

Complaint

IN THE MATTER OF

VALERO L.P., ET. AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4141; File No. 0510022*
Complaint, June 14, 2005--Decision, July 22, 2005

This consent order addresses the acquisition by Respondents Valero L.P. and Valero Energy Corporation -- collectively engaged in the transportation and storage of crude oil, and in the refining, transportation, and marketing of petroleum products and related petrochemical products -- of Respondents Kaneb Services LLC and Kaneb Pipe Line Partners, L.P., which collectively own and operate refined petroleum product pipelines and petroleum and specialty liquids storage and terminaling facilities. The order, among other things, requires the respondents to divest three Kaneb petroleum terminals in the Greater Philadelphia, Pennsylvania area; to divest a Kaneb pipeline system that originates in Casper, Wyoming, and terminates in Rapid City, South Dakota (and includes Kaneb petroleum terminals in Rapid City, South Dakota, Cheyenne, Wyoming, Denver, Colorado, and Colorado Springs, Colorado); and to divest Kaneb petroleum terminals in Martinez and Richmond, California. The consent order also requires Respondent Valero L.P. to ensure that customers and prospective customers have non-discriminatory access to commingled terminaling of ethanol at its retained San Francisco Bay terminals - on terms and conditions no less advantageous than those given to Valero Energy -- and to create firewalls that prevent the transfer of competitively sensitive information between the merged firm and Valero Energy.

Participants

For the Commission: *Peter Richman, Marc W. Schneider, Robert E. Friedman, Brian J. Telpner, Vadim M. Brusser, Natasha Allen, Jacob Swanton, Sara S. Brown, Nick Pedersen Phillip L. Broyles, Naomi Licker, Elizabeth A. Piotrowski, Daniel P. Ducore, Mark D. Williams, Louis Silvia and Mark Frankena.*

For the Respondents: *Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, and Daniel Wellington, Fulbright & Jaworski LLP*

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Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondents Valero L.P. and Valero Energy Corporation and Respondents Kaneb Services LLC and Kaneb Pipe Line Partners, L.P. (together “Kaneb”) have entered into agreements and plans of merger whereby Valero L.P. proposes to acquire all of the outstanding common stock of Kaneb, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

Valero L.P.

1. Respondent Valero L.P. is a publicly-traded limited partnership organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.
2. Respondent Valero L.P. is, and at all times relevant herein has been, a diversified transportation and terminaling company engaged, either directly or through affiliates, in the transportation and terminaling of crude oil, intermediate refinery feed stocks, finished petroleum product blend components, gasoline, diesel fuel, and aviation fuel; and other related businesses.
3. Valero GP, LLC is the general partner of Riverwalk Logistics, L.P., which is in turn the general partner of Valero L.P. Valero GP, LLC manages the operations and employs the full-time

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personnel of Valero L.P. Riverwalk Logistics, L.P. owns a two percent general partnership interest in Valero L.P. At all times relevant herein, Valero GP, LLC and Riverwalk Logistics, L.P. have been indirect wholly owned subsidiaries of Valero Energy Corporation.

4. Respondent Valero L.P. is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Valero Energy Corporation

5. Respondent Valero Energy Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.
6. Respondent Valero Energy Corporation is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, aviation fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel, and aviation fuel; and other related businesses.
7. Respondent Valero Energy Corporation is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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Kaneb Pipe Line Partners, L.P.

8. Respondent Kaneb Pipe Line Partners, L.P. is a publicly-traded limited partnership organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2435 North Central Expressway, Richardson, Texas 75080.
9. Respondent Kaneb Pipe Line Partners, L.P. is, and at all times relevant herein has been, a diversified transportation and terminaling company engaged, either directly or through affiliates, in the transportation and terminaling of crude oil, intermediate refinery feed stocks, finished petroleum product blend components, gasoline, diesel fuel, and aviation fuel; and other related businesses.
10. Respondent Kaneb Pipe Line Partners, L.P. is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Kaneb Services LLC

11. Respondent Kaneb Services LLC is a publicly-traded limited liability company organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2435 North Central Expressway, Richardson, Texas 75080.
12. Respondent Kaneb Services LLC is, and at all times relevant herein has been, a company that manages and operates a refined petroleum products and anhydrous ammonia pipeline business and a terminaling of petroleum products and specialty liquids business through the general

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partner interest owned by one of its subsidiaries in Kaneb Pipe Line Partners, L.P., a Delaware limited partnership, which in turn owns those systems and facilities through its subsidiaries, and other related businesses.

13. Respondent Kaneb Services LLC is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE MERGERS

14. Pursuant to (1) the Agreement and Plan of Merger, dated as of October 31, 2004, by and among, Valero L.P.; Riverwalk Logistics, L.P.; Valero GP LLC; VLI Sub A LLC; and Kaneb Services LLC; and (2) the Agreement and Plan of Merger, dated as of October 31, 2004, by and among Valero L.P.; Riverwalk Logistics, L.P.; Valero GP LLC; VLI Sub B LLC; Kaneb Pipe Line Partners, L.P.; and Kaneb Pipe Line Company LLC, Valero L.P. intends to acquire all of the equity interests of Kaneb Services LLC and Kaneb Pipe Line Company, L.P. in exchange for cash, Valero L.P. partnership units, or a combination of cash and Valero L.P. partnership units. The value of the transaction at the time of the agreements was approximately \$2.8 billion. The surviving entity is to be called Valero L.P.

III. TRADE AND COMMERCE

Relevant Product Markets

15. A line of commerce in which to analyze the effect of the proposed transaction is the provision of terminaling services for light petroleum products, fuel blending components, intermediate feed stocks for refinery units, and crude oil.

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16. A line of commerce in which to analyze the effect of the proposed transaction is the pipeline transportation of light petroleum products.
17. A line of commerce in which to analyze the effect of the proposed transaction is the bulk supply of light petroleum products.
18. Light petroleum product terminals are specialized facilities with large storage tanks used to receive light petroleum products by pipeline, by water, or direct from refinery production; for storage; and for redistribution by pipeline, water carrier, or local distribution by truck.
19. Terminaling services consist of a cluster of services related to the storage and throughput of petroleum products. Terminals receive, store, and handle bulk quantities of light petroleum products for redelivery by pipeline, into water vessels, or across truck racks in tankwagon quantities. They also perform value-added services, such as handling and injection of motor fuel additives (including ethanol) as light petroleum products are redelivered across the truck rack. Terminals also receive, store, and redeliver bulk quantities of crude oil, refinery feedstocks, and other blending components for finished fuels.
20. Light petroleum products include motor gasoline, distillates, and jet fuel.
21. Motor gasoline is produced in various grades and types, including conventional unleaded gasoline, reformulated gasoline, CARB gasoline, and others. Reformulated gasoline is gasoline formulated for use in motor vehicles, the composition and properties of which meet the requirements of the reformulated gasoline regulations promulgated by the U.S. Environmental Protection Agency under Section 211K of the Clean Air Act. Reformulated

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gasoline also includes oxygenated fuels program reformulated gasoline. CARB gasoline is gasoline meeting the specifications of the California Air Resources Board, and which also meet or exceed U.S. Environmental Protection Agency gasoline specifications for the areas in which they are used. There is no substitute for gasoline as a fuel for automobiles and other vehicles that are designed to use gasoline.

22. Diesel fuel is a petroleum distillate with the referenced sulfur specification to meet on-road, off-road, or home heating uses. There is no substitute for the appropriate diesel fuel as a fuel for trucks, railroad engines, farm equipment, other vehicles and equipment designed to burn diesel fuel. Jet fuel is a kerosene product meeting the specifications for use as turbojet and turboprop engines. Military jet fuel meets the specifications for kerosene products designated for military use (JP-8 and JP-5).
23. Blend components are petroleum products and other chemicals blended with unfinished gasoline to produce finished gasoline. Examples of common blend components include CARBOB, reformat, alkylate, MTBE, and ethanol. Ethanol is an anhydrous denatured aliphatic alcohol. The use of ethanol as a gasoline blending component and oxygenate has become increasingly prevalent in some parts of the country, especially as some states, (*e.g.*, California, New York) have recently prohibited the use of oxygenates such as MTBE.
24. Crude oil is the primary feedstock distilled and further refined to produce finished fuel products and other refined products. Intermediate feedstocks are semi-refined petroleum products used as feedstocks to blend into finished petroleum products.

