

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	
BUCKEYE PARTNERS, L.P.)	
a limited partnership;)	
)	Docket No. C-
and)	
)	
SHELL OIL COMPANY,)	
a corporation.)	
)	

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 Buckeye Partners, L.P. (“Buckeye”) and Shell Oil Company (“Shell”) (collectively “Respondents”) entered into an agreement pursuant to which Buckeye proposed to acquire certain refined petroleum product assets from Shell, that such agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such agreement and acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. THE RESPONDENTS

Buckeye Partners, L.P.

1. Respondent Buckeye is a 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 at 5 Radnor Corporate Center, Suite 500, 100 Matsonford Road, Radnor, Pennsylvania 19087.
2. Respondent Buckeye is, and at all times relevant herein has been, engaged in the storage, terminaling and pipeline transportation of refined petroleum products, including gasoline, diesel fuel, and other light petroleum products.
3. Respondent Buckeye is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a partnership as that term is used in Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Shell Oil Company

4. Respondent Shell is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.
5. Respondent Shell is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the business of manufacturing, refining, distributing, transporting, terminaling, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, base oil, motor oil, lubricants, petrochemicals, and other petroleum products.
6. Respondent Shell is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITIONS

7. Pursuant to a Purchase and Sale Agreement dated June 30, 2004, Respondent Buckeye agreed to buy from Respondent Shell certain refined petroleum products pipelines, tankage and terminal assets in the Midwest United States (“First Proposed Acquisition”), including a refined petroleum product terminal that serves the areas within a 50-mile radius of Niles, Michigan (“Niles Area”).
8. After being advised by Commission staff of potential competitive issues and concerns in connection with Buckeye acquiring Shell’s terminal in Niles in the First Proposed Acquisition, Respondents withdrew their HSR filing.
9. Respondents informed Staff of their intention to initiate a second acquisition (“Second Proposed Acquisition”), which would include all of the assets of the First Proposed Acquisition except for the Shell terminal in Niles.
10. Respondent Buckeye has expressed a continued interest in acquiring the Shell terminal in Niles after completion of the Second Proposed Acquisition.
11. Respondent Shell has expressed a continued interest in selling its Niles terminal to Respondent Buckeye or another third party after completion of the Second Proposed Acquisition.

III. TRADE AND COMMERCE

A. Relevant Product Market

12. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. Terminals receive deliveries 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 petroleum terminals for providing such terminaling services.
13. A relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products.

B. Relevant Geographic Market

14. Respondents each own a petroleum product terminal that supplies gasoline, diesel fuel, and other light petroleum products to buyers in the Niles Area. Buyers of gasoline, diesel fuel and other light petroleum products in the Niles Area, such as gasoline marketers and others, may have no effective alternative to terminals located within the Niles Area. Because of costs and delivery logistics, terminals located outside the Niles Area may be too far away to supply buyers in that area.
15. A relevant section of the country in which to evaluate the effects of this acquisition may be as small as the Niles Area.

C. Market Structure

16. The market for terminaling services in the Niles Area is highly concentrated and would become significantly more highly concentrated if the First Proposed Acquisition had been consummated. The pre-merger Herfindahl-Hirschman Index for the First Proposed Acquisition was 2,800, and would have increased by 800 points to 3600 had the First Proposed Acquisition been consummated. The Second Proposed Acquisition results in no change in market concentration in the Niles Area because it does not involve the acquisition of Shell's terminal in Niles.

D. Entry Conditions

17. Entry into the market for terminaling services in the Niles Area is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger. Constructing a new terminal is subject to significant regulatory and supply constraints, and would require substantial time to accomplish. As

a result, new entry would not be sufficient to constrain the anticompetitive effects that are likely to result from this acquisition.

IV. EFFECTS OF THE PROPOSED ACQUISITION

18. Respondents Buckeye and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Niles Area.
19. The First Proposed Acquisition, if consummated, would likely have led to a substantial lessening of competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Niles Areas. The First Proposed Acquisition does and would demonstrate these effects in the following ways, among others:
 - a. by eliminating direct competition between Buckeye and Shell in the supply of terminaling services in the Niles Areas; and
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the remaining competitors in the relevant market;

each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

V. STATUTES VIOLATED

20. Buckeye's agreement to acquire petroleum product assets from Shell, as originally proposed in the First Proposed Acquisition, may violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and may have, if consummated, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2004, issues its complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: