

Complaint

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.*

COMPLAINT

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.

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§ 45 and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and that a proceeding by the Commission in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. Respondent AspenTech

1. Respondent AspenTech is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Ten Canal Park, Cambridge, Massachusetts 02141.
2. AspenTech is a developer and worldwide supplier of manufacturing, engineering, and supply chain simulation computer software, including non-linear process engineering simulation software used by the refining, oil & gas, petrochemical, specialty chemical, air separation, pharmaceutical, fine chemical and other process manufacturing industries and by engineering and construction companies to support those industries. AspenTech has long offered steady state and dynamic process engineering simulation software under the Aspen Plus trade name and a suite of complementary products within its Aspen Engineering Suite. In fiscal year 2002, AspenTech reported an \$83.5 million loss on revenues of over \$320 million.
3. Respondent AspenTech is, and at all times relevant herein has been, engaged in commerce as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. The Acquisition of Hyprotech

4. Prior to the acquisition by Respondent, Hyprotech was a wholly-owned operating division of AEA Technology plc., a corporation organized, existing and doing business under and

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by virtue of the laws of the United Kingdom. Hyprotech was headquartered in Calgary, Canada, with offices in the United States and other parts of the world.

5. Since its founding in 1976, Hyprotech had been a developer and worldwide supplier of manufacturing, engineering and supply chain simulation computer software, including nonlinear process engineering simulation software used by the refining, oil & gas, petrochemical, specialty chemical, air separation, pharmaceutical, fine chemical and other process manufacturing industries and by engineering and construction companies to support those industries. Hyprotech offered steady state and dynamic process engineering simulation software under the HYSYS trade name and a suite of complementary products within its HYSYS engineering suite of products. In fiscal year 2002, Hyprotech had revenues of approximately \$68.5 million.
6. On or about May 31, 2002, Respondent acquired Hyprotech for approximately \$106 million ("the Acquisition"). The transaction was not reportable under the Hart-Scott-Rodino Act.

III. Trade and Commerce

7. Process industries are those in which a chemical continuous or batch process is used to produce intermediate or finished consumer products. Continuous process industries include hydrocarbon, chemical and air separation industries. Batch process industries include the pharmaceutical and fine chemical industries.
8. Flowsheet simulation software, using non-linear variables, mathematically models a process, creating a virtual plant on a personal computer. Flowsheet programs are the backbone of process simulation and optimization software. The flowsheet, using established chemical engineering properties or "1st Principles," accurately predicts what happens in a process unit

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or system. Through a graphical interface, the flowsheet allows its user to take into account the process units in a plant, the dynamics between units and the chemistry of the processed materials. Such computer simulations improve engineering design, reduce capital investment, lower the cost of inputs and optimize production levels and potentially shorten the time to market for new products.

9. There are two fundamental types of flowsheets: steady-state and dynamic. Steady-state flowsheets model a process at one point in time; they are snapshots of a plant operating at its intended optimum. Aspen Plus (AspenTech), HYSYS.Process (Hyprotech) and Pro/II (Simulation Sciences (SimSci)) are the most widely used steady-state flowsheets to model continuous process industries. In dynamic simulation, the flowsheet models the same variables as the steady state simulation, adding the ability to measure the effect of changes over time. A flowsheet with dynamic capabilities can model start-ups, shutdowns, upsets and changes that occur in a continuous process over time. Aspen Plus with Aspen Dynamics and HYSYS with the dynamic option are the two leading dynamic simulators for continuous process industries. Both Aspen Dynamics and the HYSYS dynamic option require customers to purchase the steady-state flowsheet to access the dynamic.
10. Flowsheets are designed to rigorously represent the processes that they simulate. The mathematic rigor necessary to model reactions and interactions in the process industries makes these programs very slow to solve any given question. For this reason, they have limited utility in solving plant-wide optimization exercises. Prior to the Acquisition, next-generation flowsheet solutions – non-linear simulators that can solve whole plant optimization questions in an economically reasonable time-frame – were in commercial release and on-going development by Hyprotech and AspenTech.

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11. Batch process simulation is the modeling of processes that entail a single production run with a finite beginning and end. With a batch process, a manufacturer combines a set of ingredients in a single piece of equipment that performs multiple tasks to arrive at a finished substance. Batch process differs from continuous process in that continuous process experiences an ongoing flow of inputs and outputs. Batch flowsheet simulation software is essentially continuous flowsheet simulation tailored expressly for batch processes. Batch process software is particularly suited to pharmaceutical and fine chemical production. Prior to the Acquisition, BatchPlus from AspenTech was the leading batch simulator ahead of the BaSYS suite from Hyprotech.
12. Many customers of flowsheet simulation software have operations in multiple process industries and therefore license software for more than one industry. For example, many engineering and construction companies design both hydrocarbon process plants and chemical plants. Those companies license flowsheet software for both industries. Other engineering and construction companies may be engaged in only one discrete industry and thus license flowsheet software for only that industry. For example, some engineering and construction companies are involved solely in air separation and license flowsheet software for only that industry. However, there are large, vertically integrated companies that license software that is used in all parts of hydrocarbon and chemical processes. Whether they license software for application to many process industries or one specialized industry, there are still only three companies that license the necessary software: AspenTech, Hyprotech and SimSci.
13. Integrated engineering software gathers information generated from process engineering software and allows users to store, update and retrieve data depending on their needs. The software allows for the more efficient use of process engineering tools. Prior to the Acquisition,

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AspenTech's Zyqad was the leading application for these uses and Hyprotech's integrated engineering product, AXSYS, was in development and ready for release to committed buyers.

14. Prior to the Acquisition, competition between AspenTech and Hyprotech to develop, license and support continuous and batch process engineering simulation flowsheet software and integrated engineering software was direct and vigorous and helped to hold down prices and to promote product innovation.

IV. Relevant Product Markets

15. Relevant product markets in which to assess the likely effects of the Acquisition are:
 - a. continuous process engineering simulation flowsheet software for process industries;
 - b. continuous process engineering simulation flowsheet software for upstream oil and gas process industries;
 - c. continuous process engineering simulation flowsheet software for downstream refining process industries;
 - d. continuous process engineering simulation flowsheet software for chemical process industries;
 - e. continuous process engineering simulation flowsheet software for air separation process industries;
 - f. batch process engineering simulation flowsheet software for process industries; and
 - g. Integrated engineering software for process industries.

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V. Relevant Geographic Market

16. The relevant geographic market in which to assess the likely effects of the Acquisition in each of the relevant product markets is the world.

VI. Concentration

17. Each of the relevant product markets is highly concentrated.
18. Prior to the Acquisition, AspenTech and Hyprotech were direct and actual competitors in the development, license and support of continuous and batch process engineering simulation flowsheet software in each of the relevant product markets. AspenTech and Hyprotech competed with each other on price and service, and competed through innovation to provide software that would enhance the efficiency and performance of customers' process plants.
19. The Acquisition combined the two most significant and closest competitors providing continuous process engineering simulation flowsheet software. AspenTech documents admit a share post-acquisition between 67% and 80% of the continuous process flowsheet market. The Acquisition may create a worldwide dominant firm in continuous process engineering simulation flowsheet software.
20. The Acquisition combined the two most significant and closest competitors providing continuous process engineering simulation flowsheet software to upstream oil and gas process industries. The Acquisition may create a worldwide dominant firm in continuous process engineering simulation flowsheet software for upstream oil and gas process industries.
21. The Acquisition combined the two most significant and closest competitors providing continuous process

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engineering simulation flowsheet software to downstream refining process industries. The Acquisition may create a worldwide dominant firm in continuous process engineering simulation flowsheet software for downstream refining process industries.

