

Complaint

IN THE MATTER OF

**DTE ENERGY COMPANY,
ENBRIDGE INC.,
III. AND
NEXUS GAS TRANSMISSION LLC**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4691; File No. 191 0068
Complaint, November 21, 2019 – Decision, November 21, 2019*

This consent order addresses the \$160 million acquisition by NEXUS Gas Transmission, LLC (“NGT”) of certain assets of Generation Pipeline LLC. The complaint alleges that the Transaction violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by eliminating actual and potential competition between NCGT and any other pipeline competitor in a market no broader than the pipeline transportation of natural gas to Lucas, Ottawa, and Wood counties in Ohio. The consent order requires Respondents to strike the Non-Compete from the purchase agreement and are prohibited from entering similarly anticompetitive agreements with their pipeline competitors in this market.

Participants

For the *Commission*: *Michael E. Blaisdell and Ashley Masters.*

For the *Respondents*: *Mike Cowie, Dechert, LLP; Joe Matelis, Sullivan Cromwell LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent NEXUS Gas Transmission LLC, a joint venture between Respondents DTE Energy Company and Enbridge Inc., entered into a transaction to acquire Generation Pipeline LLC, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and which, if the acquisition is consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. RESPONDENTS

1. Respondent DTE Energy Company (“DTE”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan with its executive offices and principal place of business located at One Energy Plaza, Detroit, Michigan, 48226.

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2. Respondent Enbridge Inc. (“Enbridge”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its executive offices and principal place of business located at 200 Fifth Avenue Place, Calgary, Alberta, T2P 3L8.

3. Respondent NEXUS Gas Transmission LLC (“Nexus”) is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 5400 Westheimer Court, Houston, Texas, 77056. Nexus is a 50/50 joint venture between DTE and Enbridge.

II. JURISDICTION

4. Respondents, either directly or through corporate entities under their control, are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce,” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

III. PROPOSED TRANSACTION

5. North Coast Gas Transmission LLC (“NCGT”) is a wholly-owned subsidiary of Somerset Gas Transmission Company, LLC, a private company that invests in natural gas pipeline opportunities throughout the United States. NCGT’s primary asset is a 280-mile natural gas transmission pipeline system spanning thirteen counties in Ohio, including Lucas, Ottawa, and Wood counties (the “North Coast Pipeline”).

6. Generation Pipeline LLC (“Generation”) owns and operates a 23-mile intrastate pipeline that serves customers in the Toledo, Ohio area (the “Generation Pipeline”). NCGT formed Generation as a wholly owned subsidiary in 2015, and NCGT is currently a minority owner of Generation.

7. In January 2019, Respondent Nexus agreed to pay \$160 million to acquire Generation from NCGT and Generation’s other owners (the “Transaction”). The Transaction’s sale agreement forbids NCGT from competing to provide natural gas transportation within a restricted area encompassing parts of Lucas, Ottawa, and Wood counties in Ohio for a period of three years post-closing (the “Non-Compete”). Following the transaction, NCGT will continue to own and operate the North Coast Pipeline.

8. The Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. THE RELEVANT MARKET

9. A relevant line of commerce within which to analyze the effects of the Transaction is natural gas pipeline transportation.

10. A relevant geographic market within which to analyze the effects of the Transaction is an area no broader than Lucas, Ottawa, and Wood counties in Ohio (the “Relevant

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Area”), which contains the closest geographic overlaps between the Generation Pipeline and the North Coast Pipeline. Although pipeline options may vary by customer delivery location, all customers for whom the Generation Pipeline and the North Coast Pipeline are both competitive options are located within the Relevant Area.

11. No economic or practical alternatives to natural gas pipeline transportation exist. Other natural gas delivery methods are significantly more costly, less reliable, and potentially more hazardous than pipeline transportation.

V. MARKET STRUCTURE

12. The Generation Pipeline and the North Coast Pipeline are two of few natural gas pipeline transportation options capable of serving customers in the Relevant Area. Moreover, the Generation Pipeline and the North Coast Pipeline represent the best natural gas pipeline transportation alternatives for certain existing or potential customers located reasonably close to both pipelines.

VI. ENTRY CONDITIONS

13. Entry, repositioning, or fringe firm growth would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Transaction. Significant barriers to entry or expansion include the time and cost of constructing a new natural gas pipeline or expanding existing pipelines, as these projects may take several years to complete, require numerous regulatory approvals, and cost millions of dollars.

VII. EFFECTS OF THE TRANSACTION

14. By prohibiting NCGT from competing to provide natural gas transportation within the restricted area, the Non-Compete would harm customers who would otherwise benefit from competition from NCGT.

