

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

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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 RESPONDENTS

Buckeye Partners, L.P.

1. Respondent Buckeye 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 5 Radnor Corporate Center, Suite 500, 100 Matsonford Road, Radnor, Pennsylvania 19087.
2. Respondent Buckeye is, and at all times relevant herein has been, engaged in the storage, terminaling and pipeline transportation of refined petroleum products, including gasoline, diesel fuel, and other light petroleum products.
3. Respondent Buckeye 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.
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,

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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 ACQUISITIONS

7. Pursuant to a Purchase and Sale Agreement dated June 30, 2004, Respondent Buckeye agreed to buy from Respondent Shell certain refined petroleum products pipelines, tankage and terminal assets in the Midwest United States (“First Proposed Acquisition”), including a refined petroleum product terminal that serves the areas within a 50-mile radius of Niles, Michigan (“Niles Area”).
8. After being advised by Commission staff of potential competitive issues and concerns in connection with Buckeye acquiring Shell’s terminal in Niles in the First Proposed Acquisition, Respondents withdrew their HSR filing.
9. Respondents informed Staff of their intention to initiate a second acquisition (“Second Proposed Acquisition”), which would include all of the assets of the First Proposed Acquisition except for the Shell terminal in Niles.
10. Respondent Buckeye has expressed a continued interest in acquiring the Shell terminal in Niles after completion of the Second Proposed Acquisition.
11. Respondent Shell has expressed a continued interest in selling its Niles terminal to Respondent Buckeye or another

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third party after completion of the Second Proposed Acquisition.

III. TRADE AND COMMERCE

A. Relevant Product Market

12. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. 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.
13. 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

14. Respondents each own a petroleum product terminal that supplies gasoline, diesel fuel, and other light petroleum products to buyers in the Niles Area. Buyers of gasoline, diesel fuel and other light petroleum products in the Niles Area, such as gasoline marketers and others, may have no effective alternative to terminals located within the Niles Area. Because of costs and delivery logistics, terminals located outside the Niles Area may be too far away to supply buyers in that area.
15. A relevant section of the country in which to evaluate the effects of this acquisition may be as small as the Niles Area.

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C. Market Structure

16. The market for terminaling services in the Niles Area is highly concentrated and would become significantly more highly concentrated if the First Proposed Acquisition had been consummated. The pre-merger Herfindahl-Hirschman Index for the First Proposed Acquisition was 2,800, and would have increased by 800 points to 3600 had the First Proposed Acquisition been consummated. The Second Proposed Acquisition results in no change in market concentration in the Niles Area because it does not involve the acquisition of Shell's terminal in Niles.

D. Entry Conditions

17. Entry into the market for terminaling services in the Niles Area is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger. Constructing a new terminal is subject to significant regulatory and supply constraints, and would 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. EFFECTS OF THE PROPOSED ACQUISITION

18. Respondents Buckeye and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Niles Area.
19. The First Proposed Acquisition, if consummated, would likely have led to a substantial lessening of competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Niles Areas. The First Proposed Acquisition does and would demonstrate these effects in the following ways, among others:

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- a. by eliminating direct competition between Buckeye and Shell in the supply of terminaling services in the Niles Areas; and
- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the remaining competitors 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

20. Buckeye's agreement to acquire petroleum product assets from Shell, as originally proposed in the First Proposed Acquisition, may violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and may have, if consummated, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of December, 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 Buckeye Partners, L.P. (“Buckeye”), of certain refined petroleum products 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 Order (“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 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 Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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1. Respondent Buckeye 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 5 Corporate Center, Suite 500, 100 Matsonford Road, Radnor, Pennsylvania 19087.

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. “Buckeye” means Buckeye Partners, L.P., its partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Buckeye, 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 respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. “Acquisition” means the proposed acquisition by Buckeye of certain refined petroleum products pipeline and terminaling assets from Shell pursuant to a Purchase and Sale Agreement dated June 30, 2004, as amended to exclude the Niles Terminal.
- D. “Commission” means the Federal Trade Commission.
- E. “Niles Terminal” means Shell’s refined petroleum product storage and distribution terminal located in Niles, Michigan.
- F. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- G. “Respondents” means Buckeye and Shell, individually and collectively.

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

- A. For a period of ten (10) years from the date this Order becomes final, Respondent Buckeye shall not acquire, directly or indirectly, any interest in the Niles Terminal, in connection with the Acquisition or otherwise, without prior written notification to the Commission before consummating any such transaction.

The prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the “Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United

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States Department of Justice, and Notification is required only of Respondent Buckeye and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent Buckeye shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Buckeye shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition; *provided, however*, that Respondent Buckeye shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- B. For a period of ten (10) years from the date this Order becomes final, Respondent Shell shall not sell, transfer or otherwise convey, directly or indirectly, any interest in the Niles Terminal to any Person, in connection with the Acquisition or otherwise, without prior written notification to the Commission before consummating any such transaction.

The prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the “Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United

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States Department of Justice, and Notification is required only of Respondent Shell and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent Shell shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Shell shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition; *provided, however*, that Respondent Shell shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

III.

IT IS FURTHER ORDERED that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph II. of this Order.

