

Complaint

IN THE MATTER OF

TC GROUP, L.L.C., 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-4183; File No. 061 0197**Complaint, January 24, 2007 — Decision, March 14, 2007*

This consent order addresses the acquisition of Kinder Morgan, Inc., by a group of investors. Kinder Morgan is a midstream energy firm whose business includes the terminaling of gasoline and other light petroleum products. Among the investors are TC Group, L.L.C. (The Carlyle Group), and Riverstone Holdings LLC, who together operate several private equity funds that focus on energy-related investments. Two of their funds, Carlyle/Riverstone Global Energy and Power Fund III, L.P. and Carlyle Partners IV, L.P., will each acquire approximately 11.3% of the equity in Kinder Morgan. Another fund, Carlyle/Riverstone Global Energy and Power Fund II, L.P., holds interests in various energy firms, including a 50% interest in the general partner that controls Magellan Midstream Partners, L.P., a midstream terminal and pipeline company that competes with Kinder Morgan. Kinder Morgan and Magellan are two of only three significant “independent” (*i.e.* not owned by a refiner) terminaling companies in the southeastern United States. A reduction in competition, through partial common ownership of the two companies, may result in higher prices of gasoline and other light petroleum products, reduced supply, or other anticompetitive effects in these markets. The order effectively remedies these possible effects by, among other things, prohibiting representatives of Carlyle or Riverstone from serving on any of the Magellan boards, prohibiting Carlyle and Riverstone from exerting control or influence over Magellan as long as they hold an interest in or can influence Kinder Morgan, and requiring respondents to set firewalls to prevent the exchange of competitively sensitive non-public information. The Commission also issued an order to maintain assets, which required the respondents to adhere to the terms of the proposed consent order during the time leading up to their acquisition of equity interests in Kinder Morgan.

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Participants

For the *Commission*: *Dennis F. Johnson, Eric Rohlck, Brian J. Telpner, Nancy E. Turnblacer, and Amanda L. Wait.*

For the *Respondents*: *Marc Williamson, Latham & Watkins; and Neil Imus and Michael Rosenwasser, Vinson & Elkins.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondent TC Group, L.L.C. (“Carlyle”), a limited liability company, and Respondent Riverstone Holdings LLC (“Riverstone”), a limited liability company, each subject to the jurisdiction of the Commission, have through affiliates entered into an agreement and plan of merger to acquire equity interests in Kinder Morgan, Inc. (“KMI”), 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. THE PARTIES***A. TC Group, L.L.C.***

1. Respondent TC Group, L.L.C. (“Carlyle”) is a limited liability company doing business as The Carlyle Group, and is 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 1001 Pennsylvania Avenue, N.W., Suite 220 S, Washington, DC 20004.

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2. Respondent Carlyle is, and at all times relevant herein has been, engaged in the business of originating, managing and operating private equity funds. As part of its private equity fund business, Respondent Carlyle directly or indirectly acquires interests in a variety of firms, including, as relevant here, midstream energy companies whose businesses include the terminaling of gasoline and other light petroleum products.
3. Respondent Carlyle is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

B. Riverstone Holdings LLC

4. Respondent Riverstone Holdings LLC (“Riverstone”) is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019.
5. Respondent Riverstone is, and at all times relevant herein has been, engaged in the business of originating, managing and operating private equity funds. As part of its private equity fund business, Respondent Riverstone directly or indirectly acquires interests in a variety of firms, including, as relevant here, midstream energy companies whose businesses include the terminaling of gasoline and other light petroleum products.
6. Respondent Riverstone is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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***C. Carlyle/Riverstone Global Energy
and Power Fund II, L.P.***

7. Respondent Carlyle/Riverstone Global Energy and Power Fund II, L.P. (“CR-II”) is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
8. Respondent CR-II is, and at all times relevant herein has been, a private equity fund that holds interests in a variety of investments.
9. Respondent CR-II is a joint venture between, and is managed and controlled by, Respondents Carlyle and Riverstone.
10. Respondent CR-II holds a fifty percent interest in MGG Midstream Holdings GP, LLC, the general partner of MGG Midstream Holdings, L.P., which in turn holds 100% of Magellan Midstream Holdings GP, LLC, the general partner of Magellan Midstream Holdings, L.P., which in turn holds 100% of Magellan GP, LLC, the general partner of Magellan Midstream Partners, L.P. (“Magellan”). Magellan is a midstream energy firm whose business includes the terminaling of gasoline and other light petroleum products.
11. Respondent CR-II has the right to designate two representatives on a four-member Board of Managers of MGG Midstream Holdings GP, LLC, and has the ability to veto actions by the Board of Managers. The CR-II representatives on the Board of Managers also serve as CR-II’s representatives on the Boards of Directors of Magellan Midstream Holdings GP, LLC, and Magellan GP, LLC.

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12. As a result of the interests and rights set forth above in Paragraphs 9, 10 and 11, Respondents Carlyle, Riverstone and CR-II have the ability to exercise veto power over actions by the Board of Managers of MGG Midstream Holdings GP, LLC and to receive non-public competitively sensitive information from and about Magellan.
13. Through the interests set forth above in Paragraphs 9 and 10, Respondents Carlyle, Riverstone, and CR-II are, and at all times relevant herein have been, engaged in the business of terminaling gasoline and other light petroleum products.
14. Respondent CR-II is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

***D. Carlyle/Riverstone Global Energy
and Power Fund III, L.P.***

15. Respondent Carlyle/Riverstone Global Energy and Power Fund III, L.P. (“CR-III”), is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
16. Respondent CR-III is, and at all times relevant herein has been, a private equity fund that has been set up to hold interests in a variety of investments.
17. Respondent CR-III is a joint venture between, and is managed and controlled by, Respondents Carlyle and Riverstone.
18. Respondent CR-III is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as

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amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUISITION

19. On August 28, 2006, Kinder Morgan, Inc. (“KMI”) announced that it had entered into a definitive merger agreement under which a group of investors (collectively the “Investor Group”) would acquire all outstanding shares of KMI for approximately \$14.4 billion plus the assumption of more than \$7 billion in debt (the “Acquisition”).
20. KMI is a midstream energy firm whose business includes, directly or through affiliates, the terminaling of gasoline and other light petroleum products.
21. The Investor Group consists of (1) Members of KMI management, including Chairman and Chief Executive Officer Richard Kinder; (2) Goldman Sachs Capital Partners and affiliates; (3) American International Group and affiliates; (4) Carlyle Partners IV, L.P., a private equity fund managed and controlled by Respondent Carlyle; and (5) Respondent CR-III, a private equity fund jointly managed and controlled by Respondents Carlyle and Riverstone.
22. As a result of the Acquisition, Respondents Carlyle and Riverstone, through their interests in Respondent CR-III, will jointly hold approximately 11.3% of the equity of KMI.
23. As a result of the Acquisition, Respondent Carlyle, through its interest in Carlyle Partners IV, L.P., will also hold approximately 11.3% of the equity of KMI.
24. As a result of their interest in KMI held through CR-III, Respondents Carlyle and Riverstone will have the right to appoint a representative to the Board of Directors of KMI and

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to receive non-public competitively sensitive information from and about KMI.