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Relevant Geographic Markets

25. Relevant sections of the country in which to analyze the proposed transaction are the following:
- a. Greater Philadelphia Area, consisting of the metropolitan statistical areas (“MSAs”) of Philadelphia, Pennsylvania, Wilmington, Delaware, and Camden, New Jersey, where the mergers would reduce competition in terminaling services for, and among bulk suppliers of, light petroleum products, as alleged below;
 - b. Colorado Front Range, consisting of the portion of Colorado east of the Continental Divide, including the MSAs of Denver, Colorado Springs, Fort Collins, and Boulder, Colorado, where the mergers would reduce competition in pipeline transportation and terminaling services for, and among bulk suppliers of, light petroleum products, as alleged below; and
 - c. Northern California, consisting of California counties north of, but not including, San Luis Obispo, Kern, and San Bernardino counties, and narrower markets contained therein, where the mergers would reduce competition in terminaling services for crude oil, light petroleum products, blend components, and intermediate refinery feedstocks, and among bulk suppliers of light petroleum products and blend components (including ethanol), as alleged below.

Market Structure

Greater Philadelphia Area

26. Refineries produce light petroleum products and deliver them either into storage tanks or terminals on the refinery premises or into pipelines or deepwater marine vessels, that, in turn, deliver the fuel products into terminals located near the final consumer.

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27. Refineries, deepwater-capable terminals, and pipeline terminals are direct horizontal competitors from which firms produce or to which firms deliver bulk supplies of light petroleum products. In the Greater Philadelphia Area, local refiners and bulk suppliers sell to independent discount gasoline retailers, oil companies, and wholesalers of light petroleum products.
28. Bulk suppliers of light petroleum products require terminals that can receive, store, and transfer the products to marine vessel, pipeline or truck. There is no substitute for light petroleum products terminals for bulk suppliers.
29. Firms that purchase truck-load quantities of light petroleum products to supply their retail or commercial pumps have no effective alternative to using local light petroleum product terminals.
30. Valero and Kaneb are direct horizontal competitors in the provision of terminaling services for bulk suppliers in the Greater Philadelphia Area.
31. Kaneb is an independent commercial terminal operator. Kaneb does not own or sell any light petroleum products to retail or commercial customers. Thus, in Philadelphia, Kaneb derives its revenue solely from the provision of terminaling services, including receipt and throughput of bulk supplies.
32. Bulk suppliers may purchase light petroleum products from an integrated refiner and terminal operator in the Greater Philadelphia Area (“local suppliers”). The local suppliers in the Philadelphia area include Valero, ConocoPhillips, Premcor, Sunoco, ExxonMobil, and Hess.
33. A reasonable substitute for bulk suppliers to purchasing light petroleum products made by local refineries in the

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Greater Philadelphia Area for a significant portion of the time is the purchase of wholesale light petroleum products produced outside the area and physically delivered by a pipeline or marine vessel. The primary sources of these imports are refiners located in the U.S. Gulf Coast region (“Gulf Coast”) and outside the United States.

34. Valero L.P. owns a light petroleum products terminal in Paulsboro, New Jersey, from which light petroleum products are delivered by truck into, among other places, the Greater Philadelphia Area. The Valero L.P. terminal is supplied by Valero Energy’s Paulsboro refinery.
35. Kaneb owns three terminals in the greater Philadelphia area: two in Philadelphia and one in Paulsboro, New Jersey. Kaneb’s “north” Philadelphia terminal is connected to the Colonial Pipeline and is capable of receiving bulk shipments of light petroleum products produced in the Gulf Coast. The terminal also has a dock that permits it to receive bulk marine shipments by barge. Kaneb’s “south” Philadelphia terminal is connected to the Colonial Pipeline but does not currently have access to marine shipments. Kaneb’s Paulsboro terminal can receive bulk shipments both from the Colonial Pipeline and from deepwater tankers.
36. On April 25, 2005, Valero Energy announced its intent to acquire Premcor Inc. in a transaction valued at approximately \$8 billion. The transaction includes Premcor’s Delaware City, Delaware, refinery. For the purposes of analyzing the proposed Valero/Kaneb transaction, the Commission assumes a combined Valero, Kaneb, and Premcor.
37. Post-merger, the combined Valero, Kaneb, and Premcor will control a significant share of bulk supply and terminaling services for light petroleum products in the greater Philadelphia area. The proposed transaction would

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significantly increase market concentration, and post-merger the market would be highly concentrated. Without Premcor, post-merger, the combined Valero and Kaneb would still control a significant share of bulk supply and terminaling services for light petroleum products in the Greater Philadelphia area.

38. As an independent terminal operator, Kaneb today provides Philadelphia area customers access to bulk supply originating outside the area. Without this competitive constraint, Philadelphia prices, generally limited by either Gulf Coast prices plus pipeline tariff or New York Harbor prices adjusted by the water-borne transportation costs, could rise.
39. Kaneb's terminals are the only Philadelphia area terminals accessible to independent delivery, storage, and throughput of bulk imports of light petroleum products delivered by marine vessel (deepwater and barge) and Colonial Pipeline into the Greater Philadelphia area. Loss of access would reduce the total supply to the Greater Philadelphia area and increase wholesale prices for light petroleum products.
40. After the mergers, the combined firm could effectively coordinate with the other providers in the Greater Philadelphia area to raise prices in bulk supply of and terminaling services for light petroleum products in the greater Philadelphia area.

Colorado Front Range

41. Valero and Kaneb are direct horizontal competitors in the provision of pipeline transportation to and terminaling services for bulk suppliers of light petroleum products in the Colorado Front Range and in narrower markets contained therein. Other providers of bulk supply and terminaling services for light petroleum products in the Colorado Front Range are Sinclair, Suncor, ConocoPhillips, and Magellan.

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42. Kaneb is an independent pipeline and terminal operator in the Colorado Front Range. Kaneb does not own or sell any of the product that it transports on its pipeline or stores in its terminal. Thus, Kaneb derives its revenue solely from providing pipeline transportation and terminaling services.
43. Bulk supply customers in Denver may purchase light petroleum products from local suppliers. The local suppliers in the Colorado Front Range are Valero, Suncor, ConocoPhillips, and Sinclair.
44. For bulk supply customers, a reasonable substitute for purchasing from local refiners for a significant portion of the time is purchasing wholesale light petroleum products from refineries located outside of the Colorado Front Range and physically delivered into the area by pipeline. Refiners outside of the area, in Montana, Wyoming, Kansas, and Texas, that supply the Colorado Front Range are Frontier, Sinclair, ExxonMobil, ConocoPhillips, and CHS.
45. Valero L.P. owns the McKee-Denver pipeline that originates at the Valero Energy refinery in McKee, Texas, and serves Denver. Valero L.P. has a partial interest in the Borger-Denver pipeline. This pipeline runs from the ConocoPhillips refinery in Borger, Texas, through the Valero Energy refinery in McKee, Texas, and connects to a Valero L.P. terminal in Denver, Colorado.
46. Kaneb owns the West Pipeline system, which originates in Casper, Wyoming, and runs to terminals in Fountain, Colorado (near Colorado Springs), and Dupont, Colorado (near Denver), among other locations. The West Pipeline connects to a Frontier refinery in Cheyenne, Wyoming; a Sinclair refinery in Casper, Wyoming; and the Seminole Pipeline, from which it receives light petroleum products from the ExxonMobil, ConocoPhillips, and CHS refineries in Billings, Montana.

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47. Post-merger, the combined Valero and Kaneb will control a significant share of bulk supply, and of terminaling services for bulk suppliers, of light petroleum products in the Colorado Front Range. The proposed transaction would significantly increase market concentration, and post-merger the market would be highly concentrated. The proposed transaction would result in Valero having a monopoly in the Colorado Springs area.
48. After the mergers, the combined firm could effectively coordinate with others to raise prices in the markets for bulk supply of, and terminaling services for, light petroleum products in the Colorado Front Range, or unilaterally in parts contained therein.
49. Kaneb's West Pipeline, along with Magellan's Chase Pipeline, provides the only independent access to pipeline deliveries of light petroleum products from refineries outside of the Colorado Front Range. Loss of independent access would reduce the number of competitors capable of supplying the Colorado Front Range, reduce the amount of supply in the market and increase wholesale prices for light petroleum products.