IV.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of that Respondent, (2) acquisition, merger or consolidation of that Respondent, or (3) any other change in that Respondent that may affect compliance obligations

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arising out of this Order, 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 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, Respondents 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 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.

Analysis

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

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Order (“Proposed Order”) with Buckeye Partners, L.P. (“Buckeye”) and Shell Oil Company (“Shell”), which is designed to guard against possible anticompetitive effects that could result from the transaction, as originally proposed.

On June 30, 2004, Buckeye and Shell entered into a Purchase and Sale Agreement in which Buckeye proposed to acquire a package of refined petroleum pipeline and terminal assets from Shell for approximately \$530 million. Included in the assets to be acquired was a Shell refined petroleum terminal in Niles, Michigan. In response to competitive concerns raised by staff, the parties subsequently proposed a modified transaction that excludes the Niles, Michigan terminal from the assets to be acquired. The Proposed Order, if accepted by the Commission, would settle charges that the acquisition, as originally proposed, may have substantially lessened competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area within fifty miles of Niles, Michigan.

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

The Proposed Complaint

Buckeye is a partnership engaged in the storage, terminaling, and pipeline transportation of refined petroleum products, including gasoline, diesel fuel, and other light petroleum products. Shell is a diversified energy company engaged directly and

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through its subsidiaries in the business of manufacturing, refining, distributing, transporting, terminaling, and marketing a range of petroleum products, including gasoline, diesel fuel, jet fuel, base oil, motor oil, lubricants, petrochemicals, and other petroleum products.

The proposed complaint alleges that a relevant line of commerce in which to evaluate the effects of Buckeye's proposed acquisition is the market for terminaling of gasoline, diesel fuel, and other light petroleum products, and a relevant geographic market may be as small as the area within a fifty-mile radius of Niles, Michigan ("Niles Area"). The proposed complaint further alleges that market for terminaling services in the Niles Area is highly concentrated and that, had the original proposed acquisition been consummated, concentration in that market would have increased by 800 points, as measured by the Herfindahl-Hirschman Index. The acquisition as modified would not change market concentration in the Niles Area because it does not involve the acquisition of Shell's Niles terminal. The proposed complaint also alleges that entry into the terminaling services market in the Niles Area is difficult and would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the original proposed acquisition.

The proposed complaint alleges that the acquisition, if consummated as originally proposed, may have led to a substantial lessening of competition in the supply of terminaling services for gasoline, diesel, and other light petroleum products in the Niles Area. The acquisition as originally proposed may have substantially increased concentration in a market that is already highly concentrated. The complaint further alleges competitive harm could result from the elimination of direct competition between Buckeye and Shell in the supply of terminaling services in the Niles Area, and from the increased likelihood of collusion or coordinated interaction between the remaining competitors in the relevant market.

Analysis

Terms of the Proposed Consent Order

The Proposed Order requires Buckeye to provide prior notification to the Commission of an acquisition of any interest in the Niles terminal, for a period of ten years. The Proposed Order requires Shell 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. These provisions require Buckeye and Shell to comply with premerger notification and waiting periods similar to those found in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a. (“HSR”).

Consistent with the Commission’s Statement of Policy Concerning Prior Approval and Prior Notice Provisions, 60 Fed. Reg. 39,745 (Aug. 3, 1995), the Proposed Order ensures that the Commission will have the appropriate mechanism to review a proposed sale of the Niles terminal by Shell, or a proposed acquisition of the Niles terminal by Buckeye, that may raise antitrust concerns but would not be reportable under HSR. The Proposed Order affords the Commission the opportunity to guard against such potentially anticompetitive transactions.

By accepting the Proposed Order, subject to final approval, the Commission anticipates that the competitive problem alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment concerning the Proposed Order to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order or to modify its terms in any way.

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IN THE MATTER OF

ASPEN TECHNOLOGY, INC.

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 9310; File No. 0210153

Complaint, August 3, 2003--Decision, December 20, 2004

This consent order, among other things, requires Respondent Aspen Technology, Inc. -- a developer and worldwide supplier of manufacturing, engineering, and supply chain simulation computer software, used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries, and by engineering and construction companies that support those industries -- to divest its integrated software business to Bentley Systems, Inc. The order also requires the respondent to divest its batch and continuous process engineering software business to a Commission-approved buyer, and -- in the event that the divested software infringes specific intellectual property rights -- to indemnify the buyer, and either to procure for the buyer the right to continue to use the software, or to modify or replace the software so that it does not infringe the third party's intellectual property rights.

Participants

For the Commission: *Peter Richman, Vadim M. Brusser, Lesli C. Esposito, Dennis F. Johnson, Mary N. Lehner, Naomi Licker, Daniel Ducore, Phillip L. Broyles and Mark Frankena.*

For the Respondent: *George S. Cary, David I. Gelfand, Mark W. Nelson, Jeremy J. Calsyn, and Tanya N. Dunne, Cleary, Gottlieb, Steen & Hamilton.*

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The Federal Trade Commission ("Commission"), having reason to believe that Aspen Technology, Inc. ("AspenTech"), a corporation subject to the jurisdiction of the Commission, acquired Hyprotech Ltd., ("Hyprotech"), in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C.