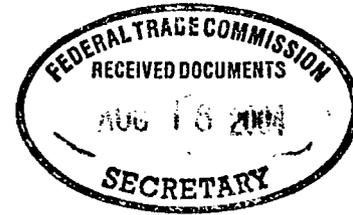


August 10, 2004

By: Priority Mail

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, N.W.  
Washington, D.C 20580



Re: Comments of Linde AG regarding Decision and  
Order of the Federal Trade Commission in the  
Matter of Aspen Technology, Inc., Docket No. 9310

Dear Mr. Clark:

I represent Linde AG and its US subsidiaries in certain matters. I have been requested by the Linde Engineering Division of Linde AG ("Linde") to submit the following comments with regard to the Decision and Order of the Federal Trade Commission (the "Commission") in the Matter of Aspen Technology, Inc., for consideration by the Commission as to whether the Commission should modify the Decision and Order as recommended below.

**Background.**

Linde has reviewed the Public Record Version of the Decision and Order, and, in general, welcomes and supports the Commission's intention to "remedy the lessening of competition" in this area. Moreover, Linde appreciates the Commission's concern that the customers' interests need to be protected, and that the sanctions imposed by the Commission should not result in disadvantages for the customers. Linde is submitting these comments in order to avoid any possible disadvantages to the customers from the imposed sanctions and to assure a smooth continuation of Linde's, as well as other similarly situated customers', gas and engineering business.

**Linde's Contracts with Aspen Technology**

Linde has the following contracts with Aspen Technology involving the Hyprotech Process Engineering Simulation Software:

**(1) Software License and Service Agreement**

This Agreement covers approximately 50 licenses of HYSYS for the headquarters

of the Linde Engineering Division in Höllriegelskreuth, Germany (near Munich), and 15 licenses of HYSYS for subsidiary and affiliates of Linde AG. The Agreement was signed on June 30, 2004, with Aspen Technology, Inc., and replaced a former agreement with Hyprotech. The current Agreement with Aspen Technology terminates on March 14, 2010.

### **(2) GMPS Wrapper and COMThermo GMPS Wrapper Extensions Maintenance Agreement**

This Agreement covers the maintenance of an interface for the use of Linde's proprietary General Multiphase Property System ("GMPS") with HYSYS. The GMPS Wrapper is the currently used interface which shall be replaced by the COMThermo GMPS Wrapper in the near future. The latter is based on the new COMThermo interface technology which is still in the test version state. This Agreement was signed on June 30, 2004, with Aspen Tech Limited, UK, and covers part of the above mentioned former agreement with Hyprotech. This Agreement terminates on March 14, 2010, but after the third year of its existence, the Agreement may be terminated on notice on an annual basis.

### **Linde's Interests**

Linde is using HYSYS primarily for the simulation of olefin, hydrogen and synthesis gas processes. Linde's interests are:

- Long-term usage of HYSYS and, therefore, benefit from the investments made by integrating HYSYS into Linde's workflow.
- Price stability.
- Continued innovative development and maintaining a competitive product.
- Stability of the interfaces for proprietary unit operations and physical property systems, and further improvement of the interfaces (e.g. HYSYS in combination with COMThermo). This can only be achieved through close cooperation between the supplier and Linde, and the supplier must be sufficiently motivated to do so.
- Close cooperation with the supplier so that Linde obtains information directly from the supplier about strategic developments in order for Linde to be able to influence the direction of the supplier's strategic development and participate on the supplier's advisory or steering committees, as it does now. Again, the supplier must be sufficiently motivated to agree to do so.

It is Linde's strong belief that it is not in Linde's interest to split the License Agreement and the Service/ Maintenance/Support Agreements between two companies, since such a split would decrease Linde's, or, for that matter, any other customer's, impact on cooperation, product quality, development direction and service. Thus, Linde favors that the License Agreement and the Service/Maintenance/Support Agreements be with one party as discussed below.

### **Implications of the Decision and Order for Linde**

In this section, we shall point out the implications of the Decision and Order for Linde with respect to Linde's Agreements relating to the use of HYSYS. Since Linde does not know the actual acquirer of the assets nor the extent of the transfer of Aspen Technology personnel to the acquirer, Linde is unable to predict the exact impact on its business at this time, and, therefore, Linde has evaluated the implications under different scenarios, as follows:

- As the Commission, no doubt, knows, HYSYS is a very sophisticated product, dependent largely for the product's development on the quality of the supplier's experts. If the acquirer employs only a small number of the Aspen Technology HYSYS experts, it is likely that the acquirer would not have the necessary potential to compete effectively with Aspen Technology with respect to either the strategic development of products or service. This is especially so since the acquirer will not have the financial benefits of the current License Agreements which remain with Aspen Technology. In these circumstances, Linde or other similarly situated customers will not have the incentive to transfer the Service/Maintenance/Support Agreements to the acquirer.