15. The Non-Compete is not reasonably limited in scope to protect a legitimate business interest. A mere general desire to be free from competition is not a legitimate business interest. The Non-Compete does not protect any intellectual property, goodwill, or customer relationship necessary to protect Nexus’ investment. Moreover, even if a legitimate interest existed, the geographic scope of the Non-Compete is broader than reasonably necessary, because it prevents NCGT from competing for any opportunity in the restricted area, even for opportunities that were unforeseen at the time of the Transaction.

16. The effects of the Transaction would be a substantial lessening of competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the agreement would:

- a. eliminate actual and potential competition among market participants in the relevant markets; and

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- b. increase Respondents' ability to exercise market power unilaterally in the relevant markets.

VIII. VIOLATIONS CHARGED

17. The allegations contained in Paragraphs 1 through 16 above are hereby incorporated by reference as though fully set forth here.

18. The Transaction agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Transaction, including the Non-Compete, constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of November, 2019, issues its complaint against Respondents.

By the Commission.

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition of Generation Pipeline LLC by Respondent NEXUS Gas Transmission, LLC, whose ultimate parent entities are Respondents DTE Energy Company ("DTE") and Enbridge Inc. ("Enbridge"). The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an agreement ("Agreement Containing Consent Order" or "Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and 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. The Commission accepts the executed Consent Agreement and places it on the

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public record for a period of 30 days for the receipt and consideration of public comments. In further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent NEXUS Gas Transmission, 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 executive offices and principal place of business located at 5400 Westheimer Court, Houston, Texas, 77056.
2. Respondent DTE is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan with its executive offices and principal place of business located at One Energy Plaza, Detroit, Michigan, 48226.
3. Respondent Enbridge is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its executive offices and principal place of business located at 200 Fifth Avenue Place, Calgary, Alberta, T2P 3L8.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER**II. Definitions**

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

- A. “DTE” means DTE Energy Company, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates Controlled by DTE Energy Company, including NEXUS Gas Transmission, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Enbridge” means Enbridge Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates Controlled by Enbridge Inc., including NEXUS Gas Transmission, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “NEXUS” means NEXUS Gas Transmission, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, parents, subsidiaries, partnerships, divisions, groups, and affiliates Controlled by, or that Control, NEXUS Gas Transmission, LLC, including and

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the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Commission” means the Federal Trade Commission.
- E. “Control” or “Controlled” means, holding at least 50% of the common voting stock or ordinary shares in, the right to appoint at least 50% of the directors of, the right to direct a general partner of, or any other arrangement resulting in the right to direct the management of, an Entity.
- F. “Entity” means an individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization or other business.
- G. “Master Interest PSA” means the Membership Interest Purchase and Sale Agreement dated January 11, 2019 by and among: NEXUS Gas Transmission, LLC (Buyer); Appalachian Midstream Partners, LLC; NM Gen, LLC; North Coast Gas Transmission LLC; JayWest Investments, LLC; SAG Partners LLC; Summit Ventures, LLC; and GAMESJJ, LLC (Sellers); Generation Pipeline LLC (the Company); and Avista Capital Holdings, L.P. (Sellers’ Representative); and all amendments, exhibits, attachments, agreements, and schedules thereto.
- H. “NCGT Pipeline” means the natural gas transportation pipeline that runs from Marion, Ohio to Toledo, Ohio owned by North Coast Gas Transmission LLC, an Ohio limited liability company (“NCGT”).
- I. “Pipeline Competitor” means an Entity other than a Respondent that owns, operates, or markets capacity on an existing or planned natural gas transportation pipeline that traverses (or will traverse) the Relevant Area.
- J. “Relevant Area” means the following counties in the State of Ohio: Lucas, Ottawa, and Wood.

III. Prohibition

IT IS FURTHER ORDERED that:

- A. Respondents shall not, individually or collectively, acquire an interest in Generation Pipeline LLC, through the Master Interest PSA or otherwise, until all parties to the Master Interest PSA have executed the Third Amendment to Membership Interest Purchase and Sale Agreement (attached hereto as Confidential Appendix A).
- B. Respondents, individually or collectively, shall not, without the prior approval of the Commission, enter into, enforce, or solicit an agreement or understanding, whether written or oral, that restricts competition between one or more

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Respondents and a Pipeline Competitor to provide natural gas pipeline transportation in the Relevant Area.