Northern California

50. Valero and Kaneb are direct horizontal competitors in the provision of terminaling services for bulk suppliers of refining components, most blending components, and light petroleum products in Northern California. The other participants are Tesoro, ConocoPhillips, Shell, and Chevron. BP and IMTT also participate in this market. However, these terminals have constrained access to the Kinder Morgan pipeline system.
51. Kaneb is an independent commercial terminal operator. Kaneb does not own or sell any light petroleum products to

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wholesale or commercial customers. Thus, Kaneb derives its revenue solely from the provision of terminaling services, including receipt of bulk supplies.

52. Kinder Morgan owns the only common carrier pipeline that serves the interior of Northern California. This pipeline provides the only economic means of distributing light petroleum products to Northern California terminals outside of the East Bay.
53. Bulk supply of light petroleum products in Northern California comes from two sources: (1) domestic production by integrated refiner/terminal operators in Northern California and (2) imports via marine vessel by petroleum product traders, largely on behalf of, or for the integrated refiner/marketers in California.
54. Kaneb owns three terminals that participate in this market: Martinez, Richmond, and Selby. All three of the terminals are both accessible to the Kinder Morgan pipeline system and capable of receiving deepwater marine vessels.
55. Valero owns a refinery at Benicia and associated storage tanks. The refinery and associated tanks are used by Valero for its own terminaling and bulk supply needs. Valero L.P. controls crude storage facilities.
56. Post-transaction, Valero and Kaneb will control a significant share of bulk supply and terminaling services for light petroleum products in Northern California. The proposed transaction would significantly increase market concentration, and post-merger the market would be highly concentrated.

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57. After the transaction, the combined firm could more effectively coordinate with others to raise prices in the market for bulk supply of and terminaling services for refining components, blending components, and light petroleum products in Northern California.
58. The Kaneb terminals are the only independent marine-accessible terminals with unconstrained access to the Kinder Morgan pipeline system. The Kaneb terminals are therefore the only terminals through which a products trader and other marketers can import and distribute light petroleum products throughout Northern California. Wholesale bulk prices in Northern California would likely increase without access to the Kaneb terminals. In addition, Kaneb provides storage to some Northern California refiners for blending components and feedstocks. Loss of access to this storage would likely result in reduced production at these refineries.

Northern California Bulk Ethanol Terminaling

59. The U.S. Environmental Protection Agency and the California Air Resources Board have mandated the use of oxygenates at various times and in various places in California. Federal regulations require oxygenated gasoline year round in the counties of Los Angeles, Ventura, San Bernardino (partial), Riverside (partial), San Diego, Sacramento, Yolo, El Dorado (partial), Placer (partial), Solano (partial), and Sutter (partial). California regulations require oxygenated gasoline year round in the counties listed above and in Imperial County from November 1 through February 2.
60. California has prohibited the use of oxygenates such as methyl tert butyl ether ("MTBE"). Ethanol is the oxygenate of choice in areas where oxygenated gasoline is required by the U.S. Environmental Protection Agency.

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61. Ethanol requires its own storage and cannot be commingled with other light petroleum products. Ethanol can be shipped in bulk quantities from production facilities into California only by rail or by marine vessel. Ethanol cannot be brought into the state by pipeline. Once bulk ethanol shipments have been placed in storage, tank trucks transport ethanol to outlying terminals, where it can be placed in smaller storage tanks pending final blending with pre-oxygenated gasoline (“CARBOB”) at the truck rack.
62. Kaneb’s Richmond, Selby, and Stockton terminals are the only terminals in Northern California not associated with refineries capable of receiving and distributing bulk volumes of ethanol. Northern California terminals could not be economically supplied with ethanol trucked from Southern California or other locations.
63. Because satellite terminals must receive ethanol supplies by truck, trucking economics strongly influence which bulk ethanol terminal will supply ethanol to finished gasoline terminals.
64. Valero Energy is a significant user and supplier of ethanol for its own finished gasoline sales.
65. After the proposed transaction, Valero could increase prices for or deny access to bulk ethanol terminaling services, causing increased prices for, or reduced supply of, ethanol or finished CARB gasoline.

Entry

66. Entry into the relevant markets into relevant sections of the country would be difficult and would not be likely, timely, or sufficient to prevent the anticompetitive effects that are likely to result from the proposed transaction.

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IV. VIOLATIONS CHARGED**First Violation Charged**

67. Valero L.P. and Kaneb are competitors in the market for terminaling services for bulk suppliers of light petroleum products in the Greater Philadelphia Area.
68. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in the provision of terminaling services for light petroleum products and the bulk supply of light petroleum products in the Greater Philadelphia Area, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Valero and Kaneb in the provision of terminaling services for bulk suppliers of light petroleum products;
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Valero and Kaneb and their competitors in the provision of terminaling services for bulk suppliers; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Valero and the other bulk suppliers of light petroleum products;

each of which increases the likelihood that the wholesale price of light petroleum products will increase in the relevant section of the country.

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Second Violation Charged

69. Valero and Kaneb are competitors in pipeline transportation and terminaling services for bulk suppliers of light petroleum products in the Colorado Front Range.
70. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in the provision of terminaling services for light petroleum products and the bulk supply of light petroleum products to the Colorado Front Range, and in narrower markets contained therein, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Valero and Kaneb in the provision of pipeline transportation and terminaling services for bulk suppliers of light petroleum products;
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Valero and Kaneb and their competitors in the provision of pipeline transportation and terminaling services for bulk suppliers;
 - c. by increasing the likelihood that the combination of Valero and Kaneb will unilaterally exercise market power in the provision of pipeline transportation and terminaling services for bulk suppliers of light petroleum products in the Colorado Springs area; and
 - d. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Valero and the other bulk suppliers of light petroleum products;

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each of which increases the likelihood that wholesale prices of light petroleum products will increase in the relevant sections of the country.

Third Violation Charged

71. Valero and Kaneb are competitors in terminaling services for bulk suppliers of refining components, blending components, and light petroleum products in Northern California.
72. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in the provision of terminaling services for crude oil, light petroleum products, blend components, and intermediate refinery feedstocks, and the bulk supply of light petroleum products and blend components (including ethanol) in Northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Valero and Kaneb in the provision of terminaling services for bulk suppliers of crude oil, refining components, light petroleum products, blend components, and intermediate refinery feedstocks,
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Valero and Kaneb and their competitors in the provision of terminaling services for bulk suppliers; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Valero and the other bulk suppliers of light petroleum products;

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each of which increases the likelihood that wholesale prices of light petroleum products will increase in the relevant section of the country.

Fourth Violation Charged

73. Kaneb provides services in the upstream market for terminaling for bulk ethanol in Northern California through its terminals at Selby and Stockton. No other independent terminals in Northern California can economically receive and distribute bulk supplies of ethanol.
74. Valero Energy is a significant user of ethanol for the oxygenation of gasoline and a significant seller in the downstream market for CARB gasoline in Northern California.
75. Valero could use information on the use of Kaneb's ethanol terminaling facilities to facilitate collusion in the bulk supply of CARB gasoline in Northern California.
76. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in bulk supply of CARB gasoline in Northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by increasing the likelihood of collusion, which would increase prices of CARB gasoline in the relevant section of the country.

Statutes Violated

The proposed transaction between Valero L.P. and Kaneb violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of June, 2005, issues its complaint against said Respondents.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Valero L.P. of Respondent Kaneb Services LLC and Respondent Kaneb Pipe Line Partners, L.P., and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

Decision and Order

1. Respondent Valero Energy Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.

2. Respondent Valero L.P. is a publicly-traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.

3. Respondent Kaneb Pipe Line Partners, L.P. is a publicly-traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2435 North Central Expressway, Richardson, Texas 75080.

4. Respondent Kaneb Services LLC is a publicly-traded limited liability company, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2435 North Central Expressway, Richardson, Texas 75080.

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

ORDER**I.**

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

- A. “Valero” means Valero L.P., its general partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Valero, and

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the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. Valero includes Riverwalk Logistics, L.P., and Valero G.P., LLC. Valero does not include VEC.