- If there is an even split of HYSYS experts between Aspen Technology and the acquirer, the acquirer should at least have the know-how potential to compete with Aspen Technology, but the acquirer will still be at a financial disadvantage since the acquirer will not receive payments under the License Agreements. Under these circumstances, Linde may wish to transfer all of its Agreements to the acquirer, but it is bound to Aspen Technology with its current License Agreement until March 2010, and it would be too risky to transfer only the Service/Maintenance/Support Agreements. Furthermore, there is an additional risk. The splitting of the HYSYS development team may weaken both companies' teams, causing the innovative development of HYSYS to be slowed significantly. Customers of HYSYS may, therefore, be disadvantaged compared to the customers of the AspenPlus product of Aspen Technology. In particular, Linde and other customers of HYSYS may be significantly

disadvantaged if AspenPlus achieves an edge over HYSYS and effectively becomes the only product on the market. It would be ironic that Aspen Technology would achieve a monopoly through this divestiture.

- If the acquirer employs most of the Aspen Technology HYSYS experts, the acquirer would be able to compete effectively with Aspen Technology. Again, in that event, Linde might wish to change supplier, but it is bound to Aspen Technology with its current License Agreement until 2010. Linde and other similarly situated customers would be disadvantaged because they would not be able to achieve close cooperation with the acquirer based solely on the financial benefits from the Service/Maintenance/Support Agreements. The acquirer would not be sufficiently motivated to do so. In addition, Linde and other customers similarly situated would be disadvantaged because Aspen Technology would lose its expertise, and, therefore, would not be able to achieve innovative developments for the HYSYS product. Linde and other similarly situated customers would be locked into a supplier that would not be able to develop a product in a technological area where continued innovation is a must.

- Aspen Technology may cease its innovative development for HYSYS, since it may no longer have an incentive to do so because it would have to provide new releases to the acquirer and thereby benefit its new competitor. Again, Linde would want to change its supplier if that occurred, but Linde would be locked into Aspen Technology until March 2010.

- The acquirer may have an interest to use and develop HYSYS for a specific customer base only, because, for example, it may have limited resources as a result of limited income solely from the Service/Maintenance/Support Agreements without the benefit of the more lucrative License Agreements. Thus, the acquirer may develop HYSYS for use within its own company or for the benefit of a single customer or a small group of customers, but would not be inclined to invest funds for the development of HYSYS for a general user base. In that case, Linde, and other similarly situated customers, would not have the incentive to change supplier and would be locked in with Aspen Technology.

## **Conclusions**

As discussed above, Linde believes that it is not in its, and all similarly situated customers', interest to split the License Agreement and the Service/Maintenance/Support Agreements between Aspen Technology and the approved acquirer. Thus, Linde recommends

that the Decision and Order be modified so that customers of the Hyprotech Process Engineering Simulation Software have the right, during the license period of their current contracts, to transfer all of their agreements -- License Agreements and Service/Maintenance/Support Agreements -- to the approved acquirer in order to establish more effective competition, and avoid the potential disadvantages for customers mentioned above

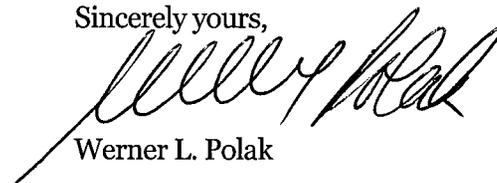
This means that Linde and other similarly situated customers need to have the right to terminate both of their agreements with Aspen Technology and for Linde (and other similarly situated customers) to have the right to terminate and to transfer any interface related agreements, such as Linde's GMPS Wrapper and COMThermo GMPS Wrapper Extensions Maintenance Agreement.

Linde is concerned that a split of the HYSYS experts between the two companies and the splitting of License Agreements and Service/Maintenance/Support Agreements between the two companies may not favor long-term competitiveness of HYSYS as a state-of-the-art simulator. Previously, Aspen Technology with AspenPlus and Hyprotech with HYSYS were effectively competing with good know-how and trained expertise. Splitting such know-how and expertise would require each company to develop and train such expertise -- if it were motivated to do so -- which would take considerable time, probably years, because of the sophisticated know-how involved, and, in the meantime, may place the HYSYS product into jeopardy.

Linde also believes that the Commission should approve an acquirer which would be financially strong with a serious interest in the continued development and marketing of the HYSYS product for general use, in order to establish an effective competitor. Linde also requests that the Commission not approve an acquirer which is a competitor of Linde or other similarly situated customers and, therefore, would not have an interest in providing a competitive product to Linde and such customers.

We thank you for the opportunity in submitting these comments to you and trust that they will be helpful in assisting the Commission in their decision. Please let us know if you should have any questions relating to our comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Werner L. Polak', written over a horizontal line.

Werner L. Polak

WLP/dt

cc: Peter Richman, Esq.

Lesli C. Esposito, Esq.