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

- A. For a period of 10 years from the date this Order is issued, Respondents shall not, collectively or individually, acquire, directly or indirectly, through subsidiaries or otherwise, an interest in the NCGT Pipeline or another natural gas transportation pipeline in the Relevant Area without providing prior written notice to the Commission. Notification shall be made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a, or if notification is not required under Section 7A of the Clayton Act, as follows:
1. Prior written notice shall be provided on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “a Notification”);
 2. The Respondent required to prepare and submit a Notification shall do so in accordance with the requirements of Part 803, except that Respondent shall not be required to pay a filing fee and shall submit the Notification the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov;
 3. The Respondent shall submit a Notification to the Commission at least 30 days prior to consummating the transaction for which the Notification is provided (this period is hereinafter referred to as the “first waiting period”);
 4. 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), the Respondent shall not consummate the relevant transaction until 30 days after submitting the requested information and documentary material (this period is hereinafter referred to as the “second waiting period”); and
 5. Respondent may request early termination of the first or second waiting period, and the Bureau of Competition may grant, where appropriate, such request via letter.

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V. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Each Respondent shall file verified written reports (“compliance reports”) in accordance with the following:
1. Each Respondent shall submit an interim compliance report 30 days after the Order is issued; an annual compliance report one year after the Order is issued and for the following nine years on the anniversary of the date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall set forth in detail the manner and form in which the submitting Respondent intends to comply, is complying, and has complied with this Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether the submitting Respondent is complying with the Order and shall:
 - a. To the extent not provided in a prior compliance report, provide an executed copy of the Master Interest PSA and any amendments or revisions thereto; and
 - b. Describe any agreements, whether written or oral, between Respondent and a Pipeline Competitor that relate in any manner to the pipeline transportation of natural gas to the Relevant Area, including identifying all parties to such agreements and the general terms, purpose and duration of such agreements.
 3. Each compliance report must be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer of the submitting Respondent or another officer or employee specifically authorized to perform this function. The submitting Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

VI. Change in Respondent

IT IS FURTHER ORDERED that Nexus Gas Transmission, LLC, DTE Energy Company, and Enbridge Inc. shall each notify the Commission at least 30 days prior to:

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- A. Its proposed dissolution;
- B. Its proposed acquisition, merger or consolidation; or
- C. Any other change, including assignment or the creation, sale, or dissolution of its subsidiaries, if such change may affect its compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to a Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate on November 21, 2029.

By the Commission.

Concurring Statement

Confidential Appendix A**[Redacted from the Public Record]****CONCURRING STATEMENT OF CHRISTINE S. WILSON**

The proposed consent order settles the Commission's allegation that the proposed acquisition of Generation Pipeline LLC by NEXUS Gas Transmission LLC may substantially lessen competition in the market for natural gas pipeline transportation in the Toledo, Ohio area.

Pursuant to the consent agreement, the parties will strike an overly broad non-compete clause between the buyer (NEXUS) and the seller (North Coast Gas Transmission LLC, or NCGT) in the purchase agreement. Both NEXUS and NCGT will continue to compete for natural gas sales in the Toledo area after the transaction closes.

I voted to accept the proposed consent agreement because I believe that this particular non-compete was broader than necessary to protect the legitimate interests of the parties. I write separately to reiterate, however, that many non-compete clauses are lawful and enforceable.

"[M]ost modern courts will uphold a covenant [not to compete] to the extent that a breach of the covenant has occurred within a reasonable geographic area and time period, and, where applicable, with respect to a product reasonably related to the legitimate purpose of the restraint."¹ And it has long been so. In 1898, then-Judge (and future President and Chief Justice) William Howard Taft explained that "covenants in partial restraint of trade are generally upheld as valid when they are agreements ... by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold."² This

1 *Lektro-Vend Corp. v. Vendo Corp.*, 660 F.2d 255, 267 (7th Cir. 1981) (citing, *e.g.*, *Alders v. AFA Corp. of Florida*, 353 F. Supp. 654, 658 (S.D. Fla. 1973), *aff'd without opinion*, 490 F.2d 990 (5th Cir. 1974); Harlan M. Blake, *Employee Agreements Not to Compete*, 73 HARV. L. REV. 625, 674 (1960); Robert Bork, *Ancillary Restraints and the Sherman Act*, 15 ABA SECTION OF ANTITRUST LAW PROCEEDINGS 211, 223-24 (1959)).

2 *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 281 (6th Cir. 1898) (Taft, J.), *aff'd in relevant part*, 175 U.S. 211 (1899).

Analysis to Aid Public Comment

principle stretches back at least as far as 18th Century England,³ and today continues to protect the trade secrets, customer lists, and other goodwill a purchaser acquires with a business.⁴

Therefore, although the Commission will continue to scrutinize non-compete agreements to ensure that they are no broader than necessary to protect the legitimate interests of the parties, I believe that many of these agreements are – and will continue to be – lawful.