22. The Acquisition combined the two most significant and closest competitors providing continuous process engineering simulation flowsheet software to chemical process industries. The Acquisition may create a worldwide dominant firm in continuous process engineering simulation flowsheet software for chemical process industries.
23. The Acquisition combined the two most significant and closest competitors providing continuous process engineering simulation flowsheet software to air separation process industries. The Acquisition may create a worldwide dominant firm in continuous process engineering simulation flowsheet software for air separation process industries.
24. The Acquisition combined the two largest and closest competitors providing batch process engineering simulation flowsheet software. The Acquisition may create a worldwide dominant firm in batch process engineering simulation flowsheet software.
25. Prior to the Acquisition, AspenTech and Hyprotech were direct and actual competitors in the development, license and support of integrated engineering software for process industries. AspenTech and Hyprotech competed with each other on price and service, and competed through innovation to provide software that would enhance the efficiency and performance of customers' process plants.
26. The Acquisition combined the two firms providing integrated engineering software for process industries. The Acquisition may create a worldwide dominant firm in integrated engineering software for process industries.

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27. At the time of the Acquisition, Respondent, Hyprotech and SimSci were the only providers of a substantial, if not complete, set of features and capabilities in process engineering simulation software. SimSci had been losing market share to Hyprotech and AspenTech since the mid-1990s.

VII. Conditions of Entry

28. Entry into the licensing, sale, development and enhancement of the relevant product markets would not be timely, likely or sufficient in its magnitude, character and scope to deter or counteract anticompetitive effects of the Acquisition. Customers consider supplier reputation key to purchase decisions in each of the relevant markets. Customers are reluctant to engage the services of a new entrant because of the potential economic loss associated with simulation software bugs and potential loss of legacy data. Entry is difficult because of the substantial cost and time needed to develop, validate and establish a reputation for reliability.

VIII. Anticompetitive Effects of the Acquisition

29. The Acquisition may substantially lessen competition in the following ways, among others:
- a. it eliminates actual, direct and substantial competition between AspenTech and Hyprotech, which both had the ability and incentive to compete, and before the acquisitions did compete, on price and product development and enhancements;
 - b. it increases the level of concentration in the relevant markets;

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- c. it eliminates price competition between AspenTech and Hyprotech and may lead to reduced price competition, leading to increased prices;
- d. it eliminates innovation competition between AspenTech and Hyprotech and may lead to reduced innovation competition, withholding or delaying product development and enhancements;
- e. it enhances AspenTech's power to raise prices above a competitive level;
- f. it may give AspenTech market power in the relevant markets;
- g. it may allow AspenTech unilaterally to exercise market power in the relevant markets, through the combination of AspenTech and Hyprotech, the two closest competitors on price and innovation;
- h. it prevents other suppliers of process engineering or supply chain software from acquiring Hyprotech and increasing competition; and
- i. it creates a single entity that could undermine the ability of open standard setting organizations to decrease barriers to entry, thereby limiting innovation and third-party entry to provide niche applications except with AspenTech approval.

IX. Violation Charged

- 30. The allegations contained in paragraphs 1 through 29 are repeated and realleged as though fully set forth here.
- 31. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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32. Respondent's acquisition of Hyprotech will continue to cause, absent the relief described in the attached Notice of Contemplated Relief, the anticompetitive effects identified above.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge ("ALJ") of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. § 3.1 *et seq.* A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that

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the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on November 6, 2003, in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisition challenged in this proceeding violates Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, the Commission may order such relief against respondent as is supported by the record and is necessary and appropriate. Such relief may include, but is not limited to, an order to:

1. Cease and desist from any action to effect the acquisition or continued holding by AspenTech of any assets or businesses of Hyprotech.
2. Rescind the acquisition.

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3. Reestablish two distinct and separate, viable and competing businesses, one of which shall be divested by AspenTech to a buyer acceptable to the Commission, engaged in the design, license and continued development and support of all of the lines of commerce alleged in the complaint, including but not limited to:
 - a. divesting all Hyprotech software, intellectual property, contract rights, and other assets for the operation of such business, including but not limited to all Hyprotech applications, features, enhancements, and library functions for all operating systems and computer platforms, source code, object libraries, executable programs, model development, test problems, test results, development support software, trade secrets, trademarks, patents, know-how, interfaces with complementary software, APIs, manuals, guides, reports, and other documentation;
 - b. divesting, replacing and reconstituting all research and development, improvements to existing products and new products developed by AspenTech or Hyprotech, and such other businesses as necessary to ensure each of their viability and competitiveness in the lines of commerce alleged in the complaint and each possessed;
 - c. reconstituting and divesting customer contracts; and
 - d. facilitating the acquirers' recruitment of Respondent's employees, including but not limited to providing employee lists, personnel files, opportunities to interview and negotiate with the acquirers, eliminating any restriction on or disincentives to accepting employment with the acquirers, and providing incentives for such employees to accept employment with the acquirers.
4. Destroy any copies of Hyprotech intellectual property, including source code and executable code.

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5. Prohibit the use of any Hyprotech competitive or technological information gained since the Acquisition.
6. Cease and desist from any horizontal agreements with competitors to prevent or deter standard setting organizations from adopting standards to benefit consumers of products covered under the appropriate standards; provided that no relief shall require the competing companies to participate in any standard setting activity.
7. For a defined period, not restrict, preclude or influence a supplier of complementary software or services from dealing with the acquirers or the acquirers' products.
8. Provide such other or additional relief as is necessary to ensure the creation of one or more viable, competitive independent entities to compete against AspenTech in the manufacture and sale of relevant products with features and capabilities at least equal to those offered by Hyprotech prior to the Acquisition.
9. Require AspenTech to provide the Commission with notice in advance of the acquisition of the assets or securities of, or any other combination with, any person engaged in the manufacture or sale of any relevant product.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixth day of August, 2003, issues its complaint against said Respondent.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging Aspen Technology, Inc. (“Respondent”), with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and Respondent having been served with a copy of that complaint, together with a notice of contemplated relief, and Respondent having answered the complaint denying said charges but admitting the jurisdictional allegations set forth therein; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Aspen Technology, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Ten Canal Park, Cambridge, Massachusetts 02141.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, 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. “AspenTech” or “Respondent” means Aspen Technology, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Aspen Technology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquisition” means Respondent’s acquisition of Hyprotech on or about May 31, 2002.
- C. “AEA Partnership Agreement” means the AXSYS.Integrity Development Partnership Agreement, dated July 26, 2001, between AEA Technology plc, and Respondent under which AEA Technology plc, licenses Integrity Modules, as defined therein, to Respondent.
- D. “AXSYS” means AXSYS collaborative engineering Software and other products for collaborative engineering and knowledge management for plant engineering and design automation including but not limited to AXSYS.Engine, AXSYS.Process, AXSYS.Integrity, AXSYS.Server, and PlantSchema and the associated Interfaces.

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E. “AXSYS Assets” means the following:

1. all of Respondent’s interests in and rights to all Software and other products (including all development work in process for existing and proposed or terminated products) comprising the AXSYS collaborative engineering and knowledge management software solution for plant engineering and design automation, including but not limited to:
 - a. AXSYS.Engine, AXSYS.Process, AXSYS.Integrity, AXSYS.Server, and PlantSchema; and
 - b. all associated Interfaces, including but not limited to process, sizing, and costing interfaces;
2. all inventories (including but not limited to all inventories of finished AXSYS products and all development work) of the AXSYS Business, and the computer equipment listed in Schedule 1.2 of the Bentley Purchase Agreement;
3. a copy of all books, records, and financial files relating to the AXSYS Business;
4. all rights to all licenses, license agreements, and customer contracts described in Section 4.10 of the Disclosure Statement of the Bentley Purchase Agreement, including the AEA Partnership Agreement;
5. all Owned Intellectual Property Rights used solely in the operation of AXSYS Business;
6. a non-exclusive right to all Owned Intellectual Property Rights used both in AXSYS and in other of Respondent’s Software and other products;
7. rights to all Licensed Intellectual Property Rights necessary to the operation of the AXSYS Business;

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provided, however, that, after divestiture to the Commission-approved Acquirer, Respondent shall not be responsible for payment of any fees or charges associated with the Commission-approved Acquirer's use of the Licensed Intellectual Property;

8. for material relating solely to the AXSYS Business, all marketing and sales materials used anywhere in the world, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files, customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials; *provided, however,* that Respondent may retain a copy of such material to the extent necessary for tax, accounting, or legal purposes, including as required by applicable laws and regulations; and
9. for material relating both to the AXSYS Business and to other of Respondent's businesses, a copy of all marketing and sales materials used anywhere in the world to the extent such materials relate to the AXSYS Business, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files,

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customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials.

