Interlocutory Orders, Etc.

ASPEN TECHNOLOGY, INC.

Docket No. 9310, Order, August 20, 2009

Order modifying the Order issued on December 20, 2004 by adding provisions intended to remediate its inability to achieve fully its stated purpose as a result of actions by AspenTech.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On December 20, 2004, the Federal Trade Commission ("Commission") issued a Decision and Order ("Order") in Docket No. 9310 resolving claims contained in the Commission's Complaint issued on August 7, 2003. The Complaint alleged that the acquisition of Hyprotech Limited ("Hyprotech") by Respondent Aspen Technology, Inc. ("AspenTech"), lessened competition in several relevant markets, including the licensing of process engineering simulation software, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C.§ 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Respondent denied these allegations but agreed to settle the matter through entry of the Order, which became final on December 27, 2004, before the administrative trial had begun.

The Order requires AspenTech, among other things, to divest Hyprotech's process engineering simulation software, known as HYSYS, and certain related products specified in the Order that were marketed together with HYSYS (collectively, "Hyprotech assets"). The Order requires AspenTech to divest the Hyprotech assets it owns and to sublicense rights to the Hyprotech assets it licenses from third parties if the relevant license agreements permit it to do so. The Order also requires that AspenTech divest or license the Hyprotech assets to an acquirer approved by the Commission and in a manner approved by the Commission and incorporates into the Order the terms of any Commission-approved divestiture agreement between AspenTech and a Commission-approved acquirer. On December 20, 2004, the Commission approved divestiture of the Hyprotech assets to Honeywell International Inc. ("Honeywell') pursuant to a purchase and sale agreement previously submitted to the Commission. The Order requires AspenTech to have divested the Hyprotech assets to Honeywell on or before March 28, 2005. The

purpose of the divestiture of these assets, as stated in the Order, is "to allow the Commission-approved Acquirer [Honeywell] to engage in the continued development and licensing of Hyprotech Process Engineering Simulation Software and to remedy the lessening of competition as alleged in the Commission's complaint . . ." in the markets for process engineering simulation software. Order ¶ II.K.

Following entry of the Order in 2004, issues arose concerning the scope and timeliness of AspenTech's delivery and licensing of some of the assets required to be divested and licensed. After a full investigation, the Commission found reason to believe that AspenTech did not transfer certain of the Hyprotech assets to Honeywell by the deadline contained in the Order and did not assist Honeywell in obtaining license rights to certain assets believed to be owned by a third party but licensed to AspenTech; the Commission notified the Department of Justice of its intention to file an enforcement action. Although AspenTech denies these allegations, it has agreed to settle the matter by consenting to the entry of the attached Order Modifying Order ("Modifying Order").

The assets that the Commission believes AspenTech did not timely transfer to Honeywell consist of software contained in certain of the heat exchange simulation software products collectively referred to by AspenTech as the HTFS suite of products and identified in the Order as ACOL, APLE, FRAN, FIHR, MUSE, PIPE, TASC-Chemical and TASC-Mechanical ("HTFS products"). The Order requires AspenTech to divest all software that it owns in these products and to sublicense all third-party owned software embedded in these products for which it has the right to sublicense. The HTFS products contain software that AspenTech owns and software that AspenTech licenses from third parties. Certain of that third-party software was licensed under an agreement the Commission believes contains explicit language giving AspenTech the right to sublicense all its licensed rights in the software, including its rights to source code, to another party, and the Commission believes this language controls AspenTech's rights to this software. At the time of the original asset transfer, AspenTech removed the third party source code from the HTFS products before delivering them to Honeywell. Without the

relevant licensed source code, the HTFS products were unworkable.

Honeywell sought to obtain from AspenTech the source code that AspenTech had removed from the HTFS products, asserting that this source code was part of the Hyprotech assets the Order required AspenTech to divest or sublicense. AspenTech did not inform the Commission of this controversy or seek Commission guidance regarding its obligations under the Order, and instead directed Honeywell to the third party to obtain rights to the relevant source code. After Honeywell was unable to resolve the issue with AspenTech, it contacted the Commission staff. The Commission staff concluded that the third party agreement gave AspenTech the right to sublicense its rights to the source code, and that, in the opinion of the staff, AspenTech had improperly removed the third party source code from the HTFS products.

AspenTech states that it originally sublicensed to Honeywell the rights that it believes it was permitted to sublicense under the agreement with the third party, which AspenTech believes do not include rights to source code. AspenTech further states that, based on this understanding, it informed Honeywell that, pursuant to Honeywell's demand that AspenTech remove third party code for which it did not have sublicense rights from the Hyprotech assets before transferring them to Honeywell, AspenTech was removing the relevant third party source code from the HTFS products.

The Commission considered AspenTech's assertions, but nonetheless found reason to believe that AspenTech had violated its obligations under the Order.

The full HTFS software, including third-party software, was finally transferred to Honeywell in January 2006, some ten months after the Order's deadline of March 28, 2005. In the intervening period, AspenTech released new next-generation heat exchange products intended ultimately to replace ACOL and TASC, two of the most widely licensed HTFS products. These new products were known as ACOL+ and TASC+ and were not subject to divestiture under the Order. The Commission believes that AspenTech's delay in fully transferring the HTFS software prevented the Order from operating fully as intended and thereby

frustrated its purpose. The Commission believes that, by delaying divestiture of the software, AspenTech impaired Honeywell's ability to compete for customers who use heat exchange products in connection with process engineering simulation software.

The Commission also believes that AspenTech's actions lessened the effect of the Order's requirement that AspenTech provide Honeywell with releases for all Hyprotech assets for a period of two years. Had AspenTech fully complied with the Order, this provision would have provided Honeywell with a two-year entry window during which Honeywell could provide customers the full complement of divested software at least equivalent to that offered by AspenTech, and could seamlessly migrate customers from the AspenTech products to the Honeywell products. Because AspenTech did not provide Honeywell with all of the divested assets in a timely manner, however, Honeywell was denied the full benefit of this Order requirement. Honeywell initially lacked some of the needed products and then lacked the ability to offer seamless migration, although the Commission notes that AspenTech continued to provide updates to the HTFS products to Honeywell for an additional twelve months. The Commission believes these additional updates were required by the Order but AspenTech disagrees.

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in Docket No. 9310, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 CFR §3.72(b), and to modify the Order by adding provisions intended to remediate the inability of the Order to achieve fully its stated purpose as a result of actions by AspenTech. These provisions, set forth as (new) Paragraph XIII, among other things, require AspenTech, to maintain the "Portable Format Export/Import Feature" defined in the Modifying Order to mean "a provision for the export into and import from Portable Format of the Input Variables." Aspen Tech is also required to provide Honeywell the information needed to permit Honeywell to develop the capability to provide customers

with seamless transfer of data and files from AspenTech products to Honeywell's competing products for at least six years.[1]

Respondent AspenTech denies that it has violated the terms of the Order and does not agree with the facts and conclusions as stated herein. In settlement of the Commission's claims regarding violation of the terms of the Order as described, however, AspenTech has consented to the changes contained in this Modifying Order, and waives any further rights it may have under Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R § 3.72(b).

Respondent, its attorney, and counsel for the Commission therefore executed an Agreement Containing Order To Show Cause and Order Modifying Order ("Agreement"); the Commission thereafter accepted the executed Agreement and placed it on the public record for a period of thirty (30) days for the receipt and consideration of public comments; and the Commission has now determined to accord final approval to the Order To Show Cause and Order Modifying Order. Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that the Order in Docket No. 9310 be, and it hereby is, modified to add a new thirteenth (13th) paragraph, which shall read as follows:

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[1] Issues also arose with respect to the software product Flarenet. Hyprotech marketed Flarenet as a product that was part of the Hyprotech family of products, although Hyprotech licensed it from a third party. After acquiring Hyprotech, AspenTech obtained full rights to Flarenet from the third party. However, while the Order and purchase and sale agreement were being negotiated, AspenTech represented that Flarenet was still owned by the third party. Like other products owned by third parties, Flarenet was excluded from the divestiture under the Order. AspenTech asserts that Flarenet was excluded from divestiture for other reasons. Although AspenTech asserts that it has no obligation to provide Honeywell with access to Flarenet, in connection with the settlement of a private cause of action, it has agreed to license Flarenet to Honeywell under an agreement between the parties. Accordingly, there is no need for the Commission to pursue a modification of the Order with respect to Flarenet.

XIII.

IT IS FURTHER ORDERED that:

A. As used in this Paragraph XIII., the following definitions shall apply:

1. "Commercial Version Release" means a new version of any HYSYS Product or Heat Exchange Simulation Software Product, in each case that contains new Input Variables or changes the Portable Format of the relevant software, that is made generally available to customers. For the avoidance of doubt, "Commercial Version Release" shall not include localized versions, patches to a release, or beta or other test versions of a software product.

2. "Consent Agreement" means the Agreement Containing Show Cause Order and Order Modifying Order Pursuant to Rule 3.72, executed by Respondent.

3. "Honeywell" means Honeywell International Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 101 Columbia Road, Morris Township, NJ 07962.

4. "Heat Exchange Simulation Software Product" means Respondent's software products known by and licensed by Respondent as of the date the Modifying Order became final as, or previously known and licensed as, ACOL, APLE, FIHR, FRAN, MUSE, PIPE, TASC, Aspen Air Cooled Exchanger (previously known as Acol+), Aspen Fired Heater, Aspen Plate Exchanger (previously known as Plate+), Aspen Plate Fin Exchanger and Aspen Shell & Tube Exchanger (previously known as Tasc+) (each a "Product"). "Heat Exchange

Simulation Software Product" also includes any successor versions of these software programs, but, for the avoidance of doubt, shall not include (i) separate software programs usable in connection with such Product (such as through a "call" to the separate program), (ii) software code from separate software programs incorporated in whole or in part in such Product, except to the extent such code contains enhancements to the heat exchange design and rating capability of the Product or (iii) another software program into which all or a portion of the Product is incorporated, integrated, embedded or attached, provided that this exclusion shall not apply to the Product itself and future enhancements to the heat exchange design and rating capability of the Product as incorporated, integrated, embedded or attached to such other program.

5. "HTFS+ Portability Test Suite" means a suite of test cases that fully tests the validity of a data export from HTFS+ as demonstrated to the satisfaction of the Monitor.

6. "HTFS+ Technical Documentation" means the Technical Documentation of the HTFS+ Portable Format.

7. "HYSYS 2006.0 Update" means the versions of Aspen HYSYS and Aspen HYSYS Dynamics that contain the Portable Format Export/Import Feature as to all Input Variables in Aspen HYSYS version 2006.0 and Aspen HYSYS Dynamics version 2006.0, respectively.

8. "HYSYS Portability Test Suite" means a suite of test cases that, as verified by the Monitor, fully tests the validity of the Portable Format Export/Import Feature in HYSYS 2006.0 Update.

9. "HYSYS Product" means Respondent's software products known by and licensed by Respondent as

of the date this Modifying Order became final as Aspen HYSYS and Aspen HYSYS Dynamics. "HYSYS Product" also includes any successor versions of the Aspen HYSYS and Aspen HYSYS Dynamics software programs, but, for the avoidance of doubt, shall not include (i) separate software programs usable in connection with Aspen HYSYS or Aspen HYSYS Dynamics (such as through a "call" to the separate program), (ii) software code from separate software programs incorporated in whole or in part in Aspen HYSYS or Aspen HYSYS Dynamics, except to the extent such code contains enhancements to the steady-state process simulation or dynamic process simulation capabilities of Aspen HYSYS or Aspen HYSYS Dynamics, respectively, or (iii) another software program into which all or a portion of Aspen HYSYS or Aspen HYSYS Dynamics is incorporated, integrated, embedded or attached, provided that this exclusion shall not apply to Aspen HYSYS itself, Aspen HYSYS Dynamics itself, and future enhancements to the steady-state process simulation or dynamic process simulation capabilities of Aspen HYSYS or Aspen HYSYS Dynamics, respectively, as incorporated, integrated, embedded or attached to such other program.

10. "HYSYS 7.1 Technical Documentation" means Technical Documentation of the XML tags for new Input Variables or changes to the Portable Format in the commercial releases of Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1 current as of April 30, 2009 that are not included in Aspen HYSYS version 2006.0 and Aspen HYSYS Dynamics version 2006.0, respectively.

11. "Input Variable" means (i) input data provided as input by the user to define the calculations to be run in a case file in a HYSYS Product or a Heat

Exchange Simulation Software Product, and (ii) input data provided as input by the user to define the flowsheet block and stream graphical layout of a case in a HYSYS Product, but only as to flowsheet block and stream graphical layout input data that can be exported into Portable Format in HYSYS 2006.0 Update.

12. "Modifying Order" means the Order Modifying Order issued by the Commission in this matter.

13. "Monitor" means the person appointed by the Commission to monitor Respondent's compliance with its obligations under this Modifying Order and any related agreements, including the Monitor Agreement.

14. "Monitor Agreement" means the agreement executed by Respondent and the Monitor.

15. "Project Plan" means the plan submitted to and approved by the Monitor that contains a plan and schedule according to which Respondent plans to complete the HYSYS 2006.0 Update, HYSYS 7.1 Technical Documentation, HYSYS Portability Test Suite, HTFS+ Portability Test Suite, and HTFS+ Technical Documentation.

16. "Portable Format" shall mean a structured file format, such as XML or ASCII, that is both human-readable and machine-readable.

17. "Portable Format Export/Import Feature" means a provision for the export into and import from Portable Format of the Input Variables.

18. "Technical Documentation" means the tag itself, the data type of the tag (e.g., integer, real, Boolean, text, choice), valid choices for choice data types, and a definition of the meaning of the tag.

19. "Validate" means:

a. with respect to HYSYS 2006.0 Update, (i) the Monitor has verified that as to Input Variables common to Aspen HYSYS and Aspen HYSYS Dynamics versions 7.1 and HYSYS 2006.0 Update, the Monitor has verified that the native input report (.dmp) text files for each case in the HYSYS Portability Test Suite are shown to be substantially the same as the input report (.dmp) files that are produced when the Portable Format file is exported from Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1, and then imported as a new case in HYSYS 2006.0 Update, and (ii) the Monitor has verified, running HYSYS 2006.0 Update in calculation mode, that each case in the HYSYS Portability Test Suite demonstrates that the calculation results from the original case file and the calculation results from the exported/imported case file are substantially the same, using the same quality assurance criteria that Respondent uses for validating its commercial product release on these same test cases; and

b. with respect to a Commercial Version Release of a HYSYS Product, (i) the Monitor has verified that the Commercial Version Release native input report (.dmp) text files are shown to be substantially the same as the input report (.dmp) files that are produced when the Portable Format file is exported and then imported as a new case in the Commercial Version Release, and (ii) as to Input Variables common to the Commercial Version Release and HYSYS 2006.0 Update, the Monitor has verified that the native input report (.dmp) text files for each case in the HYSYS Portability Test Suite are shown to be substantially the same as the input report (.dmp) files that are

produced when the Portable Format file is exported from the Commercial Version Release and then imported as a new case in HYSYS 2006.0 Update, and (iii) the Monitor has verified that the Portable Format Export/Import Feature is used in a substantially similar manner as such feature is used in HYSYS 2006.0 Update.

B. The Monitor's duties and responsibilities shall include, and Respondent shall facilitate, comply with, and take no action inconsistent with or that hinders, the following:

1. the Monitor shall act in a fiduciary capacity for the benefit of the Commission;

2. the Monitor shall monitor Respondent's compliance with the requirements of subparagraphs XIII.F. – XIII.M. of this Modifying Order in consultation with the Commission staff;

3. the Monitor shall, in the Monitor's sole discretion, consult with third parties in the exercise of the Monitor's duties under this Paragraph XIII and the Monitor Agreement;

4. the Monitor shall Validate that the suite of test cases continues to operate properly with HYSYS 2006.0 Update using the same procedures and criteria provided hereunder in subparagraph XIII.G and XIII.L.4.; and

5. the Monitor shall report on a regular basis to the Commission; accordingly, the Monitor Agreement shall require the Monitor to report in writing to the Commission concerning Respondent's compliance with its obligations under subparagraphs XIII.F. – XIII.M. of this Modifying Order:

a. thirty (30) days after the date this Modifying Order becomes final;

b. every sixty (60) days until the first anniversary of the date this Modifying Order becomes final;

c. every six (6) months thereafter through the end of the Monitor's term; and

d. more frequently, as requested by the Commission or its staff; and

6. the Monitor shall, in consultation with Commission staff, attempt to resolve disputes regarding Respondent's compliance with its obligations under subparagraphs XIII.F. – XIII.M.; *provided*, *however*, that nothing in this paragraph shall limit the Commission's ability to assert that actions by AspenTech constitute a violation of the Modifying Order.

C. Respondent shall grant and transfer to the Monitor, and the Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities, including but not limited to the following:

1. subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other information as the Monitor may request, related to Respondent's compliance with its obligations under subparagraphs XIII.F. – XIII.M. of this Modifying Order;

2. the Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions to

which the Monitor and Respondent agree and that the Commission approves;

3. the Monitor shall have authority to employ, at the expense of Respondent, such experts, consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties;

4. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's 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 gross negligence, willful or wanton acts, or bad faith by the Monitor;

5. Respondent may require the Monitor and each of the Monitor's experts, consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission, and a copy of such agreement shall be provided to the Commission staff; and

6. the Commission may, among other things, require the Monitor and each of the Monitor's experts, consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

D. The Commission appoints Dr. Thomas L. Teague as Monitor and approves the Monitor Agreement executed by Respondent and Dr. Teague.

E. The Monitor shall serve until Respondent has complied with its obligations under subparagraphs XIII.F. – XIII.M.; if the Commission determines that the Monitor can no longer act, has ceased to act, or has failed to act diligently as Monitor, or if Dr. Teague can no longer act as Monitor, the Commission may appoint a substitute Monitor:

1. the Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld;

2. if Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor;

3. Respondent shall enter into Monitor Agreement with the substitute Monitor within a reasonable time thereafter, which shall satisfy the requirements of subparagraphs XIII.B. – XIII.C. and which shall be subject to the approval of the Commission; and

F. For each Commercial Version Release of HYSYS Products or Heat Exchange Simulation Software Products released by Respondent prior to December 31, 2014 (or December 31, 2016, if extended pursuant to subparagraph XIII.N), Respondent shall maintain the Portable Format Export/Import Feature.

G. By no later than July 22, 2009, Respondent shall provide to the Monitor and to Honeywell:

1. The HYSYS 2006.0 Update, including the object code and full source code for HYSYS 2006.0 Update to Honeywell and, unless otherwise requested by the Monitor, in object code form only to the Monitor, with a report of which source code files have been changed.

    a. Upon receipt of the HYSYS 2006.0 Update, the Monitor shall review and Validate the HYSYS 2006.0 Update and determine whether any revisions are necessary.

    b. If the Monitor determines that any revisions are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.

    c. When the Monitor Validates the HYSYS 2006.0 Update, he will notify Respondent and the Commission staff.

2. The HYSYS Portability Test Suite, including the exported XML files from the commercial release of Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1 current as of April 30, 2009, and the native format Aspen HYSYS version 2006.0 and Aspen HYSYS Dynamics version 2006.0 input report (.dmp) files that were produced from the importation of these XML files generated from the commercial release of Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1 current as of April 30, 2009, respectively.

    a. Upon receipt of the HYSYS Portability Test Suite, the Monitor shall review the HYSYS Portability Test Suite and determine whether the HYSYS Portability Test Suite allows the Monitor to test the Portable Format

Export/Import Feature as to all Input Variables common to the commercial release of Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1 current as of April 30, 2009 and HYSYS 2006.0 Update.

b. If the Monitor determines that any revisions to the HYSYS Portability Test Suite are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.

c. When the Monitor determines that the HYSYS Portability Test Suite is complete, he will notify Respondent and the Commission staff.

3. The HYSYS 7.1 Technical Documentation:

a. Upon receipt of the HYSYS 7.1 Technical Documentation, the Monitor shall review the HYSYS 7.1 Technical Documentation to ensure that it is complete.

b. If the Monitor determines that any revisions to the HYSYS 7.1 Technical Documentation are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and to Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.

c. When the Monitor determines that the HYSYS 7.1 Technical Documentation is complete, he will notify Respondent and the Commission staff.