25. As a result of its interest in KMI held through Carlyle Partners IV, L.P., Respondent Carlyle will have the right to appoint a representative to the Board of Directors of KMI and to receive non-public competitively sensitive information from and about KMI.

III. TRADE AND COMMERCE***A. Relevant Market***

26. Terminals are specialized facilities with large storage tanks used for the receipt and local distribution of large quantities of gasoline and other light petroleum products. Terminals receive deliveries of gasoline and other light petroleum products from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for terminals for the storage and local distribution of gasoline and other light petroleum products.
27. A relevant line of commerce in which to evaluate the effects of the Acquisition is the terminaling of gasoline and other light petroleum products.
28. Magellan and KMI both own competing terminals in each of the following metropolitan areas in the southeastern United States: (a) Birmingham, Alabama; (b) Albany, Georgia; (c) Atlanta (Doraville), Georgia; (d) Charlotte, North Carolina; (e) Greensboro, North Carolina; (f) Selma, North Carolina; (g) North Augusta, South Carolina; (h) Spartanburg, South Carolina; (i) Knoxville, Tennessee; (j) Richmond, Virginia; and (k) Roanoke, Virginia.

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29. Because of costs and delivery logistics, buyers of gasoline and other light petroleum products in any of the metropolitan areas listed above in Paragraph 28, and shippers of such products into any of such metropolitan areas, would have no effective alternative to terminals located within the area.
30. Each of the metropolitan areas listed above in Paragraph 28 is a relevant section of the country in which to evaluate the effects of this Acquisition on the terminaling of gasoline and other light petroleum products.

B. Market Structure

31. Following the Acquisition, as a result of Respondents' holding of interests in both Magellan and KMI, the market for the terminaling of gasoline and other light petroleum products in each geographic area would be either highly concentrated or moderately concentrated, and would become significantly more concentrated as a result of the Acquisition.

C. Entry Conditions

32. Construction of a terminaling facility and its necessary infrastructure, including tanks, pipeline connections, and truck loading facilities, is subject to significant regulatory and other legal constraints, and requires significant sunk costs and substantial time to accomplish.
33. Entry into the market for the terminaling of gasoline and other light petroleum products in any of the eleven geographic areas listed in Paragraph 28 above would not be timely, likely, or sufficient to prevent the anticompetitive effects that are likely to result from the Acquisition.

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IV. ANTICOMPETITIVE EFFECTS

34. KMI and Magellan are actual competitors for the terminaling of gasoline and other light petroleum products in each of the relevant sections of the country. By holding significant interests in both KMI and Magellan, by having the right to board representation at both firms, by having the right to exercise veto power over actions by Magellan, and by receiving, using or sharing non-public competitively sensitive information from or about KMI or Magellan, Respondents Carlyle, Riverstone, CR-II and CR-III may substantially lessen competition in the relevant line of commerce in each of the relevant sections of the country.
35. The Acquisition may substantially lessen competition in the following ways, among others:
- a. by eliminating competition between KMI and Magellan in the terminaling of gasoline and other light petroleum products in the relevant sections of the country;
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between KMI and Magellan, or between KMI, Magellan and other providers of terminaling services, in the relevant sections of the country; and
 - c. by increasing the likelihood that Magellan or KMI, or the combination of Magellan and KMI, will unilaterally exercise market power in the terminaling of gasoline and other light petroleum products;
- each of which increases the likelihood that terminal fees and prices for gasoline and other light petroleum products would increase in each of the relevant sections of the country.

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V. VIOLATIONS CHARGED

36. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fourth day of January, 2007, issues its complaint against Respondents.

By the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of equity interests in Kinder Morgan, Inc. by Carlyle Partners IV, L.P., an affiliate of TC Group, L.L.C. d/b/a The Carlyle Group (“Carlyle”), and by Carlyle/Riverstone Global Energy and Power Fund III, L.P., an affiliate of Carlyle and Riverstone Holdings LLC (“Riverstone”) (hereinafter Carlyle, Riverstone, Carlyle / Riverstone Global Energy and Power Fund III, L.P., and Carlyle-Riverstone Global Energy and Power Fund II, L.P. collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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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 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 issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

1. Respondent TC Group, L.L.C., is a limited liability company doing business as The Carlyle Group, and is 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 1001 Pennsylvania Avenue, N.W., Suite 220 S, Washington, DC 20004.
2. Respondent Riverstone Holdings LLC is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019.

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3. Respondent Carlyle/Riverstone Global Energy and Power Fund II, L.P., is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
4. Respondent Carlyle/Riverstone Global Energy and Power Fund III, L.P., is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
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, all capitalized terms used in this Order to Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order (“Order”) contained in the Consent Agreement.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall not consummate the Acquisition unless and until:
 1. Respondents have removed all Magellan CR Directors from all Magellan Boards; and

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2. Respondent CR-II has agreed with MDP-IV that as of the Effective Date:
 - a. all Magellan CR Directors shall be removed from all Magellan Boards;
 - b. Respondent CR-II, Respondent Carlyle, and Respondent Riverstone shall have no rights to elect or appoint a Magellan CR Director; and
 - c. the Amendment will be effective.

The MGG GP Agreement and the Amendment are attached to the Order as Appendix A and Appendix B, respectively, including all amendments, exhibits, attachments, agreements, and schedules thereto. The MGG GP Agreement, currently and as amended in the future, and the Amendment shall not vary or contradict, or be construed to vary or contradict, the terms of the Order, it being understood that nothing in the MGG GP Agreement, currently and as amended in the future, or the Amendment shall be construed to reduce any obligations of the Respondents under the Order. The Amendment shall be deemed incorporated into the Order, and any failure by Respondents to comply with any term of such Amendment shall constitute a failure to comply with the Order. The Amendment shall not be modified, directly or indirectly, without the prior approval of the Commission.

- B. For the time period following the Effective Date that Respondent Carlyle, Respondent Riverstone, or Respondent CR-III holds, directly or indirectly, any interest in KMI; has the ability or right to elect or appoint a KMI CR Director or has a KMI CR Director; has VCOC Exemption Rights with respect to KMI; or has any right to Non-Public Information of or Relating To KMI
 1. Respondents shall:

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- a. not elect or appoint a Magellan CR Director;
 - b. not have a director, officer, partner, employee, agent, or representative on any Magellan Board;
 - c. not influence or attempt to influence, directly or indirectly, by voting or otherwise, the Magellan Operating Entities, or the management or operation of the Magellan Operating Entities;
 - d. not influence or attempt to influence, directly or indirectly, the Magellan Investment Entities, or the management or operation of the Magellan Investment Entities, except and only to the extent as provided in the MGG GP Agreement as amended by the Amendment; and
 - e. not receive or attempt to receive, directly or indirectly, any Non-Public Information of, from or Relating To the Magellan Operating Entities.
2. Respondent Carlyle, Respondent Riverstone and Respondent CR-II shall:
- a. not discuss with, or provide, disclose or otherwise make available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan;
 - b. prohibit any Magellan CR Director from discussing with, or providing, disclosing or otherwise making available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan; *provided, however*, that the foregoing shall not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., from serving as a KMI CR Director; and

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- c. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required by this Paragraph II.B.
- C. Respondent Carlyle, Respondent Riverstone, and Respondent CR-III shall:
1. not discuss with, or provide, disclose or otherwise make available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI;
 2. prohibit all KMI CR Directors from discussing with, or providing, disclosing or otherwise making available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI; and
 3. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required pursuant to this Paragraph II.C.
- D. For the time period that Respondent Carlyle or Respondent Riverstone holds, directly or indirectly, any interest in Magellan,
1. Respondent Carlyle and Respondent Riverstone shall not, without providing thirty (30) days advance written notification to the Commission in the manner described in this paragraph, directly or indirectly, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition.
 2. *Provided, however,* that such prior advance written notice shall not be required if:
 - a. the acquisition is by a CR Passive Investment Fund;

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- b. the acquisition does not change the acquiring Respondent's pro rata interest in KMI received as part of the Acquisition; or
- c. as a result of the acquisition, the acquiring Respondent:
 - (1) does not, and cannot in the future, receive the right or ability to appoint or elect an additional member to any KMI Board; and
 - (2) does not, and cannot in the future, vote any of the stock, share capital, equity or other interest in KMI it receives as a result of such acquisition.

Said advance written notification shall contain: (i) a detailed term sheet for the proposed acquisition, including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date such acquisition will take effect, and any other information prepared by the Person making the acquisition Related To such acquisition, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as *Athe Notification*), *provided, however*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed with the Secretary of the Commission with additional copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition. The Notification need not be submitted to the United States Department of Justice; and (iii) the Notification is required from Respondent Carlyle and Respondent Riverstone, and not from any other party to the transaction. Respondent Carlyle and Respondent Riverstone

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shall provide the Notification to the Commission at least thirty (30) days prior to consummating the 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), no Respondent shall 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 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.

- E. Within ten (10) days after its occurrence, Respondents shall provide written notification to the Commission (with copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition):
1. if Respondents no longer hold any interest in Magellan other than a CR Passive Investment Fund interest in Magellan;
 2. if Respondents no longer hold any interest in Magellan;
 3. if Respondent Carlyle, Respondent Riverstone, and Respondent CR-III no longer hold, directly or indirectly, any interest in KMI; no longer have the ability or right to appoint a KMI CR Director or have a KMI CR Director; no longer retain VCOC Exemption Rights with respect to KMI; and no longer have any right to Non-Public Information of or Relating To KMI;

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4. if Respondents engage in any of the acquisitions listed in Paragraph II.D.2 above, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition; or
 5. of any acquisition by any Respondent of stock, share capital, equity or other interest in Magellan, including acquisitions by a CR Passive Investment Fund, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition.
- F. The purpose of Paragraph II of this Order to Maintain Assets is to ensure that KMI and Magellan are operated independently of, and in competition with, each other, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within twenty (20) days after the Effective Date, send a copy of the Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or by hand delivery (with signed confirmation) to:
 1. All Persons employed by Respondents at the Managing Director level or above;
 2. All Persons who serve on each Magellan Board, including, but not limited to, each Magellan CR Director;

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3. All Persons who serve on each KMI Board, including, but not limited to, each KMI CR Director; and
 4. All investors in Knight Holdco LLC and Knight Acquisition Co.
- B. Send a copy of the Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or hand delivery (with signed confirmation) to:
1. each Person who becomes a KMI CR Director;
 2. each Person known to Respondents who becomes an equity investor in Knight Holdco LLC or Knight Acquisition Co. after the Acquisition unless and until Knight Holdco LLC and Knight Acquisition Co. become publicly traded; and
 3. each Person who serves on each Magellan Board.

Such notice pursuant to this Paragraph III.B. shall occur no later than thirty (30) days after the commencement of such Person's employment or affiliation, except with respect to Persons serving on the Magellan Board, for which such notice shall be given no later than thirty (30) days after Respondents become aware of such person becoming a director or manager. *Provided, however,* that Respondents are not required to send such notices pursuant to this Paragraph III.B. if the Effective Date has not occurred or if and when the Respondents have given the Commission notice pursuant to Paragraph II.E.1., II.E.2., or II.E.3.

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

- A. Kevin Sudy of Navigant Consulting shall be appointed as Implementation Monitor to monitor Respondents' implementation of the firewall procedures under Paragraphs II.B. and II.C. of this Order to Maintain Assets and under Paragraphs II.B. and II.C. of the Order, which Implementation Monitor shall have the rights, duties, and responsibilities as described below.
- B. No later than one (1) day after this Order to Maintain Assets is made final, Respondents shall, pursuant to the Monitor Agreement, which is attached hereto as Appendix A, and pursuant to this Order to Maintain Assets, transfer to the Implementation Monitor all the rights, powers, and authorities necessary to permit the Implementation Monitor to monitor Respondents' implementation of the firewall procedures required under Paragraphs II.B. and II.C. of this Order to Maintain Assets and Paragraphs II.B. and II.C. of the Order, in a manner consistent with the purposes of this Order to Maintain Assets and the Order.
- C. In the event a substitute Implementation Monitor is required, the Commission shall select the Implementation Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Implementation Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Implementation Monitor, Respondents shall be deemed to have consented to the selection of the proposed Implementation Monitor. Not later than ten (10) days after appointment of a substitute Implementation Monitor, Respondents shall execute an agreement that, subject to the prior approval of the

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Commission, confers on the Implementation Monitor all the rights and powers necessary to permit the Implementation Monitor to monitor Respondents' compliance with the terms of this Order to Maintain Assets as stated in this Paragraph IV.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Implementation Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' implementation of the firewall procedures of Paragraphs II.B. and II.C. of this Order to Maintain Assets and Paragraphs II.B. and II.C. of the Order, in a manner consistent with the purposes of this Order to Maintain Assets and the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Implementation Monitor in a manner consistent with the purposes of this Order to Maintain Assets and the Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities to assure that Non-Public Information is protected as required by this Order to Maintain Assets, the Order, and the Amendment;
 - b. Assuring that Non-Public Information is not received or used by Respondents, except as allowed in this Order to Maintain Assets, the Order, and the Amendment.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The term of the Implementation Monitor shall end when the Implementation Monitor reports to the Commission that Respondents have put in place adequate procedures in

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accordance with Paragraphs II.B. and II.C. of this Order to Maintain Assets, and Paragraphs II.B. and II.C. of the Order, and that those procedures provide the appropriate firewall protections, and the Commission staff notifies Respondents that such procedures are acceptable.

4. Subject to any demonstrated legally recognized privilege, the Implementation Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Implementation Monitor may reasonably request, related to Respondents' compliance with their obligations under Paragraphs II.B. and II.C. of this Order to Maintain Assets, Paragraphs II.B. and II.C. of the Order, and the Amendment. Respondents shall cooperate with any reasonable request of the Implementation Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Order, and the Amendment.
5. The Implementation Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Implementation Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Implementation Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Implementation Monitor and hold the Implementation Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the

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Implementation Monitors' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Implementation Monitor.

7. Within one (1) month from the date the Implementation Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, during the term of the Implementation Monitor, the Implementation Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations to protect Non-Public Information under Paragraphs II.B. and II.C. of this Order to Maintain Assets, Paragraphs II.B. and II.C. of the Order, and the Amendment.
 8. Respondents may require the Implementation Monitor and each of the Implementation Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Implementation Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Implementation Monitor and each of the Implementation Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Implementation Monitor's duties.
- F. If the Commission determines that the Implementation Monitor has ceased to act or failed to act diligently, the

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Commission may appoint a substitute Implementation Monitor in the same manner as provided in this Paragraph IV.

- G. The Commission may on its own initiative, or at the request of the Implementation Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets, the Order, and the Amendment including, but not limited to, reinstating the Implementation Monitor to monitor Respondents' compliance with the firewalls as required in this Order to Maintain Assets and the Order.

V.

IT IS FURTHER ORDERED that, beginning fifteen (15) days after the date on which Respondents sign the Consent Agreement and every thirty (30) days thereafter until this Order to Maintain Assets terminates pursuant to Paragraph VIII, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order to Maintain Assets. Respondents shall submit at the same time a copy of these reports to the Implementation Monitor.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger, or consolidation of Respondents;
- C. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of

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subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

VII.

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

- A. Access, during office hours of Respondents 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 Respondents related to compliance with this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. such time as the Decision and Order has been made final.

By the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

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APPENDIX A**MONITOR AGREEMENT****DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of equity interests in Kinder Morgan, Inc. by Carlyle Partners IV, L.P., an affiliate of TC Group, L.L.C. d/b/a The Carlyle Group (“Carlyle”), and by Carlyle/Riverstone Global Energy and Power Fund III, L.P., an affiliate of Carlyle and Riverstone Holdings LLC (“Riverstone”) (hereinafter Carlyle, Riverstone, Carlyle/Riverstone Global Energy and Power Fund III, L.P., and Carlyle-Riverstone Global Energy and Power Fund II, L.P. collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as

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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 its Order to Maintain Assets 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"):

1. Respondent TC Group, L.L.C., is a limited liability company doing business as The Carlyle Group, and is 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 1001 Pennsylvania Avenue, N.W., Suite 220 S, Washington, DC 20004.
2. Respondent Riverstone Holdings LLC is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019.
3. Respondent Carlyle/Riverstone Global Energy and Power Fund II, L.P., is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).

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4. Respondent Carlyle/Riverstone Global Energy and Power Fund III, L.P., is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
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. “Carlyle” means TC Group, L.L.C., doing business as The Carlyle Group, its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and alternative investment vehicles controlled or managed by TC Group, L.L.C. (including, but not limited to, TCG Holdings, L.L.C., TC Group-Energy, L.L.C., Carlyle Investment Management L.L.C., and Carlyle Partners IV, L.P. (“CP-IV”)), and the respective directors, officers, partners, employees, agents, representatives, successors, and assigns of each. For purposes of this Order “Carlyle” includes CR-II and CR-III, except where noted in this Order.
- B. “CR-II” means Carlyle/Riverstone Global Energy and Power Fund II, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and alternative

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investment vehicles controlled or managed by Carlyle/Riverstone Global Energy and Power Fund II, L.P., and the respective directors, officers, partners, employees, agents, representatives, successors, and assigns of each.

- C. “CR-III” means Carlyle/Riverstone Global Energy and Power Fund III, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and alternative investment vehicles controlled or managed by Carlyle/Riverstone Global Energy and Power Fund III, L.P., and the respective directors, officers, partners, employees, agents, representatives, successors, and assigns of each.
- D. “Riverstone” means Riverstone Holdings LLC, its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and alternative investment vehicles controlled or managed by Riverstone Holdings LLC, and the respective directors, officers, partners, employees, agents, representatives, successors, and assigns of each. For purposes of this Order “Riverstone” includes CR-II and CR-III, except where noted in this Order.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquisition” means the transaction contemplated by the Agreement and Plan of Merger among Knight Holdco LLC, Knight Acquisition Co. and Kinder Morgan, Inc., dated August 28, 2006, pursuant to which a group of investors, including, but not limited to, CP-IV and CR-III, plan to acquire KMI.
- G. “Amendment” means Amendment No. 1 dated November 17, 2006 to the MGG GP Agreement.

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- H. “CR Passive Investment Fund” means a current or future investment fund controlled or managed by Respondent Carlyle or Respondent Riverstone that:
1. invests in publicly traded securities or securities convertible into publicly traded securities;
 2. is prohibited from receiving or using, directly or indirectly, Non-Public Information from Respondents or any other source about KMI or Magellan;
 3. does not, directly or indirectly, by its managers or otherwise, exercise any voting rights in KMI or Magellan;
 4. does not have, directly or indirectly, the right or ability to appoint a representative to any KMI Board or Magellan Board; and
 5. does not influence or attempt to influence, directly or indirectly, the management or operations of KMI or Magellan.
- I. “Effective Date” means the date on which the Acquisition is consummated.
- J. “KMI” means Kinder Morgan, Inc., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups and affiliates controlled by Kinder Morgan, Inc. (including, but not limited to, Kinder Morgan Energy Partners L.P. and Kinder Morgan Management LLC), and the respective directors, officers, partners, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, KMI includes Knight Acquisition Co., a Kansas corporation, and Knight Holdco LLC, a Delaware limited liability company.

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- K. “KMI Board” means any board of directors or board of managers of KMI.
- L. “KMI CR Director” means a Person who is elected or appointed by, or who is an agent or representative of, Carlyle, Riverstone, CR-II, or CR-III, on any KMI Board.
- M. “Magellan” means MGG Midstream Holdings GP, LLC, MGG Midstream Holdings, L.P., Magellan Midstream Holdings GP, LLC, Magellan Midstream Holdings, L.P., Magellan GP, LLC, Magellan IDR, L.P., and Magellan Midstream Partners, L.P., and the joint ventures, subsidiaries, partnerships, divisions, groups and affiliates controlled by such entities.
- N. “Magellan Board” means any board of directors or board of managers of Magellan, including, but not limited to, the Board of Managers of MGG Midstream Holdings GP, LLC, the Board of Directors of Magellan Midstream Holdings GP, LLC, and the Board of Directors of Magellan GP, LLC.
- O. “Magellan CR Director” means a Person who is or at any time was elected or appointed by, or who is or at any time was an agent or representative of, Carlyle, Riverstone, CR-II, or CR-III, on any Magellan Board, including, but not limited to, Pierre F. Lapeyre, Jr., David M. Leuschen, N. John Lancaster, Jr., and James Derryberry.
- P. “Magellan Investment Entities” means MGG Midstream Holdings GP, LLC and MGG Midstream Holdings, L.P.
- Q. “Magellan Operating Entities” means Magellan Midstream Holdings GP, LLC, Magellan Midstream Holdings, L.P., Magellan GP, LLC, Magellan IDR, L.P., and Magellan Midstream Partners, L.P. and the joint ventures, subsidiaries, partnerships, divisions, groups and affiliates controlled by such entities.

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- R. “MDP-IV” means Madison Dearborn Capital Partners IV, L.P., a 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 Three First National Plaza, Suite 3800, Chicago, Illinois 60602, with an ownership interest in Magellan.
- S. “MGG GP Agreement” means the First Amended & Restated Limited Liability Company Agreement of MGG Midstream Holdings GP, LLC, dated December 21, 2005, including all amendments, attachments, exhibits, and schedules thereto.
- T. “Monitor Agreement” means the Monitor Agreement dated December 12, 2006, between Respondents and Kevin Sudy of Navigant Consulting. The Monitor Agreement is attached as Appendix C to this Order.
- U. “Non-Public Information” means all information that is not in the public domain Relating To a Person or a Person’s business, including, but not limited to, customer lists, price lists, plans, contracts, expansion projects, cost information, marketing methods, competitively sensitive data or information, and all other information not available to the public.
- V. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- W. “Relating To” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating, or in any way pertaining to.
- X. “VCOC Exemption Rights” means any rights necessary for, or that allow, an investor to claim the Venture Capital Operating Company exemption under the plan asset regulation issued by the Department of Labor under 29 C.F.R. § 2520-3-101,

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including, but not limited to, the right to representation on the board of directors, the right to observe the board of directors, the right to inspect books and records, the right to interview officers or employees concerning their business and operations, and any other rights through which the investor can substantially participate in or influence the management of such entity.

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

- A. Respondents shall not consummate the Acquisition unless and until:
 - 1. Respondents have removed all Magellan CR Directors from all Magellan Boards; and
 - 2. Respondent CR-II has agreed with MDP-IV that as of the Effective Date:
 - a. all Magellan CR Directors shall be removed from all Magellan Boards;
 - b. Respondent CR-II, Respondent Carlyle, and Respondent Riverstone shall have no rights to elect or appoint a Magellan CR Director; and
 - c. the Amendment will be effective.

The MGG GP Agreement and the Amendment are attached to this Order as Appendix A and Appendix B, respectively, including all amendments, exhibits, attachments, agreements, and schedules thereto. The MGG GP Agreement, currently and as amended in the future, and the Amendment shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in the MGG GP Agreement, currently and as amended in the future,

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or the Amendment shall be construed to reduce any obligations of the Respondents under this Order. The Amendment shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Amendment shall constitute a failure to comply with this Order. The Amendment shall not be modified, directly or indirectly, without the prior approval of the Commission.

- B. For the time period following the Effective Date that Respondent Carlyle, Respondent Riverstone, or Respondent CR-III holds, directly or indirectly, any interest in KMI; has the ability or right to elect or appoint a KMI CR Director or has a KMI CR Director; has VCOC Exemption Rights with respect to KMI; or has any right to Non-Public Information of or Relating To KMI,

1. Respondents shall:

- a. not elect or appoint a Magellan CR Director;
- b. not have a director, officer, partner, employee, agent, or representative on any Magellan Board;
- c. not influence or attempt to influence, directly or indirectly, by voting or otherwise, the Magellan Operating Entities, or the management or operation of the Magellan Operating Entities;
- d. not influence or attempt to influence, directly or indirectly, the Magellan Investment Entities, or the management or operation of the Magellan Investment Entities, except and only to the extent as provided in the MGG GP Agreement as amended by the Amendment; and

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- e. not receive or attempt to receive, directly or indirectly, any Non-Public Information of, from or Relating To the Magellan Operating Entities.
2. Respondent Carlyle, Respondent Riverstone and Respondent CR-II shall:
- a. not discuss with, or provide, disclose or otherwise make available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan;
 - b. prohibit any Magellan CR Director from discussing with, or providing, disclosing or otherwise making available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan; *provided, however*, that the foregoing shall not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., from serving as a KMI CR Director; and
 - c. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required by this Paragraph II.B.
- C. Respondent Carlyle, Respondent Riverstone, and Respondent CR-III shall:
- 1. not discuss with, or provide, disclose or otherwise make available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI;
 - 2. prohibit all KMI CR Directors from discussing with, or providing, disclosing or otherwise making available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI; and

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3. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required pursuant to this Paragraph II.C.
- D. For the time period that Respondent Carlyle or Respondent Riverstone holds, directly or indirectly, any interest in Magellan,
1. Respondent Carlyle and Respondent Riverstone shall not, without providing thirty (30) days advance written notification to the Commission in the manner described in this paragraph, directly or indirectly, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition.
 2. *Provided, however*, that such prior advance written notice shall not be required if:
 - a. the acquisition is by a CR Passive Investment Fund;
 - b. the acquisition does not change the acquiring Respondent's pro rata interest in KMI received as part of the Acquisition; or
 - c. as a result of the acquisition, the acquiring Respondent:
 - (1) does not, and cannot in the future, receive the right or ability to appoint or elect an additional member to any KMI Board; and
 - (2) does not, and cannot in the future, vote any of the stock, share capital, equity or other interest in KMI it receives as a result of such acquisition.

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Said advance written notification shall contain: (i) a detailed term sheet for the proposed acquisition, including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date such acquisition will take effect, and any other information prepared by the Person making the acquisition Related To such acquisition, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as *Athe Notification*), *provided, however*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed with the Secretary of the Commission with additional copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition. The Notification need not be submitted to the United States Department of Justice; and (iii) the Notification is required from Respondent Carlyle and Respondent Riverstone, and not from any other party to the transaction. Respondent Carlyle and Respondent Riverstone shall provide the Notification to the Commission at least thirty (30) days prior to consummating the 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), no Respondent shall 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 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.

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- E. Within ten (10) days after its occurrence, Respondents shall provide written notification to the Commission (with copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition):
1. if Respondents no longer hold any interest in Magellan other than a CR Passive Investment Fund interest in Magellan;
 2. if Respondents no longer hold any interest in Magellan;
 3. if Respondent Carlyle, Respondent Riverstone, and Respondent CR-III no longer hold, directly or indirectly, any interest in KMI; no longer have the ability or right to appoint a KMI CR Director or have a KMI CR Director; no longer retain VCOC Exemption Rights with respect to KMI; and no longer have any right to Non-Public Information of or Relating To KMI;
 4. if Respondents engage in any of the acquisitions listed in Paragraph II.D.2 above, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition; or
 5. of any acquisition by any Respondent of stock, share capital, equity or other interest in Magellan, including acquisitions by a CR Passive Investment Fund, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition.

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- F. The purpose of Paragraph II of this Order is to ensure that KMI and Magellan are operated independently of, and in competition with, each other, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within twenty (20) days after the Effective Date, send a copy of this Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or by hand delivery (with signed confirmation) to:
1. All Persons employed by Respondents at the Managing Director level or above;
 2. All Persons who serve on each Magellan Board, including, but not limited to, each Magellan CR Director;
 3. All Persons who serve on each KMI Board, including, but not limited to, each KMI CR Director; and
 4. All investors in Knight Holdco LLC and Knight Acquisition Co.
- B. Send a copy of this Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or hand delivery (with signed confirmation) to:
1. each Person who becomes a KMI CR Director;
 2. each Person known to Respondents who becomes an equity investor in Knight Holdco LLC or Knight Acquisition Co. after the Acquisition unless and until Knight Holdco LLC and Knight Acquisition Co. become publicly traded; and

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3. each Person who serves on each Magellan Board.