- B. “VEC” means Valero Energy Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by VEC, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. VEC does not include Riverwalk Logistics, L.P., Valero GP, LLC, or Valero.
- C. “KPP” means Kaneb Pipe Line Partners, LP, its general partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by KPP, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- D. “KSL” means Kaneb Services LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by KSL; and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Acquirer” means a Person that receives the prior approval of the Commission to acquire assets to be divested pursuant to Paragraphs II., III., IV., or V. of this Order.
- F. “Alternative San Francisco Bay Terminals” means the San Francisco Bay Terminals and the Selby Terminal.
- G. “Commission” means the Federal Trade Commission.

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- H. “Kaneb” means Kaneb Services LLC and Kaneb Pipe Line Partners, L.P., collectively and individually.
- I. “Merger” means the merger of Valero and Kaneb pursuant to: (1) the Agreement and Plan of Merger, dated as of October 31, 2004, by and among Valero L.P.; Riverwalk Logistics, L.P.; Valero GP LLC; VLI Sub A LLC; and Kaneb Services LLC; and (2) the Agreement and Plan of Merger, dated as of October 31, 2004, by and among Valero L.P.; Riverwalk Logistics, L.P.; Valero GP LLC; VLI Sub B LLC; Kaneb Pipe Line Partners, L.P.; and Kaneb Pipe Line Company LLC.
- J. “Non-Public Customer Information” means any information that is not in the public domain relating to the shipment (including but not limited to volume information, timing of shipments, and end-customer identification), receipt, scheduling, rates, or inventory of products by customers of the Retained San Francisco Bay Terminals.
- K. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- L. “Philadelphia Area Terminals” means Kaneb’s one Paulsboro, New Jersey, and two Philadelphia, Pennsylvania, refined petroleum product storage and distribution terminals and all assets relating to each of the terminals, including but not limited to:
 - 1. all of Kaneb’s rights, title, and interest in and to all tangible assets that are located at, or used in connection with Terminaling at, the terminals, including but not limited to:
 - a. real estate, including existing rights or way and easements;
 - b. storage tanks;
 - c. local connector pipelines;

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- d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts;
 - f. all books, records, and files relating to the terminals;
 - g. offices, buildings, and warehouses; and
 - h. all other tangible assets;
 - 2. an exclusive right to all intellectual property used solely in the operation of the terminals, and a non-exclusive license to all other intellectual property necessary for the operation of the terminals;
 - 3. all governmental licenses and permits used in the operation of the terminals;
 - 4. all storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminals or their operation; and
 - 5. all other intangible assets.
- M. “Respondents” means:
- 1. before the Merger, Valero, VEC, KSL, and KPP, individually and collectively, and
 - 2. after the Merger, Valero, VEC, and the entity surviving after the Merger.
- N. “Retained San Francisco Bay Terminals” means:
- 1. If the San Francisco Bay Terminals are divested pursuant to Paragraph IV.A. of the Order, the terminals located at Stockton and Selby, California, which at the time of the Merger were owned by Kaneb; but
 - 2. If the Alternative San Francisco Bay Terminals are divested pursuant to Paragraph V.C.3. of this Order, the terminal located at Stockton, California, which at the time of the Merger was owned by Kaneb.
- O. “San Francisco Bay Terminals” means Kaneb’s Martinez and Richmond, California, refined petroleum product storage and distribution terminals and all assets relating to the two terminals, including but not limited to:

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1. all of Kaneb's rights, title, and interest in and to all tangible assets that are located at, or used in connection with Terminaling at, the two terminals, including but not limited to:
 - a. real estate, including existing rights or way and easements;
 - b. storage tanks;
 - c. local connector pipelines;
 - d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts;
 - f. all books, records, and files relating to the two terminals;
 - g. offices, buildings, and warehouses; and
 - h. all other tangible assets;
 2. an exclusive right to all intellectual property used solely in the operation of the terminals, and a non-exclusive license to all other intellectual property necessary for the operation of the terminals;
 3. all governmental licenses and permits used in the operation of the terminals;
 4. all storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminals or their operation; and
 5. all other intangible assets.
- P. "Selby Terminal" means the Kaneb terminal located at 90 San Pablo Avenue, Crockett, California 94525.
- Q. "Terminaling" means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of refined petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.
- R. "West Pipeline System" means Kaneb's West Pipeline System of approximately 550 miles of refined petroleum

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products pipelines, originating near Casper, Wyoming, and terminating in Rapid City, South Dakota, and Colorado Springs, Colorado; four refined petroleum products terminals; and numerous pump stations; and all assets relating to Kaneb's West Pipeline System, including but not limited to:

1. all of Kaneb's rights, title, and interest in and to all tangible assets relating to Kaneb's West Pipeline System, including but not limited to all of Kaneb's rights, title, and interest in and to all tangible assets that are located at, or used in connection with Terminaling at, all terminals owned by Kaneb located anywhere on the West Pipeline System (including the Kaneb terminals in Rapid City, South Dakota; Cheyenne, Wyoming; Dupont, Colorado; and Fountain, Colorado), including but not limited to:
 - a. real estate, including existing rights or way and easements;
 - b. storage tanks;
 - c. local connector pipelines;
 - d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts;
 - f. all books, records, and files relating to the West Pipeline System or the terminals;
 - g. offices, buildings, and warehouses; and
 - h. all other tangible assets relating to the West Pipeline System;
2. an exclusive right to all intellectual property used solely in the operation of the West Pipeline System and the terminals located on that system, and a non-exclusive license to all other intellectual property necessary for the operation of the West Pipeline System and the terminals located on that system;
3. all governmental licenses and permits used in the operation of the West Pipeline System and the terminals located on that system;

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4. all storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the West Pipeline System or the terminals located on that system or their operation; and
5. all other intangible assets relating to the West Pipeline System and the terminals located on that system.

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

- A. Respondents shall divest the West Pipeline System absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.
- B. Respondents shall divest the West Pipeline System only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. In the event that Respondents are 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 Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.
- D. The purpose of this Paragraph II. is to ensure the continued use of the West Pipeline System in the same business in

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which it was engaged at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the pipeline transportation and Terminaling of light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Philadelphia Area Terminals absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.
- B. Respondents shall divest the Philadelphia Area Terminals only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. In the event that Respondents are 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 Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.
- D. The purpose of this Paragraph III. is to ensure the continued use of the Philadelphia Area Terminals in the

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same business in which they were engaged at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the Terminaling of light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

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

- A. Respondents shall divest the San Francisco Bay Terminals absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.
- B. Respondents shall divest the San Francisco Bay Terminals only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. In the event that Respondents are 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 Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.
- D. The purpose of this Paragraph IV. is to ensure the continued use of the San Francisco Bay Terminals in the same business in which they were engaged at the time of the announcement of the proposed Merger and to remedy

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the lessening of competition in the Terminaling of refining components, blending components, and light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested the West Pipeline System, the Philadelphia Area Terminals, or the San Francisco Bay Terminals, absolutely and in good faith, as required by Paragraphs II., III., or IV., respectively, of this Order, the Commission may appoint a trustee to divest the applicable assets as described in Paragraph V.C. below, in a manner that satisfies the requirements of Paragraphs II., III., or IV., of this Order, whichever is applicable.
- B. In the event that the Commission or the U.S. Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest the respective assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the U.S. Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- C. If Respondents have not satisfied the requirements of
 - 1. Paragraphs II.A and II.B. of this Order, the Commission may appoint a trustee to divest the West Pipeline System;

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2. Paragraphs III.A. and III.B. of this Order, the Commission may appoint a trustee to divest the Philadelphia Area Terminals
 3. Paragraphs IV.A. and IV.B. of this Order, the Commission may appoint a trustee to divest the San Francisco Bay Terminals or the Alternative San Francisco Bay Terminals.
- D. The Commission shall select the trustee, subject to the consent of Valero, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Valero has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Valero of the identity of any proposed trustee, Valero shall be deemed to have consented to the selection of the proposed trustee.
- E. Within ten (10) days after appointment of a trustee, Valero shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
- F. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest assets as required by this Order.
 2. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the required divestiture, which shall be subject to the prior approval of the Commission. If,

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however, at the end of the twelve (12) month period, the trustee has submitted a divestiture plan or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period for no more than two (2) additional periods of twelve (12) months each.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested and to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Respondents shall cooperate with the efforts of the trustee to divest the required assets. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V. in an amount equal to the delay, as determined by the Commission.
4. The trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made only in a manner that receives the prior approval of the Commission and only to an Acquirer that receives the prior approval of the Commission; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Valero from among those approved by the Commission; *provided further, however*, that Valero shall select such

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entity within five (5) days of receiving notification of the Commission's approval.