“AXSYS Assets” shall not include:

1. items listed in Schedule 1.3 of the Bentley Purchase Agreement;
 2. except to the extent used solely in the AXSYS Business, business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill;
 3. rights to third-party Intellectual Property that the Commission-approved Acquirer either has or obtains independent of its acquisition of the AXSYS Assets;
 4. any other of Respondent’s products that Interface with AXSYS; and
 5. contracts for support and maintenance services with customers who have not consented, or because of contractual constraints cannot consent, to the assignment of the contract to the Commission-approved Acquirer; *provided, however*, that if the Commission-approved Acquirer provides maintenance relating to AXSYS to these customers, then Respondent shall transfer all such maintenance payments due pursuant to the contracts to the Commission-approved Acquirer.
- F. “AXSYS Business” means the business of researching, developing, designing, marketing, selling, licensing, providing, maintaining, servicing, supporting, improving, enhancing, and updating AXSYS.

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- G. “Bentley” means Bentley Systems, Incorporated, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 685 Stockton Drive, Exton, PA, 19341.
- H. “Bentley Purchase Agreement” means the Asset Purchase Agreement by and among Bentley Systems, Incorporated, and Respondent, dated May 22, 2004, and includes all schedules, exhibits, and ancillary agreements, attached as Confidential Appendix B.
- I. “CAPE-OPEN Standards,” “CAPE-OPEN Thermo and Units Standards,” and “CAPE-OPEN Thermo Standard” mean the uniform standards for interfacing process modeling software components developed specifically for the design and operation of chemical processes developed by CAPE-OPEN, currently operating as the CAPE-OPEN Laboratories Network (“CO-LaN”), a Standard-Setting Organization in the process simulation and optimization industry.
- J. “Commission” means the Federal Trade Commission.
- K. “Commission-approved Acquirer” means (1) any acquirer of the Engineering Software Assets approved by the Commission pursuant to Paragraphs II. or VI. of this Order, or (2) any acquirer of the AXSYS Assets approved by the Commission pursuant to Paragraphs III. or VI. of this Order, including Bentley.
- L. “Defect” means a material error in programming logic or documentation in the Hyprotech Process Engineering Simulation Software attributable to Respondent that prevents the performance of a principal computing function as set forth in Respondent’s published specifications for the Hyprotech Process Engineering Simulation Software.

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- M. “Delivered Intellectual Property” means Intellectual Property relating to the Hyprotech Process Engineering Simulation Software that is transferred pursuant to this Order, in the form such software is delivered by Respondent to the Commission-approved Acquirer of the Engineering Software Assets as of the date of delivery (without modification of any kind by any Person other than Respondent).
- N. “Divestiture Agreement” means any agreement or agreements approved by the Commission pursuant to which Respondent or a trustee divests assets as required by this Order.
- O. “Engineering Software Assets” means OTS Assets and Hyprotech Process Engineering Simulation Software Assets.
- P. “Hyprotech” means Hyprotech, Ltd., which, prior to May 31, 2002, was a wholly-owned operating division of AEA Technology plc, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom and, subsequent to the Acquisition, became a wholly-owned subsidiary of Respondent, and includes all subsidiaries.
- Q. “Hyprotech Process Engineering Simulation Software” means the Hyprotech family of products, which includes the products and interfaces sold or licensed under the HYSYS name and the related batch process development, conceptual engineering, heat exchanger and hydraulics software identified in Appendix A(1), but shall not include the products identified in Appendix A(2).
- R. “Hyprotech Process Engineering Simulation Software Assets” means the following:

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1. all of Respondent's interests in and rights to all Software and other products (including all development work in process for existing and proposed or terminated products) comprising Hyprotech Process Engineering Simulation Software;
2. all Owned Intellectual Property Rights used solely in the operation of the Hyprotech Process Engineering Simulation Software Business;
3. a non-exclusive right to all Owned Intellectual Property Rights used both in Hyprotech Process Engineering Simulation Software and other of Respondent's Software and other products;
4. rights to all Licensed Intellectual Property Rights relating to Software embedded in Hyprotech Process Engineering Simulation Software; *provided, however,* that, after divestiture to the Commission-approved Acquirer, Respondent shall not be responsible for payment of any fees or charges associated with the Commission-approved Acquirer's use of the Licensed Intellectual Property;
5. a license to use trademarks owned by Respondent to the Hyprotech Process Engineering Simulation Software products for a period of one (1) year from the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets;
6. a copy of all marketing and sales materials used anywhere in the world to the extent such materials relate to the Hyprotech Process Engineering Simulation Software Business, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials, promotional and marketing materials, marketing information, educational materials, Website content, and

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advertising and display materials; and

7. a list of all Hyprotech Process Engineering Simulation Software customers as of the date of the Acquisition and, if different, as of the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets, including the name and address of the customer; the name of a contact person, and his or her mailing address, e-mail address, and telephone number; the products licensed or serviced; and the termination date of the customer's contract.

"Hyprotech Process Engineering Simulation Software Assets" shall not include:

1. any business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill;
 2. any other of Respondent's products that Interface with Hyprotech Process Engineering Simulation Software;
 3. rights to third-party Intellectual Property that the Commission-approved Acquirer either has or obtains independent of its acquisition of the Hyprotech Process Engineering Simulation Software Assets; and
 4. materials related to the pricing or discounting of Hyprotech Process Engineering Simulation Software, including but not limited to pricing or discount lists, plans, policies, practices, forecasts, strategies, or analyses.
- S. "Hyprotech Process Engineering Simulation Software Business" means the business of researching, developing, designing, marketing, selling, licensing, providing,

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maintaining, supporting, improving, and updating
Hyprotech Process Engineering Simulation Software.

- T. “Intellectual Property” means all of the following throughout the world:
1. all patents, patent applications and patent disclosures and utility models, together with all re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof;
 2. copyrightable works, copyrights and applications, registrations and renewals related thereto;
 3. know-how, trade secrets, improvements, designs, techniques, and processes;
 4. business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill; and
 5. all other intellectual property rights of a proprietary nature, including but not limited to derivative rights.
- U. “Interface” means (1) (as a noun) the language and codes that two independent Software applications use to communicate with each other and with the hardware; and (2) (as a verb) to connect with or interact with by means of the language and codes that two independent Software applications use to communicate with each other and with the hardware.
- V. “Licensed Intellectual Property Rights” means all of Respondent’s sublicensable interests in and rights to Intellectual Property that is licensed to Respondent by any third person pursuant to an agreement under which

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Respondent has the right to grant a sublicense to a Commission-approved Acquirer.

- W. “New Product” means any product, technology, innovation, or module that is not available from Respondent as part of its standard support and maintenance agreements.
- X. “OTS Assets” means the following:
1. all of Respondent’s interests in and rights to all Software and other products (including all development work in process for existing and proposed or terminated products) and associated Interfaces identified in Appendix A(3);
 2. all inventories (including but not limited to all inventories of finished products and all development work relating to the products identified in Appendix A(3)) of the OTS Business, and the equipment and other tangible personal property necessary to the operation of the OTS Business;
 3. a copy of all books, records, and financial files relating to the OTS Business;
 4. all customer contracts relating solely to the OTS Business;
 5. subcontracted rights to perform and receive payment for all operator training services and Software (and only to the extent such rights to perform and receive payments are for operator training services and Software) included in customer contracts that also include rights to perform and receive payment for other of Respondent’s Software or other products;
 6. all Owned Intellectual Property Rights used solely in the

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operation of the OTS Business;

7. a non-exclusive right to all Owned Intellectual Property Rights used both in the Software and other products

described in Paragraph I.X.1 and in other of Respondent's Software and other products;

8. rights to all Licensed Intellectual Property Rights necessary to the operation of the OTS Business; *provided, however*, that, after divestiture to the Commission-approved Acquirer, Respondent shall not be responsible for payment of any fees or charges associated with the Commission-approved Acquirer's use of the Licensed Intellectual Property;
9. for material relating solely to the OTS Business, all marketing and sales materials used anywhere in the world, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files, customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials; *provided, however*, that Respondent may retain a copy of such material to the extent necessary for tax, accounting, or legal purposes, including as required by applicable laws and regulations; and
10. for material relating both to the OTS Business and to other of Respondent's businesses, a copy of all marketing and sales materials used anywhere in the

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world to the extent such materials relate to the OTS Business, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files, customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials.