Such notice pursuant to this Paragraph III.B. shall occur no later than thirty (30) days after the commencement of such Person's employment or affiliation, except with respect to Persons serving on the Magellan Board, for which such notice shall be given no later than thirty (30) days after Respondents become aware of such person becoming a director or manager. *Provided, however,* that Respondents are not required to send such notices pursuant to this Paragraph III.B. if the Effective Date has not occurred or if and when the Respondents have given the Commission notice pursuant to Paragraph II.E.1., II.E.2., or II.E.3.

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

- A. Kevin Sudy of Navigant Consulting shall be appointed as Implementation Monitor to monitor Respondents' implementation of the firewall procedures under Paragraphs II.B. and II.C. of this Order, which Implementation Monitor shall have the rights, duties, and responsibilities as described below.
- B. Within one (1) day of this Order becoming final, Respondents shall, pursuant to the Monitor Agreement and to this Order, transfer to the Implementation Monitor all the rights, powers, and authorities necessary to permit the Implementation Monitor to monitor Respondents' implementation of the firewall procedures required under Paragraphs II.B. and II.C. of this Order, in a manner consistent with the purposes of this Order.
- C. In the event a substitute Implementation Monitor is required, the Commission shall select the Implementation Monitor,

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subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Implementation Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Implementation Monitor, Respondents shall be deemed to have consented to the selection of the proposed Implementation Monitor. Not later than ten (10) days after appointment of a substitute Implementation Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Implementation Monitor all the rights and powers necessary to permit the Implementation Monitor to monitor Respondents' compliance with the terms of this Order as stated in this Paragraph IV.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Implementation Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' implementation of the firewall procedures of Paragraphs II.B. and II.C. of this Order, in a manner consistent with the purposes of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Implementation Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities to assure that Non-Public Information is protected as required by the Order and the Amendment;

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- b. Assuring that Non-Public Information is not received or used by Respondents, except as allowed in this Order and the Amendment.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The term of the Implementation Monitor shall end when the Implementation Monitor reports to the Commission that Respondents have put in place adequate procedures in accordance with Paragraphs II.B. and II.C. of this Order, and that those procedures provide the appropriate firewall protections, and the Commission staff notifies Respondents that such procedures are acceptable.
4. Subject to any demonstrated legally recognized privilege, the Implementation Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Implementation Monitor may reasonably request, related to Respondents' compliance with their obligations under Paragraphs II.B. and II.C. of this Order, and the Amendment. Respondents shall cooperate with any reasonable request of the Implementation Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and the Amendment.
5. The Implementation Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Implementation Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary

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to carry out the Monitor's duties and responsibilities. The Implementation Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

6. Respondents shall indemnify the Implementation Monitor and hold the Implementation Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Implementation Monitors' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Implementation Monitor.
 7. Within one (1) month from the date the Implementation Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, during the term of the Implementation Monitor, the Implementation Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations to protect Non-Public Information under Paragraphs II.B. and II.C. of this Order and the Amendment.
 8. Respondents may require the Implementation Monitor and each of the Implementation Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Implementation Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Implementation Monitor and each of the Implementation

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Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Implementation Monitor's duties.

- F. If the Commission determines that the Implementation Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Implementation Monitor in the same manner as provided in this Paragraph IV.
- G. The Commission may on its own initiative, or at the request of the Implementation Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Amendment including, but not limited to, reinstating the Implementation Monitor to monitor Respondents' compliance with the firewalls as required in this Order.

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

- A. Fifteen (15) days after the date this Order becomes final, and every sixty (60) days thereafter, until Respondents receive the notice from Commission staff pursuant to Paragraph IV.D.3., each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order and the Amendment. Respondents shall submit at the same time a copy of these reports to the Implementation Monitor, if any Implementation Monitor has been appointed. Respondents shall include in such report, among other things, a detailed description of the procedures put into place to comply with the provisions of the Order prohibiting the dissemination of Non-Public Information as required in Paragraph II, and evidence that notices were

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delivered to required Persons as required pursuant to Paragraph III.

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next ten (10) years, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it is complying and has complied with this Order and the Amendment. Respondents shall submit at the same time a copy of these reports to the Implementation Monitor, if any Implementation Monitor has been appointed and whose term has not ended.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger, or consolidation of Respondents;
- C. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

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 Respondents, Respondents shall permit any duly authorized representative of the Commission:

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- A. Access, during office hours of Respondents 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 Respondents related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on March 14, 2017.

By the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

CONFIDENTIAL APPENDIX A**FIRST AMENDED & RESTATED LIMITED LIABILITY
COMPANY AGREEMENT OF MGG MIDSTREAM
HOLDINGS GP, LLC**

**[Redacted From the Public Record But Incorporated By
Reference]**

Analysis to Aid Public Comment

CONFIDENTIAL APPENDIX B

**AMENDMENT NO. 1 TO FIRST AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF MGG MIDSTREAM HOLDINGS GP, LLC,
DATED NOVEMBER 17, 2006**

**[Redacted From the Public Record But Incorporated By
Reference]**

APPENDIX C

MONITOR AGREEMENT

[Public Record Version]

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT**

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (“Consent Agreement”) with TC Group, L.L.C. (“Carlyle”), Riverstone Holdings LLC (“Riverstone”), Carlyle/Riverstone Global Energy and Power Fund II, L.P. (“CR-II”), and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (“CR-III”). The proposed Consent Agreement remedies the anticompetitive effects that otherwise would be likely to result from the acquisition described herein.

Analysis to Aid Public Comment

On August 28, 2006, Kinder Morgan, Inc. (“KMI”) announced that it had entered into a definitive merger agreement pursuant to which a group of investors, including CR-III, a private equity fund managed and controlled by Carlyle and Riverstone, and Carlyle Partners IV, L.P. (“CP-IV”), an affiliate of Carlyle, would acquire all outstanding shares of KMI for approximately \$22 billion, including the assumption of approximately \$7 billion of debt (the “Acquisition”).

Carlyle and Riverstone have worked together to form, manage, and operate several private equity funds that focus on energy-related investments. One of these funds is CR-III, which, through the Acquisition, will acquire approximately 11.3% of the equity in KMI. In addition, CP-IV will also acquire approximately 11.3% of the equity in KMI. Another fund that is jointly controlled and managed by Carlyle and Riverstone, CR-II, holds interests in various energy firms, including, as relevant here, a 50% interest in the general partner that controls Magellan Midstream Partners, L.P. (“Magellan”), a midstream terminal and pipeline company that competes with KMI in various terminaling and pipeline operations.

Without some form of relief, the proposed Acquisition is likely to result in anticompetitive effects from combining KMI and Magellan under Carlyle and Riverstone. KMI and Magellan compete directly with each other in at least eleven terminal markets in the southeastern United States. These markets include: Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. In addition, KMI and Magellan are two of only three significant “independent” (*i.e.* not owned by a refiner) terminaling companies in the Southeast. A reduction in competition, particularly competition among independent terminaling companies, may result in higher prices of gasoline and other light petroleum products, reduced supply, or other anticompetitive effects in these markets.