5. The trustee shall serve, without bond or other security, at the cost and expense of Valero, 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 Valero, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission, of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid at the direction of Valero, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of assets as required by this Order.
6. Valero 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.
7. The trustee shall have no obligation or authority to operate or maintain the assets required to be divested pursuant to this paragraph.

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8. The trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
 10. Valero may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the trustee from providing any information to the Commission.
- G. If the Commission determines that a trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph V.
- H. 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.

VI.

IT IS FURTHER ORDERED that:

- A. Valero shall not, directly or indirectly, provide, disclose, or otherwise make available any Non-Public Customer Information to VEC; *provided, however*, that Valero may provide Non-Public Customer Information only to VEC personnel whose responsibilities do not involve refining, supply, or marketing operations in the State of California and only for the purposes listed below:
1. to ensure compliance with legal and regulatory requirements; to perform required auditing functions; to

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provide accounting, information technology and credit-underwriting services, to provide legal services associated with actual or potential litigation and transactions; and to monitor and ensure compliance with governmental environmental, health, and safety requirements; or

2. for inclusion within the periodic financial reports that Valero may provide VEC but only to the extent that any Non-Public Customer Information is aggregated so that data as to individual customers are not disclosed.

B. VEC shall not use any Non-Public Customer Information obtained from Valero except for the purposes listed in VI.A.2., above.

C. Respondents shall operate the Retained San Francisco Bay Terminals in a reasonable and non-discriminatory manner and shall ensure that all customers and prospective customers of commingled Terminaling of ethanol at the Retained San Francisco Bay Terminals have access to commingled Terminaling of ethanol on terms and conditions consistent with past practices, but in no event on terms and conditions less advantageous than those given VEC for like services under like circumstances. The terms and conditions Respondent will maintain include, but are not limited to:

1. Respondents shall provide access to the Retained San Francisco Bay Terminals to offload into or withdraw from the commingled tanks ethanol on a first-come-first-serve nondiscriminatory basis, subject, where applicable, to (1) standard notice of readiness and scheduling procedures for all products, and (2) preference for shipments of the U.S. Department of Defense.
2. Respondent shall continue the current procedure of permitting a customer to withdraw from the commingled

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tanks the ethanol inventory of another customer, upon written approval of both affected customers.

- D. Respondents shall take steps to ensure that all of their employees comply with the requirements of subparagraphs VI.A., B. and C., above, including establishing and disseminating applicable policies and procedures to all employees no later than 30 (thirty) days after the Order becomes final.
- E. Valero shall provide written notification to the staff of the Commission at least 30 (thirty) days prior to leasing to VEC the use, on an exclusive basis, of any of the tanks (or any portion thereof) at the Retained San Francisco Bay Terminals that, as of the date Respondents executed the Consent Agreement, was designated for commingled storage of ethanol; *provided, however*, that such notice is not required for tanks leased to VEC at the Selby Terminal so long as at least four hundred thousand (400,000) shell barrels of tankage remains designated for commingled storage of ethanol at the Selby Terminal.
- F. The purpose of this Paragraph VI. is to ensure continued access to the Retained San Francisco Bay Terminals for customers at least at the same level of access that they had at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the Terminaling of bulk ethanol resulting from the proposed Merger, as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

- A. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without prior written notification to the Commission,

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acquire, directly or indirectly, the Philadelphia Area Terminals or any portion thereof.

- B. The prior notification required by the Paragraph VII.A. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the “Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition; *provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VIII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the initial report is required to be filed pursuant to the Consent Agreement in this matter,

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and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II., III., IV., or V. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order; *provided, however*, that Respondents may consolidate all required information into one report and submit one consolidated report on behalf of all Respondents. Respondents shall include in the reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in the reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning its obligations under this Order.

- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

IX.

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

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X.

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

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

XI.

IT IS FURTHER ORDERED that if: (1) within the time period required for divestiture pursuant to Paragraphs II., III., or IV., of this Order, Respondents have submitted a complete application in support of the applicable divestiture (including the acquirer, manner of divestiture, and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the applicable divestiture and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State of California under an applicable consent decree to which the State of California and Respondents are parties, the State of California has failed to approve the divestiture that is also required under this Order, or (b) the State of California has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an

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applicable consent decree to which the State of California and Respondents are parties, then, (4) with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State of California pertaining to the proposed divestiture, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the State of California.

XII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order becomes final.

By the Commission.

Analysis

Analysis of Proposed Consent Order To Aid Public Comment**I. Introduction**

The Federal Trade Commission (“Commission” or “FTC”) has issued a complaint (“Complaint”) alleging that Valero L.P.’s proposed acquisition of Kaneb Services LLC and Kaneb Pipe Line Partners, L.P. (collectively “Kaneb”) would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and has entered into an agreement containing consent orders (“Agreement Containing Consent Orders”) pursuant to which Valero L.P., Valero Energy, and Kaneb (collectively “Respondents”) agree to be bound by a proposed consent order that requires divestiture of certain assets (“Proposed Consent Order”) and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (“Hold Separate Order”). The Proposed Consent Order remedies the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint. The Hold Separate Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Valero L.P. is a publicly traded master limited partnership based in San Antonio, Texas. Valero L.P. shares its headquarters with Valero Energy, which owns 46% of Valero L.P.’s common units. Valero L.P. is engaged in the transportation and storage of crude oil and refined petroleum products and currently derives 98% of its total revenues from services provided to Valero Energy. The remaining 2% of revenue is generated from third parties who pay fees to use Valero L.P.’s pipelines and terminals. Valero L.P. reported 2004 net income of \$78.4 million on total revenue of \$221 million.

Respondent Valero Energy Corporation is an independent domestic refining company, headquartered in San Antonio, Texas. It is engaged in national refining, transportation, and marketing of

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petroleum products and related petrochemical products. Valero Energy reported 2004 net income of \$1.8 billion on revenues of nearly \$55 billion.

Kaneb is a single company represented by two publicly traded entities: Kaneb Pipe Line Partners, L.P. (“KPP”) and Kaneb Services LLC (“KSL”). Kaneb owns and operates refined petroleum product pipelines and petroleum and specialty liquids storage and terminaling facilities. KPP is a master limited partnership that owns Kaneb’s pipeline and terminaling assets. KSL owns the general partnership in KPP and five million of KPP’s limited partnership units. KSL’s wholly owned subsidiary, Kaneb Pipeline Company LLC, manages and operates KPP’s pipeline and terminaling assets. KSL reported 2004 consolidated net income of \$24 million on total revenue of approximately \$1 billion.

Pursuant to the terms of the Agreements and Plans of Merger between Valero L.P. and the Kaneb entities, (1) Valero L.P. will pay \$525 million in cash for the entirety of KSL’s partnership units, and (2) Valero L.P. will exchange \$1.7 billion in Valero L.P. partnership units for all outstanding KPP partnership units. As a result of the transactions, both KSL and KPP will be wholly owned subsidiaries of Valero L.P., and Valero Energy’s equity ownership in Valero L.P. would be reduced to 23%.

III. The Investigation and the Complaint

The Complaint alleges that the merger of Valero L.P. and Kaneb would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in each of the following markets: (1) terminaling services for bulk suppliers of light petroleum products in the Greater Philadelphia Area; (2) pipeline transportation and terminaling services for bulk suppliers of light petroleum products in the Colorado Front Range; (3) terminaling services for bulk suppliers of refining components, blending components, and light

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petroleum products in Northern California; and (4) terminaling for bulk ethanol in Northern California.