“OTS Assets” shall not include:

1. rights to third-party Intellectual Property that the Commission-approved Acquirer either has or obtains independent of its acquisition of the OTS Assets;
 2. any of Respondent’s other products that Interface with the Software and other products described in Paragraph I.X.1.; and
 3. except to the extent used solely in the OTS Business, business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill.
- Y. “OTS Business” means Respondent’s business of researching, developing, designing, marketing, licensing, selling, providing, maintaining, servicing, supporting, improving, enhancing, and updating software and providing services to the extent used for the development and implementation of a computer system connected to a

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real or emulated distributed control system that simulates by use of dynamic simulation models the performance and reactions of a designated process plant for the training of process plant operators.

Z. “Owned Intellectual Property Rights” means all of Respondent’s interests in and rights to Intellectual Property that is owned by Respondent.

AA. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

BB. “Release” means the following: (1) new versions of a Software product and related documentation with new features and/or significant enhancements or (2) revisions to a version of a Software product and related documentation with changes and/or Defect corrections, which, in each case, AspenTech makes generally available to its customers as part of its standard support and maintenance services without any separate charge. “Release” shall not include “New Product.”

CC. “Software” means any type of computer code, including but not limited to, source code, object code, executable programs, software scripts, modules, add-ons, patches, bug fixes, library functions, object libraries, test programs, testing and quality control information (including lists of known bugs), test results, regression test software, enhancements, customization, development tools, development environments, and proprietary programming languages.

DD. “Specified Proceedings” means the following:

1. the arbitration proceeding pending in London before Philip Naughton, or his successor, between KBC

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Advanced Technologies plc and KBC Advanced Technologies, Inc., on the one hand, and AEA Technology plc, Hyprotech, Ltd., and Hyprotech, Inc., on the other hand, for which an award was issued on or about April 22, 2004; and

2. any governmental proceedings, and any orders or judgments issued in connection with the above proceeding, relating to or arising out of such arbitration, including without limitation the Interlocutory Order signed and filed on or about May 7, 2004 in the matter captioned *KBC Advanced Technologies plc and KBC Advanced Technologies, Inc. v. AEA Technology plc, Hyprotech, Ltd., and Hyprotech, Inc.* pending before the District Court of Harris County, Texas, Cause No. 2002-44783.

EE. “Standard-Setting Organization” means any formal group, organization, association, membership or stock corporation, or other entity that, through voluntary participation of interested or affected parties, is engaged in the development, promulgation, promotion or monitoring of product or process standards for the process simulation and optimization industry, or any segment thereof, anywhere in the world.

FF. “Third-party Developer” means an entity, other than Respondent, the Commission-approved Acquirer of the AXSYS Assets, or their respective customers, that is engaged in the development of Software for process industries.

GG. “Zyqad” means the AspenTech software that integrates front-end engineering processes with the management of process data and knowledge.

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II.**IT IS FURTHER ORDERED** that:**A.** Respondent shall either:

1. (a) divest the Engineering Software Assets, absolutely and in good faith, and at no minimum price, 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, no later than ninety (90) days after this Order becomes final; and (b) submit to the Commission, pursuant to Rule 2.41(f) of the Commission's Rules of Practice, a complete application (including an executed purchase agreement) for approval of the divestiture required by Paragraph II., no later than five (5) days after this Order becomes final; or
2. if Respondent has not submitted to the Commission a complete application in compliance with Paragraph II.A.1. above, divest the Engineering Software Assets, absolutely and in good faith, and at no minimum price, no later than sixty (60) days after this Order becomes final, 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;

provided, however, that Respondent shall have a right to obtain from the Commission-approved Acquirer: (1) for any purpose, a perpetual, world-wide, royalty-free right to prepare derivative works of, modify, enhance, improve, maintain, support, make, have made, use, develop, reproduce, demonstrate, promote, sell, offer to sell, distribute, transmit, and import Hyprotech Process Engineering Simulation Software products (in source code form, object code form, executable code form, or any other applicable form) and all Owned Intellectual Property used solely in the operation of the Hyprotech Process

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Engineering Simulation Software Business; and (2) for any purpose other than the OTS Business, a perpetual, world-wide, royalty-free right to prepare derivative works of, modify, enhance, improve, maintain, support, make, have made, use, develop, reproduce, demonstrate, promote, sell, offer to sell, distribute, transmit, and import MUSIC and OTISS (in source code form, object code form, executable code form, or any other applicable form).

- B. Any Divestiture Agreement between Respondent and the Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Prior to the date of divestiture of the Engineering Software Assets to the Commission-approved Acquirer, Respondent shall secure all consents, approvals, and waivers from all Persons (other than Respondent or the Commission-approved Acquirer) that are necessary for the divestiture of the Engineering Software Assets to the Commission-approved Acquirer or for the continued use, development, designing, enhancement, improvement, production, licensing, sale, marketing, distribution, or servicing of the Engineering Software Assets by the Commission-approved Acquirer. In the event that Respondent is unable to satisfy all conditions necessary to divest any intangible asset as contemplated in this Order, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the Commission-approved Acquirer may reasonably request in the Commission-approved Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to all other intangible assets, including but not limited to Software, Intellectual Property (including patents), or contractual rights, substitute functionally equivalent assets or arrangements, subject to the approval of the Commission.

D. Respondent shall:

1. for two (2) years following the date of divestiture of the Engineering Software Assets, at no additional cost to the Commission-approved Acquirer of the Engineering Software Assets, provide the Commission-approved Acquirer with all Releases (in source, object, and executable code form and including all related documentation) for Respondent's Hyprotech Process Engineering Simulation Software. Respondent shall ship Releases in source, object, and executable code form to the Commission-approved Acquirer of the Engineering Software Assets on or before the same date as Respondent ships such Releases to Respondent's manufacturing vendor for mass production of such Releases; *provided, however*, that, notwithstanding the above, Respondent shall provide any Releases, the sole purpose of which is to correct Defects, to the Commission-approved Acquirer of the Engineering Software Assets on or before the same date that such Releases are provided to Respondent's customers; and
 2. no later than fourteen (14) days after the end of the two-year period described in Paragraph II.D.1, deliver to the Commission-approved Acquirer of the Engineering Software Assets a copy of the Releases for Respondent's Hyprotech Process Engineering Simulation Software in source, object, and executable code form that are under development by Respondent as such Releases exist on the second anniversary of the date of divestiture of the Engineering Software Assets.
- E. For two (2) years following the date of divestiture of the Engineering Software Assets, Respondent shall provide to the Commission-approved Acquirer of the Engineering Software Assets, upon reasonable notice and at reasonable times and levels, personnel, information, assistance, advice

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or training relating to Hyprotech Process Engineering Simulation Software as necessary or appropriate to effectuate the purposes of this Order. Respondent shall not charge the Commission-approved Acquirer of the Engineering Software Assets more than Respondent's own direct, out-of-pocket expenses of labor and travel in providing such services, not including overhead or administrative expenses.

- F. Respondent shall, for a period of two (2) years from the date of divestiture of the Engineering Software Assets:
1. allow any customer who uses Hyprotech Process Engineering Simulation Software, without penalty, to:
 - a. modify its current agreements with Respondent to allow for renewal of annual software maintenance and support with respect to less than the complete range of products covered by the current agreements and to allocate fees for the products remaining in the agreement on a pro rata basis, to enable such customer to deal with the Commission-approved Acquirer; and
 - b. obtain additional copies of Software from the Commission-approved Acquirer of the Engineering Software Assets without effecting a termination of an existing license agreement or maintenance and support services agreement with Respondent with respect to Software licensed by Respondent; *provided, however*, that Respondent shall not be under any obligation to provide maintenance and support services with respect to software licensed to customers by the Commission-approved Acquirer.
 2. remove any license impediment or grant any requisite intellectual property rights to allow the Commission-approved Acquirer of the Engineering Software Assets:

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- a. to provide software maintenance and support services for Software that has been installed by Respondent; and/or
 - b. upon expiration of the customer's license agreement with Respondent, to grant new licenses to the Hyprotech Process Engineering Simulation Software installed on its computers without requiring the deletion and re-installation of such Software.
- G. Respondent shall, within fourteen (14) days after the date of the divestiture of the Hyprotech Process Engineering Simulation Software Assets:
- 1. provide notice either by electronic mail or by first class mail to all of Respondent's customers of Hyprotech Process Engineering Simulation Software of their rights as set forth in this Paragraph II.; such notice to the Hyprotech Process Engineering Simulation Software Customers shall be made by means of a letter in the form of Appendix C to this Order; and
 - 2. and for a period of six (6) months from the date of posting, post a notice, prominently displayed in the top portion of Respondent's home page of its web site, immediately below any header information, that provides a link to the complete copy of the complaint and Order in this matter in Adobe Portable Document Format.
- H. Respondent shall indemnify the Commission-approved Acquirer of the Engineering Software Assets in respect of, and hold the Commission-approved Acquirer of the Engineering Software Assets harmless against, any and all liabilities, monetary damages, fines, fees, penalties, costs, and expenses incurred or suffered by the Commission-approved Acquirer of the Engineering Software Assets from any claims, liabilities, or obligations relating to or arising out of the Specified Proceedings, including any

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claims that would restrict, or attempt to restrict, the use of the Engineering Software Assets.

- I. In the event that the use of the Delivered Intellectual Property by the Commission-approved Acquirer is held in the Specified Proceedings to infringe any intellectual property rights of a party to the Specified Proceedings (or constitute the misappropriation of a trade secret of a party to the Specified Proceedings) and the use of such Delivered Intellectual Property is enjoined, or Respondent or the Commission-approved Acquirer of the Engineering Software Assets reasonably believes that it is likely to be found to infringe or constitute a misappropriation or likely to be enjoined, then Respondent shall, at its sole cost and expense, either (at the option of Respondent):
 1. procure from a party to the Specified Proceedings the right for the Commission-approved Acquirer of the Engineering Software Assets (and its then-existing, and any future, licensees) to (or to continue to) design, sell, offer for sale, manufacture, reproduce, distribute, develop, modify, create derivative works of, display, perform, import, export, and use the Delivered Intellectual Property;
 2. modify such Delivered Intellectual Property so that it becomes non-infringing or no longer constitutes a misappropriation or otherwise falls outside the subject matter of the Specified Proceedings, without affecting the basic functionality of such Delivered Intellectual Property; or
 3. replace the applicable Delivered Intellectual Property with a new item that does not infringe or constitute a misappropriation or otherwise falls outside the subject matter of the Specified Proceedings, and that is functionally equivalent to the applicable Delivered Intellectual Property.

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- J. Notwithstanding anything to the contrary in Paragraphs II.H. and II.I., Respondent shall have no obligation or liability under Paragraphs II.H. or II.I. for any claim of infringement arising from:
1. any combination of the Delivered Intellectual Property with any other product or technology not supplied by Respondent, where such infringement would not have occurred but for such combination;
 2. the adaptation or modification of the Delivered Intellectual Property by any Person other than a Person employed by Respondent at the time of the adaptation or modification, where such infringement would not have occurred but for such adaptation or modification;
 3. the use of the Delivered Intellectual Property in an application for which it was not designed or intended, where such infringement would not have occurred but for such use; or
 4. a claim based on intellectual property rights (other than the Delivered Intellectual Property) owned by the Commission-approved Acquirer of the Engineering Software Assets or any of its Affiliates.
- K. The purpose of the divestiture of the Engineering Software Assets is to allow the Commission-approved Acquirer to engage in the continued development and licensing of Hyprotech Process Engineering Simulation Software and to remedy the lessening of competition as alleged in the Commission's complaint in the markets for: (1) continuous process engineering simulation flowsheet software for process industries and smaller markets contained therein, and (2) batch process engineering simulation flowsheet software for process industries.

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III.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the AXSYS Assets to Bentley, absolutely and in good faith, no later than ten (10) days after the Commission places the Agreement Containing Consent Order on the public record (but no earlier than the day after the Commission places the Agreement Containing Consent Order on the public record), pursuant to and in accordance with the Bentley Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Bentley pursuant to the Bentley Purchase Agreement or to reduce any obligations of Respondent under such agreement).
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent in writing that Bentley is not an acceptable purchaser of the AXSYS Assets or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification, Respondent shall:
 - 1. immediately notify Bentley of the notice received from the Commission;
 - 2. effect a termination of the Divestiture Agreement, a rescission of the acquisition, and a transfer of the AXSYS Assets no later than ten (10) business days from the date of receipt of the Commission's notice; and
 - 3. divest the AXSYS Assets, absolutely and in good faith at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission no later than six (6) months from the date of receipt of the Commission's notice.

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- C. Unless the Commission rejects it pursuant to Paragraph III.B., the Bentley Purchase Agreement, attached as Confidential Appendix B and made a part of this Order, shall be incorporated by reference into this Order, and failure by Respondent to comply with any term of the Bentley Purchase Agreement (or other Divestiture Agreement, as applicable) shall constitute a failure to comply with this Order.
- D. Prior to the date of divestiture of the AXSYS Assets to the Commission-approved Acquirer, Respondent shall secure all consents, approvals, and waivers from all Parties (other than Respondent or the Commission-approved Acquirer) that are necessary for the divestiture of the AXSYS Assets to the Commission-approved Acquirer or for the continued use, development, enhancement, improvement, production, sale, marketing, distribution, or servicing of the AXSYS Assets by the Commission-approved Acquirer. In the event that Respondent is unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the Commission-approved Acquirer may reasonably request in the Commission-approved Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to all other intangible assets, including but not limited to Software, Intellectual Property (including patents), or contractual rights, substitute functionally equivalent assets or arrangements, subject to the approval of the Commission.
- E. For a period of five (5) years from the date of divestiture of the AXSYS Assets, Respondent shall provide to the Commission-approved Acquirer of the AXSYS Assets access to all Releases (and all related data and documentation) of Respondent's products (including

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Respondent's process simulators) that Interface with any AXSYS product, at least as early as, and on at least as favorable terms as, offered by Respondent to any Third-party Developer.

- F. Respondent shall provide to the Commission-approved Acquirer of the AXSYS Assets support on all Interfaces to Respondent's products relating to the AXSYS products on the following terms:
 - 1. for a period of two (2) years following the date of divestiture of the AXSYS Assets to the Commission-approved Acquirer, at no cost; and
 - 2. thereafter, for a period of not less than the maximum duration of any term license assumed by the Commission-approved Acquirer, on at least as favorable terms as offered by Respondent to any Third-party Developer.
- G. Respondent shall, within fourteen (14) days after the date of the divestiture of the AXSYS Assets, provide notice either by electronic mail or by first class mail to all customers of Respondent with license rights to AXSYS or Zyqad by means of a letter in the form of Appendix D to this Order. Respondents shall attach to or enclose in that notice a complete copy of the complaint and Order in this matter.
- H. The purpose of the divestiture is to ensure the continued use and development of the AXSYS Assets in the same business in which the AXSYS Assets were used prior to the acquisition by Respondent and to remedy the lessening of competition alleged in the Commission's complaint in the market for integrated engineering software for process industries.

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IV.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of divestiture of the Engineering Software Assets:

- A. Respondent shall maintain technical standards with respect to Respondent's Hyprotech Process Engineering Simulation Software to provide:
 - 1. compatibility of HYSYS cases so that HYSYS cases created with Version 3.2 of HYSYS will be compatible with all additional and subsequent versions of HYSYS released by Respondent; and
 - 2. support for:
 - a. version 1.0 of the CAPE-OPEN Thermo and Units Standards;
 - b. upgrading HYSYS to CAPE-OPEN Thermo Standard 1.1;
 - c. new versions of the CAPE-OPEN Thermo and Units Standards as new versions become available; and
 - d. new CAPE-OPEN Standards on Math solvers and Reactors.
- B. Respondent shall publish, and make available on an unrestricted basis:
 - 1. all Interfaces for HYSYS and Aspen Plus, completely and accurately, no later than ten (10) days after the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets for Interfaces in existence as of the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets; and

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2. thereafter, any new Interfaces for HYSYS and Aspen Plus, completely and accurately, no later than ten (10) days after Respondent distributes Releases of HYSYS and Aspen Plus.
- C. Respondent shall provide support for all published Interfaces in the same manner and on terms comparable to those that, as of the date this Order becomes final, Respondent offers to third parties, including but not limited to cooperating with Third-party Developers to resolve any questions, issues, or problems that arise in connection with any published Interface.
- D. Respondent shall not enter into or enforce any agreement with any competitor that has the purpose of impeding or obstructing the conduct or organizational structure of any Standard-Setting Organization, which agreement has not been explicitly disclosed to the members of that Standard-Setting Organization, and that is inconsistent with the purpose of Paragraphs II.K. and III.H. of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall, not later than ten (10) days after execution of the Divestiture Agreement:
1. provide to the Commission-approved Acquirers a list of all non-clerical employees of the AXSYS Business, the OTS Business, or Hyprotech, as applicable, who were employed by Respondent as of the date of execution of the Divestiture Agreement or who were employed by Respondent any time within the three (3) years prior to the date this Order becomes final;

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2. to the extent permissible under applicable laws, and for a period of six (6) months from the date of divestiture of the AXSYS Assets or the Engineering Software Assets, as applicable, allow each Commission-approved Acquirer to inspect the personnel files and other documentation relating to such employees; and
 3. and for a period of six (6) months from the date of divestiture of the AXSYS Assets or the Engineering Software Assets, as applicable, provide an opportunity for each Commission-approved Acquirer:
 - a. to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the employees of the AXSYS Business, the OTS Business, or Hyprotech, as applicable; and
 - b. to make offers of employment to any one or more of these employees.
- B. For a period of six (6) months from the date of divestiture of the AXSYS Assets or the Engineering Software Assets, as applicable:
1. Respondent shall not interfere with the employment by a Commission-approved Acquirer of any employee of the AXSYS Business, the OTS Business, or Hyprotech;
 2. Respondent shall not offer any incentive to employees of the AXSYS Business, the OTS Business, or Hyprotech to decline employment with a Commission-approved Acquirer or to accept other employment with Respondent; and
 3. Respondent shall remove any impediments that may deter employees of the AXSYS Business, the OTS Business, or Hyprotech from accepting employment with

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a Commission-approved Acquirer or that may interfere with the ability of such employee to accept employment with a Commission-approved Acquirer, including but not limited to waiving any confidentiality or non-compete provisions of employment or other contracts with Respondent that would affect the ability of those individuals to be employed by a Commission-approved Acquirer.

- C. Respondent shall continue all employee benefits, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), offered by Respondent to employees of the AXSYS Business, the OTS Business, or Hyprotech until, for the employees of the AXSYS Business, the date of the divestiture of the AXSYS Assets; and, for the employees of the OTS Business and Hyprotech, until the date of the divestiture of the Engineering Software Assets.
- D. Respondent shall not, for two (2) years following the date of the divestiture of the AXSYS Assets and the Engineering Software Assets, directly or indirectly, solicit, induce, or attempt to solicit or induce any employees of Respondent who have accepted offers of employment with a Commission-approved Acquirer to terminate their employment relationship with the Commission-approved Acquirer unless such individual is no longer employed by the Commission-approved Acquirer; *provided, however*, it is not a violation of this provision if: (1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the employees, or (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this Paragraph.

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

- A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Engineering Software Assets within the time and in the manner required by Paragraph II.A. of this Order, or the AXSYS Assets within the time and in the manner required by Paragraphs III.A. or III.B. of this Order, the Commission may appoint a trustee to accomplish either or both divestitures, at no minimum price. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. 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 Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VI.A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to

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Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the AXSYS Assets and/or the Engineering Software Assets.
3. Within ten (10) days after appointment of the trustee, Respondent 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 either or both of the divestitures required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.B.3. to accomplish either or both of the divestitures. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, provided, however, the Commission may extend the period for no more than two (2) additional periods of twelve (12) months each.
5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the AXSYS Assets or the Engineering Software Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of either or both of the divestitures. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an

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amount equal to the delay, as determined by the Commission.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. Either or both of the divestitures shall be made only in a manner that receives the prior approval of the Commission, and only to an acquirer that receives the prior approval of the Commission. Provided, however, that in connection with a particular divestiture, 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 and to allow the Respondent to choose from among them, then the trustee shall divest such assets to the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, 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, 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 his or her services, all remaining monies shall be paid at the direction of Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at

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least in significant part on a commission arrangement contingent on the trustee's divesting the AXSYS Assets or the Engineering Software Assets.

8. Respondent 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 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.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VI.A. of this Order.
10. 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.
11. The trustee shall have no obligation or authority to operate or maintain the AXSYS Assets or the Engineering Software Assets.
12. The trustee shall report in writing to the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestitures required by this Order.

VII.

IT IS FURTHER ORDERED that, until the divestitures of the AXSYS Assets and of the Engineering Software Assets are completed, Respondent shall not cause, and will use commercially reasonable efforts to avoid, the wasting, deterioration, or loss of

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the AXSYS Assets or the Engineering Software Assets, nor shall Respondent sell, transfer, or encumber the AXSYS Assets or the Engineering Software Assets.

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

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has complied with its obligations pursuant to Paragraphs II.A., II.C., II.G., III.A., III.B., III.D., III.G., V.A., V.B., V.C., VI., and VII. of this Order, and at such other times as the Commission may require, Respondent 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 the above-listed paragraphs of this Order.
- B. Within thirty (30) days after the date this Order becomes final, and, if later, within thirty (30) days after each divestiture required by Paragraphs II. and III. are completed, and then annually for two (2) years after each divestiture required by Paragraphs II. and III. are completed, Respondent 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 Paragraphs II.D., II.E., II.F., III.F., and V.D.,
- C. Within thirty (30) days after the date this Order becomes final, one year from the date this Order becomes final, and then annually for four (4) years thereafter, Respondent 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 Paragraphs II.H., II.I. II.J., III.E., and IV.A.-D.

Decision and Order

IX.

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

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

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

XII.

IT IS FURTHER ORDERED that this Order shall terminate on December 20, 2014.

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Appendix A(1)**Hyprotech Process Engineering Simulation Software**

HYSYS

HYSYS Dynamics Option

MASSBAL

HYSYS Amines Interface

HYSYS for Ammonia Plants Interface

HYSYS Upstream Interface

HYSYS OLGA Transient Interface

HYSYS OLGAS 3-Phase Interface

HYSYS OLGAS Interface

HYSYS OLI Interface

PIPESIM Interface

HYSYS PIPESYS Interface

HYSYS RTO Offline Interface

HYSYS RTO Online Interface

HYSYS Synetix Reactor Models Interface

HYSYS Synetix Reactor Models DYCAT Interface

COMThermo

BDK

Hyprotech Explorer

Hyprotech Server

DISTIL

HX- Net

ACOL

APLE

FIHR

FRAN

MUSE

PIPE

PPDS Package Interface

TASC-Thermal

TASC-Mechanical

ProFES 2P Erosion Option

ProFES 2P Tran

ProFES 2P Wax Option

ProFES 3P Tran

ProFES Tranflo

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Appendix A(2)

Excluded Hyprotech Process Engineering Simulation

Software

HYSYS Upstream Steady-State Option

HYSYS Upstream Dynamics Option

SULSIM

HYPROPIII

BatchCAD

HYSYS Pipesim Net Option

HYSYS UREA++ Option

FLARENET

TICP

Harwell Math Library

Proconex SX006

Decision and Order

Appendix A(3)**Operator Training Software**

OTISS	Steady State Report Generation Spreadsheet
MUSIC	Stream Checker Spreadsheet
AMCL Translator - Desktop	T3 TDC Emulation
Bailey Infi90 Link	TDC_Builder
CIMIO Link	TDC3000 Functions
CL Tracer	Tdcomd
Column Builder	TriconImp
CONCERT	Visio Graphics Generation Kit
CONTRALTO	VPC-Honeywell - AMCL add on
CPGEN	VPC-Honeywell TDC3000 Web update system
Cplink	Web enablement of Melody tools
CrEdit Macros	Xeng
Cslink	Xstation
Custom Hard Panel Links	Yocomd-HP
Datatracker	Yocomd-NT
Deltcomd	ZOE
diffpara	Alarm Manager
DMC Ref File Generator	Automated Training Exercises
Dmccomd	Command Channel
Engineering Spreadsheet	CS3000 offline tools
FSC Unplot	DDLGen
FSIMlink	deltaV DCS Link
Generic IEC 1131 system handling	EB Parser
History Extraction Spreadsheet	EB Viewer
Honutils	Hygreen Instructor Station
idef/ odef	Hylinker
Imcomd	IS tester
IssueMonitoring	Performance Evaluation and Record Keeping
jpdef	Proconex SX003 Interface
mdef	Siemens Interface
O/I/Flink	Simulation Coordinator
Olgacomd	Simulation Server
PCON	SX003 driver
pdef	T3 Emulation Link
PMCL Translator	Trend
Potential Control Checkout Toolset	Yokogawa CS Link
Proconex SX003	Yokogawa CS offline tools
Proserve	Yokogawa CS3000 Interface
Recomd	ATUKOPCSERVER

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VOLUME 138

1011

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Remlink
RTAP
Softex HTL

MOORCOMD
OPCCOMD
serialpan

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**Appendix B – Confidential
Bentley Purchase Agreement**

**[Redacted From Public Record Version, But Incorporated By
Reference]**

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Appendix C

[Aspen Technology, Inc. letterhead]
[date]

[Name of customer]

Attention: [name of contact person at customer]

[Address of contact person at customer]

[telephone number of contact person]

Dear [contact person]:

This letter is to inform you that, pursuant to an order of the Federal Trade Commission (“FTC”), Aspen Technology, Inc. (“AspenTech”) is required to notify certain customers that it has divested its operator training simulator business and rights to Hyprotech Ltd.’s (“Hyprotech”) process engineering software to [insert name of Commission-approved Acquirer].

The FTC order is part of a settlement between AspenTech and the FTC resolving the FTC’s action challenging AspenTech’s acquisition of Hyprotech. Under the settlement, AspenTech has the right to obtain a license back from [insert name of Commission-approved Acquirer] and to continue selling and developing all of its existing engineering software products, including those acquired in its acquisition of Hyprotech (with the exception of AXSYS and certain operator training products).

The order requires AspenTech, for a period of two years from [date of divestiture], to allow customers of Hyprotech process engineering simulation software to choose without penalty to maintain their current agreements for annual software maintenance and support with AspenTech or to pursue similar agreements with [insert name of Commission-approved Acquirer]. The order also provides for customers to be able to obtain additional copies of Hyprotech process engineering software from [insert name of Commission-approved Acquirer] without affecting current license agreements with AspenTech. AspenTech is further required to maintain certain published and open

Decision and Order

interface standards with respect to HYSYS, Aspen Plus and certain CAPE-OPEN standards.

A link to [copy of] the Federal Trade Commission's complaint and final order in this matter may be found at www.aspentech.com [is attached].

Sincerely,

David L. McQuillin
President and Chief Executive Officer
Aspen Technology, Inc.

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Appendix D

[Aspen Technology, Inc. letterhead]
[date]

[Name of customer]

Attention: [name of contact person at customer]

[Address of contact person at customer]

[telephone number of contact person]

Dear [contact person]:

This letter is to inform you that, pursuant to an order of the Federal Trade Commission, Aspen Technology, Inc. (“AspenTech”), is required to notify all AspenTech customers with license rights to use AXSYS or Zyqad that it has divested its assets relating to AspenTech’s AXSYS business to Bentley Systems, Incorporated, and that, as of [insert date], Bentley will provide all license, development and services relating to AXSYS, unless otherwise subcontracted.

A link to [copy of] the Federal Trade Commission’s complaint and final order in this matter may be found at www.aspentech.com [is attached].

Sincerely,

David L. McQuillin
President and Chief Executive Officer
Aspen Technology, Inc.

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 Aspen Technology, Inc. ("AspenTech") to resolve the anticompetitive effects alleged in the Complaint issued by the Commission on August 6, 2003.

On or about May 31, 2002, AspenTech acquired Hyprotech, Ltd. from AEA Technology plc for approximately \$106.1 million in a transaction that was not reportable under the Hart-Scott-Rodino Act. At the time of the acquisition, AspenTech and Hyprotech were the primary global suppliers of process engineering simulation software and had only one other significant competitor, Simulation Sciences ("SimSci"). The Agreement requires that AspenTech divest its integrated engineering software business to Bentley Systems, Inc. ("Bentley"), and its batch and continuous process engineering software business to a Commission-approved buyer.

The Proposed Order 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 Proposed Order and the comments received and will decide whether it should withdraw the Proposed Order or make the Proposed Order final.

I. The Parties

AspenTech, headquartered in Cambridge, Massachusetts, is a developer and worldwide supplier of manufacturing, engineering, and supply chain simulation computer software. AspenTech's products include non-linear process engineering simulation software used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that

Analysis

support those industries. AspenTech had total revenues of approximately \$323 million for fiscal year 2003, and it employs approximately 1,750 people worldwide.

Hyprotech was a wholly-owned operating division of AEA Technology plc, a corporation organized, existing, and doing business under the laws of the United Kingdom. Hyprotech was also a developer and worldwide supplier of engineering and 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. Headquartered in Calgary, Alberta, Canada, Hyprotech had offices throughout the world, including the United States, and had revenues of approximately \$68.5 million in fiscal year 2002.

Prior to the acquisition, AspenTech and Hyprotech were the largest providers of process engineering simulation software. Process engineering simulation software enables plant designers, engineers, production planners, and others, to design, simulate, and analyze production processes used in various industrial operations. The software allows users to mathematically model, or simulate, a process to predict what happens when different variables (such as heat, pressure, or raw material composition) are changed, thereby allowing more efficient and lower cost operations. AspenTech and Hyprotech were also the two primary providers of integrated engineering software, which facilitates the sharing and implementation of process design data.

II. The Commission's Complaint

On August 6, 2003, the Commission issued a Complaint charging that AspenTech unlawfully acquired the assets of Hyprotech in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Analysis

The Complaint alleges the following seven global markets within which to analyze the effects of the acquisition: (1) software used to simulate continuous process engineering applications; (2) four narrower markets contained within the overall continuous process engineering software market, each such market defined by end-use application (specifically oil and gas, refining, chemicals, and air separation process simulation); (3) software used to simulate batch process engineering applications, such as fine chemicals or pharmaceuticals; and (4) software used for integrated engineering applications (multi-user software that enables engineers to share process design data).

The Complaint alleges that, prior to the acquisition, AspenTech and Hyprotech were the closest competitors within each relevant market. The Complaint further alleges that, prior to the acquisition, AspenTech and Hyprotech vigorously competed to develop, license, and support continuous and batch process engineering simulation software and integrated engineering software. This competition provided customers with lower prices, better service, and increased product innovation. The Complaint maintains that entry into the relevant product markets 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 charges that the combination of the two companies substantially lessened competition in the relevant markets. Specifically, the acquisition eliminated the competition between AspenTech and Hyprotech to reduce prices, enhance innovation, and offer better services with respect to their software offerings in the relevant markets. Thus the acquisition enhanced AspenTech's ability to raise customers' prices above competitive levels in the relevant markets. The acquisition also increased AspenTech's capability to undermine open standard setting organizations, diminishing the pro-consumer effectiveness of such organizations to promote third-party software design and sale.

Analysis

III. Terms Of The Proposed Order

The Proposed Order effectively remedies the acquisition's alleged anticompetitive effects by requiring AspenTech to divest the overlapping Hyprotech assets. The continuous process and batch process assets, along with AspenTech's operator training software and service business, are to be divested to a Commission-approved buyer and in a manner approved by the Commission, and the integrated engineering software business is to be divested to Bentley, also subject to the Commission's final approval.