H. By no later than July 22, 2009, Respondent shall complete and provide to the Monitor and to Honeywell the HTFS+ Technical Documentation:

1. Upon receipt of the HTFS+ Technical Documentation, the Monitor shall review the HTFS+ Technical Documentation to ensure its completeness.

2. If the Monitor determines that any revisions are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.

3. When the Monitor determines that the HTFS+ Technical Documentation is complete, he will notify Respondent and the Commission staff.

I. Respondent shall generate and provide to the Monitor and to Honeywell the HTFS+ Portability Test Suite as follows:

1. As part of the HTFS+ Portability Test Suite, Respondent shall generate three (3) sets of test cases:

a. the standard example cases for ACOL, APLE, FIHR, MUSE, and TASC will be run through the import function of HTFS+ and saved in HTFS+ input files;

b. the supplemental set of test input files that are designed by Respondent to map Input Variables that are not already covered by the existing example input cases; and

c. any additional supplemental set of test input files to the extent that additional Input Variables for ACOL, APLE, FIHR, MUSE, or

TASC not covered by the test cases above are identified by the Monitor prior to or on March 1, 2009, Respondent shall generate such additional supplemental test cases in the respective product and run those cases through the import function of HTFS+ and save as HTFS+ input files.

2. Respondent shall complete and provide to the Monitor and Honeywell the HTFS+ Portability Test Suite by no later than July 22, 2009. The HTFS+ Portability Test Suite shall include two (2) formats of the same test cases: the first format as inputs to ACOL, APLE, FIHR, MUSE or TASC, and the second format as run through the import function of HTFS+ and saved as HTFS+ input files.

3. The Monitor shall review the HTFS+ Portability Test Suite.

4. If the Monitor determines that any revisions are necessary, Respondent shall furnish final and complete updates, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.

5. When the Monitor determines that the HTFS+ Portability Test Suite is complete, he will notify Respondent and the Commission staff.

J. From the date Respondent executes the Consent Agreement until the last of the dates that the Monitor notifies Respondent and the Commission staff that Respondent has completed the HYSYS 2006.0 Update, the HYSYS 7.1 Technical Documentation, the HYSYS Portability Test Suite, the HTFS+ Portability Test Suite, and the HTFS+ Technical Documentation, Respondent shall report weekly to the Monitor on the

status of the Project Plan, or more frequently and in such manner as the Monitor requests.

K. If the Monitor determines that, despite Respondent's good faith efforts to satisfy the requirements of subparagraphs XIII.G. – XIII.J. and to comply with the Project Plan, Respondent is unable to satisfy specific time requirements, the Monitor may extend any of the deadlines in subparagraphs XIII.G. – XIII.J. by up to forty-five (45) days. If the Monitor determines that a longer extension is appropriate, Respondent may include that determination in any request for an extension of time under Rule 4.3(b) of the Commission's Rules of Practice, 16 C.F.R. § 4.3(b), and the Commission will give great weight to that determination in considering whether to grant the extension of time.

L. With respect to any Commercial Version Release of a HYSYS Product or any Heat Exchange Simulation Software Product that (i) Respondent releases after the date Respondent executes the Consent Agreement and prior to December 31, 2014 (or December 31, 2016, if extended pursuant to subparagraph XIII.N.), and (ii) contains new Input Variables, or changes the Portable Format of the relevant software:

1. Respondent shall provide to the Monitor the Technical Documentation of the Portable Format tags for all new Input Variables and changes to the Portable Format in such Commercial Version Release.

2. The Monitor shall review the Technical Documentation to ensure its completeness, and will report to Respondent any necessary revisions.

    a. If the Monitor communicates such revisions to Respondent within two (2) weeks of the Monitor's receipt of the Technical Documentation, Respondent shall provide a

final and complete update incorporating such revisions to the Monitor and to Honeywell no later than two (2) weeks prior to shipping the Commercial Version Release to customers.

b. If the Monitor does not communicate revisions within two (2) weeks from the Monitor's receipt of the Technical Documentation, Respondent shall provide the Technical Documentation to Honeywell no later than two (2) weeks prior to shipping the Commercial Version Release to Customers.

c. For any revisions communicated to Respondent by the Monitor later than two (2) weeks from the Monitor's receipt of the Technical Documentation, Respondent shall provide a final and complete update of the Technical Documentation incorporating such revisions to the Monitor and to Honeywell within four (4) weeks of notification of such revisions from the Monitor.