To remedy the anticompetitive effects of the merger, the Proposed Consent Order requires Respondents to divest the following assets: (1) in the Greater Philadelphia Area, Kaneb's Paulsboro, New Jersey, Philadelphia North, and Philadelphia South terminals; (2) in the Colorado Front Range, Kaneb's West Pipeline system, which originates in Casper, Wyoming, and terminates in Rapid City, South Dakota, and Colorado Springs, Colorado, and includes Kaneb's terminals in Rapid City, South Dakota, Cheyenne, Wyoming, Denver, Colorado, and Colorado Springs, Colorado; and (3) in Northern California, Kaneb's Martinez and Richmond terminals. Finally, the Order also requires Valero L.P. not to discriminate in favor of or otherwise prefer Valero Energy in bulk ethanol terminaling services and to maintain customer information confidentiality at the Selby and Stockton terminals.

The Commission's decision to issue the Complaint and enter into the Agreement Containing Consent Orders was made after an extensive investigation in which the Commission examined competition and the likely effects of the merger in the markets alleged in the Complaint and in other markets.¹ The Commission has concluded that the merger is unlikely to reduce competition significantly in markets other than those alleged in the Complaint.

The Complaint alleges that the merger would violate the antitrust laws in four product and geographic markets, each of which is discussed below. The analysis applied in each market

¹ The Commission conducted the investigation leading to the Complaint in collaboration with the Attorney General of the State of California. As part of this joint effort, Respondents have entered into a State Decree with California settling charges that aspects of the transaction affecting California consumers would violate both state and federal antitrust laws.

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requiring structural relief follows the analysis set forth in the FTC and U.S. Department of Justice *Horizontal Merger Guidelines* (1997) (“*Merger Guidelines*”). The relief obtained in the bulk ethanol terminaling market is consistent with the Commission’s past remedies in similarly-structured mergers.

In addition, the Commission focused on the identity and corporate control of the merging parties. Valero Energy owns the general partner of Valero L.P. The general partner is presumed to exercise all operational rights afforded by the partnership agreements and applicable state corporation law. In light of this relationship, and for purposes of competitive analysis, the Commission attributes Valero Energy’s assets and incentives to Valero L.P. The Commission further determined that Valero Energy may have incentives to operate the Valero L.P. assets less competitively than would Kaneb, by maximizing product prices rather than terminal or pipeline revenues. Given the trend toward master limited partnerships holding midstream petroleum transportation and terminaling assets, Commission staff will continue to scrutinize the ownership and control of limited partnerships in its evaluation of midstream asset transactions. Where it appears an operator’s interests may be more closely aligned with downstream output reductions than increased transportation and terminaling throughput, the Commission will apply the analysis conducted during this investigation.

Count I Terminaling Services for Bulk Suppliers of Light Petroleum Products in the Greater Philadelphia Area

The Complaint charges that the proposed merger would likely reduce competition in the market for terminaling services for bulk suppliers of light petroleum products in the Greater Philadelphia Area, thereby increasing the price for terminaling services and bulk supply of transportation fuels, by (1) eliminating direct competition between Valero L.P. and Kaneb; and (2) increasing the ability and likelihood of coordinated interaction between the combined company and its competitors in the Greater

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Philadelphia Area. The proposed merger reduces the number of suppliers of terminaling services for transportation fuels and eliminates Kaneb as a source of imported transportation fuel, thereby increasing the likelihood of coordination.

Valero L.P. and Kaneb compete in the supply of terminaling services for bulk suppliers of light petroleum products in the Greater Philadelphia Area, a relevant antitrust market. Terminaling customers such as refiner-marketers, independent marketers, and traders rely on terminals to supply transportation fuel to the area. There are no substitutes for terminals in supplying and distributing transportation fuels in the Greater Philadelphia Area.

The Greater Philadelphia Area includes the city of Philadelphia, the Philadelphia suburbs, and portions of southern New Jersey and northern Delaware. Terminals outside the Greater Philadelphia Area are not economic substitutes for terminals within the area because of additional costs of transporting product by truck from more distant terminals. Post-merger, the remaining terminal operators could profitably impose a small but significant and nontransitory price increase in terminaling services for transportation fuels because no additional terminals can serve the Greater Philadelphia Area without significantly raising the cost of distributing fuel.

Seven firms currently provide terminaling services for transportation fuels in the Philadelphia area: Valero L.P., Kaneb, Sunoco, ConocoPhillips, Hess, Premcor, and ExxonMobil. Each of these firms owns or has contractual rights to one or more terminals in the Greater Philadelphia Area. The proposed merger would significantly increase market concentration, and post-merger the market would be highly concentrated. The change in market concentration understates the competitive significance of the merger because Kaneb is the only terminal system in the Greater Philadelphia Area capable of facilitating imports into the market.

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Valero L.P.'s purchase of Kaneb's terminals in the Greater Philadelphia Area would allow the remaining terminaling owners to profitably impose a small but significant and nontransitory price increase in the price of terminaling services. Eliminating Kaneb as an independent terminaling service competitor would have additional anticompetitive effects in the sale of bulk supplies of transportation fuels. Kaneb does not own or market any of the product in its terminals and earns its revenue solely from providing terminaling services to third parties. The other terminaling services providers, including Valero, also provide bulk supply to the market and sell their own transportation fuels through downstream marketing assets. These terminal owners use their terminal assets primarily for their own marketing needs and often do not provide terminaling services to third parties.

Because Kaneb does not earn any revenue from the sale of product, it has no economic interest in the price of the product. Kaneb's incentive is strictly to obtain as much third party terminaling business as it can. Thus, third party marketers can reliably use the Kaneb terminals to receive and throughput bulk supplies imported by pipeline and by water from outside the Greater Philadelphia Area. These imports are critical in maintaining a competitive market and to keeping prices low for transportation fuels in the Greater Philadelphia Area. The proprietary terminal operators have different incentives from Kaneb. As downstream marketers, higher product prices increase their profitability from their marketing operations, which typically accounts for a much larger portion of their business than terminaling. Post-merger, Valero would control the Kaneb terminals and could restrict access by third parties to these terminals. Without open access to the Kaneb terminals, it would be much more difficult for third party marketers to import product into the Greater Philadelphia Area. The elimination of imports would reduce competitive pressure on the local bulk suppliers, including Valero, thereby allowing them to maintain higher prices for bulk supplies of transportation fuel in the Greater Philadelphia Area.

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Entry into the terminaling market is difficult and would not be timely, likely, or sufficient to preclude anticompetitive effects resulting from the proposed merger. Building a new terminal requires significant sunk costs and would be a very long process, in part due to lengthy permitting requirements. Converting a non-transportation fuel terminal is also expensive and time consuming, and would not be likely in the Greater Philadelphia Area.

The efficiencies proposed by the Respondent, to the extent they relate to this market, are not cognizable under the *Merger Guidelines*, and are small compared to the extent of the potential anticompetitive harm. Even if the proposed efficiencies were achieved, they would not be sufficient to reverse the merger's potential to raise the price of bulk supply and terminal services.

Count II Pipeline Transportation and Terminaling Services for Bulk Suppliers of Light Petroleum Products in the Colorado Front Range

The Complaint charges that the proposed acquisition would likely substantially reduce competition in pipeline transportation and terminaling services for bulk suppliers of light petroleum products in Denver and Colorado Springs by (1) eliminating direct competition between Valero L.P. and Kaneb, (2) increasing the ability and likelihood of coordinated interaction between the combined company and its competitors in the Denver area, and (3) eliminating all competition in Colorado Springs, making Valero L.P. a monopolist in pipeline transportation and terminaling services. While the relevant market is pipeline transportation and terminaling services, any purchaser of light petroleum products would have to pay for the product to get to the market through pipeline transportation and/or terminals. Therefore, a price increase in these relevant markets would also cause an increase in light petroleum products prices.

Valero L.P. and Kaneb compete in the pipeline transportation and terminaling services for bulk suppliers of light petroleum products in both Denver and Colorado Springs. While light

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petroleum products can be trucked to Denver and Colorado Springs, pipeline transportation is the only economic means to ship bulk supplies of light petroleum products to either Denver or Colorado Springs. There is no economically feasible substitute to pipeline transportation to reach these geographic areas.

Light petroleum products reach Denver and Colorado Springs through terminals that can receive product from either pipelines or refineries. Tank trucks pick up the light petroleum products from these local terminals and deliver them short haul distances to retail outlets and other customers. Terminals outside of Denver and Colorado Springs cannot economically supply those areas due to the costs of shipping light petroleum products by truck. Therefore, terminaling services provided by those terminals in the Denver and Colorado Springs areas is a relevant market.

Following the merger, the combined firm would control a significant share of bulk supply and terminaling services for light petroleum products in the Colorado Front Range. The proposed transaction would significantly increase market concentration, and post-merger the market would be highly concentrated. Moreover, the proposed transaction would result in the combined firm having a monopoly in the Colorado Springs area. The change in market concentration underestimates the likely competitive harm because it does not take into account how Valero L.P.'s incentives differ from Kaneb's current incentives in operating the Kaneb West Pipeline system.

Entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects arising from the proposed acquisition. Pipeline entry in Denver or Colorado Springs is very unlikely because of the high expense of constructing a new pipeline to these geographically isolated areas. It is highly improbable, if not impossible, that a new pipeline originating in a distant market could be both approved and constructed within the two-year period required by the *Merger Guidelines*.

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Terminal entry in Denver or Colorado Springs is also very unlikely. Each refinery in and each pipeline to the Denver and Colorado Springs markets is accommodated by an existing terminal. Given the sufficient terminal capacity for the existing refinery and pipeline infrastructure, it is highly unlikely that a potential entrant could find a financial incentive to make a major investment, involving high sunk costs, in the construction of a new terminal.

The efficiency claims of the Respondents, to the extent they relate to these markets, are not cognizable under the *Merger Guidelines*, are small as compared to the magnitude of the potential harm, and would not be sufficient to reverse the merger's potential to raise the price of bulk supply and terminal services.

The proposed acquisition would create a highly concentrated market in Denver and Colorado Springs and create a presumption that the acquisition "will create or enhance market power or facilitate its exercise. . ." *Merger Guidelines* § 1.5(c). These anticompetitive effects could result from the coordinated interaction between Valero L.P. and the remaining firms with enough excess capacity to defeat a price increase in Denver, and from a unilateral reduction in supply or price increase instituted by Valero L.P. in Colorado Springs.

Count III Terminating Services for Bulk Suppliers of Refining Components, Blending Components, and Light Petroleum Products in Northern California

The Complaint charges that the proposed acquisition would likely substantially reduce competition in terminating services for bulk suppliers of refining components, blending components, and light petroleum products in Northern California by (1) eliminating direct competition between the firms in the provision of terminating services for bulk suppliers of refining components, blending components, and light petroleum products, and (2) increasing the ability and likelihood of coordinated interaction between the combined company and its competitors in Northern

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California. Downstream effects will likely result in increased prices for light petroleum products.

Valero L.P. and Kaneb compete in providing terminaling services for bulk suppliers of refining components, blending components, and light petroleum products in Northern California. Refiner-marketers, independent marketers, and traders use Kaneb's three marine-accessible Northern California terminals to receive and store imported products and to distribute light petroleum products via pipeline to other Northern California terminals. In addition, refiners use the Kaneb terminals to store refining components, blending components, and light petroleum products that are needed to optimize production from their refineries. There are no substitutes for terminaling services for these products.

Northern California is a relevant geographic market. Due to trucking costs, firms need access to the Kinder Morgan intrastate pipeline to distribute bulk volumes of California gasoline and other light petroleum products throughout the state, and Southern California terminals are not connected to Kinder Morgan's Northern California pipeline network. In addition, constraints in Southern California terminal infrastructure make it unlikely that Southern California terminals could handle excess volume in the event of a Northern California terminal services price increase.

The market for terminaling services for bulk suppliers of refining components, blending components, and light petroleum products in Northern California will be highly concentrated following the proposed acquisition. Participants in the market include Kaneb and the five San Francisco Bay Area refiners (Valero Energy, Chevron Corp., ConocoPhillips, Shell, and Tesoro). Other terminals lack sufficient capacity into the Kinder Morgan pipeline system to transport excess product in the event of a price increase. The proposed acquisition would significantly increase market concentration, and post-merger the market would be highly concentrated.

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Post-acquisition, Valero L.P. would have an incentive to increase light petroleum prices by restricting products moving into and through the three marine-accessible Kaneb terminals in Northern California. Valero L.P. could limit the amount of product reaching that market by (1) limiting out-of-state marine shipments of California-grade gasoline and other products into Northern California; (2) limiting the volume of product entering the Kinder Morgan pipeline system in Northern California; and (3) limiting the ability of other Bay Area refiners to produce California-grade gasoline by restricting their storage for refining components, blending components, and other products needed to optimize refinery output.

The acquisition increases the likelihood of coordinated interaction among the remaining market participants by eliminating the terminal services provider with different incentives. Kaneb is the only market participant that does not also own or market light petroleum products in Northern California. Because after the merger all market participants will benefit from higher prices for light petroleum products, Valero L.P.'s restriction of terminaling services would likely not trigger an offsetting response from its terminaling competitors.

Entry into the market for Northern California terminaling services for these products would not be likely or timely, for the reasons discussed in other terminal markets. Indeed, if anything, entry is even more difficult in California, given that the state imposes an extensive and costly permitting process that would prolong any attempt to secure and develop new terminal space.

The efficiency claims of the Respondents, to the extent they relate to any of these three markets with horizontal overlaps, are not cognizable under the *Merger Guidelines*, are small as compared to the magnitude of the potential harm, and would not be sufficient to reverse the merger's potential to raise the price of bulk supply and terminal services.

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Count IV Terminating for Bulk Ethanol in Northern California

The Complaint charges that the proposed acquisition would likely substantially reduce competition in terminaling services for bulk ethanol in Northern California by changing the owner of Kaneb's Selby and Stockton terminals. Ethanol is a necessary input in producing California-grade "CARB" gasoline. This is the Commission's first opportunity to examine a merger's competitive effects on ethanol since California adopted it as the preferred oxygenate.

In Northern California, Kaneb's Selby, Stockton, and Richmond terminals are the only terminals capable of receiving and storing bulk quantities of ethanol. From these terminals, ethanol is offloaded from large rail or marine shipments, placed into storage tanks, and loaded onto trucks for delivery to other nearby terminals. Once the ethanol reaches these other terminals, ethanol is blended at the truck rack to produce CARB gasoline.

Terminal services for bulk ethanol is the relevant product market. There are no substitutes for these services; large quantities of ethanol received from producers must be broken into smaller volumes for distribution to remote gasoline terminals. Because remote terminals must receive ethanol supplies by truck, the geographic market is limited to Northern California. It is simply not feasible to supply Northern California terminals with ethanol trucked from Southern California terminals. Similarly, customers currently using Kaneb's Stockton terminal would face additional trucking costs if forced to use either of Kaneb's Selby or Richmond terminals.

The proposed acquisition raises vertical issues relating to ethanol terminaling services with likely effects in finished gasoline sales. Valero Energy and the other Northern California refiners do not offer ethanol terminaling services that compete with Kaneb and would not likely be able to do so in the event of a price increase. Post-acquisition, Valero L.P.'s ownership of the

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Kaneb terminals would give it control over an input necessary to finish gasoline for portions of Northern California. Valero Energy refines and markets CARB gasoline. By virtue of the merger, Valero L.P. could use control over bulk ethanol terminaling to limit access to ethanol storage by refusing to renew storage agreements with terminaling customers, by canceling contracts at some terminals to force competitors to truck longer distances, or by simply raising prices or abusing confidential information for ethanol terminaling. Because a percentage of ethanol must be added to CARB gasoline where oxygenation is required, any of these actions could increase the price of finished gasoline in Northern California. Because Kaneb does not market CARB gasoline, Kaneb currently has no incentive to manipulate ethanol access in these ways.

New entry into the market for Northern California bulk ethanol terminaling services would not be likely or timely, for the same reasons that entry would not be timely or likely for terminaling services for refining components, blending components, and light petroleum products in Northern California.