Analysis to Aid Public Comment

CR-II has representatives on Magellan's board and has significant veto power over Magellan's activities. Carlyle and CR-III also will have the right to appoint one director each to the eleven-member KMI board. Carlyle and Riverstone therefore may have the ability to reduce competition between the terminals owned by KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

The proposed Consent Agreement effectively remedies these possible anticompetitive effects by, among other things, prohibiting CR-II from having representation on any Magellan board, prohibiting the Respondents from influencing or attempting to influence Magellan's business activities, and requiring that Respondents implement firewalls designed to prevent the exchange of competitively sensitive information between Magellan and KMI.

I. The Proposed Respondents and Other Relevant Entities**A. Carlyle and Riverstone**

Founded in 1987, Carlyle is a private equity firm based in Washington, D.C., with more than \$44.3 billion under management. Carlyle invests in buyouts, venture and growth capital, real estate, and leveraged finance in Asia, Australia, Europe, and North America, focusing on aerospace and defense, automotive and transportation, consumer and retail, energy and power, healthcare, industrial, technology and business services, and telecommunications and media. Carlyle's investors include public and private institutional investors and high net worth individuals.

Founded in 2000, Riverstone Holdings LLC is a \$6 billion private investment firm that invests solely in the energy and power sectors. Riverstone has partnered with Carlyle to create a

Analysis to Aid Public Comment

series of energy-focused investment funds, which include CR-II and CR-III.

Carlyle and Riverstone launched CR-II in 2002, and in the last four years the fund has invested more than \$1 billion in transactions in the energy and power sector. Currently, CR-II holds interests in more than a dozen energy firms, including Magellan. In 2005, Carlyle and Riverstone launched CR-III, with more than \$3.8 billion in capital. CR-III, through the Acquisition, proposes to acquire shares that would constitute approximately 11.3% of KMI. CP-IV, another fund controlled and managed by Carlyle, also plans to acquire shares that would constitute approximately 11.3% of KMI, so that Carlyle and Riverstone together would hold approximately 22.6% of the equity of KMI.

B. KMI

KMI is one of the largest energy transportation, storage, and distribution companies in North America. Through various operating affiliates, KMI owns or operates pipelines that transport natural gas, crude oil, petroleum products and carbon dioxide, and terminals that store, transfer, and handle energy products such as gasoline and other light petroleum products, including terminals in the southeastern United States. KMI holds the general partner interest of Kinder Morgan Energy Partners, L.P. ("KMP"), which is one of the largest publicly traded energy limited partnerships in the United States.

C. Magellan

Magellan Midstream Partners, L.P., is a publicly traded limited partnership that is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include an 8,500 mile petroleum products pipeline system, including petroleum product terminals serving the mid-continent region of the United States, and other inland petroleum products terminals located in the southeastern United

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States, mostly along the Colonial Pipeline. Magellan has a complex organizational structure. CR-II holds a 50% interest in MGG Midstream Holdings GP, LLC — the general partner that ultimately controls Magellan — as well as certain limited partnership interests. Interests affiliated with Madison Dearborn Partners (“MDP”), another investment firm, hold the other 50% interest. CR-II and MDP have the right to designate two representatives each on a four-member Board of Managers, and each has veto power over actions taken by the Board of Managers. CR-II and MDP also have two directors each on the boards of the other general partners that control Magellan.

II. Market Structure and Competitive Effects

Relevant markets in which to analyze the effects of the Acquisition are the terminaling of gasoline and other light petroleum products in eleven metropolitan areas in the southeastern United States, including Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. Terminals are essential to the efficient flow of gasoline and other products from refineries to retail stations and have no effective substitutes. A terminal is the only method of safely and economically receiving, storing, and distributing bulk supplies of gasoline and other refined products in the large quantities needed for delivery to retail stations. Large quantities of gasoline and other light petroleum products can be shipped economically over long distances only by means of pipelines or marine vessels, not by trucks. Local deliveries to retail stations and commercial accounts, however, can be handled effectively only by tank trucks. Terminals serve as the link between pipelines that transport products from refineries and local modes of transportation.

Terminals typically serve limited geographic areas. Although the size of a terminal’s service area may vary from one metropolitan area to another based on the relative proximity of

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terminals, traffic congestion, natural barriers, and other factors impacting tank truck delivery, terminals often are clustered near each other and compete primarily to supply a nearby metropolitan area. The eleven local metropolitan areas in which both KMI and Magellan own terminals are relevant geographic markets in which to assess the possible effects of the Acquisition.

Each of the eleven markets already is either moderately or highly concentrated prior to the Acquisition, and an acquisition that combines KMI and Magellan through partial common ownership or control would significantly increase those levels of concentration. Moreover, KMI and Magellan are two of only three major independent terminaling systems in the Southeast — the third being TransMontaigne. Independent shippers and marketers frequently depend on independent terminals to obtain competitive access to certain markets because proprietary terminals are sometimes either not available to them or only available on a limited basis. In a number of the relevant markets, KMI and Magellan are either the only independent terminals available or two of a small number of independent terminals in service.

As a result, a direct combination of KMI and Magellan would remove a significant supplier of terminal services in markets where customers have few competitive alternatives. The combination would make the exercise of unilateral market power more likely because many customers view KMI's and Magellan's terminals as their first and second choices, and the other suppliers in the market are likely to be either incapable of replacing or unwilling to replace the competition lost as a result of the combination. Indeed, there is evidence that when customers have few independent terminal options, they can have difficulty obtaining storage and terminaling services and pay higher prices for those services that are available. Such a transaction also would increase the likelihood of coordinated interaction because of the small number of competitors remaining in many of the markets at issue and because the transaction would remove one of the few

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remaining independent participants that may serve as an important competitive influence.

Although the proposed transaction will not directly merge KMI and Magellan, it will have the effect of combining the two companies through partial common ownership. Carlyle and Riverstone, through their funds, will acquire a combined 22.6% interest in KMI, in addition to their existing 50% interest in the general partner controlling Magellan. After the transaction, it is likely that Carlyle and Riverstone would reduce competition between KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

III. Entry

Entry into the market for terminaling of gasoline and other light petroleum products in each of the identified markets in the southeastern United States is unlikely to deter or counteract the likely anticompetitive effects. Entry is difficult and time-consuming and potential entrants would face substantial barriers in the form of permit requirements and land use restrictions.