3. Respondent shall provide to the Monitor a beta version of the Commercial Version Release software.

4. The Monitor shall review and Validate the beta version of the Commercial Version Release, and will report to Respondent any necessary revisions.

a. If the Monitor communicates such revisions to Respondent within two (2) weeks of the Monitor's receipt of the beta version of the Commercial Version Release, Respondent shall provide a final and complete update of the Commercial Version Release incorporating such revisions to the Monitor no later than when the Commercial Version Release is shipped to customers.

b. For any revisions communicated to Respondent by the Monitor later than two (2) weeks from the Monitor's receipt of the beta version of the Commercial Version Release, Respondent shall provide an update of the Commercial Version Release incorporating such revisions to the Monitor and to customers in the next patch shipped to customers for the Commercial Version Release.

5. If, in the Commercial Version Release, Respondent replaces XML with a different Portable Format, the Monitor shall determine an appropriate procedure for the Monitor to Validate such Commercial Version Release and for the provision of Technical Documentation to the Monitor and to Honeywell. Pursuant to such procedure, Respondent shall not ship the Commercial Version Release to customers until at least two (2) weeks after providing the Technical Documentation for such Commercial Version Release to Honeywell.

M. With respect to any software patch for a HYSYS Product or Heat Exchange Simulation Software Product that (i) contains new Input Variable or changes the Portable Format, and (ii) is furnished to customers by Respondent at any time after the date Respondent executes the Consent Agreement and prior to December 31, 2014 (or December 31, 2016, if extended pursuant to subparagraph XIII.N.):

1. Respondent shall provide to the Monitor and to Honeywell the Technical Documentation of the Portable Format tags for the affected Input Variables no later than the date that Respondent makes the software patch generally available to customers.

2. If, after review of the Technical Documentation, the Monitor reports to Respondent necessary revisions, Respondent shall provide an update to

the Technical Documentation incorporating such revisions to the Monitor and to Honeywell within four (4) weeks of notification of such revisions from the Monitor.

N. The duration of Respondent's obligations under subparagraphs XIII.L. and XIII.M. may be extended to December 31, 2016, at the sole option of Honeywell, provided that Honeywell delivers written notice to the general counsel of Respondent, to the Commission staff, and to the Monitor, between April 1, 2014, and June 30, 2014.

O. Respondent shall:

1. Within thirty (30) days after it executes the Consent Agreement, file a verified written report with the Commission setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Paragraph XIII; and

2. On January 1, 2010, and on January 1 for each of the next five (5) years (or seven (7) years if Honeywell chooses to extend the duration of Respondent's commitment under subparagraph XIII.N.), and at such other times as the Commission may require, file a verified written report with the Commission setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Paragraph.

P. The purpose of this Paragraph XIII is to remedy the possible effects of the alleged delays in Respondent's complying with its obligations in the Commission's Order as issued on December 20, 2004, and as discussed in the Commission's Order To Show Cause.

By the Commission, Commissioner Rosch recused.

Concurring Statement of Commissioner Pamela Jones Harbour

In the Matter of Aspen Technology, Inc., Docket No. 9310

Final Approval of Order To Show Cause
and Order Modifying Order

I concur in granting final approval to this Order to Show Cause and Order Modifying Order because I believe these changes to our Order of December 20, 2004 ("Original Order") are likely to remedy the harm created in the marketplace by Aspen's failure to divest assets in the manner required by the Original Order.

I believe, however, that civil penalties would have been the appropriate remedy for Aspen's deliberate failure to comply with either the letter or spirit of the Original Order. Aspen's conduct regarding the Original Order was part of an attempt to gain competitive advantage, which included both untruthful and disingenuous representations. Such threats to the integrity of the Commission's procedures and remedies deserve their own independent sanctions – civil penalties.