IV. The Proposed Consent Order

The Commission has provisionally accepted the Agreement Containing Consent Orders executed by Valero L.P., Valero Energy, and Kaneb in the settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Hold Separate Order for the divestiture of certain assets described below. Under the terms of the Proposed Order, the merged firm must: (1) divest Kaneb's Paulsboro, New Jersey, Philadelphia North, and Philadelphia South terminals; (2) divest the Kaneb West Pipeline System; (3) divest Kaneb's Martinez and Richmond terminals; (4) ensure that customers and prospective customers have non-discriminatory access to commingled terminaling of ethanol at its retained San Francisco Bay terminals, on terms and conditions no less advantageous to those given to Valero Energy; and (5) create firewalls that prevent the transfer of

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competitively sensitive information between the merged firm and Valero Energy. The Commission will appoint James F. Smith as the hold separate trustee.

A. Kaneb's Paulsboro, Philadelphia North, and Philadelphia South Terminals

To remedy the lessening of competition in the supply of terminaling services for bulk suppliers of light petroleum products in the Greater Philadelphia Area alleged in Count I of the Complaint, Paragraph III of the Proposed Order requires Respondents to divest Kaneb's Paulsboro, New Jersey, Philadelphia North, and Philadelphia South terminals. The assets to be divested include the three terminals, and all assets located at or used in connection with these terminals, including truck racks, local connector pipelines, storage tanks, real estate, inventory, customer contracts, and real estate.

The divestiture is designed to ensure that, post-merger, the same number of players will compete in supplying terminaling services as at present. In addition, divesting the Philadelphia area package to an independent terminal operator that does not benefit from higher product prices will complicate the ability of the integrated terminal owners in the Greater Philadelphia Area to coordinate their bulk supply decisions and will maintain the pre-merger competition in this market.

These terminal assets must be divested within six months of the date the merger is effectuated to a buyer that receives that prior approval of the Commission. In a separate Order to Hold Separate and Maintain Assets, Respondents are required to hold all assets to be divested separate and to maintain the viability and marketability of the assets until they are divested.

B. Kaneb West Pipeline System

To remedy the lessening of competition in pipeline transportation and terminaling services for bulk suppliers of light

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petroleum products in the Colorado Front Range alleged in Count II of the Complaint, Paragraph II of the Proposed Order requires Respondents to divest the Kaneb West Pipeline System. The assets to be divested include: (1) a refined products pipeline originating near Casper, Wyoming, and terminating in Rapid City, South Dakota, and Colorado Springs, Colorado; (2) refined products terminals in Rapid City, South Dakota; Cheyenne, Wyoming; Dupont, Colorado; and Fountain, Colorado. The assets to be divested also include all assets located at, or used in connection, with these pipelines and terminals, including truck racks, local connector pipelines, storage tanks, real estate, inventory, customer contracts, and real estate.

This divestiture is designed to maintain the likelihood that the new owner of the Kaneb West Pipeline System will not restrict Montana and Wyoming refiners' ability to send product to Denver and Colorado Springs. The divestiture will eliminate the ability of the combined company to raise light petroleum product prices in Denver and Colorado Springs by restricting access to the West Pipeline System. It also ensures that the current competition for pipeline transportation to and terminaling services in Denver and Colorado Springs will be maintained, with the same number of competitors post-acquisition as pre-acquisition. The divestiture of the West Pipeline System will also complicate the ability of the terminal and pipeline owners in these markets to coordinate in raising their pipeline transportation or terminaling service fees. Finally, the divestiture prevents Valero L.P. from controlling light petroleum product pipeline transportation to and terminaling in Colorado Springs. It effectively maintains the pre-merger competition in this market.

These pipeline and terminal assets must be divested within six months of the date the merger is effectuated to a buyer that receives the prior approval of the Commission. In a separate Order to Hold Separate and Maintain Assets, Respondents are required to hold all assets to be divested separate and to maintain the viability and marketability of the assets until they are divested.

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C. Kaneb's Martinez and Richmond Terminals

To remedy the lessening of competition in terminaling services for bulk suppliers of refining components, blending components, and light petroleum products in Northern California as alleged in Count III of the Complaint, Paragraph IV of the Proposed Order requires Respondents to divest Kaneb's Martinez and Richmond terminals to a Commission-approved buyer. The assets to be divested include both terminals, and all assets located at or used in connection with these terminals, including truck racks, local connector pipelines, storage tanks, real estate, inventory, customer contracts, and real estate.

The divestiture is ordered to maintain the likelihood that the new owner of these terminals does not restrict access to these terminals or otherwise limit imports into the Northern California market. The divestiture also complicates the ability of the remaining terminal owners in the market to coordinate to raise the prices of terminaling services. Although Valero L.P. will acquire Kaneb's Selby terminal, the presence of an independent operator of Martinez and Richmond will check Valero L.P.'s incentive and ability to restrict access at that terminal.

These terminal assets must be divested within six months of the date the Merger is effectuated to a buyer that receives the prior approval of the Commission. In a separate Order to Hold Separate and Maintain Assets, Respondents are required to hold all assets to be divested separate and to maintain the viability and marketability of the assets until they are divested.

In considering an application to divest any of these three asset packages, to one or more buyers, the Commission will consider factors such as the acquirer's ability and incentive to invest and compete in the businesses in which Kaneb was engaged in the relevant geographic markets alleged in the Complaint. The Commission will consider whether the acquirer has the business experience, technical judgment, and available capital to continue

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to invest in the terminals in order to maintain current levels of competition.

D. Terminating Services for Bulk Ethanol in Northern California

To remedy the lessening of competition in terminaling services for bulk ethanol in Northern California alleged in Count IV of the Complaint, Paragraph VI of the Proposed Order requires Respondents to maintain an information firewall. The Paragraph also requires that the Respondents not discriminate in offering access to commingled terminaling of ethanol at its retained Northern California terminals in Stockton and Selby, and offer access to third parties on terms and conditions no less advantageous to those given to Valero Energy. This remedy is ordered to ensure that the Respondents do not use confidential business information or limit access to ethanol storage to maintain competition in the terminaling of ethanol and the sale of finished gasoline in Northern California.

E. Other Terms

Paragraph VII requires the Respondents to provide written notification prior to acquiring the Paulsboro, New Jersey, Philadelphia North, or Philadelphia South terminals, or any portion thereof. It further requires Respondents to provide reports to the Commission regarding compliance with the Proposed Order. Paragraph IX requires the Respondents to provide written notification prior to any proposed dissolution, acquisition, merger, or consolidation, or any other change that may affect compliance obligations arising out of the Proposed Order. Paragraph X requires the Respondents to provide the Commission with access to their facilities and employees for purposes of determining or securing compliance with the Proposed Order. Paragraph XI provides for an extension of time to complete divestitures required under the Proposed Order if the particular divestiture has been challenged by a State.

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V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make it final. By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complain 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 to make the Proposed Order final. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Complaint

IN THE MATTER OF

CHEVRON CORPORATION, ET. AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4144; File No. 0510125*
Complaint, July 27, 2005--Decision, July 27, 2005

This consent order addresses the merger of Respondent Chevron Corporation -- a major international energy firm engaged in exploring for, developing and producing crude oil and natural gas; refining crude oil into finished petroleum products; marketing crude oil, natural gas, and other finished products derived from petroleum; and transporting crude oil, natural gas, and finished petroleum products by pipeline, marine vessels, and other means -- and Respondent Unocal Corporation, another major international energy firm engaged primarily in oil and gas exploration, development and production. The order, among other things, requires the respondents to cease and desist from any and all efforts to assert or enforce any of Unocal's relevant U.S. patents -- including in particular patents covering technology that refiners must use to produce California Air Resources Board compliant reformulated gasoline, the only type of gasoline that can be sold in California -- against any person to recover any damages or costs for alleged infringements of any of these patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of these patents. The consent order also requires the respondents, within thirty days, to file with the United States Patent and Trademark Office the necessary documents to disclaim or dedicate to the public the remaining term of the patents. In addition, the consent order requires the respondents, within thirty days, to dismiss with prejudice all pending legal actions relating to the alleged infringement of any of the patents.

Participants

For the Commission: *Dennis F. Johnson, Chong S. Park, Frank Lipson, Geary A. Gessler, Phillip Broyles, Geoffrey D. Oliver, Daniel P. Ducore, Jeffrey H. Fischer and Mark Frankena.*

For the Respondent: *Martin R. Lueck and David W. Beehler, Robins, Kaplan, Miller & Ciresi, David S. Neill, Wachtell, Lipton, Rosen & Katz, and Joe Sims, Jones Day.*