan is primarily engaged in the storage,

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transportation, and distribution of refined petroleum products and ammonia. Its assets include a petroleum products pipeline and terminal system that serves the Mid-continent region of the United States, marine terminals along the Gulf Coast and near the New York Harbor, inland petroleum products terminals located principally in the southeastern United States, and a pipeline system for ammonia in the Mid-continent region. For the year ending December 31, 2003, Magellan had total annual revenues of approximately \$485 million and total assets of nearly \$1.2 billion.

Shell Oil Company is the United States operating entity for the Royal Dutch/Shell Group of companies, which ultimately is owned 60% by Royal Dutch Petroleum Company of the Netherlands and 40% by The Shell Transport and Trading Company, p.l.c. of the United Kingdom (collectively referred to as “Shell”). Shell is one of the largest integrated petroleum companies in the world, and is engaged in virtually all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing. For the year ending December 31, 2003, Shell reported total gross revenues of more than \$268 billion and total assets of approximately \$124 billion.

II. The Commission’s Complaint

The Commission’s Complaint charges that Magellan’s agreement to acquire the Oklahoma City refined products terminal from Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, 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.

The Complaint alleges that a relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light

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petroleum products. Depending on their location, terminals receive deliveries from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for petroleum terminals for providing such terminaling services.

The Complaint alleges that a relevant section of the country in which to evaluate the effects of this acquisition is the Oklahoma City Metropolitan Area. Buyers of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area, such as gasoline marketers and others, have no effective alternative to terminals located within the Oklahoma City Metropolitan Area. Because of costs and delivery logistics, terminals located outside the Oklahoma City Metropolitan Area are too far away to supply buyers in that area.

The Complaint charges that Magellan and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Magellan and Shell have two of only a very limited number of terminals that can serve the Oklahoma City area. According to the Complaint, the market for terminaling services in the Oklahoma City Metropolitan Area is highly concentrated and would become significantly more highly concentrated as a result of this acquisition. Even if a terminal located 40 miles outside of Oklahoma City is included, the pre-merger Herfindahl-Hirschman Index is more than 3,100, and would increase by more than 1,200 points to a level exceeding 4,300. The Complaint further maintains that entry into the relevant market is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint further charges that the proposed acquisition, if consummated, may substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area.

Analysis

Specifically, the acquisition would (1) eliminate direct competition between Magellan and Shell in the supply of terminaling services in the Oklahoma City Metropolitan Area, and (2) increase the likelihood of, or facilitate, collusion or coordinated interaction in the relevant market, each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

III. Terms of the Decision and Order and Order to Hold Separate and Maintain Assets

The Decision and Order (“Proposed Order”) effectively remedies the acquisition’s alleged anticompetitive effects by requiring Magellan to divest the overlapping Shell terminal assets. The Shell Oklahoma City terminal is to be divested to a Commission-approved buyer and in a manner approved by the Commission.

The Proposed Order requires that Magellan divest the Shell terminal, at no minimum price, within six months after Magellan signs the Agreement, to a buyer approved by the Commission. The Proposed Order includes several additional provisions to ensure the interim viability of the subject terminal, to ensure that the acquirer has an opportunity to enter into an agreement with Shell for the Shell volumes at the terminal, and to remedy the lessening of competition resulting from the proposed acquisition. In particular, the Proposed Order requires Shell to utilize the subject terminal for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after divestiture of the terminal. It further prohibits Shell and Magellan until three months after divestiture from entering into or maintaining, or attempting to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell’s refined petroleum products volume from the subject terminal to any other terminaling facility owned, leased, or operated by Magellan. The order further prohibits Shell and Magellan from

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discussing or negotiating with each other any potential agreement or understanding relating to such movement or transfer.

The Proposed Order also provides that should Magellan be unable to satisfy all conditions necessary to divest any intangible asset, Magellan will: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

The Proposed Order further provides that if the subject terminal has not been divested within the allotted time, a trustee may be appointed to sell the terminal to a buyer approved by the Commission.

Other paragraphs of the Proposed Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Order to Hold Separate and Maintain Assets ("Hold Separate Order") contains provisions designed to ensure that the Oklahoma City terminal at issue will be maintained separately and apart from Magellan pending divestiture.

The Hold Separate Order provides that Magellan will hold the terminal assets separate from its other businesses and continue to maintain the terminal assets during the period prior to divestiture. Paragraph II also provides that pending divestiture Magellan will contract with Shell for Shell to manage the terminal independently from Magellan's other operations. Shell will report directly and exclusively to a hold separate trustee with respect to

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the operation of the terminal. Shell is required to keep confidential business information related to the terminal from Magellan employees, except as permitted by the Hold Separate Order.

Other paragraphs of the Hold Separate Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Hold Separate Order terminates on the earlier of two dates, either (1) three business days after the Commission withdraws its acceptance of the consent agreement, or (2) the day after the divestiture of the Oklahoma City terminal, as described in and required by the Proposed Order, is completed.

IV. Opportunity For Public Comment

By accepting the Agreement, subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Agreement, including the proposed divestiture, to aid the Commission in its determination of whether it should make the Agreement final. This analysis is not intended to constitute an official interpretation of the Agreement or modify the terms of the Agreement in any way.

Complaint

IN THE MATTER OF

BUCKEYE PARTNERS, L.P., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4127; File No. 0410162**Complaint, December 17, 2004--Decision, December 17, 2004*

This consent order, among other things, requires Respondent Buckeye Partners, L.P. -- a partnership engaged in the storage, terminaling, and pipeline transportation of refined petroleum products, including gasoline and diesel fuel -- to provide prior notification to the Commission of an acquisition of any interest in a Shell refined petroleum terminal in Niles, Michigan, for a period of ten years. The order also requires Respondent Shell Oil Company -- a diversified energy company engaged in manufacturing, refining, distributing, transporting, terminaling, and marketing numerous petroleum products -- to provide prior notification to the Commission of a sale or transfer of any interest in the Niles terminal, for a period of ten years.

Participants

For the Commission: *Lesli C. Esposito, Elizabeth D. Kaiser, Brian J. Telpner, Phillip L. Broyles, Naomi Licker, Elizabeth A. Piotrowski, John Yun, Christopher Taylor and Mark Frankena.*

For the Respondent: *Stephen C. Muther, Marc G. Schildkraut, and Charles W. Corddry III.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Respondents Buckeye Partners, L.P. ("Buckeye") and Shell Oil Company ("Shell") (collectively "Respondents") entered into an agreement pursuant to which Buckeye proposed to acquire certain refined petroleum product assets from Shell, that such agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15