**STATEMENT OF COMMISSIONERS ROHIT CHOPRA
AND REBECCA KELLY SLAUGHTER**

Competition is a fundamental tenet of our economy. Too many firms impose non-compete clauses to avoid the discipline of a functioning marketplace. The FTC should always be skeptical of non-compete agreements that unnecessarily suppress competition. In this matter, the Commission will unleash competition by quashing a non-compete provision. The Commission should continue to closely scrutinize contract terms that impede free and fair markets.

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from DTE Energy Company (“DTE”), Enbridge Inc. (“Enbridge”), and NEXUS Gas Transmission, LLC (“Nexus”) (collectively, the “Respondents”). Nexus is a 50/50 joint venture between DTE and Enbridge. The Consent Agreement would remedy the anticompetitive effects stemming from a January 2019 transaction (the “Transaction”) in which Nexus intends to purchase Generation Pipeline LLC (“Generation”) from a group of sellers including North Coast Gas Transmission LLC (“NCGT”).

³ *Id.* at 279-282 (beginning with *Mitchel v. Reynolds*, 1 P. Wms. 181 (1711)).

⁴ See, e.g., *Lektro-Vend*, 660 F.2d at 266 (affirming a district court order finding a non-compete ancillary to the sale of a business lawful because, in part, it appropriately served the purchaser’s “interests in protecting its (1) acquired goodwill, and (2) any trade secrets or clientele to which [the seller] might potentially have access”).

Analysis to Aid Public Comment

Generation's primary asset is a 23-mile intrastate natural gas pipeline serving the Toledo, Ohio area. NCGT also owns another natural gas transportation pipeline in Ohio (the "North Coast System"), which includes a spur running slightly east of Toledo, and which Nexus is not acquiring. The Transaction's sale agreement prohibited NCGT from competing to provide natural gas pipeline transportation within a restricted area encompassing parts of Lucas, Ottawa, and Wood counties in Ohio (the "Restricted Area") for a period of three years post-closing (the "Non-Compete"). Under the terms of the proposed Consent Agreement, and to maintain competition in the affected market post-merger, Respondents are required to strike the Non-Compete from the purchase agreement and are prohibited from entering similarly anticompetitive agreements with their pipeline competitors in this market.

At the time of the Transaction, Generation and NCGT were two of a small number of natural gas pipeline transportation options capable of serving customers in the Restricted Area. The Commission's Complaint alleges that the Transaction violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating actual and potential competition between NCGT and any other pipeline competitor in a market no broader than the pipeline transportation of natural gas to Lucas, Ottawa, and Wood counties in Ohio.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent DTE Energy Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan with its executive offices and principal place of business located at One Energy Plaza, Detroit, Michigan, 48226.

Respondent Enbridge Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its executive offices and principal place of business located at 200 Fifth Avenue Place, Calgary, Alberta, T2P 318.

Respondent NEXUS Gas Transmission 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 executive offices and principal place of business located at 5400 Westheimer Court, Houston, Texas, 77056. Nexus is a 50/50 joint venture between DTE and Enbridge.

III. Relevant Markets and Market Structure

The relevant product market at issue is the pipeline transportation of natural gas. Even if pipeline transportation rates increased slightly, natural gas shippers would continue to use pipelines, as no economic or practical alternative exists. Other natural gas delivery methods (such as boat, rail, or truck) are far more costly, less reliable, and potentially more hazardous

Analysis to Aid Public Comment

than pipeline transportation. Moreover, particularly given low natural gas prices, a small increase in natural gas pipeline transportation rates would not lead customers to switch to other (more costly) fuels.

A relevant geographic market within which to analyze the effects of the Transaction is an area no broader than Lucas, Ottawa, and Wood counties in Ohio (the “Relevant Area”), which contains the closest geographic overlaps between the Generation Pipeline and the North Coast Pipeline. Although pipeline options may vary by customer delivery location, any customer for whom the Generation Pipeline and the North Coast pipeline are both competitive options are located within the Relevant Area.

Market concentration in this industry is location-specific and depends on the pipeline options available near a given delivery point. Many customers connect only to one pipeline and cannot economically connect to any other. For large industrial customers looking to establish a direct connection to a natural gas pipeline system, concentration is a factor of how many suppliers are close enough to connect economically, while also meeting the customer's volume and service requirements. The Commission's Complaint alleges that the Generation pipeline and the NCGT pipeline may be the best alternatives for a subset of large non-residential customers in the Toledo area who are located reasonably close to both pipelines.