IV. Terms of the Proposed Agreement Containing Consent Orders

The proposed Consent Agreement effectively remedies the Acquisition's alleged anticompetitive effects by, among other things, prohibiting representatives of Carlyle or Riverstone from serving on any of the Magellan boards, prohibiting Carlyle and Riverstone from exerting control or influence over Magellan as long as they hold an interest in or can influence KMI, and requiring Respondents to set firewalls to prevent the exchange of competitively sensitive non-public information. The purpose of the Consent Agreement is to ensure that KMI and Magellan are operated independently of, and in competition with, each other,

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and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

D. Proposed Respondents' Current and Future Magellan Investments Must Be Passive

In order to achieve the purposes of the Consent Agreement, Paragraph II.A. of the Commission's proposed Decision and Order ("Order") prohibits the proposed Respondents from consummating the Acquisition unless and until (1) they have removed all of their appointed or elected agents from all Magellan boards, and (2) they have agreed with MDP that they will remove such directors and will no longer have the right to have any representation on any Magellan board. Paragraph II.B of the proposed Order provides that as long as either Carlyle, Riverstone, or CR-III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, the proposed Respondents shall not: (1) elect or appoint a director to any Magellan board, (2) have a director on any Magellan board, (3) influence or attempt to influence, directly or indirectly, Magellan (with exceptions that would allow Respondents to monitor certain actions of their partner MDP in Magellan entities that are not directly involved in the operation or management of the entities engaged in Magellan's terminaling business), or (4) receive or attempt to receive non-public information about Magellan. CR-II has agreed with MDP to modify their partnership agreement to effectuate the removal of CR-II's representatives on the Magellan boards, to ensure that CR-II does not have the ability through the general partnership agreement to elect or appoint a director to any Magellan board, and to otherwise comply with the terms of the Order.

Paragraph II.B of the Order further provides that as long as either Carlyle, Riverstone, or CR-III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, Carlyle,

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Riverstone, and CR-II shall: (1) not discuss with, or provide, disclose or otherwise make available to KMI or any KMI director any non-public information relating to Magellan, (2) prohibit any Magellan director from discussing with, or providing, disclosing or otherwise making available to KMI or any KMI director, directly or indirectly, any non-public information relating to Magellan; and (3) institute procedures and requirements throughout the various entities of the proposed Respondents to ensure that non-public information is protected as required by the proposed Order. This prohibition, however, would not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., who are principals with Riverstone, from serving as a director on any KMI board. Although these individuals have served on Magellan boards in the past, they are not currently directors of Magellan and have not been Magellan directors for several years. As a result, any direct non-public information they might have about Magellan from serving on the board in the past is out of date and would be competitively insignificant. In addition, such individuals still are prohibited from divulging such information to KMI or other KMI directors.

E. KMI Information and Investment Limitations

The Order also limits the flow of non-public KMI information to Magellan and places restrictions on the proposed Respondents' additional investments in KMI. Specifically, paragraph II.C. of the proposed Order provides that Carlyle, Riverstone, and CR-III shall: (1) not discuss with, or provide, disclose or otherwise make available to, Magellan, any non-public information relating to KMI; (2) prohibit all KMI directors from discussing with, or providing, disclosing or otherwise making available to Magellan, any non-public information relating to KMI; and (3) institute procedures and requirements throughout the various entities of the proposed respondents to ensure that non-public information is protected as required by the proposed Order.

Paragraph II.D. provides that, for the time period that Carlyle or Riverstone holds, directly or indirectly, any interest in

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Magellan, Carlyle and Riverstone shall not, without providing thirty days advance written notification, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition. This prior notice gives the Commission the opportunity to analyze additional purchases of KMI by the proposed Respondents that may change the economic incentives of the proposed Respondents. Advance notice is not required in certain limited situations where investments are effectively passive or where the Respondents' relative ownership interests would not change. In such situations, the Respondents must provide notification under Paragraph II.E. within ten days after such acquisitions.

F. Implementation Monitor

To assure that the firewall provisions of Paragraphs II.B. and II.C. of the Order are properly implemented and enforced, the Order requires an Implementation Monitor to monitor these obligations. Pursuant to Paragraph IV, Mr. Kevin Sudy, an Associate Director at Navigant Consulting, will be appointed as the Implementation Monitor and shall serve until such time as he reports to the Commission that the parties have established adequate procedures under the terms of the proposed Order and the Commission notifies the parties that such procedures are acceptable. The Commission reserves the right subsequently to reinstate the monitor as necessary and appropriate to ensure compliance by Respondents with the terms of the proposed Order. The Implementation Monitor is important to assuring compliance with the firewall provisions of the Order.

G. Notice Provisions

Paragraph II.E. requires the proposed Respondents to provide the Commission with written notice within ten days if they (1) no longer hold any interest in Magellan, other than a wholly passive investment, (2) no longer hold any interest in Magellan, (3) no longer hold any interest in KMI or no longer have the ability to

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influence or have representation at KMI, (4) acquire interest in interest in KMI through a passive investment fund, or (5) acquire any interest in Magellan.

Paragraph III of the proposed Order requires the proposed Respondents to send notice of the Order, Complaint, and Analysis to Aid Public Comment in this matter to certain persons likely to have competitively sensitive information subject to this Order or likely to be impacted by the firewall provisions of the Order, including persons on the Magellan and KMI Boards of Directors, and other persons involved in the Acquisition of KMI.

Paragraph V.A. requires periodic reports until the Implementation Monitor and the Commission are satisfied that the firewalls are properly established and adequately protect the flow of non-public information as required by the Order. Paragraph V.B. requires annual reports until the Order terminates in ten years.

Paragraph VI requires the proposed Respondents to give the Commission prior notice of certain events that may change their obligations under the Order.

H. Additional Provisions

Paragraph VII allows the Commission to have access to personnel and documents at the offices of the proposed Respondents with proper notice for purposes of determining or securing compliance with this Order.

Paragraph VIII provides that the Order shall terminate after ten years.

V. The Order to Maintain Assets

The Commission has also issued an Order to Maintain Assets in this proceeding, which effectively requires the proposed Respondents to adhere to the terms of the proposed Order during

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the time period leading up to their proposed Acquisition of equity interests in KMI.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order to aid the Commission in its determination of whether it should make final the proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.

Complaint

IN THE MATTER OF
MIREALSOURCE, INC.

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

Docket D-9321; File No. 061 0266

Complaint, October 10, 2006 — Decision, March 20, 2007

This consent order addresses rules and policies adopted by MiRealSource, a real estate corporation in Southeastern Michigan that operates a Multiple Listing Service, which shares and publicizes information on properties for sale. These rules and policies discriminated against certain kinds of lawful contracts between listing real estate brokers and their customers. The order prohibits MiRealSource from adopting or enforcing any rules or policies that deny or limit the ability of Multiple Listing Service members to enter into Exclusive Agency Listings or any other lawful listing agreements with sellers of properties. The order also prohibits MiRealSource from denying or restricting the services of the Multiple Listing Service to Exclusive Agency Listings or treating Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings. The order also requires that, within forty-five days after it becomes final, MiRealSource shall have conformed its rules to the substantive provisions of the order. In addition, the respondent is required to notify its members of the applicable order through its usual business communications and its website, to notify the Commission of changes in its structure, and to file periodic written reports concerning compliance.

Participants

For the *Commission*: *Peggy Bayer Femenella, Joel Christie, Sean P. Gates, Linda Holleran, and Christopher Renner.*

For the *Respondent*: *Kimberly Allen and Sheldon Klein, Butzel Long, P.C.; and Charles O. Houston III, Ferriby & Houston.*