A. Divestiture of the Hyprotech Process Engineering Software and AspenTech Operator Training Software Business

The Proposed Order directs AspenTech to sell Hyprotech's continuous process and batch process assets, as well as AspenTech's operator training business, to a buyer acceptable to the Commission within the required time period. Section II. If AspenTech is unable to divest this set of assets to a Commission-approved buyer within 60 or 90 days of the Commission making the Proposed Order final, this time period dependant on when AspenTech provides an application for divestiture, the Commission may appoint a trustee to divest the assets to a Commission-approved buyer.

The Proposed Order assures the viability of the divestiture of the continuous and batch process engineering software assets by (1) requiring AspenTech to divest its operator training software and services business and (2) allowing customers with current software maintenance and support agreements to choose between maintaining those contracts with AspenTech or switching to the Commission-approved buyer. Section II. Customers will also be able to obtain additional copies of Hyprotech software from the Commission-approved buyer without affecting current license agreements with AspenTech. Paragraph II.F.

Analysis

The Proposed Order allows AspenTech to license the Hyprotech continuous and batch process engineering software from the Commission-approved buyer to preserve software development efforts since the acquisition. The Proposed Order requires AspenTech to provide the Commission-approved buyer with (1) all releases and upgrades to the Hyprotech process engineering simulation software for two years and (2) within fourteen days after the two-year post-divestiture period, all Hyprotech process engineering software under development at that time. Paragraph II.D. The Proposed Order additionally requires AspenTech to provide support services on the process engineering software assets to the Commission-approved buyer for two years from the date of divestiture. Paragraph II.E. These provisions ensure that the Commission-approved buyer will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Proposed Order requires AspenTech to indemnify the Commission-approved buyer in the event that the divested process engineering software infringes specific intellectual property rights. AspenTech will be bound to either procure for the Commission-approved buyer the right to continue to use the software or modify or replace the software so that it does not infringe the third party's intellectual property rights. Paragraphs II.H. and II.I.

The Commission's purpose in divesting the process engineering simulation software assets is to allow the buyer to engage in the development and licensing of the Hyprotech software and to remedy the lessening of competition alleged in the Commission's Complaint in the markets for (1) continuous process engineering simulation flowsheet software for process industries and smaller markets contained therein, and (2) batch process engineering simulation flowsheet software for process industries.

Analysis

B. Divestiture to Bentley

Pursuant to the Proposed Order and subject to the Commission's final approval, AspenTech will divest Hyprotech's AXSYS integrated engineering software business to Bentley. Section III. Bentley is a technology firm that provides architecture, engineering, construction, and operations software for a variety of applications, including buildings, industrial plants, and civil operations. Bentley reported 2003 revenues of approximately \$260 million.

Under the terms of the Proposed Order, Bentley will acquire Hyprotech's integrated engineering software products and, among other things, all rights to any existing software contracts no earlier than one day, and no later than ten days after the Proposed Order is placed on the public record. The Proposed Order contains additional provisions that require AspenTech to provide Bentley with updates, upgrades, and new releases of AspenTech's engineering and other products on at least as favorable terms as offered to any other person, for a period of five years. Paragraph III.E. AspenTech must also provide Bentley with no-cost support services relating to the AXSYS assets for a period of two years. Paragraph III.F. These provisions ensure that Bentley will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Commission believes that Bentley is a satisfactory buyer for these assets. The AXSYS software effectively complements the other software and services that Bentley currently offers. Bentley has the engineering, software, and marketing resources to support the AXSYS software, and the expertise to provide updated and innovative versions of AXSYS. As a result, the Commission believes that divestiture of this product line to Bentley will remedy the acquisition's alleged anticompetitive effects in the integrated engineering software market.

The purpose of the divestiture is to ensure the continued use and development of the AXSYS software in the same business in

Analysis

which Hyprotech used the software prior to Hyprotech's acquisition by AspenTech and to remedy the lessening of competition alleged in the Commission's Complaint in the market for integrated engineering software for process industries.

C. Other Provisions

To maintain the viability of both packages and to provide a level playing field for third-party software developers that must interface with the Hyprotech and AspenTech process engineering simulation software products, the Proposed Order requires AspenTech to maintain a level playing field. For a period of five years after the divestiture, the Proposed Order requires AspenTech to develop its engineering simulation software in a manner that maintains its compatibility with HYSYS and to maintain published interfaces to AspenTech engineering simulation software. Paragraphs IV.A. and IV.B. AspenTech also must publish and provide support for all HYSYS and AspenPlus interfaces. Paragraphs IV.B. and IV.C. Finally, the proposed order prohibits AspenTech from entering into or enforcing any agreement with any competitors that has the purpose of impeding or obstructing the conduct or organizational structure of any standard-setting organization, which agreement has not been explicitly disclosed to the members of that standard-setting organization and that is inconsistent with the purpose of the Proposed Order as stated in Paragraphs II.K. and III.H. Paragraph IV.D.

To ensure that both the Commission-approved buyer of the process engineering software and operator training software and Bentley can hire employees familiar with the divested software, the Proposed Order directs AspenTech to provide the acquirers with access to relevant AspenTech employees. Paragraph V.A. This provision requires AspenTech to provide the acquirers with lists of relevant employees, remove any impediments deterring current AspenTech employees from switching to Commission-approved buyers, and for a period of two years following the divestitures, prevents AspenTech from soliciting any former

Analysis

AspenTech employees who choose to work for either of the Commission-approved buyers. Paragraphs V.B. through V.D.

Section VI of the Proposed Order includes the standard divestiture trustee provision pursuant to which the Commission may appoint a trustee to effectuate a required divestiture if AspenTech is unable to comply with its divestiture obligations in either Section II. or Section III., or both. Section VI. If, however, the Commission rejects Bentley as a buyer, AspenTech is granted an additional six months to divest the asset package to an acquirer that receives the prior approval of the Commission. Paragraph III.B. If AspenTech is unable to divest within that six month period, then the Commission may appoint a trustee to divest the AXSYS Assets.

IV. Opportunity For Public Comment

By accepting the Proposed Order, 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 Proposed Order, including the proposed divestitures, 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 modify the terms of the Proposed Order in any way.

Commission Opinion

IN THE MATTER OF

CHICAGO BRIDGE & IRON COMPANY, ET AL.OPINION OF THE COMMISSION AND FINAL ORDER IN REGARD TO
ALLEGED VIOLATIONS OF SEC. 7 OF THE CLAYTON ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9300; File No. 0110015**Complaint, October 25, 2001--Opinion and Final Order, December 22, 2004*

In a unanimous Opinion, the Commission addressed the acquisition by Respondent Chicago Bridge & Iron Company ("CB&I") of the Engineered Construction and Water Divisions of Respondent Pitt-Des Moines, Inc. The Commission determined that the acquisition affected four relevant product markets involving the design and construction of liquefied natural gas (LNG) storage tanks; liquefied petroleum gas (LPG) storage tanks; liquid atmospheric gas (LIN/LOX) storage tanks; and thermal vacuum chambers (TVCs) in the United States. The Commission concluded that the acquisition substantially lessened competition in each of these markets, and therefore violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The Final Order, among other things, requires Respondent CB&I to create two separate, stand-alone operating divisions or subsidiaries – each fully, equally, and independently engaged in all aspects of the relevant business, and capable of competing in the relevant markets – and to divest one of those divisions within six months to an acquirer approved by the Commission.

Participants

For the Commission: *J. Robert Robertson, Rhett R. Krulla, Steven L. Wilensky, Chul Pak, Hector Ruiz, April Tabor, Cecelia M. Waldeck, Robert S. Tovsky, Michael A. Franchak, Eric M. Sprague, Jeffrey Dahnke, Michele Cerullo, Sebastian Lorigo, John A. Singer, Kavita Puri, Yasmine Carson, Jacqueline Tapp, Morris A. Bloom, David von Nirschl, Naomi Licker, Elizabeth A. Piotrowski, Steven R. Nelson, Jeffrey Fischer, Daniel P. O'Brien, and David T. Scheffman.*

For the Respondent: *Duane M. Kelley, Jeffrey A. Leon, Greg J. Miarecki, Christopher B. Essig, Michael P. Mayer, Andrew D. Shapiro, Danielle A.R. Coffman, David E. Dahlquist, James F. Herbison, and Lance W. Lange, Winston & Strawn L.L.P.*