IV. Effects of the Transaction

The Commission's Complaint alleges that, absent the proposed Consent Agreement, the Transaction would result in competitive harm in the natural gas pipeline transportation market in the Relevant Area. By prohibiting NCGT from competing to provide natural gas transportation within the Restricted Area, the Non-Compete would harm customers who would otherwise benefit from competition from NCGT. The Non-Compete is not reasonably limited in scope to protect a legitimate business interest. In this instance, the provision does not protect any significant intellectual property, goodwill, or customer relationship necessary to protect Nexus ' investment. A mere general desire to be free from competition following a transaction is not a legitimate business interest. Moreover, even if a legitimate interest existed, the geographic scope of the Non-Compete would be broader than reasonably necessary, because, in part, it prevents NCGT from competing for any opportunity in the restricted area, even for opportunities that were unforeseen at the time of the Transaction.

V. Entry Conditions

Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Merger. Entry into the pipeline transportation of natural gas is a complicated, expensive, and time-consuming endeavor. In addition to completing a lengthy regulatory review and approval process, an entrant would need to secure sufficient precedent agreements by shippers, obtain rights of way, and overcome environmental or landowner hurdles.

Analysis to Aid Public Comment

VI. The Proposed Consent Agreement

The proposed consent order (“Order”) effectively resolves the competitive concerns raised by the Sale Agreement's Non-Compete. First, the Order requires the parties to execute a revised Sale Agreement that eliminates the Non-Compete and associated language.

Next, Section II.B of the Order prohibits Nexus and its parents, DTE and Enbridge, (collectively “Respondents”), from entering into, enforcing, or soliciting any written or oral agreement that restricts competition between one or more Respondents and a “Pipeline Competitor” to provide natural gas pipeline transportation to the Relevant Area, without prior Commission approval. The Order defines “Pipeline Competitor” as a firm that owns, operates, or markets capacity on a natural gas pipeline. This definition would include NCGT and other pipeline companies, as well as a situation where a customer with long-term capacity rights might resell its capacity and effectively act as a competitor.

In an industry where joint ventures and other competitor collaborations frequently occur, some arrangements that the Order might capture could advance legitimate purposes. The Order's prior approval provision gives Respondents the opportunity to advocate for these arrangements and the Commission to evaluate any attendant restrictions on a case-by-case basis.

The Order also requires Respondents to provide prior notice of intent to acquire the North Coast System or any other natural gas pipeline in the Relevant Area. It also requires Respondents to file annual compliance reports with the Commission for 10 years following the Order's issuance.

Complaint

IN THE MATTER OF

CAMBRIDGE ANALYTICA, LLCCOMPLAINT, OPINION, AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket No. 9383; File No. 182 3107
Complaint, July 22, 2019 – Decision, November 25, 2019

This case addresses Cambridge Analytica, LLC’s use of the GSRAApp to harvest certain Facebook user profile data from approximately 250,000–270,000 Facebook users who directly interacted with the app, as well as 50–65 million of the “friends” in those users’ Facebook social network. The complaint alleges that respondents’ representation to users who installed the GSRAApp that they would not “download [their] name or any other identifiable information” was deceptive because the GSRAApp collected identifiable information from these users, including their Facebook User IDs. The complaint also alleges that Cambridge Analytica misrepresented its participation in the EU-U.S. Privacy Shield framework and its adherence to the framework’s requirements. When respondent failed to timely file an Answer, Complaint Counsel filed a Motion for Summary Decision. The Commission granted Complaint Counsel’s motion and issued an Order to Cease and Desist.

Participants

For the *Commission*: Linda Holleran Kopp.

For the *Respondents*: Adam Harris and Kristine Manoukian, Schulte Roth & Zabel LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Cambridge Analytica, LLC, a corporation, (“Respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

NATURE OF THE CASE

1. This action seeks to hold Respondent responsible for its deceptive acts and practices to harvest personal information from Facebook users for political and commercial targeted advertising purposes. Respondent, along with Alexander Nix and Aleksandr Kogan, jointly and severally, developed, operated, analyzed, and used data obtained through an application on the Facebook platform called the “GSRAApp,” also sometimes referred to publicly as the “thisisyourdigitallife” app. Using the Graph application programming interface (“Graph API”) Facebook made available to developers on its platform, the GSRAApp harvested Facebook user profile data from approximately 250,000–270,000 Facebook users who directly interacted with the app, as well as 50–65 million of the “friends” in those users’ social networks. Cambridge Analytica, LLC, Alexander Nix, and Aleksandr Kogan obtained the app users’ consent to collect their Facebook profile data through false and deceptive means. Specifically, they falsely represented that the GSRAApp did not collect any identifiable information from the Facebook users who authorized it.